

SB 1372 by **Alexander**; (Identical to H 0833) Florida Hurricane Catastrophe Fund

626970 A S RCS BI, Alexander Delete L.722 - 723: 02/16 10:13 AM

SB 2082 by **GO**; (Identical to H 7105) OGSR/Florida Workers' Compensation Joint Underwriting Association, Inc.

CS/SB 1514 by **CM, Detert**; (Similar to H 1085) Tax on Sales, Use, and Other Transactions

243574 D S L RCS BI, Bennett Delete everything after 02/16 10:13 AM

SB 1290 by **Negron**; (Similar to H 0777) Criminal Penalties for Violations of Securities Laws

SB 1342 by **Storms**; (Compare to CS/H 0935) Child Support Enforcement

202046 A S L FAV TR, Storms Delete L.118 - 131: 02/08 03:45 PM
615208 AA S L RCS BI, Fasano Delete L.5: 02/16 10:13 AM
682354 A S L FAV TR, Storms Delete L.152: 02/08 03:45 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Richter, Chair
Senator Smith, Vice Chair

MEETING DATE: Thursday, February 16, 2012
TIME: 8:00 —10:15 a.m.
PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Fasano, Gaetz, Hays, Margolis, Negron, Oelrich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1372 Alexander (Identical H 833)	Florida Hurricane Catastrophe Fund; Providing for calculation of an insurer's reimbursement premium and retention under the reimbursement contract; revising coverage levels available under the reimbursement contract; revising aggregate coverage limits; providing for the phase-in of changes to coverage levels and limits; revising the cash build-up factor included in reimbursement premiums; providing for phase-in; reducing maximum allowable emergency assessments; changing the name of the Florida Hurricane Catastrophe Fund Finance Corporation; repealing provisions related to temporary emergency options for additional coverage, etc. BI 02/16/2012 Fav/CS BC	Fav/CS Yeas 8 Nays 1
2	SB 2082 Governmental Oversight and Accountability (Identical H 7105)	OGSR/Florida Workers' Compensation Joint Underwriting Association, Inc.; Amending provisions which provide an exemption from public records requirements for records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., and an exemption from public meetings requirements for meetings of the association's board of governors, or a subcommittee of the association's board, at which confidential and exempt records are discussed; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions, etc. GO 02/07/2012 Favorable BI 02/16/2012 Favorable	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Thursday, February 16, 2012, 8:00 —10:15 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 1514 Commerce and Tourism / Detert (Similar H 1085, Compare H 861, S 1352, S 2098)	Tax on Sales, Use, and Other Transactions; Revising the definition of the term "dealer" for purposes relating to the collection of the tax on sales, use, and other transactions; deleting certain provisions that specify dealer activities or other circumstances that subject mail order sales to this state's power to levy and collect the sales and use tax; providing that certain persons who make mail order sales and who have a substantial nexus with this state are subject to this state's power to levy and collect the sales and use tax when they engage in certain enumerated activities, etc. CM 02/02/2012 Fav/CS BI 02/16/2012 Fav/CS BC	Fav/CS Yeas 9 Nays 1
4	SB 1290 Negron (Similar H 777)	Criminal Penalties for Violations of Securities Laws; Increasing the offense severity ranking for failing to register securities with the Office of Financial Regulation; specifying the offense severity ranking for the failure of a dealer, associated person, or issuer of securities to register with the Office of Financial Regulation, etc. CJ 02/09/2012 CJ 02/09/2012 Favorable BI 02/16/2012 Favorable BC	Favorable Yeas 10 Nays 0
5	SB 1342 Storms (Compare CS/H 935)	Child Support Enforcement; Providing that, for IV-D cases, an affidavit filed with a child support depository requesting that child support payments be made through the depository need not allege a default in support payments; requiring the Department of Highway Safety and Motor Vehicles to suspend an obligor's driver license unless the obligor begins paying child support by income deduction; requiring the Department of Highway Safety and Motor Vehicles to reinstate an obligor's driving privileges if the obligor is paying his or her support obligation by income deduction order; adding a caregiver to the list of persons who may provide a statement regarding a putative father, etc. CF 01/19/2012 Favorable TR 02/07/2012 Fav/2 Amendments BI 02/16/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0

Other related meeting materials



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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	.	
	.	

The Committee on Banking and Insurance (Alexander) recommended the following:

Senate Amendment (with title amendment)

Delete lines 722 - 723

and insert:

applicable for the 2007, 2008, 2009, 2010, 2011, and 2012, ~~and~~
~~2013~~ hurricane seasons, to address market disruptions and

Delete lines 730 - 731

and insert:

(c) *Optional coverage.*—For the 2009-2010, 2010-2011, 2011-
2012, and 2012-2013, ~~and 2013-2014~~ contract years, the board



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13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 Delete line 18

16 and insert:

17 the end of the 2012-2013 contract year; limiting to

By Senator Alexander

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1 A bill to be entitled
 2 An act relating to the Florida Hurricane Catastrophe
 3 Fund; amending s. 215.555, F.S.; revising the
 4 definitions of "retention" and "corporation";
 5 providing for calculation of an insurer's
 6 reimbursement premium and retention under the
 7 reimbursement contract; revising coverage levels
 8 available under the reimbursement contract; revising
 9 aggregate coverage limits; providing for the phase-in
 10 of changes to coverage levels and limits; revising the
 11 cash build-up factor included in reimbursement
 12 premiums; providing for phase-in; reducing maximum
 13 allowable emergency assessments; changing the name of
 14 the Florida Hurricane Catastrophe Fund Finance
 15 Corporation; repealing provisions related to temporary
 16 emergency options for additional coverage; terminating
 17 the temporary increase in coverage limits option at
 18 the end of the 2011-2012 contract year; limiting to
 19 the 2012-2013 contract year provisions relating to the
 20 TICL options addendum, TICL reimbursement premiums,
 21 and the claims-paying capacity of the fund, to
 22 conform; amending s. 627.0629, F.S.; conforming a
 23 cross-reference; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Paragraphs (e) and (n) of subsection (2),
 28 paragraphs (b) and (c) of subsection (4), paragraph (b) of
 29 subsection (5), paragraphs (b) and (d) of subsection (6), and

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30 subsections (16), (17), and (18) of section 215.555, Florida
 31 Statutes, are amended to read:
 32 215.555 Florida Hurricane Catastrophe Fund.—
 33 (2) DEFINITIONS.—As used in this section:
 34 (e) "Retention" means the amount of losses below which an
 35 insurer is not entitled to reimbursement from the fund. An
 36 insurer's retention shall be calculated as follows:
 37 1.a. The board shall calculate and report to each insurer
 38 the retention multiples for that year.
 39 (I) For the contract year beginning June 1, 2005, the
 40 retention multiple shall be equal to \$4.5 billion divided by the
 41 total estimated reimbursement premium for the contract year; for
 42 subsequent years, up to and including the 2012-2013 contract
 43 year, the retention multiple shall be equal to \$4.5 billion,
 44 adjusted based upon the reported exposure for the contract year
 45 occurring 2 years before the particular contract year to reflect
 46 the percentage growth in exposure to the fund for covered
 47 policies since 2004, divided by the total estimated
 48 reimbursement premium for the contract year.
 49 (II) For the contract year beginning June 1, 2013, the
 50 retention multiple shall be equal to \$8 billion divided by the
 51 total estimated reimbursement premium for the contract year. For
 52 subsequent years, the retention multiple shall be equal to \$8
 53 billion, adjusted based upon the reported exposure for the
 54 contract year occurring 2 years before the particular contract
 55 year to reflect the percentage growth in exposure to the fund
 56 for covered policies since 2011, divided by the total
 57 reimbursement premium for the contract year.
 58 b. For the 2012-2013 contract year, total reimbursement

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59 premium for purposes of the calculation under this subparagraph
60 shall be estimated using the assumption that all insurers have
61 selected the 90-percent coverage level.

62 c. In order to implement the phase-in of reduced coverage
63 levels as provided in paragraph (4)(b), total reimbursement
64 premium for purposes of the calculation under this subparagraph
65 shall be estimated using the following assumptions:

66 (I) For the 2013-2014 contract year, the assumption is that
67 all insurers have selected the 85-percent coverage level.

68 (II) For the 2014-2015 contract year, the assumption is
69 that all insurers have selected the 80-percent coverage level.

70 (III) For the 2015-2016 contract year and subsequent
71 contract years, the assumption is that all insurers have
72 selected the 75-percent coverage level.

73 2. The retention multiple as determined under subparagraph
74 1. shall be adjusted to reflect the coverage level elected by
75 the insurer.

76 a. For an insurer electing the maximum coverage level
77 available under paragraph (4)(b) for a particular contract year
78 For insurers electing the 90-percent coverage level, the
79 adjusted retention multiple is 100 percent of the amount
80 determined under subparagraph 1.

81 b. In order to implement the phase-in of reduced coverage
82 levels as provided in paragraph (4)(b), for an insurer electing
83 a coverage level other than the maximum coverage level, the
84 adjusted retention multiple is as follows:

85 (I) With respect to the 2012-2013 contract year, for an
86 insurer For insurers electing the 75-percent coverage level, the
87 retention multiple is 90/75ths 120-percent of the amount

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88 determined under subparagraph 1., and for an insurer ~~For~~
89 ~~insurers~~ electing the 45-percent coverage level, the adjusted
90 retention multiple is 90/45ths 200-percent of the amount
91 determined under subparagraph 1.

92 (II) With respect to the 2013-2014 contract year, for an
93 insurer electing the 75-percent coverage level, the retention
94 multiple is 85/75ths of the amount determined under subparagraph
95 1., and for an insurer electing the 45-percent coverage level,
96 the retention multiple is 85/45ths of the amount determined
97 under subparagraph 1.

98 (III) With respect to the 2014-2015 contract year, for an
99 insurer electing the 75-percent coverage level, the retention
100 multiple is 80/75ths of the amount determined under subparagraph
101 1., and for an insurer electing the 45-percent coverage level,
102 the retention multiple is 80/45ths of the amount determined
103 under subparagraph 1.

104 (IV) With respect to the 2015-2016 contract year and
105 subsequent contract years, for an insurer electing the 75-
106 percent coverage level, the retention multiple is the amount
107 determined under subparagraph 1., and for an insurer electing
108 the 45-percent coverage level, the retention multiple is
109 75/45ths of the amount determined under subparagraph 1.

110 3. An insurer shall determine its provisional retention by
111 multiplying its provisional reimbursement premium by the
112 applicable adjusted retention multiple and shall determine its
113 actual retention by multiplying its actual reimbursement premium
114 by the applicable adjusted retention multiple.

115 4. For insurers who experience multiple covered events
116 causing loss during the contract year, beginning June 1, 2005,

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117 each insurer's full retention shall be applied to each of the
 118 covered events causing the two largest losses for that insurer.
 119 For each other covered event resulting in losses, the insurer's
 120 retention shall be reduced to one-third of the full retention.
 121 The reimbursement contract shall provide for the reimbursement
 122 of losses for each covered event based on the full retention
 123 with adjustments made to reflect the reduced retentions on or
 124 after January 1 of the contract year provided the insurer
 125 reports its losses as specified in the reimbursement contract.

126 (n) "Corporation" means the State Board of Administration
 127 Florida Hurricane Catastrophe Fund Finance Corporation created
 128 in paragraph (6) (d).

129 (4) REIMBURSEMENT CONTRACTS.—

130 (b)1.a. The contract shall contain a promise by the board
 131 to reimburse the insurer for a specified percentage 45 percent,
 132 75 percent, or 90 percent of its losses from each covered event
 133 in excess of the insurer's retention, plus 5 percent of the
 134 reimbursed losses to cover loss adjustment expenses.

135 b. The available coverage levels are as follows:

136 (I) For the 2012-2013 contract year, 90 percent, 75
 137 percent, and 45 percent.

138 (II) For the 2013-2014 contract year, 85 percent, 75
 139 percent, and 45 percent.

140 (III) For the 2014-2015 contract year, 80 percent, 75
 141 percent, and 45 percent.

142 (IV) For the 2015-2016 contract year and subsequent
 143 contract years, 75 percent and 45 percent.

144 2.a. The insurer must elect one of the percentage coverage
 145 levels specified in this paragraph and may, upon renewal of a

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146 reimbursement contract, elect a lower percentage coverage level
 147 if no revenue bonds issued under subsection (6) after a covered
 148 event are outstanding, or elect a higher percentage coverage
 149 level, regardless of whether or not revenue bonds are
 150 outstanding. All members of an insurer group must elect the same
 151 percentage coverage level. Any joint underwriting association,
 152 risk apportionment plan, or other entity created under s.
 153 627.351 must elect the maximum 90-percent coverage level
 154 available under subparagraph 1.

155 b. In order to implement the phase-in of reduced coverage
 156 levels as provided in subparagraph 1., and notwithstanding any
 157 provisions of sub-subparagraph a. to the contrary, if revenue
 158 bonds issued under subsection (6) after a covered event are
 159 outstanding and the insurer has elected the maximum coverage
 160 level available under subparagraph 1., the insurer must, upon
 161 renewal of the reimbursement contract, elect the maximum
 162 coverage level available under subparagraph 1. for the renewal
 163 contract year.

164 3. The contract shall provide that reimbursement amounts
 165 shall not be reduced by reinsurance paid or payable to the
 166 insurer from other sources.

167 4. Notwithstanding any other provision contained in this
 168 section, the board shall make available to insurers that
 169 purchased coverage provided by this subparagraph in 2008,
 170 insurers qualifying as limited apportionment companies under s.
 171 627.351(6) (c), and insurers that have been approved to
 172 participate in the Insurance Capital Build-Up Incentive Program
 173 pursuant to s. 215.5595 a contract or contract addendum that
 174 provides an additional amount of reimbursement coverage of up to

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175 \$10 million. The premium to be charged for this additional
 176 reimbursement coverage shall be 50 percent of the additional
 177 reimbursement coverage provided, which shall include one prepaid
 178 reinstatement. The minimum retention level that an eligible
 179 participating insurer must retain associated with this
 180 additional coverage layer is 30 percent of the insurer's surplus
 181 ~~as of December 31, 2008, for the 2009-2010 contract year; as of~~
 182 ~~December 31, 2009, for the 2010-2011 contract year; and as of~~
 183 December 31, 2010, for the 2011-2012 contract year. This
 184 coverage shall be in addition to all other coverage that may be
 185 provided under this section. The coverage provided by the fund
 186 under this subparagraph shall be in addition to the claims-
 187 paying capacity as defined in subparagraph (c)1., but only with
 188 respect to those insurers that select the additional coverage
 189 option and meet the requirements of this subparagraph. The
 190 claims-paying capacity with respect to all other participating
 191 insurers and limited apportionment companies that do not select
 192 the additional coverage option shall be limited to their
 193 reimbursement premium's proportionate share of the actual
 194 claims-paying capacity otherwise defined in subparagraph (c)1.
 195 and as provided for under the terms of the reimbursement
 196 contract. The optional coverage retention as specified shall be
 197 accessed before the mandatory coverage under the reimbursement
 198 contract, but once the limit of coverage selected under this
 199 option is exhausted, the insurer's retention under the mandatory
 200 coverage will apply. This coverage will apply and be paid
 201 concurrently with mandatory coverage. This subparagraph expires
 202 on May 31, 2012.

203 (c)1. The contract shall also provide that the obligation

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204 of the board with respect to all contracts covering a particular
 205 contract year shall not exceed the actual claims-paying capacity
 206 of the fund up to the limit specified in this subparagraph.
 207 a. For the 2012-2013 contract year, the limit is \$17
 208 billion.
 209 b. For the 2013-2014 contract year, the limit is \$15.5
 210 billion.
 211 c. For the 2014-2015 contract year, the limit is \$14
 212 billion.
 213 d. For the 2015-2016 contract year and subsequent contract
 214 years, the limit is \$12 billion.
 215 e. For contract years after the 2015-2016 contract year, if
 216 a limit of \$17 billion for that contract year, unless the board
 217 determines that there is sufficient estimated claims-paying
 218 capacity to provide \$12 \$17 billion of capacity for the current
 219 contract year and an additional \$12 \$17 billion of capacity for
 220 subsequent contract years. If the board makes such a
 221 determination, the estimated claims-paying capacity for the
 222 particular contract year shall be determined by adding to the
 223 \$12 \$17 billion limit one-half of the fund's estimated claims-
 224 paying capacity in excess of \$24 \$34 billion. However, the
 225 dollar growth in the limit may not increase in any year by an
 226 amount greater than the dollar growth of the balance of the fund
 227 as of December 31, less any premiums or interest attributable to
 228 optional coverage, as defined by rule, which occurred over the
 229 prior calendar year.
 230 2. In May and October of the contract year, the board shall
 231 publish in the Florida Administrative Weekly a statement of the
 232 fund's estimated borrowing capacity, the fund's estimated

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 233 claims-paying capacity, and the projected balance of the fund as
 234 of December 31. After the end of each calendar year, the board
 235 shall notify insurers of the estimated borrowing capacity,
 236 estimated claims-paying capacity, and the balance of the fund as
 237 of December 31 to provide insurers with data necessary to assist
 238 them in determining their retention and projected payout from
 239 the fund for loss reimbursement purposes. In conjunction with
 240 the development of the premium formula, as provided for in
 241 subsection (5), the board shall publish factors or multiples
 242 that assist insurers in determining their retention and
 243 projected payout for the next contract year. For all regulatory
 244 and reinsurance purposes, an insurer may calculate its projected
 245 payout from the fund as its share of the total fund premium for
 246 the current contract year multiplied by the sum of the projected
 247 balance of the fund as of December 31 and the estimated
 248 borrowing capacity for that contract year as reported under this
 249 subparagraph.

(5) REIMBURSEMENT PREMIUMS.—

251 (b)1. The State Board of Administration shall select an
 252 independent consultant to develop a formula for determining the
 253 actuarially indicated premium to be paid to the fund. The
 254 formula shall specify, for each zip code or other limited
 255 geographical area, the amount of premium to be paid by an
 256 insurer for each \$1,000 of insured value under covered policies
 257 in that zip code or other area. In establishing premiums, the
 258 board shall consider the coverage elected under paragraph (4) (b)
 259 and any factors that tend to enhance the actuarial
 260 sophistication of ratemaking for the fund, including
 261 deductibles, type of construction, type of coverage provided,

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 262 relative concentration of risks, and other such factors deemed
 263 by the board to be appropriate.
 264 2. The formula must provide for a cash build-up factor as
 265 specified in this subparagraph. ~~For the 2009-2010 contract year,~~
 266 ~~the factor is 5 percent. For the 2010-2011 contract year, the~~
 267 ~~factor is 10 percent.~~
 268 a. For the 2011-2012 contract year, the factor is 15
 269 percent.
 270 b. For the 2012-2013 contract year, the factor is 20
 271 percent.
 272 c. For the 2013-2014 contract year ~~and thereafter,~~ the
 273 factor is 25 percent.
 274 d. For the 2014-2015 contract year, the factor is 30
 275 percent.
 276 e. For the 2015-2016 contract year, the factor is 35
 277 percent.
 278 f. For the 2016-2017 contract year, the factor is 40
 279 percent.
 280 g. For the 2017-2018 contract year, the factor is 45
 281 percent.
 282 h. For the 2018-2019 contract year and subsequent contract
 283 years, the factor is 50 percent.
 284 3. The formula may provide for a procedure to determine the
 285 premiums to be paid by new insurers that begin writing covered
 286 policies after the beginning of a contract year, taking into
 287 consideration when the insurer starts writing covered policies,
 288 the potential exposure of the insurer, the potential exposure of
 289 the fund, the administrative costs to the insurer and to the
 290 fund, and any other factors deemed appropriate by the board. The

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291 formula must be approved by unanimous vote of the board. The
292 board may, at any time, revise the formula pursuant to the
293 procedure provided in this paragraph.

294 (6) REVENUE BONDS.—

295 (b) *Emergency assessments*—

296 1. If the board determines that the amount of revenue
297 produced under subsection (5) is insufficient to fund the
298 obligations, costs, and expenses of the fund and the
299 corporation, including repayment of revenue bonds and that
300 portion of the debt service coverage not met by reimbursement
301 premiums, the board shall direct the Office of Insurance
302 Regulation to levy, by order, an emergency assessment on direct
303 premiums for all property and casualty lines of business in this
304 state, including property and casualty business of surplus lines
305 insurers regulated under part VIII of chapter 626, but not
306 including any workers' compensation premiums or medical
307 malpractice premiums. As used in this subsection, the term
308 "property and casualty business" includes all lines of business
309 identified on Form 2, Exhibit of Premiums and Losses, in the
310 annual statement required of authorized insurers by s. 624.424
311 and any rule adopted under this section, except for those lines
312 identified as accident and health insurance and except for
313 policies written under the National Flood Insurance Program. The
314 assessment shall be specified as a percentage of direct written
315 premium and is subject to annual adjustments by the board in
316 order to meet debt obligations. The same percentage shall apply
317 to all policies in lines of business subject to the assessment
318 issued or renewed during the 12-month period beginning on the
319 effective date of the assessment.

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320 2.a. A premium is not subject to an annual assessment under
321 this paragraph in excess of 6 percent of premium with respect to
322 obligations arising out of losses attributable to any one
323 contract year prior to the 2015-2016 contract year, and a
324 premium is not subject to an aggregate annual assessment under
325 this paragraph in excess of 10 percent of premium if all of the
326 losses that generated the obligations were attributable to
327 contract years prior to the 2015-2016 contract year. An annual
328 assessment under this paragraph shall continue as long as the
329 revenue bonds issued with respect to which the assessment was
330 imposed are outstanding, including any bonds the proceeds of
331 which were used to refund the revenue bonds, unless adequate
332 provision has been made for the payment of the bonds under the
333 documents authorizing issuance of the bonds.

334 b. Except as provided in sub-subparagraph a., a premium is
335 not subject to an annual assessment under this paragraph in
336 excess of 5 percent of premium with respect to obligations
337 arising out of losses attributable to any one contract year, and
338 a premium is not subject to an aggregate annual assessment under
339 this paragraph in excess of 8 percent of premium. An annual
340 assessment under this paragraph shall continue as long as the
341 revenue bonds issued with respect to which the assessment was
342 imposed are outstanding, including any bonds the proceeds of
343 which were used to refund the revenue bonds, unless adequate
344 provision has been made for the payment of the bonds under the
345 documents authorizing issuance of the bonds.

346 3. Emergency assessments shall be collected from
347 policyholders. Emergency assessments shall be remitted by
348 insurers as a percentage of direct written premium for the

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 349 preceding calendar quarter as specified in the order from the
 350 Office of Insurance Regulation. The office shall verify the
 351 accurate and timely collection and remittance of emergency
 352 assessments and shall report the information to the board in a
 353 form and at a time specified by the board. Each insurer
 354 collecting assessments shall provide the information with
 355 respect to premiums and collections as may be required by the
 356 office to enable the office to monitor and verify compliance
 357 with this paragraph.

358 4. With respect to assessments of surplus lines premiums,
 359 each surplus lines agent shall collect the assessment at the
 360 same time as the agent collects the surplus lines tax required
 361 by s. 626.932, and the surplus lines agent shall remit the
 362 assessment to the Florida Surplus Lines Service Office created
 363 by s. 626.921 at the same time as the agent remits the surplus
 364 lines tax to the Florida Surplus Lines Service Office. The
 365 emergency assessment on each insured procuring coverage and
 366 filing under s. 626.938 shall be remitted by the insured to the
 367 Florida Surplus Lines Service Office at the time the insured
 368 pays the surplus lines tax to the Florida Surplus Lines Service
 369 Office. The Florida Surplus Lines Service Office shall remit the
 370 collected assessments to the fund or corporation as provided in
 371 the order levied by the Office of Insurance Regulation. The
 372 Florida Surplus Lines Service Office shall verify the proper
 373 application of such emergency assessments and shall assist the
 374 board in ensuring the accurate and timely collection and
 375 remittance of assessments as required by the board. The Florida
 376 Surplus Lines Service Office shall annually calculate the
 377 aggregate written premium on property and casualty business,

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 378 other than workers' compensation and medical malpractice,
 379 procured through surplus lines agents and insureds procuring
 380 coverage and filing under s. 626.938 and shall report the
 381 information to the board in a form and at a time specified by
 382 the board.

