

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Dean, Vice Chair

MEETING DATE: Tuesday, October 4, 2011
TIME: 10:45 a.m.—12:45 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Dean, Vice Chair; Senators Bennett, Hays, Margolis, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 138 Bennett (Identical H 117)	Military Veterans Convicted of Criminal Offenses; Cites this act as the "T. Patt Maney Veterans' Treatment Intervention Act;" providing that a person found to have committed a criminal offense who alleges that the offense resulted from posttraumatic stress disorder, traumatic brain injury, substance use disorder, or psychological problems stemming from service in a combat theater in the United States military may have a hearing on that issue before sentencing; providing that a defendant found to have committed an offense due to such causes and who is eligible for probation or community control may be placed in a treatment program in certain circumstances; exempting treatment services provided by the Department of Veterans' Affairs or the United States Department of Veterans Affairs from certain contract requirements, etc. CJ 10/04/2011 Favorable BC	Favorable Yeas 6 Nays 0
2	SB 186 Ring (Identical H 183)	Misdemeanor Pretrial Substance Abuse Programs; Providing that a person who is charged with a nonviolent, nontraffic-related misdemeanor and identified as having a substance abuse problem or a person who is charged with certain other designated misdemeanor offenses, and who has previously been convicted of a felony, may qualify for participation in a misdemeanor pretrial substance abuse program, etc. CJ 10/04/2011 Fav/1 Amendment JU	Fav/1 Amendment (821248) Yeas 6 Nays 0
3	Presentation by Florida TaxWatch on its Government Cost Savings Task Force Report for FY 2012-13 on criminal and juvenile justice reform.		Presented
4	Presentation by DOC on activities relating to recidivism reduction and successful community reentry: issuing identification cards, providing a supply of prescription drugs, utilization of community work release beds, connection to financial assistance and mental health services in the community, use of reentry facilities, and vocational training and certification.		Presented
5	Interim Project 2012-116 (Review Penalties for Drug-Free Zone Violations) Presentation		Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, October 4, 2011, 10:45 a.m.—12:45 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6		Presentation by the Florida Parole Commission on its vision for the criminal justice system.	Not Considered
7		Presentation by the Department of Juvenile Justice on education and vocational programming.	Not Considered
Other related meeting documents			

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 Criminal Justice Committee

BILL: SB 138

INTRODUCER: Senators Bennett, Gaetz, and Evers

SUBJECT: Military Veterans Convicted of Criminal Offenses

DATE: September 27, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill creates the T. Patt Maney Veterans' Treatment Intervention Act. It addresses the increasing involvement of military veterans with the criminal justice system. It allows counties to establish programs to divert a veteran who is charged with a criminal offense into an appropriate treatment program if he or she suffers from posttraumatic stress disorder (PTSD), traumatic brain injury (TBI), substance use disorder, or psychological problems stemming from military service in a combat theater. These pretrial veteran's treatment diversion programs are modeled after existing treatment-based drug court programs. Successful completion of the program would result in dismissal of charges; lack of success could lead to prosecution through normal channels.

The bill also requires courts to hold a pre-sentencing hearing if a convicted veteran claims that his or her crime resulted from PTSD, TBI, substance use disorder, or psychological problems stemming from service in a combat theater. If the court determines that the defendant is a veteran who suffers from one of the conditions as a result of service in a combat theater, and if the defendant is otherwise eligible to be placed on community supervision, with the defendant's agreement the court may place him or her into a treatment program for the length of the sentence. The bill encourages placement in an established treatment program with a history of successfully treating combat veterans with a history of PTSD, TBI, substance use disorder, or psychological problems. It also specifies a preference for Department of Veterans Affairs programs for which the defendant is eligible. Pretrial drug court diversion programs are funded by the state and local government. In drug court programs, the county pays for the costs of testing and treatment. If the veteran's treatment diversion programs operate in a similar fashion, the cost of such programs will be borne by both the state and local government.

This bill creates section 921.00242 of the Florida Statutes, and amends sections 948.08 and 948.16 of the Florida Statutes.

II. Present Situation:

The Department of Corrections does not have statistics of how many of the approximately 150,000 offenders on community supervision are military veterans. However, it reports that 6,726 state prison inmates (approximately 6.6% of the total prison population) were identified as military veterans as of September 23, 2011. This includes 4,986 inmates whose claim of veteran status is unverified and 1,740 whose claim has been verified by submission of a Certificate of Release or Discharge from Active Duty (Department of Defense Form 214). The types of offenses for which these veterans are incarcerated are reflected in the following table:

Primary Offense	Claimed Veteran Status	Verified Veteran Status	Total	%
Murder/Manslaughter	683	408	1091	16.2%
Sexual/Lewd Behavior	1177	609	1786	26.6%
Robbery	464	142	606	9.0%
Aggravated Battery/Assault, Kidnapping, Other Violent Crimes	588	136	724	10.8%
Burglary	521	144	665	9.9%
Property Theft/Fraud/Damage	467	78	545	8.1%
Drugs	671	128	799	11.9%
Weapons	120	32	152	2.3%
Other	295	63	358	5.3%
Total	4986	1740	6726	100%

The table indicates that a majority of veteran inmates in Florida are incarcerated for violent crimes and a lesser number for property and drug offenses. This is in contrast to the findings of the American Bar Association's Commission on Homelessness and Poverty (ABA), which cited national statistics that 70 percent of incarcerated veterans are in jail for non-violent offenses.¹ However, the ABA statistic apparently relates to veterans in local jails. There is no comprehensive data on the number of veterans among the approximate 57,000 adults either serving sentences or awaiting trial or hearing in county jails throughout Florida.

Judge T. Patt Maney, for whom the bill is named, regularly deals with veterans in his Okaloosa County courtroom. Judge Maney has observed that the offenses that are most frequently committed by veterans are trespass, possession of an open container, obstructing traffic,

¹ ABA Commission on Homelessness and Poverty, Resolution 105A, February 10, 2010 at <http://www.abanow.org/wordpress/wp-content/themes/ABANow/wp-content/uploads/resolution-pdfs/MY2010/summaries/105A-adopted-as-revised.pdf> and accompanying report at <http://www.abanow.org/wordpress/wp-content/themes/ABANow/wp-content/uploads/resolution-pdfs/MY2010/105A.pdf>, last viewed on September 28, 2011. The report indicates that the statistics come from a 2002 report by the Department of Justice Bureau of Justice Statistics, but staff could not locate the underlying report.

possession of marijuana, loitering, worthless checks, disorderly conduct, domestic violence, resisting an officer, and petit theft.² A detailed report of veterans' involvement in the criminal judicial system in Travis County, Texas, reflects that the majority of misdemeanor charges against veterans were for non-violent offenses, while the majority of felony charges were for violent offenses.³

In 2008, the Florida Department of Veterans' Affairs and the Florida Office of Drug Control issued a paper examining the issue of mental health and substance abuse needs of returning veterans and their families.⁴ The study noted that combat medical advances are enabling veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) to survive wounds that would have been fatal in previous conflicts, and thus some are returning with "more complex physical and emotional disorders, such as Traumatic Brain Injuries and Post-Traumatic Stress Disorder, substance abuse and depression."⁵ The study also estimated that approximately 29,000 returning veterans residing in Florida may suffer from PTSD or some form of major depression.⁶

A Rand Center report in 2008 indicated that preliminary studies showed that 5 to 15 percent of OIF and OEF service members are returning with PTSD, 2 to 10 percent with depression, and an unknown number with TBI.⁷ A person with any of these disorders also has a greater likelihood of experiencing other psychiatric diagnoses than do other persons.⁸

A report by the Center for Mental Health Services National GAINS Center of the federal Substance Abuse and Mental Health Services Administration (SAMHSA) noted that many veterans coming into contact with the criminal justice system may have unmet treatment needs.⁹ Veterans courts have been established across the country as some judges have begun to recognize a correlation between the commission of offenses by veterans and substance abuse issues, mental health issues, and cognitive functioning problems. These judges concluded that in many cases, the veterans' inability to deal with these conditions on their own contributed to their encounters with the legal system.

Veterans' courts have the goal of identifying veterans who would benefit from a treatment program instead of incarceration or other sanctions. They are typically patterned after successful specialty courts such as drug courts and mental health courts. Since 2008, legislation authorizing

² Email from Okaloosa County Judge Pat Maney to legislative staff dated February 11, 2011.

³ *Report of Veterans Arrested and Booked Into the Travis County Jail, July 2009*, http://www.co.travis.tx.us/constables/4/pdfs/vip_jail_survey_report.pdf, last viewed on September 28, 2011.

⁴ Florida Department of Veterans' Affairs and Florida Office of Drug Control Green Paper, *Returning Veterans and Their Families with Substance Abuse and Mental Health Needs: Florida's Action Plan*, January 2009, page 5, http://www.helppromotehope.com/documents/Veterans_Green_Paper.pdf, last viewed on September 28, 2011.

⁵ *Ibid*, p. 5.

⁶ *Ibid*, p. 5.

⁷ Rand Center for Military Health Policy Research, Benjamin R. Karney, Rajeev Ramchand, Karen Chan Osilla, Leah B. Caldarone, and Rachel M. Burns, *Invisible Wounds, Predicting the Immediate and Long-Term Consequences of Mental Health Problems in Veterans of Operation Enduring Freedom and Operation Iraqi Freedom*, April 2008, page xviii, http://www.rand.org/pubs/working_papers/2008/RAND_WR546.pdf, last viewed on September 28, 2011.

⁸ *Ibid*, p. 127.

⁹ GAINS Center, *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions*, August 2008, page 6, at http://gainscenter.samhsa.gov/pdfs/veterans/CVTJS_Report.pdf last viewed on September 28, 2011. The observation was based upon information provided by the VA.

the establishment of veterans' courts has been adopted or at least considered in California, Colorado, Illinois, Oregon, Texas and Virginia, and has been considered in Connecticut, Minnesota, Nevada, New Mexico, New York and Oklahoma.¹⁰ The National Association of Drug Court Professionals website indicates that there are veterans' courts in 73 cities or counties nationwide.¹¹

One advantage that veterans' courts have over drug and mental health courts is that the majority of veterans who have committed criminal offenses are eligible for treatment services provided and funded by the United States Department of Veterans Affairs (VA). The previously-cited ABA study indicates that 82 percent of veterans in jail nationwide are eligible for services from the VA based on the character of their discharge.¹²

Florida has experience with both drug courts and mental health courts. In fact, it is believed that the Miami-Dade County Drug Court, founded in 1989, was the first drug court in the United States.¹³ Section 397.334, F.S., authorizes the establishment of drug courts that divert eligible persons to county-funded treatment programs in lieu of adjudication. Twenty-nine counties have an adult pretrial drug court and twenty-seven counties have an adult post-adjudication drug court. When juvenile, family dependency, DUI, and misdemeanor drug courts are included, forty-five counties have some type of drug court program.¹⁴

Funding for drug courts can come from a variety of sources including court fees, local funding, private or governmental grants, private payment by participants, or charitable donations.¹⁵

The Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program in s. 394.658, F.S., calls for award of a 1-year planning grant and a 3-year implementation or expansion grant to identify and treat individuals who have mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in or at risk of entering the criminal or juvenile justice systems. Twenty counties have received implementation grants, and five of those counties received subsequent expansion grants for their programs.¹⁶

¹⁰ Interim Report 2011-131, Veterans' Courts, Florida Senate Committee on Military Affairs and Domestic Security, October 2010, p. 1 (with updated information). Much of the information in this portion of the analysis is derived from the Interim Report.

¹¹ National Association of Drug Court Professionals website at <http://www.nadcp.org/learn/veterans-treatment-courts/veterans-treatment-court-studies-and-statistics>, last viewed on September 28, 2011.

¹² *Supra* note 2, ABA Commission on Homelessness and Poverty, Report on Resolution 105A, p. 2.

¹³ The history of the founding of the Miami-Dade Drug Court, and of Florida drug courts in general, can be found in the Supreme Court Task Force on Treatment-Based Drug Courts Supreme Court Task Force's "Report on Florida Drug Courts (July 2004)", http://www.flcourts.org/gen_public/family/drug_court/bin/taskforcereport.pdf, last viewed on September 28, 2011.

¹⁴ "Drug Courts in Florida", http://www.flcourts.org/gen_public/family/drug_court/map.shtml, last viewed on September 28, 2011.

¹⁵ "Drug Court Funding Opportunities", http://www.flcourts.org/gen_public/family/drug_court/bin/Funding.pdf, last viewed on September 28, 2011.

¹⁶ Annual Report on the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program Act, 2010 Report, at <http://www.floridatac.org/files/document/CJMHS%20TA%20Center%20Annual%20Report%202010.pdf%20Final.pdf>, last viewed on September 28, 2011.

Veterans Courts in Florida

There are several veterans' court and veterans' jail diversion initiatives around the state. The National Association of Drug Court Professionals (NADCP) maintains information about veterans treatment courts that lists courts in Miami-Dade, Palm Beach, and Pinellas counties.¹⁷ There are also veterans dockets or programs in other Florida courts that are not included on the NADCP list.

The program in Miami-Dade County is available to veterans who are facing minor drug offenses and do not have a violent or extensive criminal history. In its initial stages, the program has drawn participants from defendants who are already involved with traditional drug court. They receive similar treatment, but also are assisted by a VA psychologist and outreach coordinator.¹⁸

The Palm Beach County veterans' docket began operating in November 2010.¹⁹ A feature of the program is assignment of a VA social worker supervisor to act as the court's VA liaison. This VA employee has oversight of screening and case management services for eligible veterans. In addition to receiving any needed mental health and substance abuse treatment, participating veterans also have access to VA programs that address homelessness and unemployment. This is compatible with the VA's national Veteran's Justice Outreach Initiative that will assign staff and trained volunteer resources to facilitate veterans' court programs.²⁰

In April 2011, the Okaloosa County Commission approved creation of a veterans' court for the county that is expected to begin operation later this year. Although there is currently no formal veterans' court, many cases of veterans in the county are already being referred to a court docket with special knowledge of veterans and veterans' issues. To determine eligibility, offenders are asked at initial booking if they have ever served in the military and what type of discharge they received. Veterans are further asked if they will sign a release in order to share information with the VA. Further screening is conducted through the Pre-Trial Services Office, and the program uses drug court case managers to monitor participants. Access to VA treatment facilities is being sought for eligible veterans in the program.

As noted previously, the bulk of Okaloosa County veterans' cases involve substance abuse, related domestic violence, and some theft related cases including worthless check charges that may be related to lost cognitive ability to do math. Successful completion of the program is defined as completion of a treatment program and avoiding additional legal problems.

The 12th Judicial Circuit (DeSoto, Sarasota and Manatee Counties) has established a program called "Courts Assisting Veterans." While not a true veteran's court, it seeks to achieve similar

¹⁷ See <http://www.justiceforvets.org>, last viewed on September 29, 2011.

¹⁸ "Miami-Dade starts specialized drug court for military veterans," Miami Herald, May 2, 2011, <http://www.miamiherald.com/2011/04/30/2197989/miami-dade-starts-specialized.html>, last viewed on September 29, 2011.

¹⁹ The Veteran's Docket was established by Administrative Order No. 4.905-11/10 of the Fifteenth Judicial Circuit for Palm Beach County, which can be downloaded from <http://15thcircuit.co.palm-beach.fl.us/web/guest/adminorders/series4>, last viewed on September 28, 2011.

²⁰ The Veteran's Justice Outreach Initiative website is <http://www.va.gov/HOMELESS/VJO.asp>, and specific information about the Palm Beach County Veterans' Docket can be found at <http://www.westpalmbeach.va.gov/WESTPALMBEACH/features/VeteransJusticeOutreach.asp>. Both sites were last viewed on September 28, 2011.

goals through the use of existing programs, including referral of veteran's to existing drug and mental health courts.²¹

In October 2009, the Department of Children and Families Mental Health Program Office was awarded over \$1.8 million from SAMHSA over the next five years to provide services and support for Florida's returning veterans who served in Iraq and Afghanistan and who suffer with Post-Traumatic Stress Disorder and other behavioral health disorders. The department describes the grant and the project as follows:

The project will redesign the state's response to the needs of veterans and their family members by helping returning veterans learn to cope with the trauma of war and the adjustments of coming home and avoiding unnecessary involvement with the criminal justice system. Florida's project is based on a foundation of evidence-based screening, assessment, treatment and recovery practices. The grant will enable the Department to implement two veteran's jail diversion pilot projects for 240 veterans over the next five years. This grant will expand the Department's existing jail diversion programs by identifying veterans who have an initial contact with the criminal justice system, helping them enroll in Veteran's Administration benefits for those who are eligible, providing trauma-related treatment services, linking them with support services in their community, and providing specialized peer support services. Additionally, this grant enables the Department to include family members as recipients of services. One unique aspect of this grant is Florida's creation and implementation of a new state-level Veteran Peer Support Specialist credential, possible through the Department's ongoing partnership with the Florida Certification Board. Certification of trained veterans will professionalize what we know works - trained veterans who've been there helping other returning veterans adjust to their home and community. In the first year, the grant from the federal Substance Abuse and Mental Health Services Administration (SAMHSA) will provide DCF with \$268,849. Hillsborough County is one of two sites that will launch Florida's Jail Diversion and Trauma Recovery Program. The location of the other pilot project has not yet been determined.²²

III. Effect of Proposed Changes:

Pre-sentencing Hearing for Veterans

Section 2 of the bill requires a sentencing court to hold a special pre-sentencing hearing for a convicted veteran if the veteran alleges that he or she committed the offense because of PTSD, TBI, substance use disorder, or psychological problems stemming from service with the United States military in a combat theater. If these prerequisites are met, the court must hold a hearing to: (1) determine whether the veteran was a member of the United States military who served in a combat theater; and (2) assess whether the veteran suffers from PTSD, TBI, substance use disorder, or psychological problems as a result of that service. The court is not required to

²¹Courts Assisting Veterans, 12th Judicial Circuit, <http://www.cavs12.org/home.aspx>, last viewed on September 29, 2011.