383 5.a. Any assessment authority not used for a particular
 384 contract year may be used for a subsequent contract year. If,
 385 for a subsequent contract year, the board determines that the
 386 amount of revenue produced under subsection (5) is insufficient
 387 to fund the obligations, costs, and expenses of the fund and the
 388 corporation, including repayment of revenue bonds and that
 389 portion of the debt service coverage not met by reimbursement
 390 premiums, the board shall direct the Office of Insurance
 391 Regulation to levy an emergency assessment up to an amount not
 392 exceeding the amount of unused assessment authority from a
 393 previous contract year or years, plus an additional 4 percent,
 394 if provided that the assessments in the aggregate do not exceed
 395 the limits specified in subparagraph 2. and all of the losses
 396 that generated the obligations were attributable to contract
 397 years prior to the 2015-2016 contract year.

398 b. Except as provided in sub-subparagraph a., any
 399 assessment authority not used for a particular contract year may
 400 be used for a subsequent contract year. If, for a subsequent
 401 contract year, the board determines that the amount of revenue
 402 produced under subsection (5) is insufficient to fund the
 403 obligations, costs, and expenses of the fund and the
 404 corporation, including repayment of revenue bonds and that
 405 portion of the debt service coverage not met by reimbursement
 406 premiums, the board shall direct the Office of Insurance

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407 Regulation to levy an emergency assessment up to an amount not
 408 exceeding the amount of unused assessment authority from a
 409 previous contract year or years, plus an additional 3 percent,
 410 if the assessments in the aggregate do not exceed the limits
 411 specified in subparagraph 2.

412 6. The assessments otherwise payable to the corporation
 413 under this paragraph shall be paid to the fund unless and until
 414 the Office of Insurance Regulation and the Florida Surplus Lines
 415 Service Office have received from the corporation and the fund a
 416 notice, which shall be conclusive and upon which they may rely
 417 without further inquiry, that the corporation has issued bonds
 418 and the fund has no agreements in effect with local governments
 419 under paragraph (c). On or after the date of the notice and
 420 until the date the corporation has no bonds outstanding, the
 421 fund shall have no right, title, or interest in or to the
 422 assessments, except as provided in the fund's agreement with the
 423 corporation.

424 7. Emergency assessments are not premium and are not
 425 subject to the premium tax, to the surplus lines tax, to any
 426 fees, or to any commissions. An insurer is liable for all
 427 assessments that it collects and must treat the failure of an
 428 insured to pay an assessment as a failure to pay the premium. An
 429 insurer is not liable for uncollectible assessments.

430 8. When an insurer is required to return an unearned
 431 premium, it shall also return any collected assessment
 432 attributable to the unearned premium. A credit adjustment to the
 433 collected assessment may be made by the insurer with regard to
 434 future remittances that are payable to the fund or corporation,
 435 but the insurer is not entitled to a refund.

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436 9. When a surplus lines insured or an insured who has
 437 procured coverage and filed under s. 626.938 is entitled to the
 438 return of an unearned premium, the Florida Surplus Lines Service
 439 Office shall provide a credit or refund to the agent or such
 440 insured for the collected assessment attributable to the
 441 unearned premium prior to remitting the emergency assessment
 442 collected to the fund or corporation.

443 10. The exemption of medical malpractice insurance premiums
 444 from emergency assessments under this paragraph is repealed May
 445 31, 2013, and medical malpractice insurance premiums shall be
 446 subject to emergency assessments attributable to loss events
 447 occurring in the contract years commencing on June 1, 2013.

448 (d) State Board of Administration ~~Florida Hurricane~~
 449 ~~Catastrophe Fund Finance Corporation.~~

450 1. In addition to the findings and declarations in
 451 subsection (1), the Legislature also finds and declares that:

452 a. The public benefits corporation created under this
 453 paragraph will provide a mechanism necessary for the cost-
 454 effective and efficient issuance of bonds. This mechanism will
 455 eliminate unnecessary costs in the bond issuance process,
 456 thereby increasing the amounts available to pay reimbursement
 457 for losses to property sustained as a result of hurricane
 458 damage.

459 b. The purpose of such bonds is to fund reimbursements
 460 through the Florida Hurricane Catastrophe Fund to pay for the
 461 costs of construction, reconstruction, repair, restoration, and
 462 other costs associated with damage to properties of
 463 policyholders of covered policies due to the occurrence of a
 464 hurricane.

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465 c. The efficacy of the financing mechanism will be enhanced
 466 by the corporation's ownership of the assessments, by the
 467 insulation of the assessments from possible bankruptcy
 468 proceedings, and by covenants of the state with the
 469 corporation's bondholders.

470 2.a. There is created a public benefits corporation, which
 471 is an instrumentality of the state, to be known as the State
 472 Board of Administration Florida Hurricane Catastrophe Fund
 473 Finance Corporation.

474 b. The corporation shall operate under a five-member board
 475 of directors consisting of the Governor or a designee, the Chief
 476 Financial Officer or a designee, the Attorney General or a
 477 designee, the director of the Division of Bond Finance of the
 478 State Board of Administration, and the Chief Operating Officer
 479 ~~senior employee of the State Board of Administration responsible~~
 480 ~~for operations~~ of the Florida Hurricane Catastrophe Fund.

481 c. The corporation has all of the powers of corporations
 482 under chapter 607 and under chapter 617, subject only to the
 483 provisions of this subsection.

484 d. The corporation may issue bonds and engage in such other
 485 financial transactions as are necessary to provide sufficient
 486 funds to achieve the purposes of this section.

487 e. The corporation may invest in any of the investments
 488 authorized under s. 215.47.

489 f. There shall be no liability on the part of, and no cause
 490 of action shall arise against, any board members or employees of
 491 the corporation for any actions taken by them in the performance
 492 of their duties under this paragraph.

493 3.a. In actions under chapter 75 to validate any bonds

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494 issued by the corporation, the notice required by s. 75.06 shall
 495 be published only in Leon County and in two newspapers of
 496 general circulation in the state, and the complaint and order of
 497 the court shall be served only on the State Attorney of the
 498 Second Judicial Circuit.

499 b. The state hereby covenants with holders of bonds of the
 500 corporation that the state will not repeal or abrogate the power
 501 of the board to direct the Office of Insurance Regulation to
 502 levy the assessments and to collect the proceeds of the revenues
 503 pledged to the payment of such bonds as long as any such bonds
 504 remain outstanding unless adequate provision has been made for
 505 the payment of such bonds pursuant to the documents authorizing
 506 the issuance of such bonds.

507 4. The bonds of the corporation are not a debt of the state
 508 or of any political subdivision, and neither the state nor any
 509 political subdivision is liable on such bonds. The corporation
 510 does not have the power to pledge the credit, the revenues, or
 511 the taxing power of the state or of any political subdivision.
 512 The credit, revenues, or taxing power of the state or of any
 513 political subdivision shall not be deemed to be pledged to the
 514 payment of any bonds of the corporation.

515 5.a. The property, revenues, and other assets of the
 516 corporation; the transactions and operations of the corporation
 517 and the income from such transactions and operations; and all
 518 bonds issued under this paragraph and interest on such bonds are
 519 exempt from taxation by the state and any political subdivision,
 520 including the intangibles tax under chapter 199 and the income
 521 tax under chapter 220. This exemption does not apply to any tax
 522 imposed by chapter 220 on interest, income, or profits on debt

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523 obligations owned by corporations other than the State Board of
 524 Administration Florida Hurricane Catastrophe Fund Finance
 525 Corporation.

526 b. All bonds of the corporation shall be and constitute
 527 legal investments without limitation for all public bodies of
 528 this state; for all banks, trust companies, savings banks,
 529 savings associations, savings and loan associations, and
 530 investment companies; for all administrators, executors,
 531 trustees, and other fiduciaries; for all insurance companies and
 532 associations and other persons carrying on an insurance
 533 business; and for all other persons who are now or may hereafter
 534 be authorized to invest in bonds or other obligations of the
 535 state and shall be and constitute eligible securities to be
 536 deposited as collateral for the security of any state, county,
 537 municipal, or other public funds. This sub-subparagraph shall be
 538 considered as additional and supplemental authority and shall
 539 not be limited without specific reference to this sub-
 540 subparagraph.

541 6. The corporation and its corporate existence shall
 542 continue until terminated by law; however, no such law shall
 543 take effect as long as the corporation has bonds outstanding
 544 unless adequate provision has been made for the payment of such
 545 bonds pursuant to the documents authorizing the issuance of such
 546 bonds. Upon termination of the existence of the corporation, all
 547 of its rights and properties in excess of its obligations shall
 548 pass to and be vested in the state.

549 7. The State Board of Administration Finance Corporation is
 550 for all purposes the successor to the Florida Hurricane
 551 Catastrophe Fund Finance Corporation.

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552 ~~(16) TEMPORARY EMERGENCY OPTIONS FOR ADDITIONAL COVERAGE.~~

553 ~~(a) Findings and intent.~~

554 ~~1. The Legislature finds that:~~

555 ~~a. Because of temporary disruptions in the market for~~
 556 ~~catastrophic reinsurance, many property insurers were unable to~~
 557 ~~procure reinsurance for the 2006 hurricane season with an~~
 558 ~~attachment point below the insurers' respective Florida~~
 559 ~~Hurricane Catastrophe Fund attachment points, were unable to~~
 560 ~~procure sufficient amounts of such reinsurance, or were able to~~
 561 ~~procure such reinsurance only by incurring substantially higher~~
 562 ~~costs than in prior years.~~

563 ~~b. The reinsurance market problems were responsible, at~~
 564 ~~least in part, for substantial premium increases to many~~
 565 ~~consumers and increases in the number of policies issued by the~~
 566 ~~Citizens Property Insurance Corporation.~~

567 ~~c. It is likely that the reinsurance market disruptions~~
 568 ~~will not significantly abate prior to the 2007 hurricane season.~~

569 ~~2. It is the intent of the Legislature to create a~~
 570 ~~temporary emergency program, applicable to the 2007, 2008, and~~
 571 ~~2009 hurricane seasons, to address these market disruptions and~~
 572 ~~enable insurers, at their option, to procure additional coverage~~
 573 ~~from the Florida Hurricane Catastrophe Fund.~~

574 ~~(b) Applicability of other provisions of this section. All~~
 575 ~~provisions of this section and the rules adopted under this~~
 576 ~~section apply to the program created by this subsection unless~~
 577 ~~specifically superseded by this subsection.~~

578 ~~(c) Optional coverage. For the contract year commencing~~
 579 ~~June 1, 2007, and ending May 31, 2008, the contract year~~
 580 ~~commencing June 1, 2008, and ending May 31, 2009, and the~~

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581 ~~contract year commencing June 1, 2009, and ending May 31, 2010,~~
 582 ~~the board shall offer for each of such years the optional~~
 583 ~~coverage as provided in this subsection.~~

584 ~~(d) Additional definitions. As used in this subsection, the~~
 585 ~~term:~~

586 ~~1. "TEACO options" means the temporary emergency additional~~
 587 ~~coverage options created under this subsection.~~

588 ~~2. "TEACO insurer" means an insurer that has opted to~~
 589 ~~obtain coverage under the TEACO options in addition to the~~
 590 ~~coverage provided to the insurer under its reimbursement~~
 591 ~~contract.~~

592 ~~3. "TEACO reimbursement premium" means the premium charged~~
 593 ~~by the fund for coverage provided under the TEACO options.~~

594 ~~4. "TEACO retention" means the amount of losses below which~~
 595 ~~a TEACO insurer is not entitled to reimbursement from the fund~~
 596 ~~under the TEACO option selected. A TEACO insurer's retention~~
 597 ~~options shall be calculated as follows:~~

598 ~~a. The board shall calculate and report to each TEACO~~
 599 ~~insurer the TEACO retention multiples. There shall be three~~
 600 ~~TEACO retention multiples for defining coverage. Each multiple~~
 601 ~~shall be calculated by dividing \$3 billion, \$4 billion, or \$5~~
 602 ~~billion by the total estimated mandatory FHCF reimbursement~~
 603 ~~premium assuming all insurers selected the 90 percent coverage~~
 604 ~~level.~~

605 ~~b. The TEACO retention multiples as determined under sub-~~
 606 ~~paragraph a. shall be adjusted to reflect the coverage level~~
 607 ~~elected by the insurer. For insurers electing the 90 percent~~
 608 ~~coverage level, the adjusted retention multiple is 100 percent~~
 609 ~~of the amount determined under sub-paragraph a. For insurers~~

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610 ~~electing the 75 percent coverage level, the retention multiple~~
 611 ~~is 120 percent of the amount determined under sub-paragraph~~
 612 ~~a. For insurers electing the 45 percent coverage level, the~~
 613 ~~adjusted retention multiple is 200 percent of the amount~~
 614 ~~determined under sub-paragraph a.~~

615 ~~e. An insurer shall determine its provisional TEACO~~
 616 ~~retention by multiplying its estimated mandatory FHCF~~
 617 ~~reimbursement premium by the applicable adjusted TEACO retention~~
 618 ~~multiple and shall determine its actual TEACO retention by~~
 619 ~~multiplying its actual mandatory FHCF reimbursement premium by~~
 620 ~~the applicable adjusted TEACO retention multiple.~~

621 ~~d. For TEACO insurers who experience multiple covered~~
 622 ~~events causing loss during the contract year, the insurer's full~~
 623 ~~TEACO retention shall be applied to each of the covered events~~
 624 ~~causing the two largest losses for that insurer. For other~~
 625 ~~covered events resulting in losses, the TEACO option does not~~
 626 ~~apply and the insurer's retention shall be one-third of the full~~
 627 ~~retention as calculated under paragraph (2)(c).~~

628 ~~5. "TEACO addendum" means an addendum to the reimbursement~~
 629 ~~contract reflecting the obligations of the fund and TEACO~~
 630 ~~insurers under the program created by this subsection.~~

631 ~~6. "FHCF" means the Florida Hurricane Catastrophe Fund.~~
 632 ~~(c) TEACO addendum.~~

633 ~~1. The TEACO addendum shall provide for reimbursement of~~
 634 ~~TEACO insurers for covered events occurring during the contract~~
 635 ~~year, in exchange for the TEACO reimbursement premium paid into~~
 636 ~~the fund under paragraph (f). Any insurer writing covered~~
 637 ~~policies has the option of choosing to accept the TEACO addendum~~
 638 ~~for any of the 3 contract years that the coverage is offered.~~

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639 ~~2. The TEACO addendum shall contain a promise by the board~~
 640 ~~to reimburse the TEACO insurer for 45 percent, 75 percent, or 90~~
 641 ~~percent of its losses from each covered event in excess of the~~
 642 ~~insurer's TEACO retention, plus 5 percent of the reimbursed~~
 643 ~~losses to cover loss adjustment expenses. The percentage shall~~
 644 ~~be the same as the coverage level selected by the insurer under~~
 645 ~~paragraph (4) (b).~~

646 ~~3. The TEACO addendum shall provide that reimbursement~~
 647 ~~amounts shall not be reduced by reinsurance paid or payable to~~
 648 ~~the insurer from other sources.~~

649 ~~4. The TEACO addendum shall also provide that the~~
 650 ~~obligation of the board with respect to all TEACO addenda shall~~
 651 ~~not exceed an amount equal to two times the difference between~~
 652 ~~the industry retention level calculated under paragraph (2) (c)~~
 653 ~~and the \$3 billion, \$4 billion, or \$5 billion industry TEACO~~
 654 ~~retention level options actually selected, but in no event may~~
 655 ~~the board's obligation exceed the actual claims-paying capacity~~
 656 ~~of the fund plus the additional capacity created in paragraph~~
 657 ~~(g). If the actual claims-paying capacity and the additional~~
 658 ~~capacity created under paragraph (g) fall short of the board's~~
 659 ~~obligations under the reimbursement contract, each insurer's~~
 660 ~~share of the fund's capacity shall be prorated based on the~~
 661 ~~premium an insurer pays for its mandatory reimbursement coverage~~
 662 ~~and the premium paid for its optional TEACO coverage as each~~
 663 ~~such premium bears to the total premiums paid to the fund times~~
 664 ~~the available capacity.~~

665 ~~5. The priorities, schedule, and method of reimbursements~~
 666 ~~under the TEACO addendum shall be the same as provided under~~
 667 ~~subsection (4).~~

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668 ~~6. A TEACO insurer's maximum reimbursement for a single~~
 669 ~~event shall be equal to the product of multiplying its mandatory~~
 670 ~~FHCF premium by the difference between its FHCF retention~~
 671 ~~multiple and its TEACO retention multiple under the TEACO option~~
 672 ~~selected and by the coverage selected under paragraph (4) (b),~~
 673 ~~plus an additional 5 percent for loss adjustment expenses. A~~
 674 ~~TEACO insurer's maximum reimbursement under the TEACO option~~
 675 ~~selected for a TEACO insurer's two largest events shall be twice~~
 676 ~~its maximum reimbursement for a single event.~~

677 ~~(f) TEACO reimbursement premiums.~~

678 ~~1. Each TEACO insurer shall pay to the fund, in the manner~~
 679 ~~and at the time provided in the reimbursement contract for~~
 680 ~~payment of reimbursement premiums, a TEACO reimbursement premium~~
 681 ~~calculated as specified in this paragraph.~~

682 ~~2. The insurer's TEACO reimbursement premium associated~~
 683 ~~with the \$3 billion retention option shall be equal to 85~~
 684 ~~percent of a TEACO insurer's maximum reimbursement for a single~~
 685 ~~event as calculated under subparagraph (c)6. The TEACO~~
 686 ~~reimbursement premium associated with the \$4 billion retention~~
 687 ~~option shall be equal to 80 percent of a TEACO insurer's maximum~~
 688 ~~reimbursement for a single event as calculated under~~
 689 ~~subparagraph (c)6. The TEACO premium associated with the \$5~~
 690 ~~billion retention option shall be equal to 75 percent of a TEACO~~
 691 ~~insurer's maximum reimbursement for a single event as calculated~~
 692 ~~under subparagraph (c)6.~~

693 ~~(g) Effect on claims paying capacity of the fund. For the~~
 694 ~~contract term commencing June 1, 2007, the contract year~~
 695 ~~commencing June 1, 2008, and the contract term beginning June 1,~~
 696 ~~2009, the program created by this subsection shall increase the~~

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 697 ~~claims-paying capacity of the fund as provided in subparagraph~~
 698 ~~(4)(c)1. by an amount equal to two times the difference between~~
 699 ~~the industry retention level calculated under paragraph (2)(c)~~
 700 ~~and the \$3 billion industry TEACO retention level specified in~~
 701 ~~sub-subparagraph (d)4.a. The additional capacity shall apply~~
 702 ~~only to the additional coverage provided by the TEACO option and~~
 703 ~~shall not otherwise affect any insurer's reimbursement from the~~
 704 ~~fund.~~

(16)(17) TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.—

(a) *Findings and intent.*—

1. The Legislature finds that:

a. Because of temporary disruptions in the market for catastrophic reinsurance, many property insurers were unable to procure sufficient amounts of reinsurance for the 2006 hurricane season or were able to procure such reinsurance only by incurring substantially higher costs than in prior years.

b. The reinsurance market problems were responsible, at least in part, for substantial premium increases to many consumers and increases in the number of policies issued by Citizens Property Insurance Corporation.

c. It is likely that the reinsurance market disruptions will not significantly abate prior to the 2007 hurricane season.

2. It is the intent of the Legislature to create options for insurers to purchase a temporary increased coverage limit above the statutorily determined limit in subparagraph (4)(c)1., applicable for the ~~2007, 2008, 2009, 2010, 2011, 2012, and 2013~~ hurricane season seasons, to address market disruptions and enable insurers, at their option, to procure additional coverage from the Florida Hurricane Catastrophe Fund.

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 726 (b) *Applicability of other provisions of this section.*—All
 727 provisions of this section and the rules adopted under this
 728 section apply to the coverage created by this subsection unless
 729 specifically superseded by provisions in this subsection.
 730 (c) *Optional coverage.*—For the ~~2009-2010, 2010-2011, 2011-~~
 731 ~~2012, 2012-2013, and 2013-2014~~ contract year years, the board
 732 shall offer, ~~for each of such years,~~ the optional coverage as
 733 provided in this subsection.

(d) *Additional definitions.*—As used in this subsection, the term:

1. "FHCF" means Florida Hurricane Catastrophe Fund.

2. "FHCF reimbursement premium" means the premium paid by an insurer for its coverage as a mandatory participant in the FHCF, but does not include additional premiums for optional coverages.

3. "Payout multiple" means the number or multiple created by dividing the statutorily defined claims-paying capacity as determined in subparagraph (4)(c)1. by the aggregate reimbursement premiums paid by all insurers estimated or projected as of calendar year-end.

4. "TICL" means the temporary increase in coverage limit.

5. "TICL options" means the temporary increase in coverage options created under this subsection.

6. "TICL insurer" means an insurer that has opted to obtain coverage under the TICL options addendum in addition to the coverage provided to the insurer under its FHCF reimbursement contract.

7. "TICL reimbursement premium" means the premium charged by the fund for coverage provided under the TICL option.

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755 8. "TICL coverage multiple" means the coverage multiple
756 when multiplied by an insurer's reimbursement premium that
757 defines the temporary increase in coverage limit.

758 9. "TICL coverage" means the coverage for an insurer's
759 losses above the insurer's statutorily determined claims-paying
760 capacity based on the claims-paying limit in subparagraph
761 (4)(c)1., which an insurer selects as its temporary increase in
762 coverage from the fund under the TICL options selected. A TICL
763 insurer's increased coverage limit options shall be calculated
764 as follows:

765 a. The board shall calculate and report to each TICL
766 insurer the TICL coverage multiples based on 12 options for
767 increasing the insurer's FHCF coverage limit. Each TICL coverage
768 multiple shall be calculated by dividing \$1 billion, \$2 billion,
769 \$3 billion, \$4 billion, \$5 billion, \$6 billion, \$7 billion, \$8
770 billion, \$9 billion, \$10 billion, \$11 billion, or \$12 billion by
771 the total estimated aggregate FHCF reimbursement premiums for
772 the 2007-2008 contract year, and the 2008-2009 contract year.

773 b. For the 2009-2010 contract year, the board shall
774 calculate and report to each TICL insurer the TICL coverage
775 multiples based on 10 options for increasing the insurer's FHCF
776 coverage limit. Each TICL coverage multiple shall be calculated
777 by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5
778 billion, \$6 billion, \$7 billion, \$8 billion, \$9 billion, and \$10
779 billion by the total estimated aggregate FHCF reimbursement
780 premiums for the 2009-2010 contract year.

781 e. For the 2010-2011 contract year, the board shall
782 calculate and report to each TICL insurer the TICL coverage
783 multiples based on eight options for increasing the insurer's

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784 ~~FHCF coverage limit. Each TICL coverage multiple shall be~~
785 ~~calculated by dividing \$1 billion, \$2 billion, \$3 billion, \$4~~
786 ~~billion, \$5 billion, \$6 billion, \$7 billion, and \$8 billion by~~
787 ~~the total estimated aggregate FHCF reimbursement premiums for~~
788 ~~the contract year.~~

789 d. ~~For the 2011-2012 contract year, the board shall~~
790 ~~calculate and report to each TICL insurer the TICL coverage~~
791 ~~multiples based on six options for increasing the insurer's FHCF~~
792 ~~coverage limit. Each TICL coverage multiple shall be calculated~~
793 ~~by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5~~
794 ~~billion, and \$6 billion by the total estimated aggregate FHCF~~
795 ~~reimbursement premiums for the 2011-2012 contract year.~~

796 a.e. For the 2012-2013 contract year, the board shall
797 calculate and report to each TICL insurer the TICL coverage
798 multiples based on four options for increasing the insurer's
799 FHCF coverage limit. Each TICL coverage multiple shall be
800 calculated by dividing \$1 billion, \$2 billion, \$3 billion, and
801 \$4 billion by the total estimated aggregate FHCF reimbursement
802 premiums for the 2012-2013 contract year.

803 f. ~~For the 2013-2014 contract year, the board shall~~
804 ~~calculate and report to each TICL insurer the TICL coverage~~
805 ~~multiples based on two options for increasing the insurer's FHCF~~
806 ~~coverage limit. Each TICL coverage multiple shall be calculated~~
807 ~~by dividing \$1 billion and \$2 billion by the total estimated~~
808 ~~aggregate FHCF reimbursement premiums for the 2013-2014 contract~~
809 ~~year.~~

810 b.g. The TICL insurer's increased coverage shall be the
811 FHCF reimbursement premium multiplied by the TICL coverage
812 multiple. In order to determine an insurer's total limit of

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 813 coverage, an insurer shall add its TICL coverage multiple to its
 814 payout multiple. The total shall represent a number that, when
 815 multiplied by an insurer's FHCf reimbursement premium for a
 816 given reimbursement contract year, defines an insurer's total
 817 limit of FHCf reimbursement coverage for that reimbursement
 818 contract year.

819 10. "TICL options addendum" means an addendum to the
 820 reimbursement contract reflecting the obligations of the fund
 821 and insurers selecting an option to increase an insurer's FHCf
 822 coverage limit.

823 (e) *TICL options addendum.*—

824 1. The TICL options addendum shall provide for
 825 reimbursement of TICL insurers for covered events occurring
 826 during the ~~2009-2010, 2010-2011, 2011-2012,~~ 2012-2013, and 2013-
 827 2014 contract year years in exchange for the TICL reimbursement
 828 premium paid into the fund under paragraph (f) based on the TICL
 829 coverage available and selected for each respective contract
 830 year. Any insurer writing covered policies has the option of
 831 selecting an increased limit of coverage under the TICL options
 832 addendum and shall select such coverage at the time that it
 833 executes the FHCf reimbursement contract.

834 2. The TICL addendum shall contain a promise by the board
 835 to reimburse the TICL insurer for 45 percent, 75 percent, or 90
 836 percent of its losses from each covered event in excess of the
 837 insurer's retention, plus 5 percent of the reimbursed losses to
 838 cover loss adjustment expenses. The percentage shall be the same
 839 as the coverage level selected by the insurer under paragraph
 840 (4) (b).

841 3. The TICL addendum shall provide that reimbursement

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 842 amounts shall not be reduced by reinsurance paid or payable to
 843 the insurer from other sources.

844 4. The priorities, schedule, and method of reimbursements
 845 under the TICL addendum shall be the same as provided under
 846 subsection (4).

847 (f) *TICL reimbursement premiums.*—Each TICL insurer shall
 848 pay to the fund, in the manner and at the time provided in the
 849 reimbursement contract for payment of reimbursement premiums, a
 850 TICL reimbursement premium determined as specified in subsection
 851 (5), except that a cash build-up factor does not apply to the
 852 TICL reimbursement premiums. However, the TICL reimbursement
 853 premium shall be increased in the ~~2009-2010 contract year by a~~
 854 ~~factor of two, in the 2010-2011 contract year by a factor of~~
 855 ~~three, in the 2011-2012 contract year by a factor of four, in~~
 856 ~~the 2012-2013 contract year by a factor of five, and in the~~
 857 ~~2013-2014 contract year by a factor of six.~~

858 (g) *Effect on claims-paying capacity of the fund.*—For the
 859 ~~2009-2010, 2010-2011, 2011-2012,~~ 2012-2013, and 2013-2014
 860 contract year years, the program created by this subsection
 861 shall increase the claims-paying capacity of the fund as
 862 provided in subparagraph (4) (c)1. by an amount not to exceed \$4
 863 ~~\$12~~ billion and shall depend on the TICL coverage options
 864 available and selected for the specified contract year and the
 865 number of insurers that select the TICL optional coverage. The
 866 additional capacity shall apply only to the additional coverage
 867 provided under the TICL options and shall not otherwise affect
 868 any insurer's reimbursement from the fund if the insurer chooses
 869 not to select the temporary option to increase its limit of
 870 coverage under the FHCf.

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871 ~~(17)-(18)~~ FACILITATION OF INSURERS' PRIVATE CONTRACT
872 NEGOTIATIONS BEFORE THE START OF THE HURRICANE SEASON.-

873 (a) In addition to the legislative findings and intent
874 provided elsewhere in this section, the Legislature finds that:

875 1.a. Because a regular session of the Legislature begins
876 approximately 3 months before the start of a contract year and
877 ends approximately 1 month before the start of a contract year,
878 participants in the fund always face the possibility that
879 legislative actions will change the coverage provided or offered
880 by the fund with only a few days or weeks of advance notice.

881 b. The timing issues described in sub-subparagraph a. can
882 create uncertainties and disadvantages for the residential
883 property insurers that are required to participate in the fund
884 when such insurers negotiate for the procurement of private
885 reinsurance or other sources of capital.

886 c. Providing participating insurers with a greater degree
887 of certainty regarding the coverage provided or offered by the
888 fund and more time to negotiate for the procurement of private
889 reinsurance or other sources of capital will enable the
890 residential property insurance market to operate with greater
891 stability.

892 d. Increased stability in the residential property
893 insurance market serves a primary purpose of the fund and
894 benefits Florida consumers by enabling insurers to operate more
895 economically. In years when reinsurance and capital markets are
896 experiencing a capital shortage, the last-minute rush by
897 insurers only weeks before the start of the hurricane season to
898 procure adequate coverage in order to meet their capital
899 requirements can result in higher costs that are passed on to

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900 Florida consumers. However, if more time is available,
901 residential property insurers should experience greater
902 competition for their business with a corresponding beneficial
903 effect for Florida consumers.

904 2. It is the intent of the Legislature to provide insurers
905 with the terms and conditions of the reimbursement contract well
906 in advance of the insurers' need to finalize their procurement
907 of private reinsurance or other sources of capital, and thereby
908 improve insurers' negotiating position with reinsurers and other
909 sources of capital.

910 3. It is also the intent of the Legislature that the board
911 publish the fund's maximum statutory limit of coverage and the
912 fund's total retention early enough that residential property
913 insurers can have the opportunity to better estimate their
914 coverage from the fund.

915 (b) The board shall adopt the reimbursement contract for a
916 particular contract year by February 1 of the immediately
917 preceding contract year. However, the reimbursement contract
918 shall be adopted as soon as possible in advance of the 2010-2011
919 contract year.

920 (c) Insurers writing covered policies shall execute the
921 reimbursement contract by March 1 of the immediately preceding
922 contract year, and the contract shall have an effective date as
923 defined in paragraph (2) (o).

924 (d) The board shall publish in the Florida Administrative
925 Weekly the maximum statutory adjusted capacity for the mandatory
926 coverage for a particular contract year, the maximum statutory
927 coverage for any optional coverage for the particular contract
928 year, and the aggregate fund retention used to calculate

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929 individual insurer's retention multiples for the particular
930 contract year no later than January 1 of the immediately
931 preceding contract year.

932 Section 2. Subsection (5) of section 627.0629, Florida
933 Statutes, is amended to read:

934 627.0629 Residential property insurance; rate filings.—

935 (5) In order to provide an appropriate transition period,
936 an insurer may implement an approved rate filing for residential
937 property insurance over a period of years. Such insurer must
938 provide an informational notice to the office setting out its
939 schedule for implementation of the phased-in rate filing. The
940 insurer may include in its rate the actual cost of private
941 market reinsurance that corresponds to available coverage of the
942 Temporary Increase in Coverage Limits, TICL, from the Florida
943 Hurricane Catastrophe Fund. The insurer may also include the
944 cost of reinsurance to replace the TICL reduction implemented
945 pursuant to s. 215.555(16)(d)9 ~~s. 215.555(17)(d)9~~. However, this
946 cost for reinsurance may not include any expense or profit load
947 or result in a total annual base rate increase in excess of 10
948 percent.

949 Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12

Meeting Date

Florida Hurricane

Topic SB 1372 - catastrophe Fund

Bill Number SB 1372 (if applicable)

Name Jack Nicholson

Amendment Barcode (if applicable)

Job Title Chief Operating Officer - FHCF

Address 1801 Hermitage Cir. Street

Phone 800-413-1340

City

State

Zip

E-mail jack.nicholson@sba-fla.com

Speaking: [X] For [] Against [] Information

Representing State Board of Administration - FHCF

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
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2/14/2012
Meeting Date

Topic CAT FOOD

Bill Number 1372
(if applicable)

Name CHRISTIAN CAMARA

Amendment Barcode _____
(if applicable)

Job Title STATE DIRECTOR

Address PO Box 10330
Street

Phone 305 608 4300

TALLAHASSEE, FL 32303
City State Zip

E-mail B CCAMARA@HEARTCAN
.ORLO

Speaking: For Against Information

Representing HEARTLAND / NSP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/2012
Meeting Date

Topic _____

Bill Number 1372
(if applicable)

Name JOSE L. GONZALEZ

Amendment Barcode _____
(if applicable)

Job Title VP GOVT. AFFAIRS

Address 516 N. ADAMS
Street

Phone 224-7173

TALLAHASSEE _____
City State Zip

E-mail JGonzalez@aif.com

Speaking: For Against Information

Representing AIF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-16-12

Meeting Date

Topic CAT FUND

Bill Number 1372 (if applicable)

Name C. Scott Dudley

Amendment Barcode (if applicable)

Job Title Legislative Director

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Phone 850-222-9684

Street

Tall FL 32301

E-mail sdudley@flcities.com

City

State

Zip

Speaking: [X] For [] Against [] Information

Representing Florida League of Cities

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/16/2012

Meeting Date

Topic CAT FUND

Bill Number 1372
(if applicable)

Name DONALD BROWN

Amendment Barcode _____
(if applicable)

Job Title _____

Address POB 866
Street

Phone 850-865-9280

DEFUNIAK SPRINGS, FL 32435
City State Zip

E-mail Don@DonBrownFlorida.com

Speaking: For Against Information

Representing HEARTLAND INSTITUTE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic FHCF Bill Number 1372
(if applicable)

Name Jay Lites Amendment Barcode _____
(if applicable)

Job Title Policy Consultant

Address PO Box 15376 Phone 858-294-5004
Street

Tallahassee FL 32317 E-mail j.lites@futorline.org
City State Zip

Speaking: For Against Information

Representing Florida Wildlife Federation

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.16.12

Meeting Date

Topic CAT FUND

Bill Number SB 1372
(if applicable)

Name DAVID HART

Amendment Barcode _____
(if applicable)

Job Title EXEC VP

Address 136 S. BRONOUGH
Street

Phone 850.521.1200

TALLAHASSEE FL 32301
City State Zip

E-mail dhart@flchamber.com

Speaking: For Against Information

Representing FL CHAMBER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



State Board of Administration

Florida Hurricane Catastrophe Fund

SB 1372

Senate Banking & Insurance Committee

SB 1372

- **SB 1372 is designed to “right size” the Florida Hurricane Catastrophe Fund (FHCF)**
- **Reliance on the financial markets for issuing large amounts of debt is risky.**
- **The bill reduces the coverage limit, reduces the amount of bonding and assessments, builds cash, transfers risk from Florida policyholders back to insurers and reinsurers. And, provides for more stable capacity and policy rates from year to year by allowing for better funding of a subsequent season.**
- **A shortfall in the FHCF’s claims-paying ability could cause numerous insurer insolvencies.**
- **The FHCF is the “backbone” of the residential property insurance market and needs to provide solid and reliable capacity.**

Facts & Observations

- **Financial markets are volatile and may be unreliable at the time of a large hurricane loss.**
 - **In the next 4 years, there is a 66% chance of a Category 3 or greater hurricane striking Florida.**
 - **3 of the last 4 years, the FHCF estimated a “potential shortfall.” In October 2011, the estimated shortfall was \$3.2 billion (17.6% less coverage than insurer’s purchased.**
 - **Financial markets have changed in recent years and the FHCF’s financing structure needs to reflect market realities.**
 - **Too much reliance on FHCF debt financing is creating an unnecessary risk for the state.**
 - **The FHCF needs to reduce its reliance on debt financing from over \$10 billion in potential debt issuance to the \$5 billion to \$7 billion range.**
 - **A 25% actual shortfall could result in about half of all insurers becoming insolvent – 24 of the top 50 writers impacting 2.1 million policyholders.**
 - **After a large event that exhausts the FHCF, policyholder rates could increase over 20% for the following year.**

What SB 1372 Does

- **Changes would be effective starting in 2013-2014.**
- **Size of the mandatory coverage reduces from \$17 billion to \$12 billion over 3 years.**
- **Insurer's copayments are increased from 10% to 25% over 3 years.**
- **FHCF's aggregate retention is increased to \$8 billion back to where it would have been had it not been reset in 2004 and 2005 (about a 8.5% increase).**

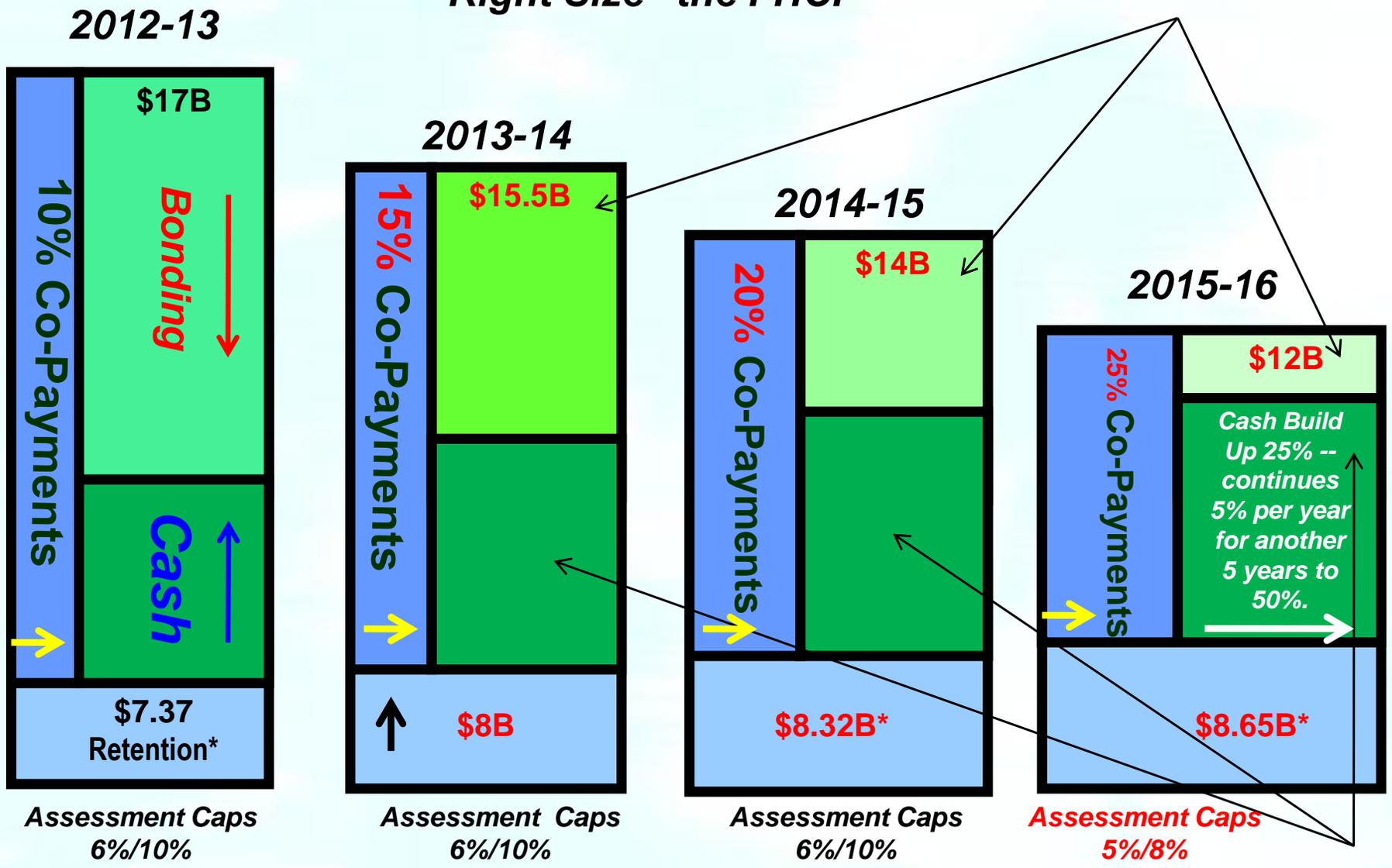
What SB 1372 Does (con't)

- **Cash build-up is increased by extending the 5% phase-in per year implemented in 2009 for another 5 years to reach 50% by 2018.**
- **Emergency assessment caps are reduced from 6% per year and 10% in all years to 5% per year and 8% in all years.**
- **Terminates the Temporary Increase in Coverage Limit (TICL) coverage in 2013-2014.**
- **Changes the name of the Florida Hurricane Catastrophe Fund Finance Corporation to the State Board of Administration Finance Corporation.**

Restructuring the FHCF

Not Drawn to Scale
Not Official
For Illustrative Purposes
Only

Lowering Statutory Limits to
"Right Size" the FHCF



*The Retention is projected to grow at 4% in these examples.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 1372

INTRODUCER: Banking and Insurance Committee and Senator Alexander

SUBJECT: Florida Hurricane Catastrophe Fund

DATE: February 16, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Senate Bill 1372 revises the Florida Hurricane Catastrophe Fund (FHCF or Fund) coverage limits, reimbursement percentage, retention, cash build-up factor, and optional coverages. The bill is designed to reduce the overall financial obligations of the fund, reducing the likelihood and amount of bonding and emergency assessments needed to fund deficits in the event the Fund experiences a shortfall after a major hurricane. The major proposed changes are summarized as follows:

Decreases the FHCF Mandatory Coverage Limit – The bill phases in annual decreases of the FHCF mandatory coverage limit beginning in the 2012-2013 contract year as follows:

- For the 2012-2013 contract year, \$17 billion (the current Fund limit).
- For the 2013-2014 contract year, \$15.5 billion.
- For the 2014-2015 contract year, \$14 billion.
- For the 2015-2016 contract year, \$12 billion.

Increases the FHCF Retention – The bill increases the FHCF industry retention to \$8 billion for the 2013-2014 contract year.

Decreases the Maximum Reimbursement Percentage for FHCF Coverage – The bill reduces the maximum reimbursement amount from 90 percent to the following percentages:

- For the 2013-2014 contract year, 85 percent.
- For the 2014-2015 contract year, 80 percent.
- For the 2015-2016 contract year and all subsequent contract years, 75 percent.

Increases the FHCF Cash Build-Up Factor – Currently, the FHCF charges insurers a “cash build-up factor” that is added to the actuarially indicated reimbursement premium. The cash build-up factor was 15 percent for the 2011-2012 contract year, and will increase to 20 percent for the 2012-2013 contract year and 25 percent for the 2013-2014 contract year. The bill continues increasing the cash build-up factor by 5 percent annually in subsequent years, culminating in a 50 percent factor for the 2018-2019 contract year.

Reduces the FHCF Emergency Assessment Authority – Beginning in the 2015-2016 contract year the bill reduces the FHCF assessment authority to 5 percent of premium for obligations attributable to a particular contract year, and reduces the maximum aggregates assessment to 8 percent of premium. Current law will apply to obligations incurred in prior contract years.

Eliminates the Optional TICL Coverage – The bill repeals the TICL coverage after the 2012-2013 contract year.

This bill substantially amends the following section of the Florida Statutes: 215.555

II. Present Situation:

Florida Hurricane Catastrophe Fund

The FHCF is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer’s retention (deductible). The FHCF provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers. The FHCF must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

FHCF Mandatory Coverage

All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage. Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer’s share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. For example, if an insurer paid 10 percent

of the total premium paid in a contract-year, then that insurer would be eligible to receive up to 10 percent of the mandatory layer of coverage (\$1.7 billion of the \$17 billion mandatory layer).

Insurers that experience multiple hurricanes causing loss during the contract year may receive reimbursement from the FHCF for losses that exceed the applicable retention. The insurer's full retention is applied to each hurricane causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention is only one-third of the full retention.

FHCF Premiums

The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The "actuarially indicated" premium is an amount that is adequate to pay current and future obligations and expenses of the fund.¹ In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. The cost of FHCF coverage is significantly lower than the cost of private reinsurance due to the fact that the fund is a tax-exempt non-profit corporation and does not charge a "risk load."

FHCF Retention

Insurers must first pay hurricane losses up to their specified "retention" for each hurricane, similar to a deductible, before being reimbursed by the FHCF coverage. The full retention is applied to the two hurricanes causing the greatest losses to the insurer. The retention is adjusted annually based on the FHCF's exposure. Like the maximum recovery amount, a retention is calculated for each insurer based on its share of fund premiums. For example, an insurer paying 10 percent of total fund premiums had a retention of \$736.9 million, (10 percent of \$7.369 billion) for the 2011-012 contract year.

FHCF Optional Coverages

Beginning in 2007, the Legislature increased the coverage limits of the FHCF by adding additional layers of optional coverage that property insurers may buy:

- *Temporary Increase in Coverage Limit Options ("TICL")* – Allows an insurer to purchase additional reinsurance in \$1 billion increments, above the FHCF mandatory coverage. A total of \$12 billion in additional TICL coverage was made available. In 2009, The Legislature required a staggered phasing out of the TICL layer of coverage over a 6-year period at a rate of \$2 billion per year. During the current 2011-2012 contract year private insurers purchased \$994 million of the \$6 billion in available TICL coverage. For the upcoming 2012-2013 contract year there will be \$4 billion dollars in TICL coverage available for purchase.
- *Temporary Emergency Additional Coverage Options ("TEACO")* – Allowed residential property insurers to purchase additional coverage below each insurer's market share of the FHCF retention during the 2007, 2008, and 2009 hurricane seasons. The TEACO options

¹ Section 215.555(2)(a), F.S. Additional amounts needed to pay debt service on revenue bonds and provide required debt service coverage may also be included in the actuarially indicated premium that an insurer pays.

allowed an insurer to select its share of a retention level of \$3 billion, \$4 billion, or \$5 billion, to cover 90 percent, 75 percent, or 45 percent of its losses up to the normal retention for the mandatory FHCF coverage. The TEACO options expired after the 2009-2010 contract year.

- *FHCF Below Retention Coverage* – In 2009, the Legislature re-authorized the sale of \$10 million in optional additional FHCF coverage below the fund’s mandatory coverage retention to limited apportionment companies and companies that had been approved to participate in the Insurance Capital Build-Up Incentive Program. The premium for the coverage is 50 percent of the coverage amount and insurers that purchase the coverage may access it before the mandatory coverage. This coverage option will expire on May 31, 2012, and thus not be available for the 2012-2013 contract year.

FHCF Bonding and Assessment Authority

Reimbursements to insurers for losses above the current cash balance of the fund are financed through bonding. When the cash balance of the FHCF is insufficient to cover losses, the law authorizes the FHCF to issue revenue bonds, which are funded by emergency assessments on property and casualty policyholders. If a large storm triggered the full capacity of the FHCF, bond issues totaling over \$11 billion could be necessary for the fund to meet its maximum obligations.

Bonds would be funded by an emergency assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers’ compensation and medical malpractice liability insurance. The FHCF’s broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.

FHCF Financial Obligations and Claims Paying Resources

The FHCF’s coverage obligations for the 2011-2012 hurricane season totaled \$18.389 billion dollars for a single storm, which consisted of:

- \$17 billion of mandatory coverage;
- \$994 million dollars in optional TICL² coverage; and
- \$395 million in optional coverage for insurers that qualify as limited apportionment companies³ or were approved to participate in the Insurance Capital Buildup Program.

² Legislation enacted in 2007 (ch. 2007-1, L.O.F.), increased the coverage limits of the FHCF for the 2007, 2008 and 2009 hurricane seasons by adding two additional layers of optional coverage that property insurers may buy: Temporary Increase in Coverage Limit Options (“TICL”), that allows residential property insurers to purchase additional reinsurance above the FHCF mandatory coverage and Temporary Emergency Additional Coverage Options (“TEACO”), that allows such insurers to purchase additional coverage below each insurer’s market share of the FHCF retention. In 2009, the Legislature reduced the FHCF’s exposure and payout by phasing out the TICL layer of coverage over a 6 year period at a rate of \$2 billion a year until the TICL coverage is completely phased out in the 2014-2015 contract year (ch. 2009-87, L.O.F.).

³ Section 627.351(6)(c)13., F.S.

The FHCF cash balance for the 2011-2012 hurricane season was \$7.17 billion. Obligations exceeding the cash balance of the FHCF would require bonding of up to \$11.219 billion. The assessment base for the FHCF is approximately \$33.603 billion for premiums written at year end 2010.

FHCF Claims-Paying Capacity Estimates

In May and October of each contract year, the SBA is required to publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31. After the end of each calendar year, the board is required to notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes.

The October 18, 2011, Claims Paying Capacity Estimate (Estimate) is the most recent such report to be issued. The report, prepared by Raymond James, evaluated the FHCF's bonding capacity by analyzing the current financial markets and obtaining written feedback from a senior managing underwriter from four large financial services firms (Barclay's, Citi, Goldman Sachs, and J.P. Morgan). The October 18, 2011 Estimate noted that the FHCF's total obligations of \$18.389 billion exceed the projected year-end fund balance of \$7.170 billion, thus the FHCF may need to raise up to \$11.219 billion through bonding in order to fund its liabilities.

The senior managers from Citi, Goldman Sachs, J.P. Morgan, and Barclays estimated the bonding capacity of the FHCF to be from \$5 billion to \$11 billion over the 12 months following a storm, leading to an average estimate of \$8 billion in bonding capacity. However, the Estimate anticipates that the FHCF will have an additional bonding capacity of \$6 billion from 12 to 24 months after the hurricane, which would enable the FHCF to pay its entire obligations and leave an estimated \$2.78 billion in bonding capacity to fund losses in a subsequent hurricane season. The first Claims Paying Capacity Estimate for the 2012-2013 hurricane season is due to be published in May 2012.