²² Florida Department of Children and Families' description of the Veterans Jail Diversion Grant at <http://www.dcf.state.fl.us/programs/samh/mentalhealth/consumerfamilyaffairs/currinitiatives.shtml>, last viewed on September 28, 2011.

determine whether the condition contributed to commission of the offense. The convicted veteran bears the burden of proving the relevant issues.

The bill does not require the court to alter its sentencing practice even if it determines that the veteran's claim is valid. However, if the veteran is otherwise eligible to be placed on community supervision, he or she may be ordered to participate in a local, state, federal, or private non-profit treatment program as a condition of probation or community control. In order for the court to exercise this option, the veteran must agree to participate and the court must determine that an appropriate treatment program is available. Whenever possible, the court must place the veteran in a treatment program that has had success in treating veterans who suffer from PTSD, TBI, substance use disorder, or psychological problems relating to their military service. Preference must also be given to programs of the United States Department of Veterans Affairs (VA) or Florida Department of Veterans Affairs (FDVA) for which the veteran is eligible.

The court can make a written finding that it would have sentenced the veteran to incarceration except for the fact that he or she suffers from PTSD, TBI, substance use disorder, or psychological problems as a result of military service. If the court makes such a finding, a veteran who is ordered into a residential treatment program would earn sentence credits for the time he or she actually spends in the program. These credits would be applied to reduce any remaining sentence in the event that the veteran is committed to jail or prison as a result of violating the terms of community supervision. This is an exception to existing law that an offender cannot receive credit against prison sentence for any time served in a treatment or rehabilitation program prior to a violation of community supervision. *See State v. Cregan*, 908 So.2d 387 (Fla. 2005).

Current law allows a court to require an offender to participate in treatment as a special condition of probation or community control. However, the bill expands upon this by: (1) focusing attention on the offender's veteran status by requiring the court to hold a hearing to consider the offender's veteran status and condition if the offender alleges that these issues resulted in the offense; (2) requiring that entry into the treatment program be voluntary; (3) providing for sentencing credit for time that the offender who is a veteran spends in an inpatient treatment program; and (4) emphasizing the need to place an offender who is a veteran into a treatment program that has a history of dealing with veterans' issues, with a preference for VA and FDVA programs. A veteran who is sentenced to a treatment program outside of the provisions of the section would not be eligible for sentence credits if he or she violates the conditions of community supervision.

Pretrial Veterans' Treatment Intervention Program

The bill also creates felony and misdemeanor pre-trial diversion programs for veterans who are current or former United States military service members suffering from PTSD, TBI, substance use disorder, or psychological problems resulting from service in a combat theater. The bill would make these veterans eligible for placement in an appropriate treatment program that is approved by the chief judge of the circuit instead of being processed through the criminal justice system.

Section 3 of the bill amends s. 948.08, F.S., to create the felony pretrial veterans treatment intervention program. It would apply to any veteran with one of the conditions who is charged

with a felony that is not a disqualifying offense. The bill references s. 948.06 (8)(c), F.S., to incorporate the offenses used to determine whether an offender is to be treated as a “violent felony offender of special concern” as disqualifying offenses. The disqualifying offenses are:

- Kidnapping or attempted kidnapping under s. 787.01, F.S., false imprisonment of a child under the age of 13 under s. 787.02(3), F.S., or luring or enticing a child under s. 787.025(2)(b) or (c), F.S.
- Murder or attempted murder under s. 782.04, F.S., attempted felony murder under s. 782.051, F.S., or manslaughter under s. 782.07, F.S.
- Aggravated battery or attempted aggravated battery under s. 784.045, F.S.
- Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), F.S., lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., F.S., lewd or lascivious conduct under s. 800.04(6)(b), F.S., lewd or lascivious exhibition under s. 800.04(7)(b), F.S., or lewd or lascivious exhibition on computer under s. 847.0135(5)(b), F.S.
- Robbery or attempted robbery under s. 812.13, F.S., carjacking or attempted carjacking under s. 812.133, F.S., or home invasion robbery or attempted home invasion robbery under s. 812.135, F.S.
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025, F.S.
- Sexual performance by a child or attempted sexual performance by a child under s. 827.071, F.S.
- Computer pornography under s. 847.0135(2) or (3), F.S., transmission of child pornography under s. 847.0137, F.S., or selling or buying of minors under s. 847.0145, F.S.
- Poisoning food or water under s. 859.01, F.S.
- Abuse of a dead human body under s. 872.06, F.S.
- Any burglary or attempted burglary offense that is a first-degree or second-degree felony under s. 810.02(2) or (3), F.S.
- Arson or attempted arson under s. 806.01(1), F.S.
- Aggravated assault under s. 784.021, F.S.
- Aggravated stalking under s. 784.048(3), (4), (5), or (7), F.S.
- Aircraft piracy under s. 860.16, F.S.
- Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4), F.S.
- Treason under s. 876.32, F.S.

If a veteran with one of the conditions is not charged with a disqualifying offense, he or she would be eligible to be admitted voluntarily into a felony pretrial veterans treatment intervention program if one has been approved by the chief judge of the circuit. Admission may be upon the court’s own motion or the motion of either party. However, there are three circumstances under which a veteran could be denied admission into a program:

- The court may deny admission if the veteran rejected an offer of admission to a pretrial veterans treatment intervention program on the record at any time prior to trial.

- The court may deny admission if the veteran previously entered a court-ordered veterans treatment program.
- The court must hold a preadmission hearing at the request of the state attorney if the state attorney believes that the veteran was involved in selling controlled substances in the case. The court must deny admission to the program if the state attorney demonstrates by a preponderance of the evidence that the veteran was involved in selling controlled substances.

Section 4 of the bill amends s. 948.16, F.S., to create the misdemeanor pretrial veterans treatment intervention program. Any veteran with one of the conditions who is charged with a misdemeanor would be eligible to be admitted voluntarily into a misdemeanor pretrial veterans treatment intervention program if one has been approved by the chief judge of the circuit. However, the court can deny admission if the defendant had previously entered a court-ordered veterans treatment program.

The bill requires that a veterans treatment intervention team develop an individualized coordinated strategy for any veteran who is to be admitted to either a felony or misdemeanor pretrial veterans treatment intervention program. This coordinated strategy must be provided to the veteran in writing before he or she agrees to enter the program. The strategy is to be modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs that are found in s. 397.334(4), F.S. These principles and components are:

- Drug court programs integrate alcohol and other drug treatment services with justice system case processing.
- Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- Eligible participants are identified early and promptly placed in the drug court program.
- Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Abstinence is monitored by frequent testing for alcohol and other drugs.
- A coordinated strategy governs drug court program responses to participants' compliance.
- Ongoing judicial interaction with each drug court program participant is essential.
- Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.
- Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.
- Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

The coordinated strategy can include a system of sanctions for non-compliance. The sanctions can include placement in a residential or jail-based treatment program or incarceration for up to the length of time that is allowed for contempt of court.

At the end of the intervention program, the court must consider recommendations for disposition made by the state attorney and the program administrator (for felony diversion programs) or the treatment program (for misdemeanor diversion programs). After considering these recommendations, the court must dismiss the charges if it finds that the veteran successfully

completed the intervention program. If the court finds that the veteran did not successfully complete the program, it can either order the veteran to continue in education and treatment or order that the charges revert to normal channels for prosecution.

Any veteran whose charges are dismissed after successful completion of the pretrial veterans treatment intervention program, if otherwise eligible, may have his or her arrest record and a plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S.

The felony and misdemeanor treatment-based drug court program statutes on which the pretrial veterans treatment intervention program are modeled include requirements for the county or appropriate government entity to enter into a contract with any public or private entity that provides felony or pretrial diversion services. However, the bill does not include this requirement for felony pretrial veterans treatment intervention programs and provides an exception for VA and FDVA programs in the statute that creates misdemeanor pretrial veterans treatment intervention programs. It is anticipated that much of the needed treatment will be provided by the VA as a benefit that is available to the veteran as a result of his or her military service.

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 would have an impact on the private sector to the extent that participants are diverted from incarceration into private treatment programs.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered whether the bill would have an impact on the state prison population. However, last year the conference determined that the originally-filed bill would have no impact on the state prison population, and there are no differences in the bills that would appear to affect fiscal issues.

The bill creates pretrial veterans treatment intervention programs. Pretrial drug court diversion programs are funded by the state and local government. In drug court programs, the county pays for the costs of testing and treatment. If the veteran's treatment diversion programs operate in a similar fashion, the cost of such programs will be borne by both the state and local government. The cost of bill is indeterminate as the number of veterans to be served as well as the type and frequency of services is unknown. If the bill diverts some defendants from incarceration to community-based treatment programs, it is anticipated that much of the programming could be provided by the VA as part of the veteran's benefits.

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.

THE FLORIDA SENATE

Spoke

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/4/2011 Date

138 Bill Number

Barcode

Name BRIAN PITTS

Phone 727/897-9291

Address 1119 Newton Ave S Street

E-mail

St. Petersburg FL 33705 City State Zip

Job Title Trustee

Speaking: For Against Information Appearing at request of Chair

Subject Vet OFFENSES

Representing Justice-2-Jesus

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from .m. to .m.

S-001 (04/14/10)

THE FLORIDA SENATE

Waived

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

oct 4 Date

SB 138 Bill Number

Barcode

Name Robert Trammell

Phone 850 510 2187

Address PO Box 1799 Street

E-mail Trammell Robert@RocketMail.com

Tallahassee FL 32302 City State Zip

Job Title GEN COUNSEL

Speaking: For Against Information Appearing at request of Chair

Subject Military Vets

Representing FL Public Defenders Assoc

Lobbyist registered with Legislature: Yes No

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If designated employee: Time: from .m. to .m.

S-001 (04/14/10)



821248

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
10/04/2011	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment

Delete line 24
and insert:
possession of alcohol while under 21 years of age under s.
562.111, or possession

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 Criminal Justice Committee

BILL: SB 186

INTRODUCER: Senator Ring

SUBJECT: Misdemeanor Pretrial Substance Abuse Programs

DATE: September 20, 2011 REVISED: 10/04/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/1 amendment
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by making three changes to current law. The bill:

- Removes the requirement that a person not have previously been admitted to a pretrial program in order to participate in such programs.
- Eliminates the current restriction that program participants may only be charged with misdemeanor drug or paraphernalia possession under ch. 893, F.S. It specifies that persons who are charged with a nonviolent, nontraffic-related misdemeanor are eligible to participate if it is shown that the person has a substance abuse problem.
- Includes persons who are charged with prostitution, underage possession of alcohol or possession of certain controlled substances without a valid prescription, as persons who may be eligible for program admission.

This bill substantially amends section 948.16, Florida Statutes.

II. Present Situation:

Misdemeanor Pretrial Substance Abuse Education and Treatment Intervention

Misdemeanor possession of controlled substances under ch. 893, F.S., is the possession of less than 20 grams of cannabis.¹ Possession of drug paraphernalia for the purposes set forth in s. 893.147, F.S. is also a misdemeanor offense.

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program, for a period based on the program requirements and the treatment plan for the offender.

Admission may be based upon motion of either party or the court except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

Participants in the program are subject to a coordinated strategy developed by a drug court team under s. 397.334(4), F.S., which may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.

At the end of the pretrial intervention period, the court must:

- Consider the recommendation of the treatment program;
- Consider the recommendation of the state attorney as to disposition of the pending charges; and
- Determine, by written finding, whether the defendant successfully completed the pretrial intervention program.

If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution. The court must dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.

Research indicates that pretrial diversion programs, such as the misdemeanor pretrial substance abuse education and treatment intervention program, have proven themselves to be effective alternatives to traditional case proceedings. A 2007 study conducted by the National Association

¹ s. 893.13(6)(b), F.S.

of Pretrial Services Agencies² found that, although data on recidivism rates for these programs was sparse, the available data indicated low rates (between 1 percent and 12 percent depending on the type of crime) of recidivism for offenders that complete pre-trial diversion programs.³ The low rate of recidivism for offenders in these programs may be due to the nature of the programs. The Pretrial Justice Institute⁴ states that pretrial diversion programs “operate under the theory that if the underlying problems are addressed the individual is less likely to recidivate. This, in turn, will lead to less crime and less future costs to the criminal justice system.”⁵ Since their beginnings in the 1960’s, pretrial diversion programs have been continually expanded. In an article published by the National Association of Pretrial Services Agencies, the author states:

The consistent record of accomplishment of Dade County Pretrial Intervention from that time forward led not only to the proliferation of diversion programs in the State of Florida – far in excess of the number anywhere else in the south – but to the adoption of a state diversion statute and to state-level standards and goals for diversion promulgated by a governor’s crime commission.⁶

III. Effect of Proposed Changes:

Under current law only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not previously been convicted of a felony nor been admitted to a pretrial program, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. It does so by removing the condition that, in order to participate in the substance abuse education and treatment intervention program, a person must not have been previously admitted to a pretrial program.

Additionally, the bill expands the pool of potential participants in the pretrial programs to include persons who are charged with prostitution, underage possession of alcohol or possession of certain controlled substances without a valid prescription.

² Incorporated in 1973 as a not-for-profit corporation, the National Association of Pretrial Services Agencies, NAPSAs, is the national professional association for the pretrial release and pretrial diversion fields. More information can be found at <http://www.napsa.org/mission.htm>.

³ Kennedy, Spurgeon et al. *Promising Practices in Pretrial Diversion*, 16 (2007), <http://www.pretrial.org/Docs/Documents/PromisingPracticeFinal.pdf>.

⁴ In 1976 the U.S. Department of Justice funded the Pretrial Justice Institute at the request of NAPSAs, and it is the nation’s only non-profit organization dedicated to ensuring informed pretrial decision-making for safe communities. More information can be found at <http://www.pretrial.org/AboutPJI/Pages/default.aspx>.

⁵ Clark, John. Pretrial Justice Institute, *The Role of Traditional Pretrial Diversion in the Age of Specialty Treatment Courts: Expanding the Range of Problem-Solving Options at the Pretrial Stage*, 7 (October 2007), <http://www.pretrial.org/Docs/Documents/Role%20of%20Traditional%20Pretrial%20Diversion%20in%20the%20Age%20of%20Specialty%20Treatment%20Courts.pdf>.

⁶ Bellassai, John P. *A Short History of the Pretrial Diversion of Adult Defendants from Traditional Criminal Justice Processing Part One: The Early Years*, 5, available at <http://www.napsa.org/publications/diversionhistory.pdf>.

Prostitution is defined by s. 796.07, F.S. The first violation is a second degree misdemeanor and a second offense is punishable as a first degree misdemeanor.

Possession of alcohol by a person under the age of 21 is prohibited by s. 562.111, F.S. The first offense is punishable as a second degree misdemeanor while the second offense is a first degree misdemeanor.

The bill provides that persons who possess certain controlled substances without a valid prescription may be admitted to the program.⁷

The bill also provides that persons charged with a nonviolent, nontraffic-related misdemeanor offense⁸ who are identified as having a substance abuse problem are also eligible for admission into the misdemeanor pretrial substance abuse education and treatment intervention programs.

The bill provides an effective date of 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.

⁷ The bill cites s. 499.03(2) and (3), F.S., which punishes as a second degree misdemeanor the possession of any habit-forming, toxic, harmful, or new drug subject to s. [499.003\(33\)](#), or prescription drug as defined in s. [499.003\(43\)](#), unless the possession of the drug has been obtained by a valid prescription. These drugs include “new drugs” (s. 499.003(33), F.S.), prescription drugs (s. 499.003(43), F.S.), medicinal drugs (s. 465.003(8), F.S.), misbranded drugs (s. 499.007(13), F.S.), compressed medical gas (s. 499.003(11), F.S.), prescription medical oxygen (s. 499.003(46), F.S.) and veterinary prescription drugs (s. 499.003(53), F.S.).

⁸ These offenses would include certain trespass, theft, criminal mischief, and worthless check offenses to name a few.

C. **Government Sector Impact:**

The bill as written could expand the number of potential participants in county-funded misdemeanor pretrial substance abuse education and treatment intervention programs. Although no potential fiscal impact has been brought to the attention of professional staff of the committee, it is conceivable that the counties may decide to increase program capacity, which would result in increased expenditures.

VI. **Technical Deficiencies:**

For the sake of continuity it is suggested that s. 562.111, F.S. (underage possession of alcohol) be referenced on line 24 of the bill.

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:**

Barcode 821248 by Criminal Justice on October 4, 2011:

Cites the statute number for possession of alcohol while under 21 years of age for continuity.