The Estimate expressed concerns about the ability of the FHCF to successfully issue \$11 billion in bonding over the first 12 months after a hurricane. The report notes that the largest single issue in the municipal market since 2009 was a \$6.543 billion dollar tax-exempt bond issue by the State of California. The report also found that municipal bond issuance for 2011 declined over 35 percent from the prior year and opined weak economic conditions and investor reluctance to invest capital in such issues as likely major factors in this reduction. However, the Estimate also noted that California was able to issue over \$23 billion in municipal debt in 2009 and \$10.544 billion in 2010, perhaps indicating that the FHCF could issue sufficient debt to pay its maximum obligation.

III. Effect of Proposed Changes:

Section 1. Amends s. 215.555, F.S., primarily by reducing the Florida Hurricane Catastrophe Fund coverage limits, reducing the maximum reimbursement percentage, increasing the

retention, increasing the cash build-up factor, and eliminating the TICL coverage after the 2012-2013 contract year. The major proposed changes are summarized as follows:

Increases the FHCF Retention

The bill increases the FHCF industry retention to \$8 billion for the 2013-2014 contract year. The bill maintains current law which authorizes the retention to be adjusted upward based upon the growth in the reported exposure of the fund.

Decreases the Maximum Reimbursement Percentage for FHCF Coverage

Under current law, insurers have the option to purchase FHCF reinsurance that provides reimbursement of 90 percent, 75 percent, or 45 percent of the insurer's losses within the mandatory FHCF layer of coverage. The bill reduces the maximum reimbursement amount from 90 percent to the following percentages:

- For the 2013-2014 contract year, 85 percent.
- For the 2014-2015 contract year, 80 percent.
- For the 2015-2016 contract year and all subsequent contract years, 75 percent.

The bill requires insurers that elect the maximum coverage level available must purchase the following year's renewal of the reimbursement contract at the highest available coverage level if revenue bonds after a covered event (hurricane) are outstanding.

Decreases the FHCF Mandatory Coverage Limit

The bill phases in annual decreases of the FHCF mandatory coverage limit beginning in the 2012-2013 contract year as follows:

- For the 2012-2013 contract year, \$17 billion.
- For the 2013-2014 contract year, \$15.5 billion.
- For the 2014-2015 contract year, \$14 billion.
- For the 2015-2016 contract year, \$12 billion.

The bill requires the FHCF coverage limit to be increased after the 2015-2016 contract year if certain events occur. If the State Board of Administration determines that the FHCF has an estimated claims-paying capacity sufficient to provide \$12 billion of capacity for the current contract year and an additional \$12 billion for subsequent contract years, then the FHCF coverage limit must be increased by one-half of the fund's estimated claims paying capacity in excess of \$24 billion. However, the increase may not increase by an amount greater than the dollar growth of the FHCF's balance as of December 31 over the prior calendar year.

Increases the FHCF Cash Build-Up Factor

Current law requires the FHCF to charge insurers a "cash build-up factor" that is added to the actuarially indicated reimbursement premium. The application of the cash build-up factor began with the 2009-2010 contract year at 5 percent and increases in 5 percent increments in each subsequent contract year. During the current 2011-2012 contract year a 15 percent factor was

applied, and will continue to increase to 20 percent for the 2012-2013 contract year and 25 percent for the 2013-2014 contract year. The bill creates additional increases to the cash build-up factor as follows:

- For the 2014-2015 contract year, 30 percent.
- For the 2015-2016 contract year, 35 percent.
- For the 2016-2017 contract year, 40 percent.
- For the 2017-2018 contract year, 45 percent.
- For the 2018-2019 contract year and subsequent contract years, 50 percent.

Reduces the FHCF Emergency Assessment Authority

Under current law, when the FHCF has insufficient revenue to fund its obligations, costs, and expenses the SBA may issue revenue bonds for the benefit of the FHCF. When such revenue bonds are issued, the SBA must direct the Office of Insurance Regulation (OIR) to levy emergency assessments on all property and casualty lines of business, including surplus lines insurers, but not including workers' compensation or medical malpractice premiums. The assessments may not exceed 6 percent of premium for losses attributable to a particular contract year, and the aggregate assessments on a policy may not exceed 10 percent of premium.

The bill maintains the current assessment authority for losses attributable to contract years prior to the 2015-2016 contract year. However, beginning in the 2015-2016 contract year the bill reduces the FHCF assessment authority to 5 percent of premium for obligations attributable to a particular contract year, and reduces the maximum aggregate assessment to 8 percent of premium. The reduction in assessment authority beginning in the 2015-2016 contract year corresponds with the reduction of the FHCF mandatory coverage limit to 12 billion dollars during that contract year.

Eliminates the Optional TICL Coverage

The bill repeals the TICL coverage after the 2012-2013 contract year. Current law requires the FHCF to make available \$4 billion dollars in TICL coverage above the mandatory layer of FCHF coverage for the 2012-2013 contract year, \$2 billion in TICL coverage for the 2013-2014 contract year, and eliminates the coverage thereafter. The bill eliminates the TICL coverage for the 2013-2014 contract year, but otherwise does not change existing law.

Other Provisions

The bill renames the "Florida Hurricane Catastrophe Fund Finance Corporation" the "State Board of Administration Finance Corporation." The name change is proposed to eliminate confusion among private sector investors who may not realize that the bonds issued by the SBA to eliminate FHCF shortfalls are revenue bonds and not other products such as catastrophe bonds. The change may also enable the state to procure such bonds at more advantageous terms by changing the finance corporation's name to eliminate terms with negative connotations such as "hurricane" and "catastrophe."

Repeals language authorizing the FHCF to sell Temporary Emergency Options for Additional Coverage (TEACO) reinsurance. The language is unnecessary because the authorization to offer TEACO coverage ended with the 2009-2010 contract year.

Section 2. Contains a technical conforming amendment to s. 627.0629(5), F.S.

Section 3. The bill is effective upon becoming a law.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives from the FHCF state that the current mandatory layer of coverage (\$17 billion) plus the optional coverages offered under current law (\$4 billion in TICL coverage for 2012-2013) place potential liabilities on the fund that it may not be able to meet due to the current status of the financial markets. These representatives note that if a major hurricane had fallen upon Florida during the 2011 hurricane season, the Fund would have needed to rely upon an \$11.3 billion bond issue, which would have been a record for municipal debt issuance if issued in a short period of time. Though additional bonding capacity may be available if the bond issues are spread out over a longer period of time (2 years instead of 1 year), the FHCF notes that some private market insurers will likely require prompt payment of FHCF funds to maintain their ability to pay claims timely and avoid insolvency in the event of a major storm.

Representatives from the FHCF assert that residential policyholders save approximately 25 percent to 30 percent on their annual residential property insurance premiums due to savings attributable to reinsurance sold by the Fund. These savings total approximately \$2 billion per year. These representatives concede that reducing the Fund's capacity will cause an increase in policyholder premiums because insurers will replace FHCF

reinsurance coverage with private market reinsurance at higher costs. The estimated market-wide premium impact is expected result in an average market-wide cumulative rate increase of approximately 10 percent from the 2012 hurricane season to the 2015 hurricane season. However, representatives from the Fund assert that such premium increases are probably unavoidable because the status of the worldwide financial markets has created a situation where the FHCF may not be able to meet its current obligations. Accordingly, many insurers will seek to procure private market reinsurance to cover amounts that the FHCF estimates cannot be paid in the first 12 months after a storm. This ultimately will harm either the availability or affordability of private market property insurance in the state.

Representatives of some business groups have voiced support for reducing the obligations of the FHCF to \$12 billion over time and increasing the retention layer to \$8 billion because these changes will reduce the likelihood that the FHCF will be required to levy assessments on all property and casualty lines of business (except workers' compensation and medical malpractice liability insurance). Many of these business groups view these assessments as a "tax" on other lines of insurance (such as motor vehicle insurance) that subsidizes the residential property insurance market.

Representatives of some private market residential property insurers have voiced concerns over the provisions of the bill that reduce the mandatory layer of the Fund while increasing the industry retention. The reductions in the size of the fund would require private market insurers to replace FHCF reinsurance with more expensive private market reinsurance. The most expensive replacement reinsurance coverage will be for coverage "below the retention" because of the greater odds that such coverage will be triggered. Some of the residential property insurers expressing concerns over the bill also assert that the rate impact of the legislation may be greater than estimated by the FHCF, particularly with regard to individual companies.

The representatives of companies concerned about the provisions of the bill assert that the increased costs associated with purchasing private market insurance may harm the ability of some companies to compete with Citizens Property Insurance Corporation (Citizens). These representatives note that Citizens premium increases are generally capped at 10 percent by statute and that Citizens is not required to charge actuarially indicated rates for coverage. Accordingly, private market insurers have difficulty in competing with Citizens in the open market. Increasing the reinsurance cost to private market insurers may exacerbate this problem.

C. Government Sector Impact:

The bill reduces the assessment liability of the FHCF, which decreases the probability that the Fund will be required to issue bonds to meet its financial obligations. Supporters of the legislation also note that the FHCF is not the only insurance-related state entity granted assessment authority. Citizens and the Florida Insurance Guaranty Association each have statutory authority to issue bond debt to meet obligations incurred in the event a major hurricane exhausts the financial resources of each entity. Reducing the likelihood of FHCF bonding and assessments will assist Citizens and FIGA in being able to raise

funds from bond issues because FHCF bonds will be less likely to be in competition for investors in the event of a storm.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 16, 2012:

Technical change.

A. Amendments:

None.

By the Committee on Governmental Oversight and Accountability

585-02460-12

20122082__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 627.3121, F.S., which provides an exemption from public records requirements for records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., and an exemption from public meetings requirements for meetings of the association's board of governors, or a subcommittee of the association's board, at which confidential and exempt records are discussed; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.3121, Florida Statutes, is amended to read:

627.3121 Public records and public meetings exemptions.—

(1) The following records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Underwriting files, except that a policyholder or an applicant shall be provided access to his or her own underwriting files.

(b) Claims files until termination of all litigation and the settlement of all claims arising out of the same accident, except that portions of the claims files may remain confidential

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or exempt if otherwise provided by law.

(c) Records obtained or generated by an auditor pursuant to a routine audit until the audit is completed or, if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

(d) Proprietary information licensed to the association under contract if the contract requires the association to maintain the confidentiality of such information.

(e) Medical ~~records, which include~~ information relating to the medical condition or medical status of an individual.

(f) All records relative to an employee's participation in an employee assistance program upon the entrance of the employee into the program, except as otherwise provided in s. 440.102(8).

(g) Information relating to negotiations for financing, reinsurance, reinsurance commutation agreements, depopulation, or contractual services until the conclusion of the negotiations.

(h) Reports provided to or submitted by the association regarding suspected fraud or other criminal activity and producer appeals and related reporting regarding suspected misconduct until such investigation is closed or ceases to be active.

(i) Information received from the Department of Revenue regarding payroll information and client lists of employee leasing companies obtained pursuant to ss. 440.381 and 468.529.

(j) A public record prepared by an attorney retained by the

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 59 association to protect or represent the interests of the
 60 association, or prepared at the attorney's express direction,
 61 that reflects a mental impression, conclusion, litigation
 62 strategy, or legal theory of the attorney or the association.
 63 This protection is not waived by the release of such public
 64 record to another employee or officer of the same association or
 65 any person consulted by the association attorney.

66 (2) (a) The association may release confidential and exempt
 67 underwriting files and claims files to:

68 1. A carrier that is considering underwriting a risk
 69 insured by the association;

70 2. A producer seeking to place such a risk with such a
 71 carrier; or

72 3. Another entity seeking to arrange voluntary market
 73 coverage for association risks.

74 (b) Prior to the release authorized in paragraph (a), the
 75 carrier, producer, or other entity must agree in writing,
 76 notarized and under oath, to maintain the confidential and
 77 exempt status of such file until that carrier, producer, or
 78 other entity agrees to underwrite the risk or provide voluntary
 79 market coverage.

80 (3) Records made confidential and exempt by this section
 81 may be released, upon written request, to another agency in the
 82 performance of that agency's official duties and
 83 responsibilities.

84 (4) (a) That portion of a meeting of the association's board
 85 of governors, or any subcommittee of the association's board, at
 86 which records made confidential and exempt by this section are
 87 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the

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 88 State Constitution.

89 (b) All exempt portions of meetings shall be recorded and
 90 transcribed. The board shall record the times of commencement
 91 and termination of the meeting, all discussion and proceedings,
 92 the names of all persons present at any time, and the names of
 93 all persons speaking. An exempt portion of any meeting may not
 94 be off the record.

95 (c) Subject to this section and s. 119.021(2), the court
 96 reporter's notes of any exempt portion of a meeting shall be
 97 retained by the association for a minimum of 5 years.

98 (d) 1. A transcript and minutes of exempt portions of
 99 meetings are confidential and exempt from s. 119.07(1) and s.
 100 24(a), Art. I of the State Constitution.

101 2. Those portions of the transcript or the minutes
 102 pertaining to a confidential and exempt claims file are no
 103 longer confidential and exempt upon termination of all
 104 litigation with regard to that claim.

105 ~~(5) This section is subject to the Open Government Sunset~~
 106 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 107 ~~on October 2, 2012, unless reviewed and saved from repeal~~
 108 ~~through reenactment by the Legislature.~~

109 Section 2. This act shall take effect October 1, 2012.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 2082

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Florida Workers' Compensation Joint Underwriting Association

DATE: February 14, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	GO	Favorable
2.	Matiyow	Burgess	BI	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill is the result of an Open Government Sunset Review of the public records and meetings exemption for certain records and meetings held by the Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA). This public records and meetings exemption is subject to the Open Government Sunset Review Act, s. 119.15, F.S., and will expire October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. This bill reenacts the public records exemption and also removes redundant language currently in the exemption.

Section 627.3121, F.S., currently provides that certain records and meetings held by the JUA are confidential and exempt from the public records requirements found in s. 119.07(1), F.S. and Article I, Section 24(a) of the Florida Constitution, and from the public meetings requirements found in s. 286.011, F.S., and Article I, Section 24(b) of the Florida Constitution. The public records and meetings exemption specifies circumstances under which the protected information may be disclosed.

This bill substantially amends section 627.3121 of the Florida Statutes.

II. Present Situation:

Florida's Public Records and Public Meetings Laws

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later,

¹ Section 1390, 1391 Florida Statutes. (Rev. 1892).

Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency⁴ records are available for public inspection. The term “public record” is broadly defined to mean:

. . .all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Article I, s. 24 of the State Constitution also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the

² Article I, s. 24, Fla. Constitution.

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁵ Section 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

public and meetings of the Legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

Only the Legislature is authorized to create exemptions to open government requirements.⁸ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

⁸ Art. I, s. 24(c), Fla. Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Art. I, s. 24(c), Fla. Constitution.

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ Section 119.15, F.S.

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁵

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁶ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

... notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Florida Workers' Compensation Joint Underwriting Association, Inc.

The Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA), created by the Legislature in 1993, is a nonprofit, self-funding entity that is the insurer of last resort for employers who are unable to secure workers' compensation insurance coverage in the voluntary market.¹⁷ The JUA board consists of: three members appointed by the Financial Services Commission; two members representing the top 20 domestic insurers writing workers'

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

¹⁷ Florida Workers' Compensation Joint Underwriting Association, Inc., <http://www.fwcjua.com/> (last visited Jan. 18, 2012). See also section 627.311(5)(a), F.S.

compensation; two members representing the top 20 foreign insurers writing workers' compensation; one person appointed by the largest property and casualty insurance agents' association; and the Consumer Advocate for the Department of Financial Services.¹⁸

The Office of the Attorney General has previously stated that other joint underwriting associations are subject to public records requirements.¹⁹ The Attorney General's Office has opined that residual markets are "agencies" as defined in Ch. 119, F.S., and are accordingly subject to provisions of the Sunshine Law in Ch. 286, F.S., unless specifically exempted from the provisions.²⁰

Public Records and Meetings Exemption Under Review

Section 627.3121, F.S. provides that the following records and portions of meetings held by the Florida Workers' Compensation Joint Underwriting Association are confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- Underwriting files, except that a policyholder or an applicant is authorized access to his or her own underwriting files;
- Claims files until the termination of all litigation and settlement of all claims arising out of the same accident, except that portions of the claims files may remain confidential or exempt if otherwise provided by law;
- Records obtained or generated by an internal auditor until the audit is completed, or if the audit is part of an investigation, until the investigation is closed or ceases to be active;
- Proprietary information licensed to the JUA under contract when the contract requires the association to maintain the confidentiality;
- Medical records, which include information relating to the medical condition or medical status of an individual;
- All records relative to the participation of an employee in an employee assistance program, except as otherwise provided in s. 440.102(8);
- Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations;
- Reports regarding suspected fraud or other criminal activity and producer appeals and related reporting regarding suspected misconduct until the investigation is closed or ceases to be active;
- Information secured from the Department of Revenue regarding payroll information and client lists of employee leasing companies authorized under ss. 440.381 and 468.529, F.S.;
- A public record prepared by an attorney retained by the association to protect or represent the interests of the association or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association.
- That portion of a meeting of the association's board of governors or any subcommittee thereof at which exempt records are discussed; all exempt portions must be recorded and transcribed and preserved for a minimum of 5 years; and

¹⁸ Section 627.311(5)(b), F.S.

¹⁹ See Attorney General Opinion 94-32.

²⁰ *Id.*

- The transcript and minutes of exempt portions of meetings at which confidential and exempt records are discussed until termination of all litigation and settlement of all claims with regard to that claim.

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Governmental Oversight and Accountability Committee recommended that the Legislature retain the public records and meetings exemption established in s. 627.3121, F.S. The recommendation was made in light of the information gathered for the Sunset Review, which indicated that a public necessity continues to exist in maintaining the exemption in order to promote the efficient and effective administration of a governmental program, to protect information of a sensitive personal nature concerning individuals, and to protect information of a confidential nature concerning entities. The Sunset Review also recommended amending s. 627.3121(1)(e) from its current language to “medical information” to remove superfluous language. Additionally, use of the term “medical information” is more consistent with definitions in other statutory provisions.

III. Effect of Proposed Changes:

Section 1 amends s. 627.3121, F.S., reenacts and saves from repeal the public records and meetings exemption for the Florida Workers’ Compensation Joint Underwriting Association; removes superfluous language to create the term “medical information.”

Section 2 provides an effective date of October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill retains an already-existing public records and meetings exemption and thus is not subject to the requirement that the exemption must pass with a two-thirds vote of both houses of the Legislature. The bill complies with the requirement of Article I, section 24 of the State Constitution that public records and meetings exemptions may only be addressed in legislation separate from substantive changes in law.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 212.06, Florida Statutes, is amended to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(2) ~~(a)~~ The term "dealer," as used in this chapter, means any includes every person who:

(a) Manufactures or produces tangible personal property for



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13 sale at retail; for use, consumption, or distribution; or for
14 storage to be used or consumed in this state.

15 ~~(b) The term "dealer" is further defined to mean every~~
16 ~~person, as used in this chapter, who~~ Imports, or causes to be
17 imported, tangible personal property from any state or foreign
18 country for sale at retail; for use, consumption, or
19 distribution; or for storage to be used or consumed in this
20 state.

21 ~~(c) The term "dealer" is further defined to mean every~~
22 ~~person, as used in this chapter, who~~ Sells at retail or ~~who~~
23 offers for sale at retail, or ~~who~~ has in his or her possession
24 for sale at retail; ~~or~~ for use, consumption, or distribution; or
25 for storage to be used or consumed in this state, tangible
26 personal property ~~as defined herein~~, including a retailer who
27 transacts a mail order sale.

28 ~~(d) The term "dealer" is further defined to mean any person~~
29 ~~who~~ Has sold at retail; ~~or~~ used, ~~or~~ consumed, or distributed; or
30 stored for use or consumption in this state, tangible personal
31 property and ~~who~~ cannot prove that the tax levied by this
32 chapter has been paid on the sale at retail, the use, the
33 consumption, the distribution, or the storage of such tangible
34 personal property. ~~However,~~ The term "dealer" does not include
35 ~~mean~~ a person who is not a "dealer" as otherwise defined in
36 ~~under the definition of any other paragraph of this subsection~~
37 and whose only owned or leased property (including property
38 owned or leased by an affiliate) in this state is located at the
39 premises of a printer with which it has contracted for printing,
40 if such property consists of the final printed product, property
41 which becomes a part of the final printed product, or property



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42 from which the printed product is produced.

43 ~~(e) The term "dealer" is further defined to mean any~~
44 ~~person, as used in this chapter, who~~ Leases or rents tangible
45 ~~personal property, as defined in this chapter, for a~~
46 consideration, permitting the use or possession of such property
47 without transferring title thereto, except as expressly provided
48 for to the contrary in this chapter herein.

49 ~~(f) The term "dealer" is further defined to mean any~~
50 ~~person, as used in this chapter, who~~ Maintains or uses ~~has~~
51 within this state, ~~directly or by a subsidiary,~~ an office,
52 distributing house, salesroom, or house, warehouse, or other
53 place of business operated by any person other than a common
54 carrier acting in the capacity of a common carrier.

55 ~~(g) "Dealer" also means and includes every person who~~
56 solicits business either by direct representatives, indirect
57 representatives, or manufacturers' agents; by distribution of
58 catalogs or other advertising matter; or by any other means
59 whatsoever, and by reason thereof receives orders for tangible
60 personal property from consumers for use, consumption,
61 distribution, and storage for use or consumption in the state;
62 such dealer shall collect the tax imposed by this chapter from
63 the purchaser, and no action, either in law or in equity, on a
64 sale or transaction as provided by the terms of this chapter may
65 be had in this state by any such dealer unless it is
66 affirmatively shown that the provisions of this chapter have
67 been fully complied with.

68 ~~(h) "Dealer" also means and includes every person who,~~ As a
69 representative, agent, or solicitor of an out-of-state principal
70 or principals, solicits, receives, and accepts orders from



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71 consumers in the state for future delivery and whose principal
72 refuses to register as a dealer.

73 (i) Constitutes ~~"Dealer"~~ also means and includes the state
74 or any, county, municipality, district ~~any political~~
75 ~~subdivision~~, agency, bureau, ~~or~~ department, or other state or
76 local governmental instrumentality.

77 (j) ~~The term "dealer" is further defined to mean any person~~
78 ~~who~~ Leases, or grants a license to use, occupy, or enter upon,
79 living quarters, sleeping or housekeeping accommodations in
80 hotels, apartment houses, roominghouses, tourist or trailer
81 camps, real property, space or spaces in parking lots or garages
82 for motor vehicles, docking or storage space or spaces for boats
83 in boat docks or marinas, or tie-down or storage space or spaces
84 for aircraft at airports. The term includes ~~"dealer" also means~~
85 any person who has leased, occupied, or used or was entitled to
86 use any living quarters, sleeping or housekeeping accommodations
87 in hotels, apartment houses, roominghouses, tourist or trailer
88 camps, real property, space or spaces in parking lots or garages
89 for motor vehicles, or docking or storage space or spaces for
90 boats in boat docks or marinas, or who has purchased
91 communication services or electric power or energy, and who
92 cannot prove that the tax levied by this chapter has been paid
93 to the vendor or lessor on any such transactions. The term
94 ~~"dealer"~~ does not include any person who leases, lets, rents, or
95 grants a license to use, occupy, or enter upon any living
96 quarters, sleeping quarters, or housekeeping accommodations in
97 apartment houses, roominghouses, tourist camps, or trailer
98 camps, and who exclusively enters into a bona fide written
99 agreement for continuous residence for longer than 6 months in



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100 duration with any person who leases, lets, rents, or is granted
101 a license to use such property.

102 (k) ~~"Dealer" also means any person who~~ Sells, provides, or
103 performs a service taxable under this chapter. The term includes
104 ~~"Dealer" also means~~ any person who purchases, uses, or consumes
105 a service taxable under this chapter who cannot prove that the
106 tax levied by this chapter has been paid to the seller of the
107 taxable service.

108 (l) ~~"Dealer" also means any person who~~ Solicits, offers,
109 provides, enters into, issues, or delivers any service warranty
110 taxable under this chapter, or who receives, on behalf of such a
111 person, any consideration from a service warranty holder.

112 Section 2. Section 212.0596, Florida Statutes, is amended
113 to read:

114 212.0596 Taxation of mail order sales.—

115 (1) For purposes of this chapter, a "mail order sale" is a
116 sale of tangible personal property, ordered by mail, Internet,
117 or other means of communication, from a dealer who receives the
118 order in another state of the United States, or in a
119 commonwealth, territory, or other area under the jurisdiction of
120 the United States, and transports the property or causes the
121 property to be transported, whether or not by mail, from any
122 jurisdiction of the United States, including this state, to a
123 person in this state, including the person who ordered the
124 property.

125 (2) Every dealer as defined in s. 212.06(2)(c) who makes a
126 mail order sale is subject to the power of this state to levy
127 and collect the tax imposed by this chapter when:

128 (a) The dealer is ~~a corporation~~ doing business under the



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129 laws of this state or is a person domiciled in, a resident of,
130 or a citizen of, this state;

131 (b) The dealer maintains retail establishments or offices
132 in this state, whether the mail order sales thus subject to
133 taxation by this state result from or are related in any other
134 way to the activities of such establishments or offices;

135 (c) The dealer has agents or representatives in this state
136 who solicit business or transact business on behalf of the
137 dealer, whether the mail order sales thus subject to taxation by
138 this state result from or are related in any other way to such
139 solicitation or transaction of business, except that a printer
140 who mails or delivers for an out-of-state print purchaser
141 material the printer printed for it is shall not ~~be~~ deemed to be
142 the print purchaser's agent or representative for purposes of
143 this paragraph;

144 ~~(d) The property was delivered in this state in fulfillment~~
145 ~~of a sales contract that was entered into in this state, in~~
146 ~~accordance with applicable conflict of laws rules, when a person~~
147 ~~in this state accepted an offer by ordering the property;~~

148 ~~(e) The dealer, by purposefully or systematically~~
149 ~~exploiting the market provided by this state by any media-~~
150 ~~assisted, media-facilitated, or media-solicited means,~~
151 ~~including, but not limited to, direct mail advertising,~~
152 ~~unsolicited distribution of catalogs, computer-assisted~~
153 ~~shopping, television, radio, or other electronic media, or~~
154 ~~magazine or newspaper advertisements or other media, creates~~
155 ~~nexus with this state;~~

156 ~~(f) Through compact or reciprocity with another~~
157 ~~jurisdiction of the United States, that jurisdiction uses its~~



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158 ~~taxing power and its jurisdiction over the retailer in support~~
159 ~~of this state's taxing power;~~

160 (d) ~~(g)~~ The dealer consents, expressly or by implication, to
161 the imposition of the tax imposed by this chapter;

162 ~~(h) The dealer is subject to service of process under s.~~
163 ~~48.181;~~

164 (e) ~~(i)~~ The dealer's mail order sales are subject to the
165 power of this state to tax sales or to require the dealer to
166 collect use taxes under a statute or statutes of the United
167 States;

168 (f) ~~(j)~~ The dealer owns real property or tangible personal
169 property that is physically in this state, except that a dealer
170 whose only property (including property owned by an affiliate)
171 in this state is located at the premises of a printer with which
172 the vendor has contracted for printing, and is ~~either~~ a final
173 printed product, ~~or~~ property which becomes a part of the final
174 printed product, or property from which the printed product is
175 produced, is not deemed to own such property for purposes of
176 this paragraph;

177 (g) ~~(k)~~ A person, other than a person acting in the capacity
178 of a common carrier, ~~The dealer, while not having nexus with~~
179 ~~this state on any of the bases described in paragraphs (a) (j)~~
180 ~~or paragraph (l), is a corporation that is a member of an~~
181 ~~affiliated group of corporations, as defined in s. 1504(a) of~~
182 ~~the Internal Revenue Code, whose members are includable under s.~~
183 ~~1504(b) of the Internal Revenue Code and whose members are~~
184 ~~eligible to file a consolidated tax return for federal corporate~~
185 ~~income tax purposes and any parent or subsidiary corporation in~~
186 ~~the affiliated group has substantial nexus with this state and:~~



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187 1. Sells a similar line of products as the dealer and does
188 so under the same or a similar business name;

189 2. Maintains an office, distribution facility, warehouse,
190 storage place, or similar place of business in this state to
191 facilitate the delivery of property or services sold by the
192 dealer to the dealer's customers;

193 3. Uses trademarks, service marks, or trade names in this
194 state which are the same or substantially similar to those used
195 by the dealer;

196 4. Delivers, installs, assembles, or performs maintenance
197 services for the dealer's customers in this state;

198 5. Facilitates the dealer's delivery of property to
199 customers in this state by allowing the dealer's customers to
200 pick up property sold by the dealer at an office, distribution
201 facility, warehouse, storage place, or similar place of business
202 maintained by the person in this state; or

203 6. Conducts any other activities in this state which are
204 significantly associated with the dealer's ability to establish
205 and maintain a market in this state for the dealer's sales ~~on~~
206 ~~one or more of the bases described in paragraphs (a)-(j) or~~
207 ~~paragraph (l); or~~

208 (h)-(l) The dealer or the dealer's activities have
209 sufficient connection with or relationship to this state or its
210 residents of some type other than those described in paragraphs
211 (a)-(g) ~~(a)-(k)~~ to create nexus empowering this state to tax its
212 mail order sales or to require the dealer to collect sales tax
213 or accrue use tax.

214
215 Notwithstanding other provisions of law, a dealer is not



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216 required to collect and remit sales or use tax under this
217 subsection unless the dealer has a physical presence in this
218 state or the activities conducted in this state on the dealer's
219 behalf are significantly associated with the dealer's ability to
220 establish and maintain a market for sales in this state.

221 (3) (a) Notwithstanding other provisions of law or this
222 section, there is established a rebuttable presumption that
223 every dealer as defined in s. 212.06(2) who makes a mail order
224 sale is also subject to the power of this state to levy and
225 collect the tax imposed by this chapter if the dealer enters
226 into an agreement with one or more residents of this state under
227 which the resident, for a commission or other consideration,
228 directly or indirectly refers potential customers, whether by a
229 link on an Internet website, an in-person oral presentation,
230 telemarketing, or otherwise, to the dealer, if the cumulative
231 gross receipts from sales by the dealer to customers in this
232 state who are referred to the dealer by all residents having
233 this type of an agreement with the dealer is in excess of
234 \$10,000 during the 12-month period immediately before the
235 rebuttable presumption arose.

236 (b) The presumption in paragraph (a) may be rebutted by the
237 submission of evidence proving that the residents with whom the
238 dealer has an agreement did not engage in any activity within
239 this state that was significantly associated with the dealer's
240 ability to establish or maintain the dealer's market in this
241 state during the 12 months immediately before the rebuttable
242 presumption arose. The evidence may consist of sworn affidavits,
243 obtained and given in good faith, from each resident with whom
244 the dealer has an agreement attesting that he or she did not



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245 engage in any solicitation in this state on the dealer's behalf
246 during the previous year.

247 (4)~~(3)~~ Every dealer engaged in the business of making mail
248 order sales is subject to the requirements of this chapter for
249 cooperation of dealers in collection of taxes and in
250 administration of this chapter, except that no fee shall be
251 imposed upon such dealer for carrying out any required activity.

252 (5)~~(4)~~ The department shall, with the consent of another
253 jurisdiction of the United States whose cooperation is needed,
254 enforce this chapter in that jurisdiction, either directly or,
255 at the option of that jurisdiction, through its officers or
256 employees.

257 (6)~~(5)~~ The tax required under this section to be collected
258 and any amount unreturned to a purchaser that is not tax but was
259 collected from the purchaser under the representation that it
260 was tax constitute funds of the State of Florida from the moment
261 of collection.

262 (7)~~(6)~~ Notwithstanding other provisions of law, a dealer
263 who makes a mail order sale in this state is exempt from
264 collecting and remitting any local option surtax on the sale,
265 unless the dealer is located in a county that imposes a surtax
266 within the meaning of s. 212.054(3)(a), the order is placed
267 through the dealer's location in such county, and the property
268 purchased is delivered into such county or into another county
269 in this state that levies the surtax, in which case the
270 provisions of s. 212.054(3)(a) are applicable.

271 (8)~~(7)~~ The department may establish by rule procedures for
272 collecting the use tax from unregistered persons who but for
273 their mail order purchases would not be required to remit sales



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274 or use tax directly to the department. The procedures may
275 provide for waiver of registration and registration fees,
276 provisions for irregular remittance of tax, elimination of the
277 collection allowance, and nonapplication of local option
278 surtaxes.

279 Section 3. (1) The Department of Revenue shall develop a
280 tracking system, in consultation with the Revenue Estimating
281 Conference, to determine the amount of sales taxes remitted by
282 out-of-state dealers who would otherwise not be required to
283 collect and remit sales taxes in the absence of the amendments
284 made to s. 212.0596, Florida Statutes, in section 2 of this act.
285 By February 1 of each year, the Department of Revenue shall
286 submit a report to the Governor, the President of the Senate,
287 and the Speaker of the House of Representatives which sets forth
288 the amount of sales taxes collected and remitted by such dealers
289 in the previous calendar year and the methodology used to
290 determine the amount.

291 (2) By March 1 of each year, the Revenue Estimating
292 Conference shall use the information provided by the Department
293 of Revenue pursuant to subsection (1) to determine the amount of
294 sales taxes remitted in the previous calendar year by such out-
295 of-state dealers who would otherwise not be required to collect
296 and remit sales taxes and estimate the amount that may be
297 expected in the following fiscal year.

298 (3) The Legislature shall use the information provided by
299 the Department of Revenue and the Revenue Estimating Conference
300 to develop legislation designed to return the amount of those
301 sales taxes collected to the taxpayers of this state. The
302 Legislature may accomplish this by establishing one or more



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303 sales tax holidays designed to reduce tax collections in an
304 amount not less than the amounts determined by the Revenue
305 Estimating Conference. If the amounts collected are determined
306 to be of a recurring nature and sufficient to lower the tax rate
307 set forth in chapter 212, Florida Statutes, the Legislature may
308 lower the tax rate and implement other tax relief as it deems
309 appropriate.

310 Section 4. This act shall take effect July 1, 2012.

311
312 ===== T I T L E A M E N D M E N T =====

313 And the title is amended as follows:

314 Delete everything before the enacting clause
315 and insert:

316 A bill to be entitled
317 An act relating to the tax on sales, use, and other
318 transactions; amending s. 212.06, F.S.; revising the
319 definition of the term "dealer" for purposes relating
320 to the collection of the tax on sales, use, and other
321 transactions; amending s. 212.0596, F.S.; revising the
322 term "mail order sale" to specifically include sales
323 of tangible personal property ordered by Internet;
324 deleting certain provisions that specify dealer
325 activities or other circumstances that subject mail
326 order sales to this state's power to levy and collect
327 the sales and use tax; providing that certain persons
328 who make mail order sales and who have a substantial
329 nexus with this state are subject to this state's
330 power to levy and collect the sales and use tax when
331 they engage in certain enumerated activities;



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332 specifying that dealers are not required to collect
333 and remit sales and use tax unless certain
334 circumstances exist; creating a rebuttable presumption
335 that a dealer is subject to the state's power to levy
336 and collect the sales or use tax under specified
337 circumstances; specifying evidentiary proof that may
338 be submitted to rebut the presumption; requiring that
339 the Department of Revenue develop a tracking system,
340 in consultation with the Revenue Estimating
341 Conference, to determine the amount of sales tax
342 remitted by out-of-state dealers who would otherwise
343 not be required to collect and remit sales taxes but
344 for the amendments made by the act; requiring that the
345 department submit a report to the Governor and
346 Legislature by a specified date each year; requiring
347 that the report contain certain information; requiring
348 that the Revenue Estimating Conference use such
349 information to determine the amount of sales taxes
350 remitted in the previous calendar year by such out-of-
351 state dealers and estimate the amount that may be
352 expected in the following fiscal year; requiring that
353 the Legislature use the information to develop
354 legislation designed to return the amount of sales
355 taxes collected to the taxpayers of the state;
356 providing an effective date.
357

By the Committee on Commerce and Tourism; and Senator Detert

577-02855-12

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A bill to be entitled

An act relating to the tax on sales, use, and other transactions; amending s. 212.06, F.S.; revising the definition of the term "dealer" for purposes relating to the collection of the tax on sales, use, and other transactions; amending s. 212.0596, F.S.; revising the term "mail order sale" to specifically include sales of tangible personal property ordered by Internet; deleting certain provisions that specify dealer activities or other circumstances that subject mail order sales to this state's power to levy and collect the sales and use tax; providing that certain persons who make mail order sales and who have a substantial nexus with this state are subject to this state's power to levy and collect the sales and use tax when they engage in certain enumerated activities; specifying that dealers are not required to collect and remit sales and use tax unless certain circumstances exist; creating a rebuttable presumption that a dealer is subject to the state's power to levy and collect the sales or use tax under specified circumstances; specifying evidentiary proof that may be submitted to rebut the presumption; amending s. 212.0506, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 212.06, Florida

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Statutes, is amended to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(2) ~~(a)~~ The term "dealer," as used in this chapter, means any includes every person who:

(a) Manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.

~~(b) The term "dealer" is further defined to mean every person, as used in this chapter, who~~ Imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.

~~(c) The term "dealer" is further defined to mean every person, as used in this chapter, who~~ Sells at retail or who offers for sale at retail, or who has in his or her possession for sale at retail; ~~or~~ for use, consumption, or distribution; or for storage to be used or consumed in this state, tangible personal property ~~as defined herein~~, including a retailer who transacts a mail order sale.

~~(d) The term "dealer" is further defined to mean any person who~~ Has sold at retail; ~~or~~ used, ~~or~~ consumed, or distributed; or stored for use or consumption in this state; tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of such tangible personal property. ~~However,~~ The term "dealer" does not include

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59 ~~mean a person who is not a "dealer" as otherwise defined in~~
 60 ~~under the definition of any other paragraph of this subsection~~
 61 ~~and whose only owned or leased property (including property~~
 62 ~~owned or leased by an affiliate) in this state is located at the~~
 63 ~~premises of a printer with which it has contracted for printing,~~
 64 ~~if such property consists of the final printed product, property~~
 65 ~~which becomes a part of the final printed product, or property~~
 66 ~~from which the printed product is produced.~~

67 ~~(e) The term "dealer" is further defined to mean any~~
 68 ~~person, as used in this chapter, who Leases or rents tangible~~
 69 ~~personal property, as defined in this chapter, for a~~
 70 ~~consideration, permitting the use or possession of such property~~
 71 ~~without transferring title thereto, except as expressly provided~~
 72 ~~for to the contrary in this chapter herein.~~

73 ~~(f) The term "dealer" is further defined to mean any~~
 74 ~~person, as used in this chapter, who Maintains or uses has~~
 75 ~~within this state, directly or by a subsidiary, an office,~~
 76 ~~distributing house, salesroom, or house, warehouse, or other~~
 77 ~~place of business operated by any person other than a common~~
 78 ~~carrier acting in the capacity of a common carrier.~~

79 ~~(g) "Dealer" also means and includes every person who~~
 80 ~~solicits business either by direct representatives, indirect~~
 81 ~~representatives, or manufacturers' agents; by distribution of~~
 82 ~~catalogs or other advertising matter; or by any other means~~
 83 ~~whatsoever, and by reason thereof receives orders for tangible~~
 84 ~~personal property from consumers for use, consumption,~~
 85 ~~distribution, and storage for use or consumption in the state;~~
 86 ~~such dealer shall collect the tax imposed by this chapter from~~
 87 ~~the purchaser, and no action, either in law or in equity, on a~~

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88 ~~sale or transaction as provided by the terms of this chapter may~~
 89 ~~be had in this state by any such dealer unless it is~~
 90 ~~affirmatively shown that the provisions of this chapter have~~
 91 ~~been fully complied with.~~

92 ~~(g)(h) "Dealer" also means and includes every person who,~~
 93 ~~As a representative, agent, or solicitor of an out-of-state~~
 94 ~~principal or principals, solicits, receives, and accepts orders~~
 95 ~~from consumers in the state for future delivery and whose~~
 96 ~~principal refuses to register as a dealer.~~

97 ~~(h)(i) Constitutes "Dealer" also means and includes the~~
 98 ~~state or any, county, municipality, district any political~~
 99 ~~subdivision, agency, bureau, ~~or~~ department, or other state or~~
 100 ~~local governmental instrumentality.~~

101 ~~(i)(j) The term "dealer" is further defined to mean any~~
 102 ~~person who Leases, or grants a license to use, occupy, or enter~~
 103 ~~upon, living quarters, sleeping or housekeeping accommodations~~
 104 ~~in hotels, apartment houses, roominghouses, tourist or trailer~~
 105 ~~camps, real property, space or spaces in parking lots or garages~~
 106 ~~for motor vehicles, docking or storage space or spaces for boats~~
 107 ~~in boat docks or marinas, or tie-down or storage space or spaces~~
 108 ~~for aircraft at airports. The term includes "dealer" also means~~
 109 ~~any person who has leased, occupied, or used or was entitled to~~
 110 ~~use any living quarters, sleeping or housekeeping accommodations~~
 111 ~~in hotels, apartment houses, roominghouses, tourist or trailer~~
 112 ~~camps, real property, space or spaces in parking lots or garages~~
 113 ~~for motor vehicles, or docking or storage space or spaces for~~
 114 ~~boats in boat docks or marinas, or who has purchased~~
 115 ~~communication services or electric power or energy, and who~~
 116 ~~cannot prove that the tax levied by this chapter has been paid~~

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117 to the vendor or lessor on any such transactions. The term
 118 ~~"dealer"~~ does not include any person who leases, lets, rents, or
 119 grants a license to use, occupy, or enter upon any living
 120 quarters, sleeping quarters, or housekeeping accommodations in
 121 apartment houses, roominghouses, tourist camps, or trailer
 122 camps, and who exclusively enters into a bona fide written
 123 agreement for continuous residence for longer than 6 months in
 124 duration with any person who leases, lets, rents, or is granted
 125 a license to use such property.

126 ~~(j)(k) "Dealer" also means any person who~~ sells, provides,
 127 or performs a service taxable under this chapter. The term
 128 includes "Dealer" also means any person who purchases, uses, or
 129 consumes a service taxable under this chapter who cannot prove
 130 that the tax levied by this chapter has been paid to the seller
 131 of the taxable service.

132 ~~(k)(l) "Dealer" also means any person who~~ solicits, offers,
 133 provides, enters into, issues, or delivers any service warranty
 134 taxable under this chapter, or who receives, on behalf of such a
 135 person, any consideration from a service warranty holder.

136 Section 2. Section 212.0596, Florida Statutes, is amended
 137 to read:

138 212.0596 Taxation of mail order sales.—

139 (1) For purposes of this chapter, a "mail order sale" is a
 140 sale of tangible personal property, ordered by mail, Internet,
 141 or other means of communication, from a dealer who receives the
 142 order in another state of the United States, or in a
 143 commonwealth, territory, or other area under the jurisdiction of
 144 the United States, and transports the property or causes the
 145 property to be transported, whether or not by mail, from any

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146 jurisdiction of the United States, including this state, to a
 147 person in this state, including the person who ordered the
 148 property.

149 (2) Every dealer as defined in s. 212.06(2)(c) who makes a
 150 mail order sale is subject to the power of this state to levy
 151 and collect the tax imposed by this chapter when:

152 (a) The dealer is ~~a corporation~~ doing business under the
 153 laws of this state or is a person domiciled in, a resident of,
 154 or a citizen of, this state;

155 (b) The dealer maintains retail establishments or offices
 156 in this state, whether the mail order sales thus subject to
 157 taxation by this state result from or are related in any other
 158 way to the activities of such establishments or offices;

159 (c) The dealer has agents or representatives in this state
 160 who solicit business or transact business on behalf of the
 161 dealer, whether the mail order sales thus subject to taxation by
 162 this state result from or are related in any other way to such
 163 solicitation or transaction of business, except that a printer
 164 who mails or delivers for an out-of-state print purchaser
 165 material the printer printed for it is shall not be deemed to be
 166 the print purchaser's agent or representative for purposes of
 167 this paragraph;

168 ~~(d) The property was delivered in this state in fulfillment~~
 169 ~~of a sales contract that was entered into in this state, in~~
 170 ~~accordance with applicable conflict of laws rules, when a person~~
 171 ~~in this state accepted an offer by ordering the property;~~

172 ~~(e) The dealer, by purposefully or systematically~~
 173 ~~exploiting the market provided by this state by any media-~~
 174 ~~assisted, media-facilitated, or media-solicited means,~~

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175 including, but not limited to, direct mail advertising,
 176 unsolicited distribution of catalogs, computer-assisted
 177 shopping, television, radio, or other electronic media, or
 178 magazine or newspaper advertisements or other media, creates
 179 nexus with this state;

180 ~~(f) Through compact or reciprocity with another~~
 181 ~~jurisdiction of the United States, that jurisdiction uses its~~
 182 ~~taxing power and its jurisdiction over the retailer in support~~
 183 ~~of this state's taxing power;~~

184 ~~(d)(g)~~ The dealer consents, expressly or by implication, to
 185 the imposition of the tax imposed by this chapter;

186 ~~(h) The dealer is subject to service of process under s.~~
 187 ~~48.181;~~

188 ~~(e)(i)~~ The dealer's mail order sales are subject to the
 189 power of this state to tax sales or to require the dealer to
 190 collect use taxes under a statute or statutes of the United
 191 States;

192 ~~(f)(j)~~ The dealer owns real property or tangible personal
 193 property that is physically in this state, except that a dealer
 194 whose only property (including property owned by an affiliate)
 195 in this state is located at the premises of a printer with which
 196 the vendor has contracted for printing, and is either a final
 197 printed product, ~~or~~ property which becomes a part of the final
 198 printed product, or property from which the printed product is
 199 produced, is not deemed to own such property for purposes of
 200 this paragraph;

201 ~~(g)(k) The person, other than a person acting in the~~
 202 ~~capacity of a common carrier, The dealer, while not having nexus~~
 203 ~~with this state on any of the bases described in paragraphs (a)-~~

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204 ~~(j) or paragraph (l), is a corporation that is a member of an~~
 205 ~~affiliated group of corporations, as defined in s. 1504(a) of~~
 206 ~~the Internal Revenue Code, whose members are includable under s.~~
 207 ~~1504(b) of the Internal Revenue Code and whose members are~~
 208 ~~eligible to file a consolidated tax return for federal corporate~~
 209 ~~income tax purposes and any parent or subsidiary corporation in~~
 210 ~~the affiliated group has substantial nexus with this state and:~~

211 1. Sells a similar line of products as the dealer and does
 212 so under the same or a similar business name;

213 2. Maintains an office, distribution facility, warehouse or
 214 storage place, or similar place of business in this state to
 215 facilitate the delivery of property or services sold by the
 216 dealer to the dealer's customers;

217 3. Uses trademarks, service marks, or trade names in this
 218 state that are the same or substantially similar to those used
 219 by the dealer;

220 4. Delivers, installs, assembles, or performs maintenance
 221 services for the dealer's customers in this state;

222 5. Facilitates the dealer's delivery of property to
 223 customers in this state by allowing the dealer's customers to
 224 pick up property sold by the person at an office, distribution
 225 facility, warehouse, storage place, or similar place of business
 226 maintained by the person in this state; or

227 6. Conducts any other activities in this state that are
 228 significantly associated with the dealer's ability to establish
 229 and maintain a market in this state for the dealer's sales on
 230 ~~one or more of the bases described in paragraphs (a)-(j) or~~
 231 ~~paragraph (l); or~~

232 ~~(h)(l)~~ The dealer or the dealer's activities have

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233 sufficient connection with or relationship to this state or its
 234 residents of some type other than those described in paragraphs
 235 ~~(a)-(g)~~ ~~(a)-(k)~~ to create nexus empowering this state to tax its
 236 mail order sales or to require the dealer to collect sales tax
 237 or accrue use tax.

238
 239 Notwithstanding other provisions of law, a dealer is not
 240 required to collect and remit sales or use tax under this
 241 subsection unless the dealer has a physical presence in this
 242 state or the activities conducted in this state on the dealer's
 243 behalf are significantly associated with the dealer's ability to
 244 establish and maintain a market for sales in this state.

245 (3) (a) Notwithstanding other provisions of law or this
 246 section, on or after October 1, 2012, there is established a
 247 rebuttable presumption that every dealer as defined in s.
 248 212.06(2) who makes a mail order sale is also subject to the
 249 power of this state to levy and collect the tax imposed by this
 250 chapter if the dealer enters into an agreement with one or more
 251 residents of this state under which the resident, for a
 252 commission or other consideration, directly or indirectly refers
 253 potential customers, whether by a link on an Internet website,
 254 an in-person oral presentation, telemarketing, or otherwise, to
 255 the dealer, if the cumulative gross receipts from sales by the
 256 dealer to customers in this state who are referred to the dealer
 257 by all residents with this type of an agreement with the dealer
 258 is in excess of \$10,000 during the 12-month period immediately
 259 before the rebuttable presumption arose.