Waived in support

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/4/2011 Date

186 Bill Number

Barcode

Name BRIAN PITTS

Phone 727/897-9291

Address 1119 Newton Ave S

E-mail

Street

St. Petersburg City

FL State

33705 Zip

Job Title Trustee

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

Appearing at request of Chair []

Subject MISDEMEANOR Pretrial

Representing Justice-2-Jesus

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

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If designated employee: Time: from .m. to .m.

S-001 (04/14/10)

Waived in support

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

Oct 4 Date

186 Bill Number

Barcode

Name Robert Trammell

Phone 850-510-2187

Address PO Box 1799

E-mail Trammell.Robert@rocketmail.com

Street

Tallahassee City

FL State

32302 Zip

Job Title

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

Appearing at request of Chair []

Subject MISDEMEANOR Pretrial

Representing FL Public Defender Assoc

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

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S-001 (04/14/10)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Commerce and Tourism
Community Affairs
Health Regulation

SENATOR JEREMY RING

32nd District

September 13, 2011

Honorable Senator Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers,

I am writing to respectfully request your cooperation in placing Senate Bill 186, relating to Misdemeanor Drug Courts on the Criminal Justice Committee agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 32

cc: Amanda Cannon

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5094

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

Cost-Savings Recommendations for the Criminal and Juvenile Justice System

*Based on the Report and
Recommendations of the
Government Cost Savings Task
Force for FY2012-13*



Report and Recommendations of the Government Cost Savings Task Force for FY2011-12

New Report: **135** cost-saving ideas worth
more than \$4 billion

Because of the importance of this policy area
to Florida's taxpayers, the
First Chapter provides recommendations for
23 Criminal and Juvenile Justice Justice reforms.

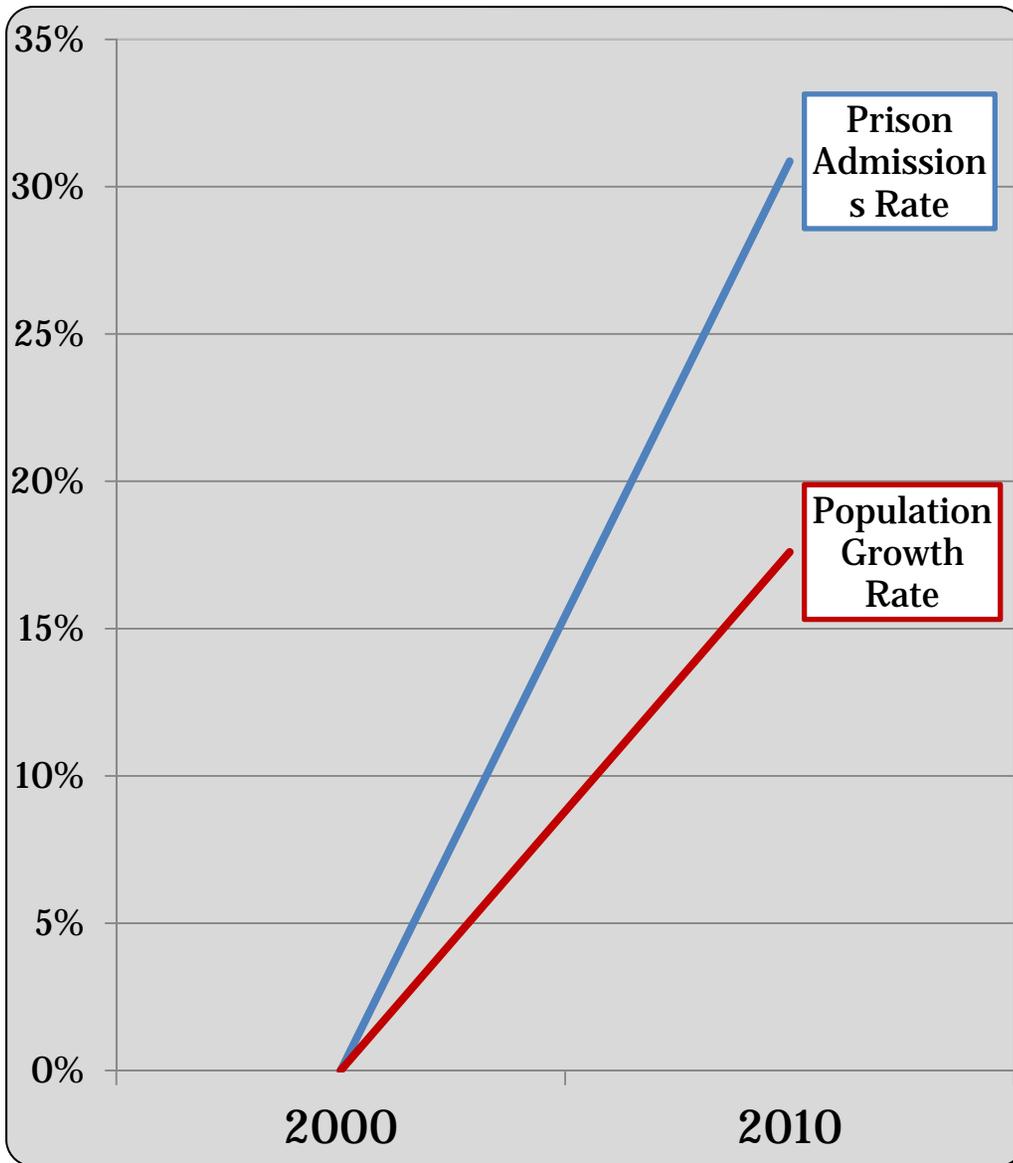
Why Justice Reform?

Large Corrections Growth

- In the past 20 years, Corrections spending has quadrupled
- In the past 40 years, Prison Population has increased 11.7-fold, while the General Population increased not quite 2.8-fold.

Increasing Incarceration Rate

- Current actual population: 102,000
- Using 1972 Rate: 24,000



2000 to 2010 Growth Rates Florida Population vs. Prison Admissions

 Prison Population more than 100,000

 Prison admissions growth rate almost double Florida's population growth rate from 2000 to 2010



Prison Population Drivers

Elimination of Parole and Lengthened Sentences and Period of Incarceration

Widespread Use of Short State Prison Sentences

State Prison Incarceration for Technical Probation Violations for Adults and Juveniles

Recidivism

Other States

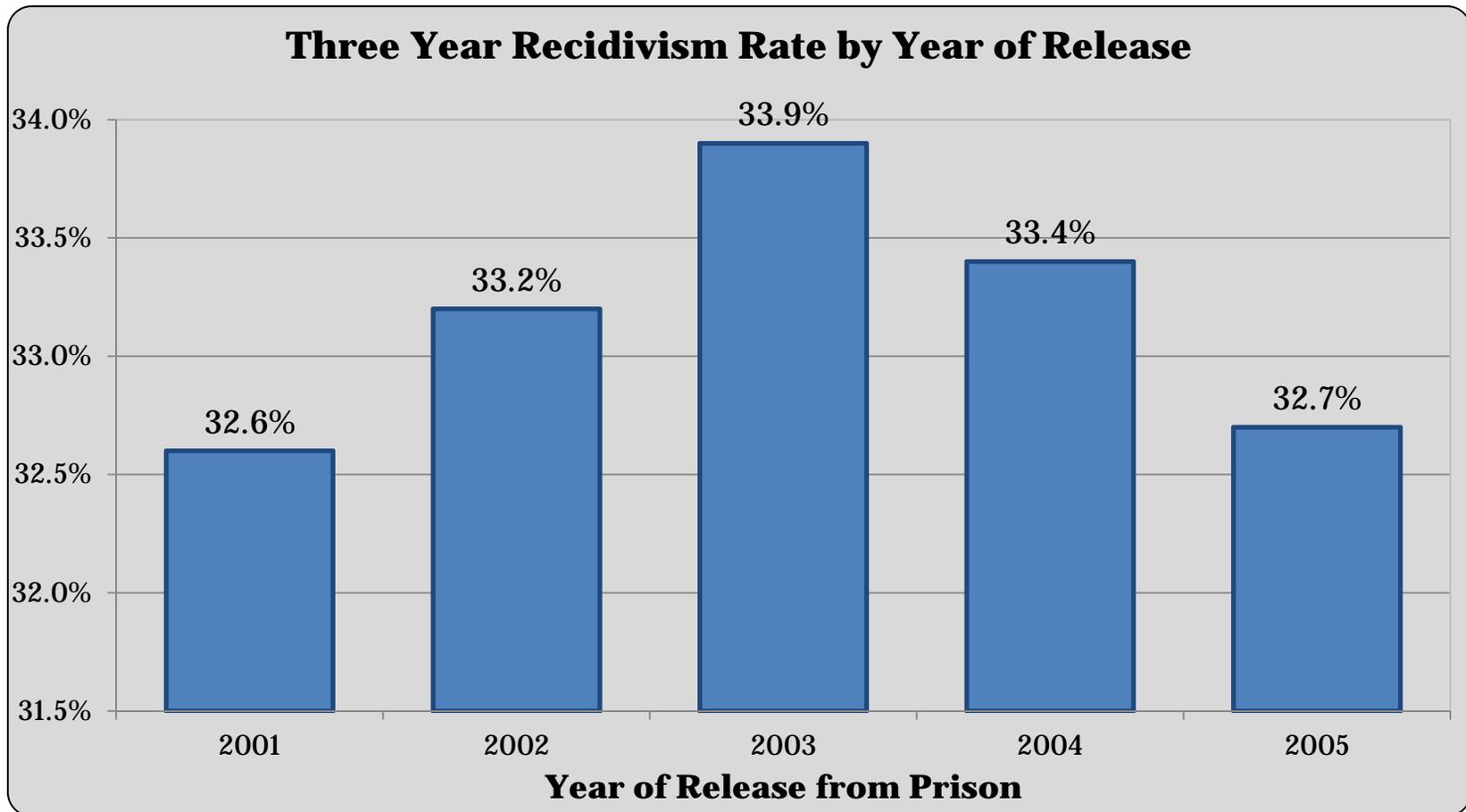
- As of 2010, Florida had the third largest state prison population in the United States, behind Texas and California.
- At the same time, for the first time in 40 years, the number of state prisoners in the nation declined.
- At that time, 26 states showed a decline, Florida was not among them.

Other States

States with Significant Declines

- Texas, reinvestment of \$2 billion set aside for prisons to \$241 million for community-based treatments and diversion
- Mississippi, Combining roll-back of 85% to 25% for low-risk offenders, critical implementation of risk assessment tool

Recidivism Drives Growth



Source: Florida Department of Corrections; 2009 Florida Prison Recidivism Study

Reducing Recidivism

Prevents future victimization

Reduces costs

Keeps our communities safer



Issues that increase risk of recidivism

People with Serious Mental Illnesses

 Represent the fastest growing sub-population within Florida's prison system

 Over the past 15 years, inmates suffering from mental illness has tripled

Increase risk of recidivism...

Substance Abuse

- 66% of inmates have a substance abuse problem
- 82% of inmates with substance abuse problem leave prison without treatment.
- Less than 1% of DOC budget goes to drug treatment
- 93% who complete community drug treatment do not recidivate three years post-release, when the risk is highest

Increase risk of recidivism...

Veterans

- 20-50% veterans returning from Iraq and Afghanistan suffer from PTSD
- Half of these individuals do not seek treatment
- PTSD and other mental health issues are strongly linked to substance abuse, including drug abuse and other criminal behavior
- Nearly 7,000 Florida prison inmates are veterans

Slowing the Growth of Prison Means...

Slowing the Juvenile Pipeline to Prison

- Children who enter and touch the juvenile justice system as delinquent youth are more likely to enter as adult offenders
- More interaction with the system increases criminal behavior and recidivism
- Growing a child from a behavioral problem to an adult offender increases taxpayer burden and puts public safety at risk.

Issues that Spur Growth- DJJ

Criminalizing Youth Instead of Offenses

- Most youth offenders charged with non-violent property or drug crimes
- 40% of all children are committed for technical violations of probation or misdemeanors

- \$50 million spent on youth committed to residential facilities
- Average length of stay has increased 30% in past ten years- trend that cost nearly \$20 million last year

What to Do?

- Florida's antiquated practices and policies of incarceration—from juvenile inputs through re-entry practices—have pushed our inmate population to more than 100,000.
- More effective, less costly, evidenced-based policy choices must be implemented.
- All must be driven by data.

Chapter 1: Recommendation 22

Expand the use of juvenile civil citations



Recommendation:

Expand Civil Citation programs by amending s.1006.13(1), F.S., to require Civil Citations to be used for all school-based misdemeanor arrests and forbid the arrest of misdemeanants on school grounds.

Based on recent data, approximately 11,492 students were arrested in school for misdemeanors

Forbidding the arrest of misdemeanants on school grounds and instead using Civil Citation programs is estimated to save the state between **\$16.9 M** and **\$53 M**

Chapter 1: Recommendation 20

Increase operational efficiencies by aligning lengths of stay with best practices

Reducing commitments and 600 beds could save the state **\$13 M**

Other states adopted similar legislation:

Texas

- 36% reduction in commitments
- Juvenile arrests for violent offenses dropped

North Carolina

- 61% reduction in commitments
- Juvenile arrests for violent offenses dropped by 20%

Virginia

- 50% drop in commitments
- Juvenile arrests for violent offenses dropped 36%



Recommendation:

Further reduce the use of expensive, ineffective residential programs in two ways:

- ↘ Limit the commitment of juvenile misdemeanants*
- ↘ Align Length of Stay to best practices and research-based findings of no more than three months for moderate and low-risk youth and targeted to 2001-2002 levels for high-risk youth*

Chapter 1: Recommendation 23

Increase operation efficiencies and public safety by aligning the average length of stay by delinquents with best practices in residential facilities

Recommendation:

Examine the increasing average lengths of stay by youth offenders in residential facilities. An option is enacting the Blueprint Commission's specific recommendations to:

 *Implement an offender review process that would allow for the early release of suitable candidates or a "step-down" to less restrictive, community-based care*

 *Count education and services received in detention towards the completion of the youth's treatment plan*

Increasing length of stay can cost the state up to **\$20 M** per year

Chapter 1: Recommendation 17

Expand Veterans Courts



Recommendation:

Convene a task force of veterans' affairs and criminal justice leaders to identify and resolve issues of veterans' encounters with the criminal justice system and establish a framework for expanding veterans' courts

Approximately 10% of all individuals with criminal records are veterans

20% - 50% of returning veterans suffer from Post Traumatic Stress Disorder

In some states veterans courts have up to a 90% graduation rate with no incidence of recidivism

Chapter 1: Recommendation 14A

Expand evidence-based substance abuse treatment

65.1% of DOC inmates (65,706 individuals) were in need of treatment with only 4,902 slots in FY08-09, making treatment available **only 7.4%** of those who needed it.