260 (b) The presumption in paragraph (a) may be rebutted by the
 261 submission of evidence proving the residents with whom the

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262 dealer has an agreement did not engage in any activity within
 263 this state that was significantly associated with the dealer's
 264 ability to establish or maintain the dealer's market in this
 265 state during the 12 months immediately before the rebuttable
 266 presumption arose. The evidence may consist of sworn affidavits,
 267 obtained and given in good faith, from each resident with whom
 268 the dealer has an agreement attesting that he or she did not
 269 engage in any solicitation in this state on the dealer's behalf
 270 during the previous year.

271 (4)(3) Every dealer engaged in the business of making mail
 272 order sales is subject to the requirements of this chapter for
 273 cooperation of dealers in collection of taxes and in
 274 administration of this chapter, except that no fee shall be
 275 imposed upon such dealer for carrying out any required activity.

276 (5)(4) The department shall, with the consent of another
 277 jurisdiction of the United States whose cooperation is needed,
 278 enforce this chapter in that jurisdiction, either directly or,
 279 at the option of that jurisdiction, through its officers or
 280 employees.

281 (6)(5) The tax required under this section to be collected
 282 and any amount unreturned to a purchaser that is not tax but was
 283 collected from the purchaser under the representation that it
 284 was tax constitute funds of the State of Florida from the moment
 285 of collection.

286 (7)(6) Notwithstanding other provisions of law, a dealer
 287 who makes a mail order sale in this state is exempt from
 288 collecting and remitting any local option surtax on the sale,
 289 unless the dealer is located in a county that imposes a surtax
 290 within the meaning of s. 212.054(3)(a), the order is placed

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291 through the dealer's location in such county, and the property
292 purchased is delivered into such county or into another county
293 in this state that levies the surtax, in which case the
294 provisions of s. 212.054(3)(a) are applicable.

295 ~~(8)(7)~~ The department may establish by rule procedures for
296 collecting the use tax from unregistered persons who but for
297 their mail order purchases would not be required to remit sales
298 or use tax directly to the department. The procedures may
299 provide for waiver of registration and registration fees,
300 provisions for irregular remittance of tax, elimination of the
301 collection allowance, and nonapplication of local option
302 surtaxes.

303 Section 3. Subsection (11) of section 212.0506, Florida
304 Statutes, is amended to read:

305 212.0506 Taxation of service warranties.—

306 (11) Any duties imposed by this chapter upon dealers of
307 tangible personal property with respect to collecting and
308 remitting taxes; making returns; keeping books, records, and
309 accounts; and complying with the rules and regulations of the
310 department apply to all dealers as defined in s. 212.06(2)(k)
311 ~~212.06(2)(l)~~.

312 Section 4. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/2012

Meeting Date

Topic _____ Bill Number SB1514
(if applicable)
Name Candace Lankford Amendment Barcode _____
(if applicable)
Job Title Volusia County School Board
Address 330 Lake Winnemissett Drive Phone 386-801-2282
Street
Deland, FL 32724 E-mail cc|ankfo@volusia.k12
City State Zip fl

Speaking: For Against Information

Representing Florida School Boards Association

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic _____

Bill Number 1514
(if applicable)

Name JOSE L. GONZALEZ

Amendment Barcode _____
(if applicable)

Job Title VP GOVT. AFFAIRS

Address 576 N. ADAMS

Phone _____

Street

TALLAHASSEE, FL

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing AIF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-16-12

Meeting Date

Topic SALES TAX FAIRNESS

Bill Number SB 1514
(if applicable)

Name DAVID HART

Amendment Barcode _____
(if applicable)

Job Title EXEC VP

Address 136 S. BRONOUGH
Street

Phone 850-521-1200

TALLAHASSEE FL 32301
City State Zip

E-mail dharta@flehamber.com

Speaking: For Against Information

Representing FL CHAMBER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic INTERNET SALES TAX

Bill Number SB 1514
(if applicable)

Name RANDY MILLER

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE V.P.

Address 227 S. ADAMS ST
Street

Phone 850-222-4082

TALLAHASSEE, FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA RETAIL FEDERATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

16 Feb 12

Meeting Date

Topic TAX ON SALES

Bill Number 1514
(if applicable)

Name CHARLES MILSTED

Amendment Barcode _____
(if applicable)

Job Title ASSOCIATE STATE DIRECTOR

Address 200 WEST COLLEGE AVENUE

Phone 850-577-5190

Street

Tallahassee, FL 32301

City

State

Zip

E-mail cmilsted@aarp.org

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/CS/SB 1514

INTRODUCER: Banking and Insurance Committee, Commerce and Tourism Committee, and Senator Detert

SUBJECT: Tax on Sales, Use, and Other Transactions

DATE: February 16, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Fav/CS
2.	Burgess	Burgess	BI	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 1514 amends Florida law to require out-of-state retailers that conduct business over the Internet to collect and remit Florida sales tax on sales made to Florida customers.

The CS revises the definition of “dealer.” Specifically, the CS creates two new situations under which an out-of-state retailer may be required to collect and remit Florida sales tax:

1. When a person with substantial nexus to Florida does one of a number of acts, including selling a similar line of products as a dealer or operates under the same name and uses similar trademarks as a dealer, then the dealer must collect and remit Florida sales and use tax.
2. If the dealer enters into an agreement with one or more Floridians, under which the person directly or indirectly refers potential customers to the dealer for a commission or other consideration, and the cumulative gross receipts for referrals are in excess of \$10,000 during the previous 12 months, then a rebuttable presumption arises that the dealer must collect and remit Florida sales and use tax.

However, the CS bases the requirement to collect sales and use tax on the fact that the activities conducted in Florida on behalf of the dealer are significantly associated with the dealer's ability to establish and maintain a market in Florida.

This CS also provides a way for the Legislature to return any taxes collected as a result of changes to s. 212.0596, F.S., to Florida taxpayers by establishing sales tax holidays or other tax relief measures.

This CS amends ss. 212.06 and 212.0596, F.S.

This CS creates general law not contained in a designated section of the Florida Statutes.

II. Present Situation:

Because Florida has no personal state income tax, the state primarily depends on consumption-based taxes for its general revenue. Sales tax collections make up over 70 percent of general revenue.¹ Forty-five states and the District of Columbia impose sales and use taxes.² States that do not have a personal income tax – Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming – rely most heavily on sales tax collections.³

Florida Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on most tangible personal property, admissions, storage, transient rentals, commercial rentals, motor vehicles, and a limited number of services.⁴ The statutes currently provide more than 200 different exemptions.⁵

A sales tax of 6 percent is levied on the sales prices of tangible personal property sold at retail in Florida.⁶ Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

¹ See Florida Revenue Estimating Conference, 2012 Florida Tax Handbook. Revenues from the sales and use tax for FY 2011-12 totaled over \$17 billion.

² Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose a state sales and use tax, although Alaska permits local governments to impose sales and use taxes.

³ New Hampshire and Tennessee both have income taxes, but the taxes are not imposed on wages or other income other than dividends and interest.

⁴ Of the limited services that are taxable, some, such as cable, are taxed at a higher rate.

⁵ For a list of exemptions and history, see REC, 2012 Florida Tax Handbook. Exemptions are estimated to total about \$10 billion.

⁶ Section 212.05(1)(a)1.a., F.S.

A use tax of 6 percent is levied on the cost price of tangible personal property when it is used, consumed, distributed, or stored, rather than sold, in Florida.⁷ This tax is levied when sales tax was not paid at the time of purchase. For example, use tax is owed when a person buys:⁸

- A taxable item in Florida and does not pay sales tax;
- An item tax-exempt intending to resell it, and then the item is used in a business or for personal use; or
- A taxable item outside Florida and brings or has it delivered into the state within 6 months of the purchase date, and sales tax was not paid on the item.

If the item brought into Florida is subject to tax, a credit is allowed for taxes paid to another state, a U.S. territory, or Washington, D.C. Credit is not given for taxes paid to another country.

The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections of discretionary sales surtaxes received by DOR are returned monthly to the county imposing the tax. Further, there are several state-shared revenue programs that allocate some portion of the state sales and use tax to local governments. A few revenue sharing programs require as a prerequisite that the county or municipality meet eligibility criteria. While general law restricts the use of some shared revenues, proceeds derived from other shared revenues may be used for the general revenue needs of local governments.⁹

Local Discretionary Sales Surtax

A “surtax” is an extra tax or charge.¹⁰ Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax on all transactions subject to the state sales and use tax. Only those surtaxes specifically designated may be levied.

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions and on communications services, defined in ch. 202, F.S. Table 1 identifies the eight taxes, the rate limits, and the number of counties authorized to impose and the number imposing the tax.¹¹

⁷ Section 212.05(1)(b), F.S.

⁸ DOR, Florida’s Sales and Use Tax, GT-800013, last revised 7/2009, available at <http://dor.myflorida.com/dor/forms/2009/gt800013.pdf> (last visited 1/20/2012).

⁹ For more information see REC, 2012 Florida Tax Handbook.

¹⁰ Black’s Law Dictionary (9th ed., 2009), tax.

¹¹ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

Table 1: Local Discretionary Sales Surtaxes			
Tax	Authorized Levy (%)	# Counties Authorized to Levy Tax	# Counties Levying Tax
Charter County Transportation System Surtax	up to 1%	31	2
Local Government Infrastructure Surtax	0.5% or 1%	67	18
Small County Surtax	0.5% or 1%	31	28
Indigent Care & Trauma Center Surtax	up to 0.25%, or up to 0.5%	65	1
County Public Hospital Surtax	0.5%	1 (Miami-Dade County)	1
School Capital Outlay Surtax	up to 0.5%	67	15
Voter-Approved Indigent Care Surtax	0.5% or 1%	60	3
Emergency Fire Rescue Services and Facilities Surtax	up to 1%	65	0

Source: REC, 2012 Tax Handbook

The maximum discretionary sales surtax that any county can levy depends upon the county’s eligibility for the taxes listed in s. 212.055, F.S.; currently, the maximum ranges between 2 percent and 3.5 percent for Florida’s 67 counties. In general, the levy of a particular tax is subject to county voter approval.

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state taxes. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. The surtax does not apply to a sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

Internet Sales and Out of State Vendors¹²

Under Florida law, each sale is subject to sales tax unless such transaction is specifically exempt. Sales made over the Internet are not exempt from the provisions of ch. 212, F.S. Use taxes are difficult for states to enforce because they must rely on out-of-state vendors to collect the tax money or purchasers must remit the tax themselves.¹³ Out-of-state vendors, not wanting to be tax collectors for states and local governments, argue that states have no jurisdiction over them. A

¹² For an in depth analysis, see Senate Budget Subcommittee on Finance and Tax, Interim Report 2012-107: Application of Florida’s Sales Tax to Sales by Out-of-State Retailers (August 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/BFT1072012-107ft.pdf> (last visited 1/20/2012).

¹³ See DOR, Florida Consumer Information website on remitting use tax for Internet sales, available at <http://dor.myflorida.com/dor/taxes/consumer.html> (last visited 1/20/2012).

state's ability to compel an out-of-state seller to collect and remit sales tax is limited by the Commerce Clause and the Due Process Clause of the U.S. Constitution.¹⁴ The U.S. Supreme Court has held that the state's disparate state and local sales tax systems make collecting taxes an undue burden on out-of-state retailers.¹⁵

In order for sales occurring over the Internet to be subject to the sales tax, there must be sufficient nexus between the seller and the state. Nexus has been found to exist when a seller:

- Has agents in this state who solicit or transact business on behalf of the seller and as a result receive orders for merchandise to be delivered to the purchaser in this state;
- Has a physical location in this state;
- Delivers merchandise into this state in vehicles which are leased or owned by the seller;
- Owns land or buildings located in this state;
- Stores merchandise in this state for sale or use; or
- Rents or leases merchandise that is located in Florida in the possession of a lessee.¹⁶

Section 212.0596, F.S., generally imposes tax on a "mail order sale," which is defined to mean "a sale of tangible personal property, ordered by mail or other means of communication, from a dealer who receives the order in another state of the United States, or in a commonwealth, territory, or other area under the jurisdiction of the United States, and transports the property or causes the property to be transported, whether or not by mail, from any jurisdiction of the United States, including this state, to a person in this state, including the person who ordered the property."¹⁷

Section 212.0596(2), F.S., requires dealers doing mail order business in Florida to collect and remit Florida sales tax if the dealer has nexus with Florida, and provides what activities constitute nexus for purposes of mail order sales. These include when:

- The dealer has agents in Florida who solicit or transact business on behalf of the dealer, whether the resulting mail orders result from or are related to the agent's solicitation or transaction of business;
- The property was delivered in Florida in fulfillment of a sales contract entered into in Florida;
- The dealer creates nexus with Florida by purposefully or systematically exploiting Florida's market by any media assisted, media facilitated, or media solicited means;
- Another U.S. jurisdiction uses its taxing power over the retailer in support of Florida's taxing power;
- The dealer is subject to service of process; or

¹⁴ Due Process requires some minimal contact with the taxing state for a taxing statute to be upheld. Upholding a statute against a Commerce Clause challenge is dependent upon satisfaction of a 4-part test: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to a service provided by the taxing state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), rehearing denied, 430 U.S. 976 (1977).

¹⁵ See Closing the Online Tax Loophole, Blackston, Michelle, NCSL's State Legislatures, April 2008.

¹⁶ Depending on the jurisdiction, courts have found that these situations satisfy nexus while others have found that they were insufficient alone.

¹⁷ Section 212.0596(1), F.S.

- The dealer without nexus with Florida is a corporation that is a member of an affiliated group of corporations under s. 1504 of the Internal Revenue Code and whose members are eligible to file a consolidated federal corporate income tax return.

If the person selling the property into this state does not have sufficient nexus or is not registered with DOR as a dealer to collect sales tax, and the goods are delivered in Florida, then use tax applies and is due from the purchaser.

According to the U.S. Census Bureau about 70 percent of U.S. households have Internet access.¹⁸ The U.S. Census Bureau estimated that national e-commerce sales over the last 4 quarters total over \$227 billion dollars. However, e-commerce sales make up only about 4.5 percent of total retail sales in the U.S.¹⁹

The issue of sales and use taxes on e-commerce is important to the states for three main reasons:

- The continued growth in e-commerce points to an increasing number of transactions on which sales and use taxes will not be collected, resulting in sales tax revenue losses for state and local governments;
- Since out-of-state sellers do not have to collect sales and use taxes, except in states where they have “nexus,” they enjoy a competitive advantage over “brick and mortar” businesses; and
- Because of allowances for on-line retailers, consumers who can afford access to the Internet escape paying sales and use taxes while forcing those without access to shoulder a heavier burden of the sales tax.²⁰

While studies estimate differing amounts of lost sales tax revenue, the most recent, a September 2011 report by Arudin, Laffer, and Moore Econometrics, estimated tax revenue losses of \$374 million in 2010 and between \$449.6 million and \$454.0 million in 2012.²¹ With 67 different state and local taxing jurisdictions in Florida, an out-of-state retailer may find it difficult to collect and remit sales taxes. There are about 7,500 different taxing jurisdictions at the state and local levels in the U.S.

Internet Tax Freedom Act

In response to the significant growth in the Internet, Congress enacted the Internet Tax Freedom Act in October, 1998. This legislation called for a 3-year moratorium, from October 1, 1998, to October 21, 2001, on state and local taxes on Internet access and multiple or discriminatory taxes on electronic commerce. This moratorium has been extended several times and currently expires November 1, 2014.²²

¹⁸ 2009 data available at <http://www.census.gov/population/www/socdemo/computer.html> (last visited 1/30/2012).

¹⁹ Quarterly Retail E-Commerce Sales, 3rd Quarter 2011, available at http://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf (last visited 1/30/2021).

²⁰ Graham Williams, “Streamlined Sales Tax for the New Economy,” National Conference of State Legislatures, Nov./Dec. 2000, Vol. 8, No. 44.

²¹ Report on file with the Senate Commerce and Tourism Committee.

²² Created by Pub. L. No. 105-277; Extended to November 2003 by Pub. L. No. 107-75; Extended to November 2007 by Pub. L. No. 108-435; Extended to November 2014 by Pub. L. No. 110-108.

Streamlined Sales Tax Project

Because of the rise of e-commerce, in 2009 a group was formed to develop a simplified sales tax collection system that could be used by traditional brick-and-mortar businesses and businesses involved in e-commerce. The result of the Streamlined Sales Tax Project is the Streamlined Sales and Use Tax Agreement (SSUTA). It proposes an effort to “modernize” states’ sales and use tax structures to create a uniform, simplified taxing system that would apply to all businesses collecting sales and use taxes. Participation in collecting sales tax under the agreement is voluntary for sellers who do not have a physical presence or “nexus” within a state. However, an end goal of the effort is for Congress to require collection from all sellers for all types of commerce.²³

Currently, 21 states are full members of SSUTA because they have state laws which are in compliance with the agreement.²⁴ Also, currently, over 1,000 businesses have voluntarily agreed to collect taxes on out-of-state sales.

Federal Involvement in the Issue

Since the power to regulate interstate commerce resides at the federal level, federal legislation appears to be the only comprehensive solution for states to have the authority to require out-of-state retailers to collect sales tax. Multiple bills have been filed in Congress over the years to try to address the issue, but none have been voted on by either the House or Senate.²⁵

Actions of Other States

Other states have attempted to address the issue of taxing sales by out-of-state retailers. Twelve states have enacted laws which take different approaches to a solution.²⁶ Generally it appears that there are four approaches:

1. Establish nexus through affiliates of an out-of-state retailer. When a state resident is an “affiliate” of an out-of-state retailer and the total sales by the out-of-state retailer that result from all referrals from affiliates in the state exceed a certain total (generally \$10,000), then the retailer must collect and remit state sales tax. Total sales by the out-of-state retailer as a result of referrals must exceed the threshold before tax is required to be collected by the out-of-state retailer.
2. Establish nexus through commission arrangements by Internet retailers with other websites owned by state residents for referring sales (also known as “click-through”). Similar to the

²³ Florida legislative action in response to this project includes s. 213.27, F.S., which grants DOR authority to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration (ch. 2000-355, L.O.F.), and ch. 2001-225, L.O.F., which among other things, created the Simplified Sales and Use Tax Act, authorizing Florida to participate in the next phase of discussions with other states for the purposes of developing the project.

²⁴ Three additional states are associate members, which are states that are in compliance with SSUTA, but their laws have not yet taken effect. See the SSUTA website for more information: <http://www.streamlinedsalestax.org/>.

²⁵ The most recent filed legislation is titled the “Main Street Fairness Act,” and authorizes states that are members of the SSUTA to require out-of-state retailers to collect and remit state sales and use tax. See H.R. 2701 and S. 1452 (112th Congress).

²⁶ New York (2008), North Carolina (2009), Rhode Island (2009), Colorado (2010), Oklahoma (2010), Arkansas (2011), California (2011), Connecticut (2011), Illinois (2011), South Dakota (2011), and Vermont (2011) enacted legislation aimed at taxing the out of state sales; Texas (2011) passed similar legislation but it was vetoed by the Governor. South Carolina (2011) enacted legislation taking the opposite approach. See Interim Report 2012-107.

affiliate relationship with out-of-state retailers, this approach also requires sales of a certain amount before liability for collection of state sales tax arises.

3. Require the retailer to notify the customer that sales and use tax may be due in the customer's state. This approach does not require collection of sales tax by the retailer. Instead the retailer is required to provide notice to the consumer, and in one state is also required to remit information to the state department of revenue related to sales to that state's residents.
4. Exempt certain retailers from collecting and remitting sales tax if the seller agrees to make a substantial investment in the state in the form of a distribution center and create a certain number of jobs. For example, South Carolina's statute requires a \$125 million investment and 2,000 new jobs in exchange for exemption from sales tax collections until 2016. However, Internet retailers must notify a purchaser in a confirmation email that the purchaser may owe South Carolina use tax on the total sales price.

Some states have enacted one of the approaches listed above or a hybrid. A fifth approach may be establishing nexus through existing state laws related to mail order sales. Pennsylvania is attempting to require out-of-state retailers to collect sales tax under the state's existing law.²⁷

States that have enacted these laws or taken these approaches have been challenged by out-of-state retailers for violation of the U.S. Constitution. While some retailers have been awarded an injunction from enforcement of the state's statutes, there have been no final decisions affording a resolution of the issues.

III. Effect of Proposed Changes:

CS/SB 1514 amends Florida law to require out-of-state vendors that conduct business over the Internet to collect and remit Florida sales tax on sales made to Florida customers.

Section 1 amends s. 212.06, F.S., relating to the definition of "dealer." The CS exempts common carriers from the definition of dealer. This section also makes stylistic changes.

Section 2 amends s. 212.0596, F.S., to provide that a "mail order sale" includes the sale of tangible personal property over the Internet.

The CS revises provisions related to when dealers who make mail order sales are required to collect and remit Florida sales and use tax. The CS provides that a representative of a dealer, in addition to an agent, soliciting or transacting business in the state may cause the dealer to have nexus for mail order sales. Under current law, a dealer who is a corporation doing business in Florida or a person domiciled in Florida is required to collect and remit sales and use tax; the CS amends this provision to remove the limitation to corporations.

Additionally, the CS creates two new situations:

Affiliates – When a person with substantial nexus to Florida sells a similar line of products as a dealer; does business under the same name and uses similar trademarks; maintains an office,

²⁷ See Pennsylvania Department of Revenue, Nexus Resources for Retailers, available at http://www.revenue.state.pa.us/portal/server.pt/community/nexus_resources/20610 (last visited 1/20/2012).

warehouse, or similar place of business to facilitate the delivery of property sold by the dealer; facilitates delivery or pick-up of the property in Florida; assembles, installs, or performs maintenance services for the dealer in Florida; or conducts other activities in Florida that are “significantly associated with the dealer’s ability to establish and maintain a market in Florida,” then the dealer must collect and remit Florida sales and use tax.

The CS provides that a dealer is required to collect and remit sales and use tax if the dealer:

- Has a physical presence in the state, or
- The activities conducted in Florida on behalf of the dealer are significantly associated with the dealer’s ability to establish and maintain a market in Florida.

Commission Arrangements – If the dealer enters into an agreement with one or more Floridians, under which the person directly or indirectly refers potential customers to the dealer for a commission or other consideration, and the cumulative gross receipts for referrals are in excess of \$10,000 during the previous 12 months, then a rebuttable presumption arises that the dealer must collect and remit Florida sales and use tax. Such referrals may be made by a link on a website, an in-person presentation, telemarketing, or otherwise. This presumption is effective on October 1, 2012.

The dealer may rebut the presumption by submitting evidence that the Floridians with which the dealer has agreements did not engage in activity that was significantly associated with the dealer’s ability to establish and maintain a market in Florida for the previous 12 months. Such evidence may include sworn affidavits from the Floridians attesting that they did not engage in any solicitation in Florida on the dealer’s behalf in the previous year.

Section 3 provides a mechanism for the Legislature to return any taxes collected as a result of this CS to Florida taxpayers.

DOR, in consultation with the Revenue Estimating Conference, must develop a tracking system to determine the amount of sales tax remitted by out-of-state dealers who would not be required to collect and remit sales taxes in the absence of this CS. The Revenue Estimating Conference must use the information provided by DOR to determine the amount of sales taxes remitted in the previous calendar year and estimate the amount of sales taxes collected that will be expected in the following fiscal year. The CS directs the Legislature to use the information provided by DOR and the Revenue Estimating Conference to develop legislation designed to return the amount of sales tax collected to the taxpayers of Florida. To accomplish this, the Legislature may establish one or more tax holidays designed to reduce the tax collections by an amount at least equal to the amount determined by the Revenue Estimating Conference. If the amounts are determined to be recurring, the Legislature may lower the tax rate and implement other appropriate tax relief.

Section 4 provides an effective date of July 1, 2012.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This CS does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art VII, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Many of the states who have enacted similar laws have become involved in lawsuits challenging the constitutionality of their laws. It is likely that if this CS were to become law, Florida may be subject to such lawsuits. As discussed above in the Present Situation, a state's ability to compel an out-of-state seller to collect and remit sales tax is primarily limited by the Commerce Clause of the U.S. Constitution.²⁸

Upholding a statute against a Commerce Clause challenge is dependent upon satisfaction of a 4-part test: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to a service provided by the taxing state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

The nexus requirement outlined in Complete Auto has generally been interpreted to require that in order to require an out-of-state retailer to collect sales and use tax, the retailer must have a "physical presence" in the state.²⁹

In Scripto, Inc. v. Carson, the U.S. Supreme Court held that an out-of-state retailer with agents in Florida was a dealer required to collect and remit Florida sales tax.³⁰ The agents of the out-of-state retailer represented the retailer pursuant to a contract that authorized the Florida merchants to solicit orders and otherwise obtain business for the retailer in Florida in return for compensation to be paid in the form of a commission.

The U.S. Supreme Court held in Tyler Pipe Industries, Inc., v. Washington State Dept. of Revenue, that "the crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sales."³¹ The Court found that this

²⁸ See AMJUR STATELOCL s. 175; 71 A.L.R.5th 671.

²⁹ See Quill Corporation v. North Dakota, 504 U.S. 298 (1992).

³⁰ Scripto, Inc., v. Carson, 362 U.S. 207, 211 (1960).

³¹ Tyler Pipe Industries, Inc., v. Washington State Dept. of Revenue, 483 U.S. 232, 250 – 251 (1987).

standard was satisfied because of the activities of the business's sales representatives in the state.

Many of the cases related to this issue were decided before the emergence of the Internet, and thus it is unclear how the case law should be applied to sales over the Internet. While some provisions of the CS would likely be held to meet the constitutional requirements of nexus, others are more questionable. The provisions of the CS seem to take an approach that follows applying "agency nexus."

Many of the states that have enacted similar laws have become involved in lawsuits challenging the constitutionality of their laws. There have been no final decisions affording a resolution of the issues.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the impact of this CS.

B. Private Sector Impact:

None.

C. Government Sector Impact:

DOR indicated that this CS would have an insignificant fiscal impact on its operations.

VI. Technical Deficiencies:

DOR indicated the following issues:

- The changes on lines 217 – 226 delete the provision to levy and collect tax from a dealer having nexus through an affiliate. The deleted affiliate language is replaced with a provision granting the state the power to levy and collect tax from a person with substantial nexus who in addition engages in one of a list of additional activities. Courts have held in the past that once substantial nexus has been established, states may impose their tax on the dealer's activities. Therefore, the additional list of activities added in lines 227-245 may not be necessary and may actually limit accounts having to register once a dealer has established substantial nexus.
 - Additionally, there does not appear to be any replacement language for a dealer having nexus through an affiliate.
- Line 217 refers to "person," while other provisions in the section refer to "dealer." The intent of using the two terms is not known.
- Addition of the word "and" on line 226 and the flush left language on lines 255-260 and the deletion of lines of 218-226, inhibit DOR's ability to enforce collection of sales tax from out-of-state sellers. The language narrows the scope of current statutory provisions.

The flush left language only requires a dealer to collect and remit tax if it has a “physical presence” in Florida, or if activities conducted on the dealer’s behalf in Florida are “significantly associated with the dealer’s ability to establish and maintain a market for sales in this state.”

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 16, 2012:

The committee substitute does the following:

- Restores current law for the definition of dealer which includes persons who solicit business through representatives, by distribution of catalogs or other advertising, or by other means to receive orders from Floridians for use or consumption of the property in this state.
- Provides a way for the Legislature to return any taxes collected as a result of this bill to the Florida taxpayers. It requires DOR and the Revenue Estimating Conference to create a tracking system and determine the amount of sales taxes remitted due to the bill. The Legislature must use the information to return the sales taxes to the taxpayers of Florida, and may provide a sales tax holiday (or holidays) or other tax relief measure.
- Makes stylistic changes.

CS by Commerce and Tourism on February 2, 2012:

The committee substitute removed the provision from the bill which provided that certain rulings, agreements, or contracts which state that a person is not a dealer were void unless approved by a majority vote of the Senate and the House of Representatives.

B. Amendments:

None.

By Senator Negrón

28-01087-12 20121290__

1 A bill to be entitled
 2 An act relating to criminal penalties for violations
 3 of securities laws; amending s. 921.0022, F.S.;
 4 increasing the offense severity ranking for failing to
 5 register securities with the Office of Financial
 6 Regulation; specifying the offense severity ranking
 7 for the failure of a dealer, associated person, or
 8 issuer of securities to register with the Office of
 9 Financial Regulation; providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Paragraphs (b) and (d) of subsection (3) of
 14 section 921.0022, Florida Statutes, are amended to read:
 15 921.0022 Criminal Punishment Code; offense severity ranking
 16 chart.—
 17 (3) OFFENSE SEVERITY RANKING CHART
 18 (b) LEVEL 2
 19 Florida Felony
 Statute Degree Description
 20 379.2431 3rd Possession of 11 or fewer marine turtle
 (1)(e)3. eggs in violation of the Marine Turtle
 Protection Act.
 21 379.2431 3rd Possession of more than 11 marine turtle
 (1)(e)4. eggs in violation of the Marine Turtle
 Protection Act.

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403.413(5)(c) 3rd Dumps waste litter exceeding 500 lbs. in
 weight or 100 cubic feet in volume or
 any quantity for commercial purposes, or
 hazardous waste.
 22
~~517.07~~ 517.07(2) 3rd Failure to furnish a prospectus meeting
requirements. Registration of securities
~~and furnishing of prospectus required.~~
 23
 590.28(1) 3rd Intentional burning of lands.
 24
 784.05(3) 3rd Storing or leaving a loaded firearm
 within reach of minor who uses it to
 inflict injury or death.
 25
 787.04(1) 3rd In violation of court order, take,
 entice, etc., minor beyond state limits.
 26
 806.13(1)(b)3. 3rd Criminal mischief; damage \$1,000 or more
 to public communication or any other
 public service.
 27
 810.061(2) 3rd Impairing or impeding telephone or power
 to a dwelling; facilitating or
 furthering burglary.
 28
 810.09(2)(e) 3rd Trespassing on posted commercial
 horticulture property.
 29

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30 812.014(2)(c)1. 3rd Grand theft, 3rd degree; \$300 or more
but less than \$5,000.

31 812.014(2)(d) 3rd Grand theft, 3rd degree; \$100 or more
but less than \$300, taken from
unenclosed curtilage of dwelling.

32 812.015(7) 3rd Possession, use, or attempted use of an
antishoplifting or inventory control
device countermeasure.

33 817.234(1)(a)2. 3rd False statement in support of insurance
claim.

34 817.481(3)(a) 3rd Obtain credit or purchase with false,
expired, counterfeit, etc., credit card,
value over \$300.

35 817.52(3) 3rd Failure to redeliver hired vehicle.

36 817.54 3rd With intent to defraud, obtain mortgage
note, etc., by false representation.

37 817.60(5) 3rd Dealing in credit cards of another.

38 817.60(6)(a) 3rd Forgery; purchase goods, services with
false card.

817.61 3rd Fraudulent use of credit cards over \$100

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39 or more within 6 months.

826.04 3rd Knowingly marries or has sexual
intercourse with person to whom related.

40 831.01 3rd Forgery.

41 831.02 3rd Uttering forged instrument; utters or
publishes alteration with intent to
defraud.

42 831.07 3rd Forging bank bills, checks, drafts, or
promissory notes.

43 831.08 3rd Possessing 10 or more forged notes,
bills, checks, or drafts.

44 831.09 3rd Uttering forged notes, bills, checks,
drafts, or promissory notes.

45 831.11 3rd Bringing into the state forged bank
bills, checks, drafts, or notes.

46 832.05(3)(a) 3rd Cashing or depositing item with intent
to defraud.

47 843.08 3rd Falsely impersonating an officer.

48 893.13(2)(a)2. 3rd Purchase of any s. 893.03(1)(c),

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(2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5.,
 (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9.,
 (3), or (4) drugs other than cannabis.

49 893.147(2) 3rd Manufacture or delivery of drug
 paraphernalia.

50 (d) LEVEL 4

51 Florida Felony
 Statute Degree Description

52 316.1935(3) (a) 2nd Driving at high speed or with wanton
 disregard for safety while fleeing or
 attempting to elude law enforcement
 officer who is in a patrol vehicle with
 siren and lights activated.

53 499.0051(1) 3rd Failure to maintain or deliver pedigree
 papers.

54 499.0051(2) 3rd Failure to authenticate pedigree papers.

55 499.0051(6) 2nd Knowing sale or delivery, or possession
 with intent to sell, contraband
 prescription drugs.

56 517.07(1) 3rd Failure to register securities.

57 517.12(1) 3rd Failure of dealer, associated person, or

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issuer of securities to register.

58 784.07(2) (b) 3rd Battery of law enforcement officer,
 firefighter, etc.

59 784.074(1) (c) 3rd Battery of sexually violent predators
 facility staff.

60 784.075 3rd Battery on detention or commitment
 facility staff.

61 784.078 3rd Battery of facility employee by
 throwing, tossing, or expelling certain
 fluids or materials.

62 784.08(2) (c) 3rd Battery on a person 65 years of age or
 older.

63 784.081(3) 3rd Battery on specified official or
 employee.

64 784.082(3) 3rd Battery by detained person on visitor or
 other detainee.

65 784.083(3) 3rd Battery on code inspector.

66 784.085 3rd Battery of child by throwing, tossing,
 projecting, or expelling certain fluids
 or materials.

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67 787.03(1) 3rd Interference with custody; wrongly takes
minor from appointed guardian.

68 787.04(2) 3rd Take, entice, or remove child beyond
state limits with criminal intent
pending custody proceedings.

69 787.04(3) 3rd Carrying child beyond state lines with
criminal intent to avoid producing child
at custody hearing or delivering to
designated person.

70 790.115(1) 3rd Exhibiting firearm or weapon within
1,000 feet of a school.

71 790.115(2)(b) 3rd Possessing electric weapon or device,
destructive device, or other weapon on
school property.

72 790.115(2)(c) 3rd Possessing firearm on school property.

73 800.04(7)(c) 3rd Lewd or lascivious exhibition; offender
less than 18 years.

74 810.02(4)(a) 3rd Burglary, or attempted burglary, of an
unoccupied structure; unarmed; no
assault or battery.

75

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76 810.02(4)(b) 3rd Burglary, or attempted burglary, of an
unoccupied conveyance; unarmed; no
assault or battery.

77 810.06 3rd Burglary; possession of tools.

78 810.08(2)(c) 3rd Trespass on property, armed with firearm
or dangerous weapon.

79 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000 or more
but less than \$20,000.

80 812.014 3rd Grand theft, 3rd degree, a will,
(2)(c)4.-10. firearm, motor vehicle, livestock, etc.

81 812.0195(2) 3rd Dealing in stolen property by use of the
Internet; property stolen \$300 or more.

82 817.563(1) 3rd Sell or deliver substance other than
controlled substance agreed upon,
excluding s. 893.03(5) drugs.

83 817.568(2)(a) 3rd Fraudulent use of personal
identification information.

84 817.625(2)(a) 3rd Fraudulent use of scanning device or
reencoder.

828.125(1) 2nd Kill, maim, or cause great bodily harm

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85 or permanent breeding disability to any
registered horse or cattle.

86 837.02(1) 3rd Perjury in official proceedings.

87 837.021(1) 3rd Make contradictory statements in
official proceedings.

88 838.022 3rd Official misconduct.

89 839.13(2)(a) 3rd Falsifying records of an individual in
the care and custody of a state agency.

90 839.13(2)(c) 3rd Falsifying records of the Department of
Children and Family Services.

91 843.021 3rd Possession of a concealed handcuff key
by a person in custody.

92 843.025 3rd Deprive law enforcement, correctional,
or correctional probation officer of
means of protection or communication.

93 843.15(1)(a) 3rd Failure to appear while on bail for
felony (bond estreature or bond
jumping).

847.0135(5)(c) 3rd Lewd or lascivious exhibition using
computer; offender less than 18 years.

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94 874.05(1) 3rd Encouraging or recruiting another to
join a criminal gang.

95 893.13(2)(a)1. 2nd Purchase of cocaine (or other s.
893.03(1)(a), (b), or (d), (2)(a),
(2)(b), or (2)(c)4. drugs).

96 914.14(2) 3rd Witnesses accepting bribes.

97 914.22(1) 3rd Force, threaten, etc., witness, victim,
or informant.

98 914.23(2) 3rd Retaliation against a witness, victim,
or informant, no bodily injury.

99 918.12 3rd Tampering with jurors.

100 934.215 3rd Use of two-way communications device to
facilitate commission of a crime.

101

102 Section 2. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12

Meeting Date

Topic Violations of Securities Law

Bill Number 1290
(if applicable)

Name Jacob Pewitt

Amendment Barcode _____
(if applicable)

Job Title Special Assistant to the Commissioner

Address 101 E. Gaines St, Suite 118

Phone 850-410-9665

Street

Tallahassee FL 32399

City

State

Zip

E-mail jacob.pewitt@flsfr.com

Speaking: For Against Information

Representing Office of Financial Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1290

INTRODUCER: Senator Negron

SUBJECT: Criminal Penalties for Violations of Securities Laws

DATE: February 13, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	Johnson	Burgess	BI	Favorable
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill amends the Criminal Punishment Code Offense Severity Ranking Chart, which sets forth the sentencing points that are scored for the listed felony offenses, as it relates to violations of the Florida Securities and Investor Protection Act. The bill increases the lowest permissible sentences for failure to register as a dealer, associated person, or issuer with the Office of Financial Regulation. It also increases the lowest permissible sentence for selling or offering to sell an unregistered security.

This bill substantially amends the following section of the Florida Statutes: 921.0022.

II. Present Situation:

The Office of Financial Regulation (OFR) is responsible for safeguarding the financial interests of the public by licensing, examining, and regulating depository and nondepository financial institutions, as well as finance companies, securities, and securities dealers in Florida. The OFR reports to the Financial Services Commission, which is comprised of the Governor and Cabinet.¹

Florida Securities and Investor Protection Act

Chapter 517, F.S., is entitled the “Florida Securities and Investor Protection Act” (act).² The purpose of the act is to protect the public from fraudulent and deceptive practices in the sale and

¹ Section 20.121(3), F.S.

² Section 517.011, F.S.

marketing of securities.³ This purpose is achieved principally by requiring the registration of securities and securities dealers, which provides potential investors with sufficient information to enable them to protect themselves.⁴ The OFR registers securities and securities dealers.⁵ The processes for registering are delineated in ss. 517.081, 517.082, 517.12, and 517.1201, F.S., which include requirements that OFR be provided an application, certain financial statements, and other specified information.

Section 517.07(1), F.S., makes it unlawful for any person to sell or offer to sell specified securities unless the security is registered or exempt. In addition to being registered, s. 517.07(2), F.S., requires that a securities purchaser be furnished with a prospectus meeting the requirements of rules adopted by the Financial Services Commission.⁶ Violations of s. 517.07(1) and (2), F.S., are currently 3rd degree felonies, ranked in Level 2 of the Offense Severity Ranking Chart.⁷ A Level 2 offense equates to 10 sentencing points. Section 517.12(1), F.S., prohibits a dealer, associated person, or issuer⁸ of securities to sell or offer for sale any securities in or from offices in Florida, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with OFR.

In addition, chapter 517, F.S., prohibits the OFR from registering any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is registered with the OFR.⁹ A violation of s. 517.12(1), F.S., is a 3rd degree felony ranked in Level 1 of the Offense Severity Ranking Chart.¹⁰ A Level 1 offense equates to 4 sentencing points.

The Criminal Punishment Code - Offense Severity Ranking Chart

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.¹¹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.¹² As the offense level increases, the number of points rises. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.¹³

A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record, and other aggravating factors.¹⁴ The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest

³ Section 517.021, F.S., defines the term "security."

⁴ 32 Fla. Jur 2d Investment Securities s. 122

⁵ Sections 517.081 and 517.12, F.S.

⁶ Section 21.121(3), F.S.

⁷ See ss. 517.302 and 921.0022(3)(b), F.S.

⁸ Section 517.021, F.S., defines the terms "dealer," "associated person," and "issuer."

⁹ Section 517.12(1), F.S.

¹⁰ See ss. 517.302 and 921.0022(3)(a), F.S.

¹¹ Section 921.002, F.S.

¹² Section 921.0022, F.S.

¹³ Section 921.0023, F.S.

¹⁴ Section 921.0024, F.S.

permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence. In each instance, the sentencing range is the lowest permissible sentence up to the maximum penalty provided in s. 775.082, F.S., which is based on the degree of the felony.¹⁵

III. Effect of Proposed Changes:

The bill increases the ranking of securities-related offenses in the Offense Severity Ranking Chart as follows:

- A violation of s. 517.07(1), F.S. (requiring certain securities to be registered prior to sale), increases from a Level 2 offense (equating to 10 sentencing points) to a Level 4 offense (equating to 22 sentencing points).
- A violation of s. 517.12(1), F.S. (requiring securities dealers, associated persons or issuers of securities to be registered), increases from a Level 1 offense (equating to 4 sentencing points) to a Level 4 offense (equating to 22 sentencing points).

As a result, the lowest permissible sentence for violations of ss. 517.07(1) and 517.12(1), F.S., will be increased.

The bill will take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁵ The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony it is fifteen years and for a third degree felony the statutory maximum is five years. Section 775.082, F.S.

C. Government Sector Impact:

The increase in severity rankings for specified securities violations may increase the likelihood that prosecutors will pursue such cases.

The Criminal Justice Impact Conference met January 17, 2012, and determined this bill will have an insignificant impact on the state prison beds because of the low volume of individuals reported with this offense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



615208

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment to Amendment (202046)

Delete line 5

and insert:

d. Begins paying by income deduction, or is receiving

Delete line 18

and insert:

paying by income deduction, or is receiving unemployment

By Senator Storms

10-00657A-12

20121342__

1 A bill to be entitled
 2 An act relating to child support enforcement; amending
 3 s. 61.13, F.S.; providing that, for IV-D cases, an
 4 affidavit filed with a child support depository
 5 requesting that child support payments be made through
 6 the depository need not allege a default in support
 7 payments; amending s. 61.13016, F.S.; requiring the
 8 Department of Highway Safety and Motor Vehicles to
 9 suspend an obligor's driver license unless the obligor
 10 begins paying child support by income deduction;
 11 amending s. 322.058, F.S.; requiring the Department of
 12 Highway Safety and Motor Vehicles to reinstate an
 13 obligor's driving privileges if the obligor is paying
 14 his or her support obligation by income deduction
 15 order; amending s. 409.256, F.S.; adding a caregiver
 16 to the list of persons who may provide a statement
 17 regarding a putative father; amending s. 409.2563,
 18 F.S.; providing for the filing of a written request to
 19 informally discuss a proposed administrative support
 20 order with the Department of Revenue; amending s.
 21 409.25656, F.S.; providing that notice of a levy upon
 22 property may be delivered by regular mail rather than
 23 by registered mail; providing for notices to be sent
 24 to a garnishee by e-mail or facsimile; requiring the
 25 Chief Financial Officer to work cooperatively with the
 26 department to establish an automated method for
 27 periodically disclosing to the department an
 28 electronic file of individuals to whom the state pays
 29 money for goods or services or who lease real property

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30 to the state; requiring the department to use the
 31 collected data to identify individuals who owe past
 32 due or overdue child support and to garnish payments
 33 owed to such individuals by the state; amending s.
 34 409.25658, F.S.; revising provisions relating to
 35 unclaimed property to be transferred to the Department
 36 of Revenue to pay for past due child support; amending
 37 s. 409.2575, F.S.; providing that the Department of
 38 Revenue rather than the director of the state IV-D
 39 program may cause a lien to be placed on a motor
 40 vehicle and vessel; reenacting s. 409.256(7), F.S.,
 41 relating to administrative procedures to establish
 42 paternity, to incorporate the amendments made to s.
 43 322.058, F.S., in a reference thereto; providing
 44 effective dates.
 45

46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Paragraph (d) of subsection (1) of section
 49 61.13, Florida Statutes, is amended to read:
 50 61.13 Support of children; parenting and time-sharing;
 51 powers of court.—

52 (1)

53 (d)1. All child support orders shall provide the full name
 54 and date of birth of each minor child who is the subject of the
 55 child support order.

56 2. If both parties request and the court finds that it is
 57 in the best interest of the child, support payments need not be
 58 subject to immediate income deduction. Support orders that are

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 59 not subject to immediate income deduction may be directed
 60 through the depository under s. 61.181 or made payable directly
 61 to the obligee. Payments made by immediate income deduction
 62 shall be made to the State Disbursement Unit. The court shall
 63 provide a copy of the order to the depository.

64 3. For support orders payable directly to the obligee, any
 65 party, or the department in a IV-D case, may subsequently file
 66 an affidavit with the depository alleging a default in payment
 67 of child support and stating that the party wishes to require
 68 that payments be made through the depository. For IV-D cases,
 69 the affidavit need not allege a default in support payments and
 70 default is not required. The party shall provide copies of the
 71 affidavit to the court and to each other party. Fifteen days
 72 after receipt of the affidavit, the depository shall notify all
 73 parties that future payments shall be paid through the
 74 depository, except that payments in Title IV-D cases and income
 75 deduction payments shall be made to the State Disbursement Unit.

76 Section 2. Subsections (1) and (3) of section 61.13016,
 77 Florida Statutes, are amended to read:

78 61.13016 Suspension of driver's licenses and motor vehicle
 79 registrations.-

80 (1) The driver's license and motor vehicle registration of
 81 a support obligor who is delinquent in payment or who has failed
 82 to comply with subpoenas or a similar order to appear or show
 83 cause relating to paternity or support proceedings may be
 84 suspended. When an obligor is 15 days delinquent making a
 85 payment in support or failure to comply with a subpoena, order
 86 to appear, order to show cause, or similar order in IV-D cases,
 87 the Title IV-D agency may provide notice to the obligor of the

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 88 delinquency or failure to comply with a subpoena, order to
 89 appear, order to show cause, or similar order and the intent to
 90 suspend by regular United States mail that is posted to the
 91 obligor's last address of record with the Department of Highway
 92 Safety and Motor Vehicles. When an obligor is 15 days delinquent
 93 in making a payment in support in non-IV-D cases, and upon the
 94 request of the obligee, the depository or the clerk of the court
 95 must provide notice to the obligor of the delinquency and the
 96 intent to suspend by regular United States mail that is posted
 97 to the obligor's last address of record with the Department of
 98 Highway Safety and Motor Vehicles. In either case, the notice
 99 must state:

100 (a) The terms of the order creating the support obligation;

101 (b) The period of the delinquency and the total amount of
 102 the delinquency as of the date of the notice or describe the
 103 subpoena, order to appear, order to show cause, or other similar
 104 order ~~that which~~ has not been complied with;

105 (c) That notification must ~~will~~ be given to the Department
 106 of Highway Safety and Motor Vehicles to suspend the obligor's
 107 driver's license and motor vehicle registration unless, within
 108 20 days after the date the notice is mailed, the obligor:

109 1.a. Pays the delinquency in full and any other costs and
 110 fees accrued between the date of the notice and the date the
 111 delinquency is paid;

112 b. Enters into a written agreement for payment with the
 113 obligee in non-IV-D cases or with the Title IV-D agency in IV-D
 114 cases; or in IV-D cases, complies with a subpoena or order to
 115 appear, order to show cause, or a similar order; ~~or~~

116 c. Files a petition with the circuit court to contest the

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117 delinquency action; ~~or and~~

118 d. Begins paying by income deduction; and

119 2. Pays any applicable delinquency fees.

120

121 If the obligor in non-IV-D cases enters into a written agreement
122 for payment before the expiration of the 20-day period, the
123 obligor must provide a copy of the signed written agreement to
124 the depository or the clerk of the court.

125 (3) If the obligor does not, within 20 days after the
126 mailing date on the notice, pay the delinquency; ~~7~~ enter into a
127 written payment agreement; ~~7~~ comply with the subpoena, order to
128 appear, order to show cause, or other similar order; begin
129 paying by income deduction; ~~7~~ or file a motion to contest, the
130 Title IV-D agency in IV-D cases, or the depository or clerk of
131 the court in non-IV-D cases, may ~~shall~~ file the notice with the
132 Department of Highway Safety and Motor Vehicles and request the
133 suspension of the obligor's driver's license and motor vehicle
134 registration in accordance with s. 322.058.

135 Section 3. Subsections (2) and (3) of section 322.058,
136 Florida Statutes, are amended to read:

137 322.058 Suspension of driving privileges due to support
138 delinquency; reinstatement.—

139 (2) The department must reinstate the driving privilege and
140 allow registration of a motor vehicle when the Title IV-D agency
141 in IV-D cases or the depository or the clerk of the court in
142 non-IV-D cases provides to the department an affidavit stating
143 that:

144 (a) The person has paid the delinquency;

145 (b) The person has reached a written agreement for payment

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146 with the Title IV-D agency or the obligee in non-IV-D cases;

147 (c) A court has entered an order granting relief to the
148 obligor ordering the reinstatement of the license and motor
149 vehicle registration; ~~or~~

150 (d) The person has complied with the subpoena, order to
151 appear, order to show cause, or similar order; or

152 (e) The obligor is paying by income deduction.