Recommendation:

Restore the \$10 million in DOC programming and target it to in-prison and community-based treatment

Chapter 1: Recommendation 3

Develop risk/needs assessment and cost-analysis tools to be used at the time of sentencing

Practices being adopted to reduce recidivism:

Establish recidivism reduction as an explicit sentencing goal

Build flexibility into the sentencing laws so that judges can mete out sentences that are aimed at reducing recidivism

Use risk and needs assessments in formulating a sentence



Recommendation:
Lead the development of a web-based tool for purposes of illuminating sentencing options, defendant risk reduction and sentencing costs

Chapter 1: Recommendation 13

Expand prison work release programs



Recommendation:

Require the DOC to establish a process that:

- Expands the current capacity of the work release program to include those eligible individuals who are currently on waiting lists to join*
- Ensures that the capacity of the program is set at the maximum sustainable level and re-evaluate on a regular basis*
- Expedites the movement of individuals into work release so that the average participating population in each program is maintained as close to full capacity as possible*

Savings of
\$536,000
to **\$5.4 M**
annually if
20% of
maximum
sentence is
completed in
work release
programs

Chapter 1: Recommendation 15

Review and revise state-created employment restriction based on criminal records

Current Problems

- Hundreds of state-created restrictions affect over 40% of Florida's public and private sector jobs
- Some restrictions put jobs or places of employment off-limits to anyone with a record of criminal conviction

Benefits Gained from Change

- Gainful employment reduces recidivism
- Ability to work gainful jobs stimulates the economy



Recommendation:

Adopt the Governor's Ex-Offender Task Force's employment restriction reform recommendations

Chapter 1: Recommendation 11

Increase the maximum gain time accrual allowed

Estimated Cost Savings FY2012-2013

Percent of Nonviolent Inmates Released with Max Gain Time	20% Maximum Gain Time	25% Maximum Gain Time	30% Maximum Gain Time	35% Maximum Gain Time
100%	\$13.8 M	\$27.4 M	\$40.5 M	\$52.9 M
50%	\$6.9 M	\$13.7 M	\$20.2 M	\$26.4 M
25%	\$3.4 M	\$13.7 M	\$10.1 M	\$13.2 M
10%	\$1.3 M	\$2.7 M	\$4.0 M	\$5.2 M

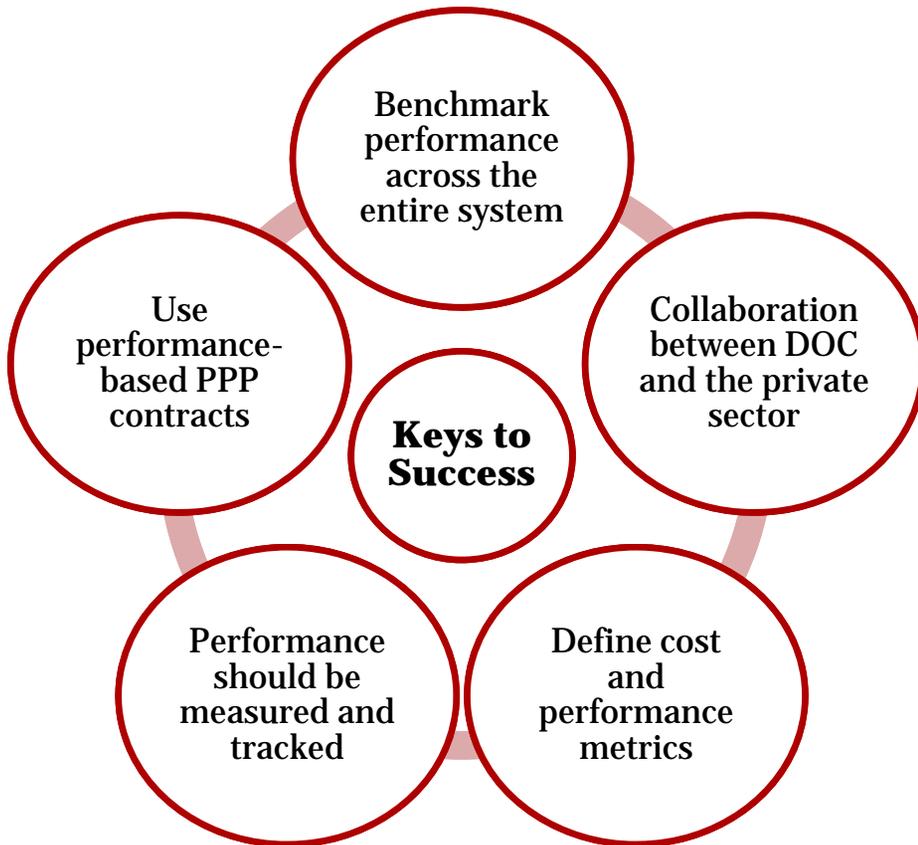


Recommendation:

Revisit 1995 amendments to gain time law, or include consideration of gain time laws as part of the top-to-bottom commission review

Chapter 1: Recommendation 19

Implement a Continuum of Care model through Correctional Public-Private Partnerships



Recommendation:

Implement continuum of care correctional model through PPPs, as appropriate.

Cost and performance improvement is expected and can be properly structured through contracting and monitoring.

DOC should be accountable for designing, implementing, and monitoring quality performance measures and benchmarks to ensure the state is MEASURABLY improving prisoner outcomes and cost-savings over time.

Chapter 1: Additional Recommendations

- **Create a Commission to Conduct Review of Criminal Justice System**
- **Establish Independent Oversight Body**
- **Require Written Justification for Sentences with low level scores of 44 or less**
- **Incentivize localities for reducing state incarceration and increasing local alternatives**
- **Align marijuana and cocaine possession laws with Texas and other states**
- **Update thresholds for property felonies**
- **Amends driving with suspended license law**
- **Expand electronic monitoring**
- **Institute post-incarceration drug courts**
- **Authorize parole for certain elderly offenders**
- **Expand Evidence-Based Programs that Reduce Recidivism**
- **Expand FAIR**
- **Reduce Costs of Inmate Hospitalization (in nonDOC)**
- **Expand Evidenced-Based Community Programs for Youth**



**Thank you for your interest in the work of
Florida TaxWatch, the Government Cost Savings
Task Force, and the Center for Smart Justice.**

**For more information,
please visit:**

[www. FloridaTaxWatch.Org](http://www.FloridaTaxWatch.Org)

Spd/6

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/4/2011
Date

Tab 3, Taxwatch reform
Bill Number

Barcode

Name BRIAN PITS

Phone 727/897-9291

Address 1119 Newton Ave S.
Street

E-mail _____

St. Petersburg FL 33705
City State Zip

Job Title Trustee

Speaking: For Against Information

Appearing at request of Chair

Subject CRIMINAL / Juvenile reform

Representing Justice-2-Jesus

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

Florida
TaxWatch



**Report and Recommendations
of the Florida TaxWatch
Government Cost Savings Task Force
for Fiscal Year 2012-13**

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Government Cost Savings Task Force

Dear Fellow Taxpayers,

It is our distinct honor to present the *Report and Recommendations of the Government Cost Savings Task Force for FY2012-13*. This report is the product of more than 50 dedicated Floridians, representing taxpayers from across the state, to find **a menu of recommendations worth more than \$4 billion in constructive and pragmatic cost-savings and containment for our state government**. We are honored to present this work as part of the continuing efforts of Florida TaxWatch and the *Government Cost Savings Task Force* to chart the path to a leaner and more efficient government by finding innovative solutions to some of the state's most complex and costly problems.

In order to assist our state's elected officials in their evaluation of various options to benefit Florida's taxpayers, this Task Force has provided **a menu of 135 extensively researched recommendations aimed at achieving significant cost-savings and cost containment in several areas of state government. Special focus has been placed on criminal and juvenile justice, health care, general government operations, procurement, and education.** Only by looking closely at the base budget, reducing unnecessary spending, increasing efficiency, maximizing current revenues, and revisiting problematic programs and policies can the state get its fiscal house in order.

This Task Force fully recognizes the challenging job of each elected official who serves broad and varied constituents and who must make difficult decisions that will impact the families and businesses of Florida including friends and neighbors who use the services and resources of this great state. As these services are vital to the families, businesses, and communities of Florida, it is even more imperative that smart, discrete, and judicious revisions and reductions be made to the state budget to create a more financially sound and efficient government under which each family, business, and community may prosper. The recommendations made in this report are intended to help be the means to this end.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Alexander".

John R. Alexander
Task Force Chair

A handwritten signature in black ink, appearing to read "Dominic M. Calabro".

Dominic M. Calabro
President and CEO



Government Cost Savings Task Force

Members of the Government Cost Savings Task Force for FY2012-13

John Alexander
Task Force Chair
Chairman and CEO
Alico, Inc.

Dominic M. Calabro
President and CEO
Florida TaxWatch

The Honorable Jeff Atwater
Chief Financial Officer of Florida

Joe Audie
President
Marble Medical, Inc.

Robert Beck
President
PinPoint Results, LLC

Barney Bishop
President and CEO
Associated Industries of Florida

Brad Boaz
Chief Financial Officer
Barron Collier Companies

The Honorable Pam Bondi
Attorney General of Florida

Janegale Boyd
President and CEO
Florida Association of Homes
and Services for the Aging

Colleen Castille
Principal
The Fiorentino Group

Chuck Cliburn
Senior Vice President
ACS, Inc.

Mike Cusick
Executive Director
Florida Coalition for Children

Claudia Davant
Managing Partner - Florida
National Strategies, Inc.

Ann Duncan
President
Vertical Integration

Steve Evans
IBM (*ret.*)

Charles Gray
Chairman and CEO
Gray Robinson, P.A.

Steve Halverson
President and CEO
Haskell Company

Ed Hannum
President and COO
AvMed Health Plans

The Honorable Mike Haridopolos
Florida Senate President
Designee Senator J.D. Alexander
Chair, Committee on Budget
Florida Senate

David Hart
Vice President, Governmental Affairs
Florida Chamber of Commerce



106 N. Bronough Street ° Tallahassee, FL 32301 ° www.FloridaTaxWatch.org ° Phone: (850) 222-5052 ° Fax: (850) 222-7476

Government Cost Savings Task Force

John Hogan

President and CEO
Capital Health Plan

Clayton Hollis

Vice President, Public Affairs
Publix Super Markets, Inc.

Michael A. Jennings

Vice President, Government Relations
Prudential

Alan Levine

President – Division 3
Health Management Associates

David Mann

Chairman and CEO - North Florida
SunTrust Bank

Bill McBride

Partner
Barnett, Bolt, Kirkwood, & McBride

Ron Nation

CEO
JVI Solutions

Pat Neal

President
Neal Communities

Susan Pareigis

President
Florida Council of 100

Barbara Ray

Managing Partner
Bryant Miller Olive

Michelle Robinson

President – S/E Region,
Public Affairs, Policy, & Communications
Verizon

John Thomas

President
Brandt Information Systems

Fred Seamon, Ph.D.

Senior Partner
MGT of America

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The Zumwalt Group



106 N. Bronough Street ° Tallahassee, FL 32301 ° www.FloridaTaxWatch.org ° Phone: (850) 222-5052 ° Fax: (850) 222-7476

Government Cost Savings Task Force

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Government Cost Savings Task Force

Executive Summary

As the nation recovers from one of the worst economic recessions in history, Florida continues to face fiscal challenges with persistently high unemployment and global economic uncertainty. In response to these challenges, Florida TaxWatch joined with leaders from across the state to embark on the monumental task of finding innovative solutions to some of the most costly and complex problems facing Florida. Through comprehensive analysis, renowned leadership, and empirical review, the *Government Cost Savings Task Force for FY2012-13* produced a **menu of 135 recommendations worth more than \$4 billion worth of immediately actionable ideas** to not only improve the operation and delivery of state government, but also to secure a sustainable economy for future generations in Florida.

In the summer of 2011, Florida TaxWatch convened the *Government Cost Savings Task Force for FY2012-13*, comprised of more than 50 community and business leaders along with current and former elected officials, to utilize and apply their acumen and expertise to the problems of state government. The Task Force provides a unique forum to thoroughly examine the operation and cost of government in key areas where efficiency enhancements and policy alterations should be implemented to reduce waste, contain costs, and improve taxpayer value.

The Report and Recommendations of the Government Cost Savings Task Force for FY2012-13 produced a menu of 135 recommendations broken down into nine core policy areas that span across the policy spectrum. If implemented, these recommendations will generate savings without compromising core services and programs for Florida's most vulnerable populations while providing much needed capital reserves for state government. All nine chapters feature a comprehensive report that details specific areas of improvement and potential solutions supported by cost savings estimates. Learning from the success of others, each chapter highlights best practices from other states who have successfully overcome similar problems. A brief summary of each chapter and contained recommendations is presented below.

Criminal and Juvenile Justice Reform

For the past two years, Florida TaxWatch and the *Government Cost Savings Task Force* have given special attention to the rising costs of Florida's criminal justice system, especially the state Department of Corrections. With a prison population of more than 100,000 costing taxpayers \$2.2 billion this past year, we can no longer afford the broken policy choices that have led to out-of-control growth with no measures of increased public safety and increased accountability—from both offenders and in terms of taxpayer results. There are many factors driving growth rates and cost. Therefore, it is important to address the many points at which honing our justice practices and policies through smart policy and budgeting decisions will result

in better societal outcomes: reduced taxpayer burden, reduced recidivism, improved public safety and healthier individuals, communities, and families. From the point at which a child's misbehavior first appears to the point at which an adult ex-offender leaves the system and returns to his family and community - and all the points in between - there are opportunities to use data and research to drive evidenced-based policy and budget decision making that will reduce costs of the ineffective practices of incarceration. All of these policies, and many more, must be addressed if we are to succeed in saving taxpayer dollars, improving public safety, and holding offenders more accountable. This chapter proposes recommendations ranging from expanding the use of civil citations, average length of stay, and value thresholds for property felonies to parole for certain elderly offenders and expanding evidence-based prison-based programs to reduce recidivism.

Healthcare Reform

While the Medicaid program dominates Florida's overall health expenditures, the provision of health care to public employees is a critical yet expensive responsibility of the state. Unsustainable health care costs have placed a growing burden on the state to finance healthcare-related services, such as prescription drugs, which cost the state more than \$2 billion annually. This section highlights areas of the non-Medicaid healthcare budget where policy changes will increase efficiencies and generate savings without reducing services.

As budget allocations for health care expenditures are increasing each year, this chapter proposes several recommendations to reduce expenditures in state health care that are fundamental changes needed to keep costs affordable while maintaining quality benefits in a competitive job market. These changes include containing state health care liabilities, controlling the cost of care, and reducing waste and fraud within the system. More insurance options also offer employees additional control over their health care allowing employees to select plans that best suit their individual needs. This chapter proposes recommendations ranging from using a defined contribution model and controllable wellness indicators to requiring all classes of employees to pay the same premiums for health insurance.

Procurement Reform

State agencies in Florida purchase large quantities of goods and services annually. These purchases include professional and construction services as well as off-the-shelf and proprietary commodities needed to support agency activities, such as office supplies, vehicles, and information technology. Establishing the most proficient processes for the procurement of these goods and services, however, remains an unresolved issue.

Florida has opted for the centralized procurement model; however, the current state procurement process suffers from a lack of enforcement, transparency, and linearity. Items that should be subject to competitive requirements remain exempt without due cause. Most importantly, multiple databases, some detrimentally outdated, continue to use separate classifications for goods and services make it extremely difficult to track agencies' compliance with competitive requirements and increase the amount of manual, administrative processes needed to complete

state procurements, contracting, and purchasing, which continue to sustain higher costs to the state than under an enterprise-wide purchasing, accounting, and auditing system.

This chapter proposes recommendations ranging from enforcing agency utilization of State Term Contracts and integrating procurement information across state purchasing and accounting system to using Automated State Contract Reporting system to ensure best prices and exploring an E-Cloud model for state purchases of commodities.

General Government Reform

While Florida's state agencies offer a myriad of valuable services to the state's residents, there is always room for improvement when it comes to making agencies more efficient and accountable in terms of the value they add for Florida taxpayers. Absent the market incentives and profit motives that determine how private businesses distribute their resources, agencies must take this responsibility upon themselves for the benefit of all of Florida's taxpayers to improve the efficiency of their operations. It is crucial that we reexamine the day-to-day operations of state agencies to ensure that Floridians are receiving the best value for their hard-earned tax dollars.

Reducing costs and increasing efficiency must be conducted without compromising the quality and level of core services provided to Floridians. Rather than implement across-the-board cuts, the state's workforce would benefit from the review and implementation of innovative practices already used in other states as well as in the private sector. This section provided ideas and recommendations to help rein in superfluous spending and make Florida's government agencies function more efficiently. This chapter proposes recommendations ranging from benchmarking operating expenses and adjusting annual appropriations to reduce fourth quarter dumping to eliminating paper checks for state disbursement and expanding teleconferencing to reduce travel expenses.

Revenue Enhancement

The State of Florida is expected to collect nearly \$40 billion in taxes and fees during FY2011-12, with almost half - \$19.8 billion - coming from the state sales and use tax. While state tax collections are on the rise there is always a difference between what is owed and what is actually collected, known as the "tax gap." A tax gap is inevitable – the Federal Government and every state, as well as every other discernable taxing entity in history, suffers some lost percentage due to a variety of factors. The key is to work toward shrinking the gap.

Enhancing state revenues by improving revenue collection and ensuring compliance with the rule of law is a fair way to help the state address the budget shortfall without adding undue tax burdens. This chapter proposes recommendations ranging from improving collections of remote sales tax and implementing a tobacco audit compliance system to re-establishing the Grants Clearinghouse Office and using contingency contracts for federal grants.

Medicaid Reform

The magnitude of Florida's multi-billion dollar Medicaid program is immense in terms of the number of people served, its critical importance, and certainly its cost. The program currently

provides a medical safety net for nearly three million Floridians. Government expenditures at both the state and federal level for the program are massive. Medicaid comprises 28.8 percent of the FY2011-12 state budget and spending on Medicaid in Florida has increased by 46.5 percent in just the last four years, rising from \$14.8 billion to \$21.6 billion. The cost is expected to continue to increase rapidly, exceeding the growth of the revenues to pay for it. The state's general revenue expenditures for Medicaid will increase significantly over the next three years, rising by some 27 percent to nearly \$5.5 billion. In order to reduce costs of the Medicaid program overall, this chapter proposes ways to reduce fraud and waste as well as alternatives to provider rate reductions. This chapter proposes recommendations ranging from managed care fraud controls to mitigating the effects of Medicaid provider rate reductions to nursing homes.

Pension Reform

Over the past decade, Florida has spent more than \$5 billion maintaining the existing retirement system. The difficulties surrounding the passage of recent reforms to the Florida Retirement System (FRS) are well known. Nevertheless, further measures are necessary to ensure the state remains efficient, the FRS remains sustainable in the long term, retirement accounts maintain solvent, and state positions remain attractive to tomorrow's workforce.

While the provision of retirement, disability, or death benefits is important to maintain competitiveness as an employer, benefits offered by the FRS are more generous than those offered by non-public sector employers (i.e. the private and non-profit sectors). In order to insure the future health of the FRS pension system, this chapter proposes recommendations ranging from closing the Defined Benefit plan and reforming and eliminating the Deferred Retirement Option Program.

Education Reform

Education is a key component to Florida's vitality, competitiveness, and long-term economic stability. Florida's education system consumes \$18.1 billion (26 percent) of the state's \$69.7 billion budget. Of this, \$12.1 billion is appropriated to K-12 schools, and \$4.5 billion appropriated to the state's community colleges and universities. However, numerous empirical studies indicate that increases in education spending do not always enhance productivity. As a result, this chapter proposes recommendations to contain costs and improve educational outcomes. This chapter proposes recommendations ranging from creating a mandatory statewide shared services program and requiring students to pay out-of-state tuition for excess hours to reforming the Bright Futures Scholarship Program.