153 (3) The department is ~~shall~~ not ~~be held~~ liable for any
154 license or vehicle registration suspension resulting from the
155 discharge of its duties under this section.

156 Section 4. Effective July 1, 2012, paragraph (a) of
157 subsection (2) of section 409.256, Florida Statutes, is amended
158 to read:

159 409.256 Administrative proceeding to establish paternity or
160 paternity and child support; order to appear for genetic
161 testing.—

162 (2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO
163 THE COURTS.—

164 (a) The department may commence a paternity proceeding or a
165 paternity and child support proceeding as provided in subsection
166 (4) if:

167 1. The child's paternity has not been established.

168 2. No one is named as the father on the child's birth
169 certificate or the person named as the father is the putative
170 father named in an affidavit or a written declaration as
171 provided in subparagraph 5.

172 3. The child's mother was unmarried when the child was
173 conceived and born.

174 4. The department is providing services under Title IV-D.

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175 5. The child's mother or caregiver or a putative father has
 176 stated in an affidavit, or in a written declaration as provided
 177 in s. 92.525(2), that the putative father is or may be the
 178 child's biological father. The affidavit or written declaration
 179 must set forth the factual basis for the allegation of paternity
 180 as provided in s. 742.12(2).

181 Section 5. Effective July 1, 2012, paragraph (c) of
 182 subsection (5) of section 409.2563, Florida Statutes, is amended
 183 to read:

184 409.2563 Administrative establishment of child support
 185 obligations.—

186 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

187 (c) The department shall provide a notice of rights with
 188 the proposed administrative support order, which notice must
 189 inform the parent from whom support is being sought that:

190 1. The parent from whom support is being sought may, within
 191 20 days after the date of mailing or other service of the
 192 proposed administrative support order, request a hearing by
 193 filing a written request for hearing in a form and manner
 194 specified by the department;

195 2. If the parent from whom support is being sought files a
 196 timely request for a hearing, the case shall be transferred to
 197 the Division of Administrative Hearings, which shall conduct
 198 further proceedings and may enter an administrative support
 199 order;

200 3. A parent from whom support is being sought who fails to
 201 file a timely request for a hearing shall be deemed to have
 202 waived the right to a hearing, and the department may render an
 203 administrative support order pursuant to paragraph (7) (b);

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204 4. The parent from whom support is being sought may consent
 205 in writing to entry of an administrative support order without a
 206 hearing;

207 5. The parent from whom support is being sought may, within
 208 15 ~~40~~ days after the date of mailing or other service of the
 209 proposed administrative support order, request to informally
 210 discuss the proposed administrative support order by filing a
 211 written request to the department ~~contact a department~~
 212 ~~representative,~~ at the address ~~or telephone number~~ specified in
 213 the notice, ~~to informally discuss the proposed administrative~~
 214 ~~support order~~ and, if informal discussions are requested timely,
 215 the time for requesting a hearing will be extended until 10 days
 216 after the department notifies the parent that the informal
 217 discussions have been concluded; and

218 6. If an administrative support order that establishes a
 219 parent's support obligation is rendered, whether after a hearing
 220 or without a hearing, the department may enforce the
 221 administrative support order by any lawful means.

222 Section 6. Subsections (3), (4), and (5), paragraph (b) of
 223 subsection (7), and subsections (10) and (11) of section
 224 409.25656, Florida Statutes, are amended to read:

225 409.25656 Garnishment.—

226 (3) During the last 30 days of the 60-day period set forth
 227 in subsection (1), the executive director or his or her designee
 228 may levy upon such credits, personal property, or debts. The
 229 levy must be accomplished by delivery of a notice of levy by
 230 regular ~~registered~~ mail, upon receipt of which the person
 231 possessing the credits, other personal property, or debts shall
 232 transfer them to the department or pay to the department the

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233 amount owed by the obligor. If the department levies upon
 234 securities and the value of the securities is less than the
 235 total amount of past due or overdue support, the person who
 236 possesses or controls the securities shall liquidate the
 237 securities in a commercially reasonable manner. After
 238 liquidation, the person shall transfer to the department the
 239 proceeds, less any applicable commissions or fees, or both,
 240 which are charged in the normal course of business. If the value
 241 of the securities exceeds the total amount of past due or
 242 overdue support, the obligor may, within 7 days after receipt of
 243 the department's notice of levy, instruct the person who
 244 possesses or controls the securities which securities are to be
 245 sold to satisfy the obligation for past due or overdue support.
 246 If the obligor does not provide instructions for liquidation,
 247 the person who possesses or controls the securities shall
 248 liquidate the securities in a commercially reasonable manner in
 249 an amount sufficient to cover the obligation for past due or
 250 overdue support and any applicable commissions or fees, or both,
 251 which are charged in the normal course of business, beginning
 252 with the securities purchased most recently. After liquidation,
 253 the person who possesses or controls the securities shall
 254 transfer to the department the total amount of past due or
 255 overdue support.

256 (4) A notice that is delivered under this section is
 257 effective at the time of delivery against all credits, other
 258 personal property, or debts of the obligor which are not at the
 259 time of such notice subject to an attachment, garnishment, or
 260 execution issued through a judicial process. Upon the
 261 garnishee's written consent the department may send notices to

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262 the garnishee by secure e-mail or facsimile.
 263 (5) The department ~~may is authorized to~~ bring an action in
 264 circuit court for an order compelling compliance with any notice
 265 issued under this section.
 266 (7)
 267 (b) Not less than 30 days before the day of the levy, the
 268 notice of intent to levy required under paragraph (a) must be
 269 given in person or sent by regular certified or registered mail
 270 to the person's last known address.
 271 (10) The Chief Financial Officer shall work cooperatively
 272 with the department to establish an automated method for
 273 periodically disclosing to the department an electronic file of
 274 individuals to whom the state pays money for goods or services
 275 or who lease real property to the state. The department shall
 276 use the data provided to identify individuals who owe past due
 277 or overdue support and may garnish payments owed to such
 278 individuals by the state as provided in this section. The
 279 department shall provide notice to the Chief Financial Officer,
 280 in electronic or other form specified by the Chief Financial
 281 Officer, listing the obligors for whom warrants are outstanding.
 282 Pursuant to subsection (1), the Chief Financial Officer shall,
 283 upon notice from the department, withhold all payments to any
 284 obligor who provides commodities or services to the state,
 285 leases real property to the state, or constructs a public
 286 building or public work for the state. The department may levy
 287 upon the withheld payments in accordance with subsection (3).
 288 Section 215.422 does not apply from the date the notice is filed
 289 with the Chief Financial Officer until the date the department
 290 notifies the Chief Financial Officer of its consent to make

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 291 payment to the person or 60 days after receipt of the
 292 department's notice in accordance with subsection (1), whichever
 293 occurs earlier.

294 (11) The Department of Revenue ~~may has the authority to~~
 295 adopt rules to administer ~~implement~~ this section.

296 Section 7. Section 409.25658, Florida Statutes, is amended
 297 to read:

298 409.25658 Use of unclaimed property for past due support.—

299 (1) In a joint effort to facilitate the collection and
 300 payment of past due support, the Department of Revenue, in
 301 cooperation with the Department of Financial Services, shall
 302 identify persons owing support collected by the department
 303 ~~through a court~~ who are presumed to have unclaimed property held
 304 by the Department of Financial Services.

305 (2) The department shall periodically provide the
 306 Department of Financial Services with an electronic file of
 307 support obligors who owe past due support. The Department of
 308 Financial Services shall conduct a data match of the file
 309 against all apparent owners of unclaimed property under chapter
 310 717 and provide the resulting match list to the department.

311 (3) Upon receipt of the data match list, the department
 312 shall provide ~~to~~ the Department of Financial Services with the
 313 obligor's last known address. The Department of Financial
 314 Services shall follow the notification procedures under s.
 315 717.118.

316 (4) ~~Before~~ Prior to paying an obligor's approved claim, the
 317 Department of Financial Services shall notify the department
 318 that the ~~such~~ claim has been approved. Upon confirmation that
 319 the Department of Financial Services has approved the claim, the

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 320 department shall immediately send a notice by certified mail to
 321 the obligor at the address provided by the obligor to the
 322 Department of Financial Services, with a copy to the Department
 323 of Financial Services, advising the obligor of the department's
 324 intent to intercept the approved claim up to the amount of the
 325 past due support, and informing the obligor of the obligor's
 326 right to request a hearing under chapter 120. The Department of
 327 Financial Services shall retain custody of the property until a
 328 final order has been entered and any appeals thereon have been
 329 concluded, or, if the intercept is uncontested, until notified
 330 by the department. If the obligor fails to request a hearing,
 331 the department shall notify ~~enter a final order instructing~~ the
 332 Department of Financial Services, electronically or in writing,
 333 to transfer to the department the property in the amount stated
 334 in the notice or electronic file ~~final order~~. Upon ~~such~~
 335 transfer, the Department of Financial Services shall be released
 336 from further liability related to the transferred property.

337 (5) ~~The provisions of~~ This section provides ~~provide~~ a
 338 supplemental remedy, and the department may use this remedy in
 339 conjunction with any other method of collecting support.

340 Section 8. Section 409.2575, Florida Statutes, is amended
 341 to read:

342 409.2575 Administrative liens ~~on motor vehicles and~~
 343 ~~vessels~~.—

344 (1) The department ~~director of the state IV-D program, or~~
 345 ~~the director's designee~~, may cause a lien for unpaid and
 346 delinquent support to be placed upon motor vehicles, as defined
 347 in chapter 320, and upon vessels, as defined in chapter 327,
 348 which ~~that~~ are registered in the name of an obligor who is

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 349 delinquent in support payments, ~~if the title to the property is~~
 350 ~~held by a lienholder,~~ in the manner provided in chapter 319 or
 351 chapter 328, and upon a claim, settlement, or judgment that may
 352 result in payment to the obligor. The department shall notify
 353 the obligor of the intent to place a lien by regular mail sent
 354 to the obligor's address of record on file with the depository.
 355 The notice must state the amount of past due support owed and
 356 inform the obligor of the right to contest the lien at an
 357 administrative hearing as provided by chapter 120. Notice of
 358 lien shall not be mailed unless the delinquency in support
 359 exceeds \$600.

(2) If the first lienholder fails, neglects, or refuses to
 360 forward the certificate of title to the appropriate department
 361 as requested pursuant to s. 319.24 or s. 328.15, the department
 362 ~~director of the IV-D program, or the director's designee,~~ may
 363 apply to the circuit court for an order to enforce the
 364 requirements of s. 319.24 or s. 328.15, whichever applies.

Section 9. For the purpose of incorporating the amendment
 365 made by this act to section 322.058, Florida Statutes, in a
 366 reference thereto, subsection (7) of section 409.256, Florida
 367 Statutes, is reenacted to read:

409.256 Administrative proceeding to establish paternity or
 370 paternity and child support; order to appear for genetic
 371 testing.—
 372 testing.—

(7) FAILURE OR REFUSAL TO SUBMIT TO GENETIC TESTING.—If a
 373 person who is served with an order to appear for genetic testing
 374 fails to appear without good cause or refuses to submit to
 375 testing without good cause, the department may take one or more
 376 of the following actions:
 377

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 378 (a) Commence a proceeding to suspend the driver's license
 379 and motor vehicle registration of the person ordered to appear,
 380 as provided in s. 61.13016;
 381 (b) Impose an administrative fine against the person
 382 ordered to appear in the amount of \$500; or
 383 (c) File a petition in circuit court to establish
 384 paternity, obtain a support order for the child, and seek
 385 reimbursement from the person ordered to appear for the full
 386 cost of genetic testing incurred by the department.
 387
 388 As provided in s. 322.058(2), a suspended driver's license and
 389 motor vehicle registration may be reinstated when the person
 390 ordered to appear complies with the order to appear for genetic
 391 testing. The department may collect an administrative fine
 392 imposed under this subsection by using civil remedies or other
 393 statutory means available to the department for collecting
 394 support.
 395 Section 10. Except as otherwise expressly provided in this
 396 act, this act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 1342

INTRODUCER: Banking and Insurance Committee and Senator Storms

SUBJECT: Child Support Enforcement

DATE: February 16, 2012 REVISED: 2/8/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Favorable
2.	Eichin	Buford	TR	Fav/2 amendments
3.	Johnson	Burgess	BI	Fav/CS
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill amends Florida law relating to child support enforcement. Specifically, the bill:

- Provides that a default in support payments is not required in Title IV-D cases for the Department of Revenue (DOR) to request that payments be made through the depository;
- Provides that a driver's license of an obligor will not be suspended (and must be reinstated if already suspended) if the obligor begins paying any delinquency by income deduction;
- Makes it discretionary for the DOR to notify the Department of Highway Safety and Motor Vehicles and request suspension of a driver's license of an obligor;
- Authorizes the DOR to commence an administrative paternity proceeding based on an affidavit or written declaration provided by a caregiver that states the putative father may be the child's biological father;
- Requires that a request by a parent from whom support is being sought to discuss informally a proposed administrative support order with the DOR be made in writing within 15 days after the date of the mailing of the proposed administrative support order;
- Eliminates the requirement for the DOR to provide certain notices by registered or certified mail, requiring regular mail instead;
- Authorizes the DOR to send notices to a garnishee by secure e-mail or facsimile upon consent by the garnishee;

- Requires the Chief Financial Officer and the department to work cooperatively to establish an automated method for identifying persons who are doing business with the state and who owe overdue support so that support payments may be withheld by the state;
- Makes changes related to the use of unclaimed property for past due support; and
- Authorizes the DOR to place an administrative lien on certain claims, judgments, and property.

This bill amends the following sections of the Florida Statutes: 61.13, 61.13016, 322.058, 409.256, 409.2563, 409.25656, 409.25658, and 409.2575. This bill reenacts section 409.256(7), Florida Statutes.

II. Present Situation:

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994. A “Title IV-D case” is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act. The DOR provides services under the federally required program in 65 counties and through contracts in two counties.¹

The DOR is responsible for some case-processing activities including opening and closing cases; collecting and maintaining case, location, and financial data; and receiving and responding to verbal and written inquiries. In 2009, 1.1 million cases were maintained by DOR. In FY 08-09, DOR had a 7.3-percent increase in new service requests and 6.6-percent increase in reopened cases.

To remain eligible for the Temporary Assistance for Needy Families (TANF) Block Grant, Florida must have a federally compliant child support program. The program must contain the following services:

- Paternity establishment;
- Support order establishment;
- Support order review and modification;
- Location of parents, employers, assets;
- Payment collection and disbursement; and
- Order enforcement.

The DOR establishes the initial child support order and modifies existing orders when a family’s circumstances change. During FY 08-09, the DOR processed \$48 million in child support collections on support orders established in that fiscal year.

Some child support orders are established by the DOR administratively. Section 409.2563, F.S., was created to provide the DOR with an alternative procedure for establishing child support obligations in Title IV-D cases in a fair and expeditious manner when there is no court order of support. Prior to beginning the administrative process, the DOR screens cases for complex circumstances and, if identified, it will proceed with those cases judicially. In order to establish a support order administratively, the DOR must provide notice to both the parent from whom

¹ Miami-Dade County cases are handled by the state attorney’s office, and Manatee County cases are handled by the clerk of court.

support is not being sought and to the parent from whom support is being sought.² After providing notice, the DOR must calculate the proposed support obligation based on the financial affidavits provided by the parties or, if the parties did not provide the required affidavits, then the department may rely on any reliable source for the information. If there is no reliable source, the DOR may calculate the proposed support obligation based on the assumption that the parent had an earning capacity equal to the federal minimum wage during the applicable period.³ The DOR must then send copies of the proposed administrative support order to both parents, along with a notice of rights to the parent from whom support is being sought. This notice of rights must inform the parent from whom support is being sought that within 10 days from the date of the mailing the parent may contact the DOR, at the address or telephone number in the notice, to discuss the proposed administrative order.⁴ If a request for an administrative hearing in response to the proposed order is not made timely, the department renders a final order that incorporates the terms of the proposed order.⁵ If the parent from whom support is being sought files a timely request for hearing or the department determines that an evidentiary hearing is appropriate, the DOR will refer the proceeding to the Division of Administrative Hearings. In 2009, the DOR established over 12,000 administrative support orders.

Child support orders are enforced by DOR, as well as the receipt and disbursement of collections. In 2009, over \$1.41 billion was collected and distributed, with 98 percent of collections distributed within 24 hours. Of all parents in the DOR caseload, fewer than 30 percent pay their full child support obligation on a monthly basis. In addition, the DOR initiated enforcement actions on 92 percent of the support collections ultimately received.

The DOR has several methods for collecting past due child support. Under s. 61.13016, F.S., the obligor is notified by the DOR or a clerk of court within 15 days of non-payment or failure to comply with a subpoena or other order, that his or her driver's license may be suspended unless such payment is made or order complied with. The notice provided to the obligor must state:

- the terms of the order creating the obligation;
- the period of the delinquency;
- the total amount of the delinquency or description of the non-compliant order; and
- that the Department of Highway Safety and Motor Vehicles (DHSMV) will be notified to suspend the license, unless the obligor:
 - pays the delinquency within 20 days;
 - enters a written agreement for payment or complies with the non-compliant order;
 - contests the delinquency action in circuit court; and
 - pays any delinquency fees⁶.

Although not provided for in statute, the DOR also allows an obligor to begin paying a delinquent support order by income deduction in order to avoid license suspension. According to the DOR, income deduction is the most reliable way to obtain child support payments.⁷ If the

² Section 409.2563(4), F.S.

³ Section 409.2563(5)(a), F.S.

⁴ Section 409.2563(5)(c), F.S.

⁵ In contested cases, there is a formal hearing before the Division of Administrative Hearings.

⁶ Section 61.13016(1)(c), F.S.

⁷ E-mail from Debbie Thomas, Dept. of Revenue, to Senate professional staff (Dec. 12, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

obligor fails to comply with any of these actions, 20 days after the notification is sent to the obligor, the DOR notifies the DHSMV, which is required to suspend the driver's license under s. 322.058, F.S.

If a person has a support obligation which is subject to enforcement by the DOR as the state Title IV-D program, the DOR can notify all persons who have credits or personal property, including wages, under their control that belong to the obligor that they may not transfer any of the credits or personal property, up to the amount listed in the notice, without the DOR consent.⁸ Additionally, the department shall provide notice to the Chief Financial Officer (CFO) identifying the obligor and the amount of support outstanding. The CFO must then withhold all payments to any obligor who provides commodities or services to the state, leases real property to the state, or constructs a public building or public work for the state, and the DOR may levy upon the withheld payments.⁹

Another way DOR may collect past due support is with unclaimed property. The DOR, in cooperation with the Department of Financial Services (DFS), shall identify persons owing support who are presumed to have unclaimed property held by the DFS. Before paying an obligor's approved claim for unclaimed property, the DFS must notify the DOR that the claim was approved, and the DOR shall immediately send a notice by certified mail to the obligor advising the obligor of the DOR's intent to intercept the approved claim up to the amount of the past due support.¹⁰

III. Effect of Proposed Changes:

This bill amends provisions relating to child support enforcement. Section 61.13, F.S., is amended to provide that in Title IV-D cases, the DOR does not need to allege a default in support payments, and a default is not required, in order for the DOR to request that child support payments be made through the depository. If such a request is made, the depository shall notify all parties that future payments in Title IV-D cases be made to the State Disbursement Unit.

The bill provides additional means for an obligor to avoid having his or her driver's license suspended. Specifically, if an obligor begins paying any delinquency by income deduction, the obligor's license will not be suspended (and it must be reinstated if it had already been suspended). Additionally, the bill makes it discretionary for the DOR to notify the Department of Highway Safety and Motor Vehicles to suspend a driver's license of an obligor if the delinquency is not paid in full.

Effective July 1, 2012, the bill amends s. 409.256, F.S., to authorize the DOR to commence a paternity proceeding if a caregiver states in an affidavit that the putative father is or may be the child's biological father. Under current law, the DOR may commence a proceeding only if the child's mother or a putative father states in an affidavit that the putative father is or may be the child's biological father.

⁸ Section 409.25656(1), F.S.

⁹ Section 409.25656(10), F.S.

¹⁰ Section 409.25658, F.S.

Section 409.2563(5), F.S., is amended to require that requests by a parent from whom support is being sought for an informal discussion with the DOR about the proposed administrative support order be made in writing within 15 days after the date of mailing the proposed support order.

The bill eliminates the requirement for the DOR to serve garnishment notices by registered mail, requiring instead that the DOR serve notice on garnishees and obligors by regular mail. If the garnishee provides written consent, the department may send notices to the garnishee by secure e-mail or facsimile. The bill requires the Chief Financial Officer and the DOR to work cooperatively to establish an automated method for identifying persons who are doing business with the state and who owe past due support so that the support payments may be withheld by the state.

Under current law, the DOR provides to the CFO a listing of obligors for whom warrants are outstanding. The CFO then withholds all payments to any obligor doing business with the state and the DOR may levy upon the withheld payments. The change made by this bill essentially reverses this method, so that the CFO is disclosing to the DOR a file of individuals to whom the state pays money. This change may mean that information on persons who do not owe past due child support may also be transmitted to the DOR.

The bill requires the DOR, in cooperation with the Department of Financial Services (DFS), to identify persons who owe past due support collected by the department who are presumed to have unclaimed property held by DFS. If a claim for unclaimed property is approved by the DFS, the DOR will send a notice by certified mail to the obligor at the address provided by the obligor to DFS advising the obligor of the department's intent to intercept the approved claim. The DFS must retain custody of the property until a final order has been entered and any appeals have concluded or, if the intercept is uncontested, until notified by the department. If an obligor does not request a hearing, The DOR must notify the DFS, electronically or in writing, to transfer the property to the department.

The bill authorizes the DOR to place an administrative lien for unpaid support on a motor vehicle or vessel, even if owned unencumbered by the obligor, and on claims, settlement proceeds, and judgments. The DOR must notify the obligor of the intent to place a lien by regular mail sent to the obligor's address on file with the depository. The notice must state the amount of past due support owed and inform the obligor of the right to contest the lien at an administrative hearing.

Finally, the bill reenacts s. 409.256, F.S., in order to incorporate the changes made by the bill to s. 322.058, F.S.

The bill is effective upon becoming a law, except as otherwise provided in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill authorizes the DOR to place an administrative lien for unpaid support on claims, settlements, and judgments, as well as a motor vehicle or vessel that is owned unencumbered by the obligor. This change in the law may have a financial impact on obligors who have certain claims, settlements, or judgments and are expecting to receive money in relation to the claim, settlement, or judgment, but also owe unpaid or delinquent support. However, these changes may result in additional funds being provided for child support.

C. Government Sector Impact:

According to the DOR, its procedures will need to be modified to implement the changes made by this bill. However, the DOR expects that any operational impact of the bill will be insignificant.¹¹

The DHSMV may incur an indeterminate reduction in reinstatement revenues (\$45 fee) collected and deposited in the General Revenue Fund (\$15) and the Highway Safety Operating Trust Fund (\$30).

VI. Technical Deficiencies:

Section 409.25658, F.S., is amended so that notice of intent to intercept an approved claim for unclaimed property is sent to the obligor by *certified* mail to the address provided by the obligor to the Department of Financial Services (see lines 316-322). According to the Department of Revenue's bill analysis, the notice of intent is meant to be mailed to the obligor by *regular* mail.¹² Other sections of the bill also eliminate the requirement for the DOR to mail notices via registered or certified mail, instead only requiring regular mail. It appears that the intent of the bill is to require notice be sent to an obligor via regular mail when the obligor's unclaimed property is to be used for past due child support. The Legislature may wish to amend line 320 of the bill to address this oversight.

¹¹ Department of Revenue, *2012 Bill Analysis, SB 1342*, January 25, 2012 (on file with the Senate Committee on Banking and Insurance).

¹² *Id.* at 4.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on February 16, 2012:
Provides technical, conforming changes.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Regulation, *Vice Chair*
Banking and Insurance
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Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Environmental Preservation and Conservation
Reapportionment
Rules - Subcommittee on Ethics and Elections

SENATOR ELEANOR SOBEL

31st District

February 16, 2012

Chairman Richter,

Please excuse my absence from the Banking and Insurance committee meeting, today, February 16, 2012. My return flight to Tallahassee was cancelled and I was unable to acquire alternative transportation to return in time for the meeting.

Thank you for your understanding,

A handwritten signature in cursive script that reads "Eleanor Sobel".

Eleanor Sobel
State Senator
District 31

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MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