Workforce Optimization and Productivity Enhancement

State agencies need to find ways to provide more service with fewer resources. For this to occur, agencies must do more than just work harder, they must develop innovative means of delivering services at a lower cost. Some of the best ideas come from the people who intimately know the processes that could be improved. The state could achieve significant savings through increasing employee productivity and optimizing the state workforce.

The first step to improving productivity is to establish a “culture of innovation” within state government which is critical to providing world class public services while also containing unit costs. A culture of innovation emphasizes continuous quality improvement, including benchmarks for performance, incentives, and recognition. To facilitate a culture of innovation, this chapter proposes incentive programs that increase efficiency and effectiveness in the workplace. These employee incentive programs (EIP) have become extremely popular in the private sector due to increases in cost-savings. Doing more with less to increase efficiency means agencies need to take a closer look at reducing the size of the bureaucratic workforce by ensuring that manager-to-employee ratios fall within accepted best practices. This chapter proposes recommendations ranging from the implementation of organically grown efficiency programs and expanding the use of agency savings-sharing program to comparing benchmarks for administrative costs and overhead across agencies.

Summary

The ***Report and Recommendations of the Government Cost Savings Task Force for FY2012-13*** has been presented with the hope of enhancing the operation of government, improving taxpayer value, and promoting a better Florida for tomorrow. The Task Force recognizes that each elected official must serve broad and varied constituents. As government services can be vital to the families, businesses, and communities of Florida, it is even more imperative that smart, discrete, and judicious revisions and reductions be made to the state budget to create a more financially sound and modern government under which each citizen may prosper.

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Government Cost Savings Task Force

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Government Cost Savings Task Force

Introduction

During the 2011 Legislative Session, the Florida Legislature cut nearly \$4 billion from the state's \$69 billion budget. Shortly after the budget's passage, Governor Rick Scott vetoed an additional \$615 million before signing the final bill. As a result of these comprehensive budget cuts, the Florida Legislature's Office of Economic and Demographic Research forecasts a small surplus in Fiscal Year 2012-13. Although a potential surplus is good news considering the painful cuts endured in the previous year, many economic factors can quickly shift current forecasts downward. This is no time for lawmakers to slow reform efforts. The state must continue to strive for maximum efficiency in all aspects of government while maintaining the premium effectiveness Floridians and our visitors deserve.

State economists highlight several caveats that could alter current forecasts including the unpredictability of recent growth due to national and international economic instability. The fluctuation in tax revenues closely correlates with consumer spending, which in turn is heavily impacted by consumer perceptions of the economy. Another main concern is the state's unemployment rate which has remained relatively static at 10 percent and above since 2009.

To achieve further sustainable growth and fiscal savings, the *Report and Recommendations of the Florida TaxWatch Government Cost Savings Task Force for FY2012-13* provides a menu of 135 well-researched recommendations aimed at achieving significant cost-savings and cost-containment in several areas of state government. These recommendations have been created by more than 50 concerned Floridians working over the course of the short summer months, to develop constructive, pragmatic, principled cost-savings and judicious spending reductions with special emphasis on key areas where implementation would not only improve efficiency, but also promote effective, sound fiscal policy without jeopardizing critical services for Floridians.

The menu of recommendations made by the Task Force is grouped into nine chapters, all of which include a comprehensive report that identifies key issues and problems currently facing each policy area. **The total estimated cost savings for all 135 recommendations is more than \$4 billion for FY2012-13.** These estimates are based on the best available data and assumptions made by Task Force members and experts in the public and private sectors. **While the Task Force believes full implementation should produce similar actual savings, the focus should be on the substance of the cost savings ideas and not the estimates.**

The work of the *Government Cost Savings Task Force for FY 2012-13* builds upon the 32-year-mission and successful track record of Florida TaxWatch to improve taxpayer value, citizen understanding, and government accountability. This mission has never been more vital as Florida must solve complex structural problems to create a more prosperous and sustainable

economic environment. Now is the time to enact reforms that will save taxpayer dollars this fiscal year and beyond through increasing efficiency, reducing fraud, and enacting smarter ways to stretch available revenues as far as possible without further cutting core services for Florida's most vulnerable. Our elected officials and policy makers have a challenging and difficult job – and it is desired that the work of this Task Force will help chart a path for a leaner, more efficient government in Florida.

Further, this report builds on the success of previous Florida TaxWatch *Government Costs Saving Task Force* efforts that have generated more than \$7 billion in cost-savings since the publication of its first report in January 2009. Last year, the ***Report and Recommendations of the Government Cost Savings Task Force for FY2011-12*** published 125 specific recommendations worth an estimated savings of \$3.5-\$4.5 billion. Following the close of the FY2010 legislative session, 30 Task Force recommendations were enacted (many more filed) by the Legislature. The description and bill numbers of these recommendations are listed below.

Implemented Recommendations for FY2011-12

Pension Reform

1. Reduce annual guaranteed rate of return for Deferred Retirement Option Program (DROP) participants from 6.5 to 3 percent

Senate Bill 2100 reduced the interest accrual rate for DROP participants from 6.5 to 1.3 percent for employees hired after July 1, 2011. Current DROP participants will maintain a 6.5 percent accrual rate.

Total Savings: \$80.9 million annually

2. Require FRS members to contribute to their retirement plans

Senate Bill 2100 requires FRS members contribute 3 percent towards retirement. However, DROP participants are not required to pay employee contributions.

Total Savings: \$456.5 million annually

3. Increase vesting period for FRS Pension Plan from six to ten years

Senate Bill 2100 increases vesting from six to eight years for employees hired after July 1, 2011. Vesting for existing employees will remain at six years of creditable service.

Total Savings: \$26.2 million annually

4. Reform the methodology used in calculating average final compensation (AFC)

Senate Bill 2100 increased AFC from five years to the average eight highest fiscal years of compensation for creditable service for employees hired after July 1, 2011. Existing employees AFC will remain at five years. SB 1128 removed unused annual/sick leave

from the AFC formula and capped overtime at 300 hours for those hired on or after July 1, 2011. These changes also apply to general employees of local pension plans.

Total Savings: \$68.1 million annually

5. Increase the normal retirement age (and minimum required years of service accordingly) for “regular” and “special risk administrative support” employee classes from 62 to 65 and 55 to 58 respectively

Senate Bill 2100 increased normal retirement age to 65 for regular employees and 60 for special risk for employees hired on or after July 1, 2011.

Total Savings: \$145.3 million annually

6. Tie automatic Cost of Living Adjustment (COLA) for public pension recipients to inflation with a 3 percent ceiling

Senate Bill 2100 suspended COLA for five years for employees hired on or after July 1, 2011.

Total Savings: \$404.8 million

Criminal and Juvenile Justice Reform

7. Increase the use of drug courts

Senate Bill 400 expands post adjudicatory treatment-based drug court programs as a sentencing option by increasing the total number of sentencing points an offender may accumulate and still qualify for the program.

8. Review and revise state employment restrictions based on criminal records

Senate Bill 146 creates the "Jim King Keep Florida Working Act" and changes Florida Law relating to the restoration of civil rights, restrictions on the employment of ex-offenders, and sealing and expunging criminal records. The bill allows offenders who have completed their sentences to qualify for state occupational licenses without having to have their civil rights restored.

9. Expand use of juvenile Civil Citation programs

House Bill 997 requires that juvenile Civil Citation programs – a type of diversion program - be established at the local level.

Total Savings: \$44 to \$139 million

10. Expand faith- and character-based prisons

Senate Bill 369 provides legislative intent to encourage the Department of Corrections to expand the use of faith- and character-based institutions. It also eliminates the requirement that at least 80 percent of participants in these institutions be within 36

months of release, thus expanding eligibility. With recidivism rates lower, in some cases, by 15% 3 years, post-release, the state should expect to realize tremendous annual savings incurred by these volunteer led programs.

11. Limit the commitment of juvenile misdemeanants

Senate Bill 2114 prohibits a court from committing a child adjudicated with any misdemeanor or probation violation to a residential facility. However, a court may commit a child to a low-risk or moderate-risk residential placement under certain circumstances.

Total Savings: \$24.6 million

Education Reform

12. Expand the Florida Tax Credit Scholarship Program

Effective July 1, 2011, House Bill 965 eliminated the 75 percent tax credit cap entirely. Previous Florida TaxWatch research has shown that this program saves significant state funds and expanding the program by raising the total cap would save millions. For every \$1 million that the cap is expanded, the state could enlarge the program by 253 additional students and save an extra \$266,000.

13. Amend the Class Size Reduction (CSR) amendment

House Bill 1255 allows class sizes to temporarily exceed the maximum if the school board determines adherence to be “impractical, educationally unsound, or disruptive to student learning.” An additional 3 students may be added to Pre-K to third grade classes, and 5 students may be added to fourth through twelfth grade classes.

Total Savings: \$300 million

14. Reduce the Cost of K-12 Textbooks

Senate Bill 2120 requires all public schools to adopt digital textbooks by the 2015-16 school year. The bill also requires schools to spend 50 percent of their textbook budget on digital material. The bill also permits schools to conduct pilot programs to test different digital textbook delivery methods. The results of the pilot programs are scheduled for submission and review to the Governor, Legislature, and Department of Education in September 2012. Specific cost savings will be available after this date.

Total Savings: \$80 million

15. Expand K-12 virtual education

Effective July 1, 2011, House Bill 7197 created the “Digital Learning Now Act”, which greatly expands the scope of the Florida Virtual School (FLVS) through a variety of means such as: authorizing virtual charter schools; authorizing blended instruction at charter schools; requiring school districts to provide at least three part-time and full-time

virtual instruction; and requiring high school students to take at least one on-line course in order to graduate.

General Government Operations Reform

16. Fully Utilize State Owned Space

Senate Bill 2000 includes language encouraging better utilization of state owned space. Senate Bill 2002 also requires that each agency to submit a list of building that are available for immediate lease and/or are surplus (not needed by the state and eligible for immediate sale).

Total Savings: \$2.5 million

17. Consolidate and Co-locate

Senate Bill 2002 requires state agencies to determine if possible savings can be derived from consolidating, co-locating, or restacking office space. If funds are found, funds to facilitate such an action appropriated funds among agencies may be transferred by the Office of the Governor.

18. Lease Renegotiation

Senate Bill 2002 requires the Department of Management Services (DMS) to renegotiate all private leases expiring before June 30, 2013 that are over 2,000 square feet in order to achieve cost reductions in future years. It also requires that Tenant Brokers be used in renegotiations of leased space over 150,000 square feet. The bill also allows the use of a tenant broker for renegotiation of leases to review the space needs of each agency, explore the possibilities of collocation, and review the length and conditions of renewals and renegotiations.

19. Increase Use of Electronic Receipts

Senate Bill 170 requires each state attorney and public defender to electronically file court documents with the clerk of the court, and receive court documents from the clerk of the court. The Task Force continues to recommend the expansion of electronic receipts in other areas of government.

20. Reduce Travel Costs

Senate Bill 2002 limits travel expenditures by agencies to only activities that are critical to each state agency's mission. No fund may be used for travel to foreign countries, conferences out of state, or staff-training activities unless expressed in writing by the agency head. The Task Force continues to recommend that more restrictions be placed on taxpayer-funded travel by agencies.

21. Expand use of teleconferencing (including online meetings and video conferencing) to reduce state travel expenses

Senate Bill 2002 requires that agency heads consider the use of teleconferencing or other electronic communication to meet the needs of an agency activity before approving mission-critical travel. The Task Force continues to recommend that further action be taken to expand the use of teleconferencing and other travel-less meeting technologies.

Medicaid Reform

22. Expand Medicaid managed care – MediPass

House Bills 7107 and 7109 expanded Managed Care to include the mandatory MediPass population (TANF-related and SSI) under its network.

Total Savings: \$26-\$43 million annually

23. Implement Medicaid statewide managed care

House Bills 7107 and 7109 implemented statewide managed care in order to provide fiscal savings and predictability to the state.

24. Medicaid patient centered medical home

House Bills 7107 and 7109 introduced a statewide patient centered medical home system.

Total Savings: \$100 million annually

25. Medicaid managed long term care

Senate Bill 2144 increased the use of managed long term care, increasing home and community based services, rather than institutionalized care.

Total Savings: \$11.5 million annually

26. Medicare Special Needs Plan (SNPs)

House Bills 7107 and 7109 require the state to manage care for dual eligibles by mandating enrollment into Medicare Advantage Special Needs Plans.

Total Savings: \$23 million annually

27. Reduce Medicaid fraud and abuse – Criminal and Administrative Sanctions

House Bill 7109 increases the disqualification period from five to ten years for those providers found to have committed fraud. The Task Force recommends continued action be taken by the 2012 Legislature to implement more sanctions against criminal and administrative violations.

28. Alternatives to Medicaid provider rate reductions – Medicaid co-payments

House Bill 7109 requires \$100 co-pay for non-emergency services provided in a hospital. The Task Force recommends further action be taken toward increasing co-payments as permitted by law should the 2012 Legislature consider reducing Medicaid provider rates.

29. Mitigate effect of Medicaid provider rate reductions – Nursing Staffing Requirements

Senate Bill 1244 reduced the nursing staff ratio from 3.9 to 3.6 hours. The Task Force recommends that the 2012 Legislature continue to reduce the nursing staff requirement per member per day to 2.6 hours.

30. Implement a statewide managed incontinence supplies program

Senate Bill 2000 created a statewide program for purchasing disposable incontinence supplies.

Total Savings: \$5 million annually

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Government Cost Savings Task Force

Criminal and Juvenile Justice Reform

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Foreword

The *Government Cost Savings Task Force for FY2011-2012*, made twenty-one specific recommendations to reform the criminal and juvenile justice system in Florida. Of these recommendations, five were enacted by the 2010 Legislature.

2010 Implemented Legislation:

1. Increase the use of drug courts:

- Senate Bill 400 expands post adjudicatory treatment-based drug court programs as a sentencing option by increasing the total number of sentencing points an offender may accumulate and still qualify for the program.

2. Review and revise state employment restrictions based on criminal records:

- Senate Bill 146 creates the "Jim King Keep Florida Working Act" and changes Florida Law relating to the restoration of civil rights, restrictions on the employment of ex-offenders, and sealing and expunging criminal records. The bill allows offenders who have completed their sentences to qualify for state occupational licenses without having to have their civil rights restored.

3. Expand use of juvenile Civil Citation programs:

- House Bill 997 requires that juvenile Civil Citation programs – a type of diversion program - be established at the local level.

Total Savings: \$44 to \$139 million

4. Expand faith- and character-based prisons:

- Senate Bill 369 provides legislative intent to encourage the Department of Corrections to expand the use of faith- and character-based institutions. It also eliminates the requirement that at least 80 percent of participants in these institutions be within 36 months of release, thus expanding eligibility. With recidivism rates lower, in some cases by 15 percent in the 3 years post-release, the state should expect to realize tremendous annual savings incurred by these volunteer led programs.

5. Limit the commitment of juvenile misdemeanants:

- Senate Bill 2114 prohibits a court from committing a child adjudicated with any misdemeanor or probation violation to a residential facility. However, a court may commit a child to a low-risk or moderate-risk residential placement under certain circumstances.

Total Savings: \$24.6 million

Introduction

For the past two years, Florida TaxWatch and the *Government Cost Savings Task Force* have given special attention to the rising costs of Florida's criminal justice system, especially the state Department of Corrections. With a prison population of more than 100,000 costing taxpayers \$2.2 billion this past year, we can no longer afford the broken policy choices that have led to out-of-control growth with no measures of increased public safety and increased accountability—from both offenders and in terms of taxpayer results. In the past 20 years, corrections spending more than quadrupled.

There are many factors driving growth rates and cost. Therefore, it is important to address the many points at which honing our justice practices and policies through smart policy and budgeting decisions will result in better societal outcomes: reduced taxpayer burden, reduced recidivism, improved public safety and healthier individuals, communities, and families. From the point at which a child's misbehavior first appears to the point at which an adult ex-offender leaves the system and returns to his family and community—and all the points in between--there are opportunities to use data and research to drive evidenced-based policy and budget decision making that will reduce costs of the ineffective practices of incarceration. All of these policies – and many more – must be addressed if we are to succeed in saving taxpayer dollars, improving public safety, and holding offenders more accountable. The cost-saving recommendations set forth here are a beginning and point to the fact that Florida needs the contributions of an expert, data-driven criminal justice and corrections commission to conduct a comprehensive review of the justice system. Fully assessing and examining the data will allow for a thoughtful, deliberative process to determine what, if any, evidence-based, fiscally responsible approaches can be taken to reverse prison growth. The creation of such a body is the first recommendation in this section.

Background – Florida's stunning corrections growth

Over the last forty years, Florida, like states across the nation, made a series of policy decisions that have driven a dramatic increase in its prison population, which reached 102,008 inmates in May 2011,¹ up from 33,681 on June 30, 1988.² Inevitably, the costs associated with incarceration have increased just as dramatically. In 1988, the correctional budget was \$502 million; in FY2011-12 it has jumped to nearly \$2.2 billion.

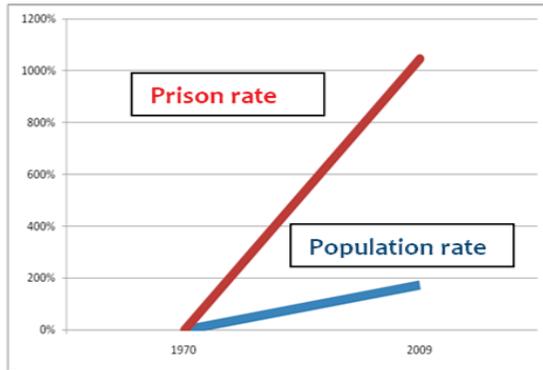
The growth in the prison population is not attributable to Florida's overall population growth. From 1970 through 2010, Florida experienced significant growth – a 2.8-fold growth in its population. But during that same period, the prisons grew *11.7-fold*.

¹ Criminal Justice Estimating Conference, 6/3/11, Office of Economic and Demographic Research, Florida Legislature. <http://www.edr.state.fl.us/Content/conferences/criminaljustice/cj2.1.pdf>.

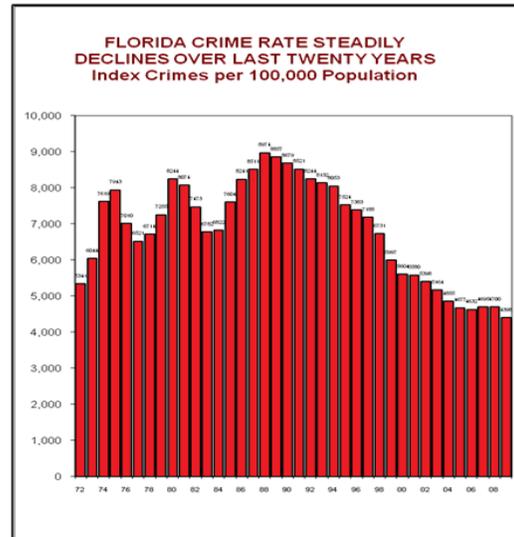
² Florida Department of Corrections: Centuries of Progress 1988-1990. Available at: www.dc.state.fl.us/oth/timeline/1988-1990.html (last retrieved June 22, 2011).

Crime rates do not explain the growth either. Crime rates fluctuated up and down during the seventies and eighties, but starting in 1988, the crime rate has declined steadily each year but one, eventually reaching a 40 year low in 2010. The crime rate certainly did not increase more than 11-fold as the prison population has done.

**1970 – 2009 Growth Rates
Florida population vs. prison population**



Sources: Legislative Committee on Intergovernmental Relations (LCIR) and Office of Economic and Demographic Research



Source: Office of Economic and Demographic Research

The increase in the prison population has been achieved by the increasing *rate* of incarceration. Policy choices dictated that result. The rate of incarceration is the percent of people that Florida locks up in prison. **If Florida incarcerated people today at the same rate as in FY1972-73 (126.8 per 100,000), the prison population would be 23,848, at a cost of \$446 million instead of the \$2.4 billion Florida spent in FY2009-10.**



Source: Pew Center on the States

It is tempting to credit the decline in crime to the increase in the rate of incarceration. Some have tried hard to make such a case, but research shows that while some decrease in crime is attributable to incarcerating dangerous criminals, increased rates of incarceration offer diminishing returns and a negative benefit-to-cost ratio. This is especially true when we increasingly incarcerate people for nonviolent drug offenses and other low-level crimes.³

The Vera Institute for Justice examined the key studies on this issue and found that; **“Analysts are nearly unanimous in their conclusion that continued growth in incarceration will prevent considerably fewer, if any, crimes – and at substantially greater cost to taxpayers.”**⁴ Indeed, several states are finding that they can decrease their crime rates while simultaneously decreasing their incarceration rates.

How has this been achieved? By data-driven strategies designed both to improve public safety and save taxpayers money. States are now reexamining and revising the policy choices that led to such spectacular prison growth. As a result, in 2009 the United States prison population declined for the first time in 38 years.⁵ Twenty-six states reduced their prison rolls in 2009, including some of the toughest on crime states such as Texas, Mississippi, and South Carolina, which have enacted reforms to stem the tide of growing prison populations. Unfortunately, Florida was not among them.

Four drivers of prison population growth

The policy changes Florida has made over the last thirty years have had long lasting implications. Reviewing patterns of growth over this time period, the *Florida TaxWatch Government Cost Savings Task Force* has identified four drivers of growth. All of which should be addressed, and additional data and trend review is imperative to understand the complexities of the system and work toward reduction in population and cost.

- **The elimination of parole and the adoption of policies lengthening both sentences and the period of incarceration**
- **Widespread use of very short state prison sentences in lieu of community-based alternatives (e.g., jail, probation, treatment, electronic monitoring)**
- **State prison incarceration for technical probation violations**
- **Recidivism – people *returning* to prison for new crimes or violations**

Florida’s juvenile justice system – criminalizing youth instead of offenses

A key population to focus on in slowing the growth of prison and improving public safety is found in those children who touch and enter the juvenile justice system. We know that children who enter as delinquent youth are much more likely to return as adult offenders, with a larger taxpayer and societal bill in hand. But there are ways to intervene, grounded in years of data and research that can slow the rate at which children cycle into the deeper parts of the criminal

³ Pew Center on the States, Public Safety Performance Project, *One in 31: The Long Reach of American Corrections*, March 2009, at 17-21.

⁴ Stemen, Don, *Reconsidering Incarceration, New Directions for Reducing Crime*, Vera Institute of Justice, January 2007.

⁵ Pew Center on the States, *Prison Count 2010*, April 2010.

justice system that result in better outcomes, individual and societal, and significantly reduce taxpayer costs.

In Florida, prevention, diversion and progressive sanctions policies have resulted in safely implementing a significant reduction in commitments to DJJ between FY2005-06 and FY2009-10.⁶ More than \$85 million was saved in FY2008-09 alone as a result of these policies. These outcomes are notable, but reform was long overdue in Florida. In 2006, Florida incarcerated children at a rate 50 percent higher than the national average.

Florida will spend more than \$50 million on children committed to non-secure residential facilities on misdemeanors and probation violations this year. Most of these youth are housed in large, congregate-care detention centers awaiting court hearings and are held in custody at costs ranging from \$100 to more than \$300 per day. Few of these youth offenders are confined for serious offenses. Most are charged with non-violent property or drug crimes, and 40 percent of all children are committed for technical violations of probation or misdemeanors, including non-violent property offenses and public order violations.

Recently, much work has been done focused on improving Florida's juvenile justice system. In 2011, Florida passed legislation expanding Civil Citation programs statewide, which is a diversionary alternative to traditional juvenile corrections methods. Additionally, the Legislature passed Senate Bill 2114, which prohibits commitment of a youth whose underlying offense is a misdemeanor to a restrictiveness level of nonresidential. However, in spite of determined efforts and substantial progress over the past five years, there is still significant room for improvement.

Reforms, such as prevention, intervention, diversion, and treatment, cost less than commitment. They are also better at holding youth accountable and reducing recidivism. While Florida must continue to incarcerate youth who pose serious risks to public safety, detention and incarceration of young people should be an option of last resort. Getting smart on crime requires efficient and effective use of limited resources in prevention, diversion, and intervention programs, especially when it comes to juvenile justice.

Conclusion

Florida's antiquated practices and policies of incarceration—beginning with juvenile inputs into the system, all the way through to ineffective reentry practices that do not reduce recidivism-- have pushed the prison population to more than 100,000. That is 100,000 people incarcerated who have made someone a victim and then handed the taxpayers a bill to house them. This population growth is simply unsustainable. There are more effective, less costly policy choices we can make to significantly reduce taxpayer burden, and protect and improve public safety. The following recommendations address these challenges, but more work is imperative if Florida is to significantly reduce taxpayer burden.

⁶ From FY2005-06 to FY 2009-10, the number of DJJ commitments decreased by 28%. During the same period the overall crime rate also fell, which undoubtedly accounts for some portion of the decrease.

Justice Reform Recommendations

Section I: Big Picture Recommendations

The first four recommendations will not result in immediate cost savings but are essential to long-term cost containment and the improvement of public safety.

1. Create a commission to do a top-to-bottom review of the Criminal Justice System and Corrections

Florida has not conducted a comprehensive review of the laws and policies that have been driving its prison growth, nor does it have an entity charged with the responsibility of doing so.

Senate Bill 2000, passed in 2008 (Chapter No. 2008-54), established the Correctional Policy Advisory Council, which was to evaluate “correctional policies, justice reinvestment initiatives, and laws affecting or applicable to corrections, and for the purpose of making findings and recommendations on changes to such policy, reinvestment initiatives, and laws,” and to advise the Legislature and Governor on such matters. Members were appointed, but the Council never met; and the enabling legislation provides that the Council shall be abolished on July 1, 2011.

During the 2011 Legislative Session, two bills relating to the creation of an overview commission were withdrawn and died in the Criminal Justice Committee. SB1932 would have established a Justice Reinvestment Committee and SB1936 would have created a board of corrections and juvenile justice. Both the committee and the board would have been established in the Executive Office of the Governor.

Such a body, but expanded in both scope and membership, is essential to the deliberative process necessary for meaningful, sustainable, cost-effective justice reforms. Virtually every state that has made the substantive policy changes that have succeeded in reducing the size of their corrections population has accomplished this through a bipartisan deliberative body engaging all three branches of government. Indeed, the Pew Center on the States’ Public Safety Performance Project requires such a cooperative effort for it to provide technical assistance in identifying the key drivers of prison growth and developing a menu of options to reverse the trend.

While this report contains many recommendations that can save tax dollars and improve public safety, we know it does not address every possibility. Florida needs the contributions that such a deliberative body could add to justice reform.

Recommendation: *The Governor, with the bipartisan, bicameral cooperation of the Legislature and the Judiciary, should create a commission composed of members of the executive, legislative, and judicial branches along with experts in criminology, sentencing, corrections, veterans affairs, mental health, substance abuse, reentry, and community supervision to do a top-to-bottom data-driven assessment of Florida’s corrections and criminal justice system with a focus on cost-effective ways to improve public safety while slowing prison growth. This commission should be required to produce comprehensive, actionable reforms in time for consideration by the Legislature in 2013.*

2. Establish an independent oversight body over the Departments of Corrections and Juvenile Justice

As the bipartisan Commission on Safety and Abuse in America's Prisons found in 2006, "All public institutions, from hospitals to schools, need and benefit from strong oversight. Citizens demand it because they understand what is at stake if these institutions fail. Prisons and jails should be no exception. They are directly responsible for the health and safety of millions of people every year, and what happens in correctional facilities has a significant impact on the health and safety of our communities. Corrections leaders work hard to oversee their own institutions and hold themselves accountable, but their vital efforts are not sufficient and cannot substitute for external forms of oversight."⁷

As a March 2010 Florida TaxWatch report⁸ and the July 2009 *Florida Trend* reported, the critical component of any such oversight is the entity's independence. Under current law, the Corrections and Juvenile Justice Inspectors General are appointed by the agency's secretary and may be removed without cause by the secretary. Indeed, in 2003, the Secretary of DOC fired the Inspector General who was uncovering the misconduct of a DOC employee who was a friend of the Secretary. Later, both the Secretary and the employee who was being investigated were indicted and incarcerated by the Federal Government – but, by then, correctional oversight had already been compromised.

No scandal involving the Florida DOC Inspector General's office has emerged since that time, but structurally, with the IG responsible to just the Secretary and able to be fired at will, the independence needed simply does not exist, nor is there adequate transparency. The IG's very brief annual report (most of it lays out its duties and authority rather than what has been accomplished) provides data on the number and types of investigation, but nothing whatever about their disposition, except how many cases are referred for prosecution.

There are a number of models for independent corrections oversight. California, for instance, created an independent inspector general's office, which has broad oversight -- investigatory, monitoring and inspecting, along with a requirement that each warden be audited one year after appointment and each prison audited every four years. Currently, Florida has oversight of medical and mental healthcare established through the Correctional Medical Authority (CMA) and this could serve as a model for general oversight.

The American Bar Association has studied the various types of oversight of corrections agencies in place among the states and in other nations and has developed a set of key requirements of effective correctional monitoring. Among these requirements are:

- Independence from corrections
- Headed by a person appointed for a fixed term by an elected official, subject to legislative confirmation, and subject to removal only for just cause
- Sufficient expert and trained staff

⁷ Gibbons, John. "Confronting Confinement", the Commission on Safety and Abuse in America's Prisons, June 2006. Available at: http://prisoncommission.org/pdfs/Confronting_Confinement.pdf

⁸ Bragg, Cecil T., CPA, "How Independent Are Florida Inspectors General?," March 2010

- Duty to conduct regular inspections of the facilities, as well as the authority to examine, and issue reports on, a particular problem at one or more facilities.
- Authorization to inspect or examine all aspects of a facility's operations and conditions including, but not limited to: staff recruitment, training, supervision, and discipline; inmate deaths; medical and mental health care; use of force; inmate violence; conditions of confinement; inmate disciplinary processes; inmate grievance processes; substance-abuse treatment; educational, vocational, and other programming; and reentry planning.
- Authority to conduct both scheduled and unannounced inspections
- Authority to obtain and inspect any and all records, including inmate and personnel records, bearing on the facility's operations or conditions.
- Authority to conduct confidential interviews with any person, including line staff and inmates, concerning the facility's operations and conditions; to hold public hearings; to subpoena witnesses and documents; and to require that witnesses testify under oath.
- Requirement of an annual report of its findings and activities that is public, accessible through the Internet, and distributed to the media, the jurisdiction's legislative body, and its top elected official.⁹

Recommendation: *An independent entity, accountable to the Governor, Legislature and the people of Florida, should be established with oversight, investigating, inspecting, monitoring, and reporting authority over state corrections and juvenile justice and their facilities. It should also establish performance measures and review and report on the data collected pursuant to such measures.*

3. Develop risk / needs assessment and cost-analysis tools to be used at the time of sentencing (Missouri model)

Since Florida first enacted its Sentencing Guidelines in 1983, Florida's sentencing policy has explicitly rejected rehabilitation as a primary purpose of sentencing. Today, under the Criminal Punishment Code, adopted in 1998, the policy reads: "The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment."¹⁰

Thus, the calculation used to determine the sentence focuses not on risk or needs, or the likelihood of reoffending, but on the appropriate dose of punishment, based on static risk factors such as the nature of the primary offense and any additional offenses, prior criminal history, and injury to the victim. These are factors that cannot change and thus cannot be addressed through targeted interventions.

Florida's sentencing policy is consistent with the trend across the U.S. that began in the late seventies with determinant sentencing, focusing on punishment (called "just deserts"), deterrence

⁹ American Bar Association, "Key Requirements for the Effective Monitoring of Correctional and Detention Facilities", August 2008.

¹⁰ 921.002 (b), The Criminal Punishment Code

and incapacitation. (It must be said that all states did not move in this direction. For instance, Article 1, Section 12 of the Alaska constitution provides that “Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.”)

Yet, as a 2006 National Conference of State Courts survey found, “the top concerns of state trial judges hearing felony cases included the high rates of recidivism among felony offenders, the ineffectiveness of traditional probation supervision and other criminal sanctions in reducing recidivism, restrictions on judicial discretion that limited the ability of judges to sentence more fairly and effectively, and the absence of effective community corrections programs. The survey also found that the state chief justices believed that the most important sentencing reform objective facing the state courts was to improve public safety and reduce recidivism through expanded use of evidence-based practices and programs, including offender risk and needs assessment tools.”¹¹

While evidence-based approaches to rehabilitation have been most commonly associated with prison and community-based programs, states, in response to this frustration and stubborn recidivism rates, have been developing policies and practices that address risk at the time of sentencing so that the sentence is most appropriate to the individual defendant’s risks of recidivating.¹²

Accordingly, states are moving away from policies that barely consider the public safety objective of reducing recidivism (and thus reducing crime) and are instead embracing sentencing policies and practices based on what research has demonstrated and which helps to rehabilitate people convicted of crimes and to reduce recidivism. This is at the heart of drug courts and other treatment-oriented courts (also called problem-solving courts), regardless of whether the official state policy favors or eschews rehabilitation.

Among the practices being adopted are:

- **Establishing recidivism reduction as an explicit sentencing goal.** The Oregon Judicial Conference, for example, requires judges to consider the sentence’s potential impact on reducing future criminal conduct.
- **Building flexibility into the sentencing laws so that judges can mete out sentences that are aimed at reducing recidivism.** As the Pew Center on the States has found, “The research indicates that whether a particular offender is an appropriate candidate for recidivism reduction cannot accurately be assessed relying solely on the type of offense committed and the offender’s prior criminal history. Individual offender characteristics must also be taken into consideration. This means shorter or

¹¹ Warren, Roger K., Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries, for the Crime and Justice Institute, National Institute of Corrections, and National Center for State Courts, The Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division, 2007.

¹² Pew Center on the States, Public Safety Policy Brief, “Arming the Courts with Research: 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Cost,” May 2009.

probationary sentences for some offenders, and perhaps longer prison terms for others.”¹³

- **Using risk and needs assessments in formulating a sentence.** Rather than focusing only on the unchangeable static factors (nature of the crime, criminal history, etc.) a validated tool that assesses “dynamic” risks and criminogenic needs (e.g., low self-control, substance abuse, antisocial attitudes, criminal thinking) can guide sentencing so that it results in effective treatment.

Missouri’s Sentencing Commission has developed a web-based tool for judges to use in sentencing that provides them extensive information about sentencing options and the risks and costs associated with each alternative. This tool is available for use by judges, prosecutors, defendants and their attorneys, and the public. The user simply types in the code number for the highest level offense upon which the defendant has been (or will be) convicted, along with demographic, criminal history, substance abuse involvement, education and other information about the defendant, and the tool provides the user with the recommended sentences, the risk assessment, recidivism projections and the costs of incarceration, supervision, and community alternatives, including treatment where warranted.

Recommendation: *The appointed commission recommended above should lead the development of a similar web-based tool for purposes of illuminating sentencing options, defendant risk reduction and sentencing costs.*

Section II: Cost-saving Recommendations Related to Sentencing People Convicted of Low-level Offenses /Short-term Sentences

As DOC reports in its annual sentencing report,¹⁴ one of the notable impacts of the 1998 repeal of the Sentencing Guidelines and the enactment of the Criminal Punishment Code is that “all felony offenders have the potential to receive a prison sentence, whereas many under the guidelines were, by policy, excluded from such a possibility.” In FY2008-09, only 28.2 percent of the new admissions to prison were incarcerated for violent crimes; the rest were admitted for drug, property or “other” offenses. Sentencing practices vary considerably from county to county, but all counties send increasing numbers of nonviolent low-level offenders to prison.

4. Require written justification for state prison sentences given to individuals with low sentencing scores – 44 or less (currently 22 or less)

Under Florida law, a person who has been convicted of a felony in the third-degree may be punished by a term of imprisonment not exceeding 5 years.¹⁵ The discretion provided judges is limited, however, by the Criminal Punishment Code, which essentially establishes minimum sentences.¹⁶ Under the Code, sentencing scores are used to calculate the *lowest* permissible

¹³ *Ibid.*

¹⁴ Florida Department of Corrections, “Florida’s Criminal Punishment Code: A Comparative Assessment”, September 2009.

¹⁵ Section 775.082, F.S., specifies the penalty structure for the different felony classifications.

¹⁶ (Chapter 921, the Criminal Punishment Code applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.)

sentence. Offenses are ranked under this law according to the seriousness of the most serious offense from one to ten. Calculation of the total sentence points includes multiple factors, such as secondary offenses, injury to the victim, and prior record.

If the total number of sentence points equals or is less than 44 points, the *lowest* permissible sentence is a non-state prison sanction,¹⁷ but the non-state sanction is still within the discretion of judge to impose or not. Until 2009, a judge had unfettered discretion to sentence any person convicted of a third-degree felony for up to five years in prison, regardless of the total sentence score calculated under the Criminal Punishment Code. That year, the Legislature had discovered that thousands of defendants with point scores less than the 44-point threshold recommended for a prison sanction were nonetheless sentenced to state prison.

Effective July 1, 2009, 775.082, F.S., (SB 1722) was amended to require the court to sentence those with 22 points or less (and that have not been convicted of a forcible felony) to a non-state prison sanction unless the court makes written findings that a non-state prison sanction could present a danger to the public.

Still, as OPPAGA reported in October 2010, in FY2009-10, 11.5 percent of defendants with sentencing scores between 22 and 44 were sent to prison (1,470 individuals), and 2.6 percent (364 people) of those with scores of 22 and below were sent to prison.¹⁸ This is a reduction over the previous fiscal years, but it is not sufficient.

Figure 1: Sentencing Scores and Sentences FY 2007-08 and FY 2008-09

Sanction Imposed	Recommended Sanction Category							
	FY 2007-2008 Sentence Dates ¹				FY 2008-2009 Sentence Dates ²			
	22.0 Points or Less	22.1 to 44.0 Points	More than 44.0 Points	Total	22.0 Points or Less	22.1 to 44.0 Points	More than 44.0 Points	Total
State Prison	1,230	5,150	13,530	19,910	1,204	5,145	13,325	19,674
	3.4%	13.2%	60.7%	20.4%	3.9%	13.8%	61.2%	21.8%
Community Control	997	2,234	1,203	4,434	872	2,152	1,273	4,297
	2.8%	5.7%	5.4%	4.6%	2.8%	5.8%	5.8%	4.8%
Probation	23,160	18,009	4,507	45,676	19,914	17,625	4,491	42,030
	64.1%	46.3%	20.2%	46.9%	63.9%	47.4%	20.6%	46.7%
County Jail	10,416	13,022	2,903	26,341	8,910	11,911	2,551	23,372
	28.8%	33.4%	13.0%	27.1%	28.6%	32.0%	11.7%	25.9%
Other	336	520	154	1,010	245	338	124	707
	0.9%	1.3%	0.7%	1.0%	0.8%	0.9%	0.6%	0.8%
Total	36,139	38,935	22,297	97,371	31,145	37,171	21,764	90,080
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

*Total points greater than 44.
¹ Offense dates on or after October 1, 2006.
² Offense dates on or after October 1, 2007.

According to the data provided in the above figure, a 10 percent diversion of individuals with 44 or less points would save \$1.6 million, annually. **If half of these individuals could be**

¹⁷ Section 775.082, F.S., specifies the penalty structure for the different felony classifications.

¹⁸ OPPAGA, *Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings*, Report No. 10-54, October 2010

successfully diverted from prison, the state could realize an annual savings of \$31.4 million.¹⁹

Recommendation: *The Legislature should further revise s.775.082, Fl. Statutes, to require written justification for sentencing individuals with 44 or fewer points to state prisons.*

5. Incentivize localities to reduce their rates of state incarceration and increase local alternatives

Florida, like many other states, has been tracking and wrestling with the increasing phenomenon of local courts sentencing individuals to state prison under circumstances that would have equally warranted, under existing law, local jail sentences or community-based alternatives.

In some states, the cost of local incarceration is borne by local governments (in Florida, it is the counties), while the cost of state prisons is borne wholly by the state. In Florida, this may be one of the reasons behind the common use of year-and-a-day sentences (and year-and-a-month in one county), which, by law, send individuals to state prison at state cost. A sentence of just one day less, and the costs would inure to the county.

In many cases, the state prison sentence actually served is just a few months because the majority of the sentence has already been served (and credited against the total) in jail, pending disposition of the case. Significantly, on a per-bed basis, the first six weeks of the sentence are the most costly because every new prisoner begins the sentence at a reception center and the per-diem at such facilities (\$85.94) is more than twice the cost of a bed, for instance, in a typical male facility (\$42.31). Thus, the cost of a short-term sentence can be far greater per day than that of a longer term sentence.

In light of this phenomenon, some states are looking to reverse or lessen the incentives to impose state prison sentences on people who would be equally or better served in the local community – or specifically incentivize counties for keeping low-level offenders out of state prison.

In Illinois, for example, the Crime Reduction Act (Public Act 96-0761) established the Adult Redeploy Illinois program (based on its successful Juvenile Redeploy program), which provides financial incentives to local jurisdictions for designing community-based programs to treat offenders in the community instead of sending them to state prisons.

In states such as California, Colorado, Arizona, Kansas, and Alabama, incentive funds are also being made available to localities to reduce recidivism and to reduce the number of probation revocations that land people back in prison. Indeed, in 1968, when Ronald Reagan was governor of California, one of the strategies employed to reduce the prison population by 34 percent over the course of his governorship was to provide counties incentives to keep individuals from being sent to prison.²⁰

¹⁹ The average daily cost of \$44.03 per inmate was used in calculations (weighted average that excludes the daily cost of reception centers based on the Florida Department of Corrections FY08-09 Budget Report.) These estimates accounted for \$5,000 in assumed diversion program costs per diverted offender.

²⁰ Palta, Rena, “Prison Overcrowding: What Would Reagan Do?”: San Francisco Chronicle, Oct. 4, 2010.

There are many possible approaches to incentivizing local sentences. If the state reimbursed counties 50 percent of the savings achieved when counties reduce the number of offenders sent to state prison that are instead sentenced to local options (jail or community-based alternatives, including electronic monitoring), taxpayers would save 50 percent of the cost of diverting each such person from state prison, and the localities would reap the benefit of funds they would not have otherwise. Of course, critical to such an approach is assurance that these are true diversions and not local sentences of people who would have been locally sentenced anyway. Therefore, counties would be able to access state funds only if they materially reduce the number of low-level offenders sent to state prison, which would be measured against a baseline rate of offenders that each county sent to state prison in previous years.

From 2005 to 2009, an average of 14 percent of all new commitments has been sentenced under the year-and-a-day practice. This is an average decline of approximately 9 percent in year-and-a-day sentencing over the previous five years.²¹ Assuming that many of the individuals sentenced to a year-and-a-day sentence would be the ones that would avoid prison if proper incentives were provided to the counties, and assuming the percent of new commitments sentenced to a year-and-a-day remains constant at 14 percent, it is **estimated that expanding state prison diversion would result in \$4.7 million to \$93 million savings over the next three years. Assuming the percent of inmates sentenced to a year-and-a-day continues to decline 9 percent annually, it is estimated that Florida would save between \$2.6 million and \$51.3 million.**

Figure 2: Estimated Cost Savings

Scenario 1- Approximately 14% of new commitments sentenced year-and-a-day				
	Number of Eligible New Entrants	50% Diverted	25% Diverted	10% Diverted
FY2011-12	4,934	\$30,930,877.98	\$15,465,438.99	\$1,546,543.90
FY2012-13	5,008	\$31,395,152.71	\$15,697,576.36	\$1,569,757.64
FY2013-14	5,108	\$32,022,669.60	\$16,011,334.80	\$1,601,133.48
Scenario 2 - Average 9% annual decline in number of new commitments with year-and-a-day sentences				
	Number of Eligible New Entrants	50% Diverted	25% Diverted	10% Diverted
FY2011-12	2,986	\$18,718,286.51	\$9,359,143.25	\$935,914.33
FY2012-13	2,719	\$17,047,166.95	\$8,523,583.47	\$852,358.35
FY2013-14	2,477	\$15,525,240.56	\$7,762,620.28	\$776,262.03

Recommendation: *Florida should reverse the incentives counties now have to send people convicted of low-level nonviolent crimes to state prisons and reward them for sentencing them to community-based alternatives.*

²¹ Calculations use prison data and projected new commitments from the Justice Estimating Conference. The average daily cost of \$44.03 per inmate was used in calculations (weighted average that excludes the daily cost of reception centers based on the Florida Department of Corrections FY08-09 Budget Report). These estimates accounted for \$5,000 in assumed diversion program cost per diverted offender.

6. Align Florida’s marijuana and cocaine possession laws with Texas and other similar states

Florida laws authorize the incarceration in state prisons for the possession of very low quantities of drugs. Possession without intent to deliver or distribute of over 20 grams (7/10th of an ounce) of marijuana in Florida is a felony punishable by up to five years in prison. By contrast, in Kentucky and New York, to reach the felony level the accused must have possessed 8 ounces or more (11 times the Florida felony amount); in Texas, it’s 4 ounces.

Possession of *any* amount of cocaine is also a felony in Florida and this offense has been a major driver of prison growth.

People convicted of drug offenses make up 19.8 percent of the prison population; those convicted of simple possession of cocaine made up 19 percent of new commitments (1,938 people) for drug offenses in 2009. According to OPPAGA, “1,265 drug possession inmates currently in prison scored fewer than 5 prior record points (likely no significant prior offenses). If half were diverted, the state would save \$10.4 million annually.”²²

Across the country, states are making changes in their drug laws to reduce penalties from felonies to misdemeanors.²³ For instance, in 2010, the Colorado legislature amended its drug possession laws to make possession of most drugs (e.g., cocaine and heroin) a misdemeanor rather than a felony (and marijuana possession is decriminalized in Colorado). Colorado is reinvesting the money saved in treatment programs.²⁴

As of July 1, 2010, there were 2,260 inmates in the custody of the Florida Department of Corrections due to charges of illegal possession of marijuana or cocaine. One third of these inmates were first-time offenders. The average maximum sentence for illegal possession is 2.9 years with an average of 2.17 years for first time offenders. **If half of the first-time offenders were diverted from prison, the state could save approximately \$6.7 million, annually.**²⁵ **A 50 percent reduction in *all* current drug offenders serving time for cocaine or marijuana possession would constitute a savings of \$21.2 million.**

Recommendation: *The Legislature should amend s.893.13(6)(b), Florida Statutes, to reclassify low-level marijuana and/or cocaine possession as a misdemeanor.*

7. Update value thresholds for property felonies

In Florida, most theft, fraud, and other property offense laws establish the dollar threshold that makes the crime a felony at \$300; other thresholds are even lower. For instance, for food stamp fraud it is \$200. For fraud through issuing a worthless check or stopping payment on a check, it is \$150. And for removal of a fixture from rental property if a landlord’s lien has been placed on

²² OPPAGA, Options for Reducing Prison Costs, Research Memorandum, March 3, 2009.

²³ See, e.g., Vera Institute of Justice, Criminal Justice Trends; Key Legislative Changes in Sentencing Policy, 2001–2010; September 2010.

²⁴ Colorado Criminal Justice Reform Coalition, “2010 Legislative Summary,” 2010.

²⁵ As of July 1, 2010, 712 were first-time offenders. Estimates assume an average per diem cost of \$52.00 for public institutions and \$45.53 for private institutions.

it, it is \$50. Florida also makes the theft of specific objects (e.g., pigs) a felonious theft regardless of value.

As with the changes other states are making to their drug laws by raising the weight level thresholds that make drug possession crimes a felony, other states are also raising the dollar value thresholds that make property crimes felonies.

Among the states that have raised their thresholds for felony property crimes are South Carolina (increasing the threshold for felony malicious injury to animal or property from \$5,000 to \$10,000); Delaware (Class G felony computer crimes from \$500 to \$1,500); Montana (increased threshold dollar amounts for a number of felony property crimes from \$1,000 to \$1,500); Washington (increased minimum threshold of Class C felony property crimes from \$250 to \$750).²⁶

As of July 1, 2010 there were 1,581 inmates in custody of the Florida Department of Corrections with carrying charges of grand theft between \$300 and \$5,000. The average maximum sentence for all of these individuals is 2.93 years. **For every 1 percent inmates with grand theft charges diverted from prison, the state could save approximately \$296,000 annually.**²⁷

Recommendation: The Florida Legislature should increase the dollar amount thresholds that make property offenses a felony and reexamine offenses made felonious based solely on the type of property stolen.

8. Amend the driving with a suspended license law to reduce the penalty from felony to misdemeanor when the reason for the suspension is inability to pay a financial obligation

Just a few years ago there was a spike in the number of people being sent to state prison for driving with a suspended license. This happened as a result of the Legislature having made a number of changes in the law over the years that made the failure to meet an increasing list of financial obligations (for instance, court fines and child support) cause to suspend a driver's license.

With more such failures punishable by license suspension, there were more felony convictions for driving a third time with a suspended license. In 2003, the increase was 10.8 percent; in 2004, it was another 10.4 percent.

The Legislature responded, passing a law²⁸ that changed what had been a felony for repeated convictions for driving with a suspended license to a misdemeanor for the many offenders whose convictions had resulted from the inability to make payments on obligations. However, a qualifier was put in the law, namely that this change did not apply "if a person does not have a prior forcible felony conviction as defined in s. 776.08, F.S" – no matter how long ago.

²⁶ *Ibid.*

²⁷ This assumes that this prison population represents an accurate sample of relevant offenders incarcerated by Florida at any given time. Estimates assume an average per diem cost of \$52.00 for public institutions and \$45.53 for private institutions.

²⁸ Florida Senate, CS/SB 1988, 2008. Available at:

<http://archive.flsenate.gov/data/session/2008/Senate/bills/amendments/pdf/sb1988c1122336.pdf>.

As of July 1, 2010, there were 1,023 inmates in custody of the Florida Department of Corrections held on charges of driving with a suspended license with an average maximum sentence of 4.79 years. **For every 1 percent of these individuals diverted from prison, the state could save approximately \$179,000 annually.**²⁹

Recommendation: *The Legislature should rescind this qualifying language and that driving with a suspended license, when the suspension was due to failure to pay a financial obligation, be recast as a misdemeanor offense in all instances.*

9. Expand electronic monitoring as an alternative to state prison sentences

In January of 2010, a significant study prepared for the National Institute of Justice and produced by the Florida State University Center for Criminology and Public Policy Research looked at the impact of Florida's electronic monitoring (EM) policies and practices. It found that "EM reduces the likelihood of failure under community supervision. The reduction in the risk of failure is about 31 percent, relative to offenders placed on other forms of community supervision."³⁰

The findings of this study show that EM is effective for offenders under a variety of different types of supervision and that involve varying levels of control and conditions, and across crime types and age groups.

The research team recommended that "there needs to be a reevaluation of the criteria the judiciary uses in EM placement, as well as laws which unilaterally mandate EM for specified offender types, regardless of whether the research indicates that it will make a difference in behavior."

Cost savings can be realized through the release of nonviolent inmates at different levels of their incarceration and utilize EM throughout the remainder of the sentence versus keeping them until they serve 85 percent of their sentences.

Given varying rates of success, the state could save between \$1.14 million and \$11.4 million for FY2012-2013 if EM is used for the last 20 percent of the sentence. If that sentence percentage is increased, the state could save between \$4.4 and \$43.8 million if EM is used for the remaining 35 percent of the sentence, given various success rates.³¹

²⁹ An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institutions.

³⁰ Bales, Bill, et al., A Quantitative and Qualitative Assessment of Electronic Monitoring, Report Submitted to the Office of Justice Programs, National Institute of Justice, U.S. Department of Justice, The Florida State University College of Criminology and Criminal Justice, Center for Criminology and Public Policy Research, January 2010

³¹ The savings are calculated for the period between July 1, 2011 and June 30, 2012, using a cross section of the inmate population in custody of the FDOC as of July 1, 2010. An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institution. An average per diem cost of \$8.94 is used for EM.

Figure 3: Estimated Cost savings³² FY2012-13
(Monitoring the remaining sentence via EM)

Success Rate	Final 20% of Maximum Sentence	Final 25% of Maximum Sentence	Final 30% of Maximum Sentence	Final 35% of Maximum Sentence
100%	\$11,417,106	\$22,655,389	\$33,462,449	\$43,778,758
50%	\$5,708,553	\$11,327,694	\$16,731,224	\$21,889,379
25%	\$2,854,276	\$5,663,847	\$8,365,612	\$10,944,689
10%	\$1,141,711	\$2,265,539	\$3,346,245	\$4,377,876

Recommendation: *The Legislature should expand authority for the use of electronic monitoring as an alternative to incarceration either at sentencing or as part of a reentry program at the end of a prison sentence.*

Section III: Recommendations relating to incarceration, release, supervision and reducing recidivism.

Florida must not only address the front-end drivers of prison growth, but also the policy choices that maintain the large numbers of people in prison and that fail to address recidivism reduction.

10. Institute adult post-incarceration drug courts

While 26.7 percent of those entering Florida prisons in 2009-10 were sentenced for drug crimes, over 50 percent needed substance abuse treatment.³³ Approximately 60 percent of all arrests in Florida are for crimes committed either under the influence of drugs and alcohol or are committed to acquire drugs or alcohol.³⁴

As of December 31, 2009, there were 23,463 inmates serving time for property crimes (e.g., any burglary, theft, or fraud).³⁵ If at least 30 percent of these inmates committed their crime for drug related reasons, then there are more than 7,040 individuals in Florida’s prisons who committed property crimes and are in need of drug rehabilitation.

Concurrently, there are 19,723 drug offenders (e.g., possession, trafficking, and manufacturing) serving in Florida’s prison system. Although drug rehabilitation programs exist within state facilities, they serve a fraction of those needing treatment. DOC established a goal of increasing the number of inmates participating in substance abuse treatment programs by 10 percent annually, but it started from a baseline of just 4,902 inmates receiving primary treatment (while 39,361 receive screening assessments) during FY2008-09.

³² Estimates based on release of nonviolent inmates without any prior commitment to the state prison system. Estimates do not include costs to administer the EM program, which could potentially be off-set through fees to individual offenders (dependent on successful collection of such fees), or any potential increase of workload for DOC patrol officers or other law enforcement officers, if necessary.

³³ OPPAGA, “Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings”, Report No. 10-54, October 2010.

³⁴ Supreme Court Task Force on Treatment-Based Drug Courts, “Report on Florida’s Drug Courts,” July 2009.

³⁵ Data provided by the Department of Corrections Bureau of Research and Data Analysis. “Property Crime” as defined by the White House ONDCP, www.whitehousedrugpolicy.gov/publications/factsht/crime/index.htm.

Significant savings could be achieved if certain offenders were allowed to receive treatment outside of the confines of prison during the last portion of their prison sentence, and research shows that programs in the community produce twice the impact on recidivism as the same program behind the walls. Allowing some nonviolent offenders to participate in drug court programs after serving 60 percent of their sentence would ensure that they continue to be monitored but receive treatment at a significantly lower cost to the state and with potentially greater outcomes. Florida TaxWatch identified approximately 15,000 nonviolent³⁶ offenders currently in the state prison system, many of whom could be directed towards post-incarceration drug courts.

Recommendation: The Legislature should authorize the Florida Parole Commission to permit incarcerated drug-involved offenders who have served at least 60 percent of their original prison sentence to complete the remaining portion of their term as a participant in a community-based drug court program.

11. Increase the maximum gain time accrual allowed

The notion of incentive gain time, that is, days subtracted from a sentence for good behavior behind bars, has been in effect in Florida since 1989. Gain time is currently discretionary and may be awarded by DOC when “an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.”

In 1995, the Legislature limited the reach of gain time and enacted a law that provides: “for sentences imposed for offenses committed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain time, *except that no prisoner is eligible to earn any type of gain time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner’s release, prior to serving a minimum of 85 percent of the sentence imposed.*” [Emphasis added] s. 944.275, F.S.

Accordingly, during the last fifteen percent of an inmate’s term in prison, DOC has no discretion to reward good behavior, and inmates have no gain time incentive to comply with reentry planning efforts or participate in programs that are designed to reduce recidivism upon release.

Adjusting the cap on accumulated gain time would provide critically needed incentives for prisoners to engage in constructive behavior and reentry programming and would result in considerable cost savings for the state, with no risk to public safety.

During the 2011 Legislative session, SB1334 and identical HB917 proposed altering the current mandatory minimum. The tough-on-crime mandatory minimum sentencing policies of the 1980s and 1990s are responsible for a great deal of the overwhelming prison population and associated costs which plague Florida today. By changing the mandatory minimum laws for low level offenders, the number of beds needed in our prison systems would decrease significantly. However, SB1334 was indefinitely postponed and withdrawn from consideration. It died on the calendar, while HB917 died in committee.

³⁶ Ibid., See Appendix on page 55.

Significant cost savings can be realized by allowing nonviolent inmates to be released at different points of maximum gain time as opposed to preventing release before reaching the 85 percent threshold of the sentence.³⁷ Based on a range of maximum gain time levels and percentage of inmates released with maximum gain time, **flexibility to the 85 percent rule could save Florida \$1.4 million to \$53 million in FY2011-12.**

Figure 4: Estimated Cost Savings FY2012-13

Percent of Nonviolent Inmates Released with Maximum Gain Time	20% Maximum Gain Time	25% Maximum Gain Time	30% Maximum Gain Time	35% Maximum Gain Time
100%	\$13,819,336	\$27,423,455	\$40,506,339	\$52,995,892
50%	\$6,909,668	\$13,711,727	\$20,253,169	\$26,497,946
25%	\$3,454,834	\$6,855,864	\$10,126,585	\$13,248,973
10%	\$1,381,933.61	\$2,742,345.47	\$4,050,633.85	\$5,299,589.25

Recommendation: *The Legislature should revisit its 1995 amendments to the gain time law, or include consideration of the gain time laws as part of the top-to-bottom commission review (from Recommendation 1).*

12. Authorize the possibility of parole for certain elderly offenders

While the literature shows that most offenders age out of their crime-committing years, the nation’s prison population is graying; nationally, 10 percent of the U.S. prison population is 50 years old or older.³⁸ In Florida, it is far higher and surging. As of June of 2010, 16.1 percent (16,483 people) of the Florida prison population were 50 years or older. In 1996, 5.7 percent of Florida’s prisoners were elderly; but in 2000, 8 percent were 50 years or older.

According to Florida Senate staff research, the cost of incarcerating a person over the age of 50 is three times greater than that of incarcerating younger people, primarily due to medical costs. Individuals in the community or nursing homes who are disabled or elderly are eligible for federally funded Medicaid (with state match) and/or Medicare, but people who are incarcerated are not eligible for such federal health care support, nor are the prisons.

Thus, Florida is increasingly saddled with the medical costs of an elderly prison population when some of these offenders would pose little, if any, risk to the public out of prison.

Many elderly prisoners were sentenced prior to 1983 when Florida abolished parole and thus are parole eligible. However, while approximately 5,000 inmates in Florida’s prisons are parole eligible, only 42 of the 37,391 inmates released from prison in FY2008-09 were actually paroled.

³⁷ Estimates are based on inmates who have reached maximum gain time and have had no prior commitment to the state prison system. An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institutions. The savings are calculated for the period between July 1, 2011 and June 30, 2012, using a cross section of the inmate population in custody of the FDOC as of July 1, 2010.

³⁸ Bureau of Justice Statistics, “Prisoners in 2008”, 2009. Available at: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763>

Alteration of parole standards for inmates over the age of 65 would save the state a significant amount without compromising public safety. Although determination should likely be made based on level of disability and potential risk, and must be made by the Florida Parole Commission or other appropriate body based on the individual offender, assuming only prisoners over 65 further limits the total number of prisoners eligible under such a program.

Assuming only inmates who have minimally served 20 to 25 years of their maximum sentence prior to the age of 65 and have not committed capital murder,³⁹ but without specific consideration of level of disability, **Florida could save between \$263,000 and \$2.6 million in FY2011-12 if elderly inmates were released after 20 years** – considering varying levels of approval by the Florida Parole Commission based on level of disability and individual offenders potential risk. Assuming the same factors, **Florida could save between \$172,500 and \$1.7 million if varying levels of elderly inmates were granted parole after serving 25 years of their sentences.**

Figure 5: Estimated Cost Savings

Percent of eligible inmates approved for parole by Parole Commission after 20 years of sentence				
	100% Approved	50% Approved	25% Approved	10% Approved
FY2011-12	\$2,632,387	\$1,316,194	\$658,097	\$263,239
FY2012-13	\$3,404,545	\$1,702,272	\$851,136	\$340,454
FY2013-14	\$4,176,702	\$2,088,351	\$1,044,176	\$417,670
Percent of eligible inmates approved for parole by Parole Commission after 25 years of sentence				
	100% Approved	50% Approved	25% Approved	10% Approved
FY2011-12	\$1,724,793	\$862,396	\$431,198	\$172,479
FY2012-13	\$1,949,363	\$974,681	\$487,341	\$194,936
FY2013-14	\$2,597,975	\$1,298,988	\$649,494	\$259,798

Recommendation: *The Legislature should pursue strategies that allow for release of elderly prisoners who do not pose a risk to public safety.*

³⁹ FDOC cross section of inmate population in custody data report on July 1, 2010 was used for these estimates. An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institution.

13. Expand prison work release programs

Florida's work release programs allow selected (i.e., pre-screened as low-risk) inmates to work at paid employment in the community and live at work release centers outside of prison during the last 15 months of their sentence.

During the 2011 Legislative Session, SB1390, which would have increased the number of inmates who are nearing the end of their sentences to live at DOC approved residences, treatment centers, or halfway houses instead of a state-operated center, was delayed in messages and subsequently withdrawn from consideration.

Housing inmates at work release centers is significantly cheaper than housing them in a regular prison facility. The average cost of housing an inmate at a work release center is \$25.84 less per day than housing them at a regular prison facility.⁴⁰ Expanding the work release program to include additional individuals who are currently on the waiting list could produce significant savings for Florida.

The key step to achieve such savings is to incorporate more eligible inmates into the program. DOC should rescind the informal policy of holding one prison bed in reserve for every work release bed and capping work release at 4 percent of the inmate population.

Allowing nonviolent inmates to carry out the remaining portion of their maximum sentence in a work release program is more cost effective than mandating inmates carry out 85 percent of the sentence in a regular prison facility. Given varying rates of success, **the state could save \$536,000 to \$5.4 million annually if 20 percent of the maximum sentence is completed in work release programs. With 35 percent of the maximum sentence completed in work release programs, the state would save between \$2.1 million and \$20.9 million in cost savings.**⁴¹

Figure 6: Estimated Cost Savings for FY2012-13
(% of final sentences served in work release programs)

Success Rate	Final 20% of Maximum Sentence	Final 25% of Maximum Sentence	Final 30% of Maximum Sentence	Final 35% of Maximum Sentence
100%	\$5,359,818	\$10,717,792	\$15,915,608	\$20,893,834
50%	\$2,679,909	\$5,358,896	\$7,957,804	\$10,446,917
25%	\$1,339,955	\$2,679,448	\$3,978,902	\$5,223,458
10%	\$535,982	\$1,071,779	\$1,591,561	\$2,089,383

⁴⁰ Collins Center for Public Policy Report, "Smart Justice: Findings and Recommendations for Florida Criminal Justice Reform," February 2010. According to the report, the average cost of housing an inmate at a work release center is \$26.16, the average cost of housing an inmate in a prison facility is about \$52.00 (even when work release centers are excluded from the calculation).

⁴¹ The estimates are calculated for the period between July 1, 2011 and June 30, 2012, using a cross section of the inmate population in custody of the FDOC as of July 1, 2010. An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institution. An average per diem cost of \$30.80 is used for work release facilities. Those individuals who are already housed in work release facilities are not included in the analysis and additional upfront costs of expanding work release are not factored into cost savings.

Recommendation: *The Legislature should require that DOC establish a process that immediately: 1) expands the current capacity of the work release program to include those eligible individuals who are currently on waiting lists to join; 2) ensures that the capacity of the program is set at the maximum sustainable level and reevaluated on a regular basis; and 3) expedites the movement of individuals into work release so that the average participating population in each program is maintained as close to full capacity as possible.*

14. Expand evidence-based prison-based programs that reduce recidivism

Florida allocates about one percent of the Corrections budget to prison-based programming (substance abuse treatment, education, vocational training, release planning, etc.) aimed at improving the chances that the inmates will not return to prison.

While DOC has a goal of reducing recidivism, about one third of the inmates nevertheless do come back within three years of release. Florida has not focused sufficient resources in preparing them during their previous stints in prison to succeed upon being released.



In December 2009, OPPAGA reported DOC was concentrating its rehabilitative programming on evidence-based approaches, which have “four basic components: assessing inmates using validated risk and needs assessment instruments; addressing offender attributes that directly relate to criminal behavior; developing release plans to facilitate offender reentry into society; and evaluating program effectiveness.” This is important, especially due to the extremely limited resources available for programming.

At the same time, community-based programs are also in short supply, and research shows that programs in the community produce twice the impact on recidivism as the same program behind the walls.

Recommendation: *The Legislature should reinvest a portion of the savings realized from front-end reforms that slow prison growth into expanding prison and community-based programming to reduce recidivism, thereby slowing prison growth further. In the meantime, these programs could be expanded at no additional cost to the state through the use of “trusties” (i.e., inmates who have earned trust through good behavior) and volunteers.*

A. Expand evidence-based substance abuse treatment

While 65.1 percent of DOC inmates (65,706 individuals) were in need of treatment, there were only 4,902 treatment slots available in FY2008-09 (before the \$10 million cut in DOC programming), making treatment available to only 7.4 percent of those who need it. Language in HB 369, which passed the Legislature in 2011, specifies that peer-to-peer programs like AA shall be allowed for substance abuse treatment.

Recommendation: *The Legislature should restore the \$10 million in DOC programming and target it to in-prison and community-based treatment*

B. Expand evidence-based mental health treatment

In Florida, about 17,957 inmates (17.8 percent of the total) receive ongoing mental health care; the number of those incarcerated who suffer from mental illness and are not being treated is not known. Compare that to the total forensic and civil commitment state psychiatric beds: 2,723. Prisons and jails are the default mental health system in Florida. Texas enacted an information sharing law that makes it easy to share information on individuals with mental illnesses who are accessing so many deep end services including those in the criminal justice system. It allows them to track individuals with Serious Mental Illness (SMI) to assure case management, consistent medication, and re-entry. It has also helped them tremendously to keep people with SMI out of jail and prison.

Recommendation: *The Legislature should review and amend statutes to facilitate more effective collaboration among stakeholders involved in the delivery of mental health services, particularly as they relate to continuity of care for individuals involved in or at risk of becoming involved in the justice system. This should include consideration of opportunities to improve information exchange among state and county agencies, as well contracted entities, that provide mental health and/or substance abuse treatment services. Consideration of such information sharing should be for the purposes of facilitating continuity of care only and should not be used as evidence in any criminal proceeding. The Legislature may wish to review chapter 614.017 of the Texas Health and Safety Code as an example of such cross systems collaboration.*

The Legislature should pass the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act. The Legislature should authorize county court judges to order involuntary outpatient treatment as a condition of release for defendants with mental illnesses when appropriate.

C. Expand evidence-based literacy, education, and vocational training

DOC reported that 50.5 percent of DOC inmates (44,786 total) in FY2008-09 were tested as reading at or below the 6th grade level and that “for every education level an inmate gains, that person is 3 to 4 percent less likely to come back to prison. Inmates with a vocational certificate at release recidivate 14 percent less often than inmates overall.”

That year, DOC was able to award 1,953 GED certificates and 1,881 vocational certificates. As demonstrated below in DOC’s annual report, the completion rates in the literacy, adult basic education, and vocational programs are quite low.

In HB 369, signed by the Governor this year, the Legislature stipulated that peer-to-peer literacy programs should be allowed. Introduced during the 2011 Legislative Session, SB 1938 and HB 1123 both provided alternatives to adjudication for non-violent adult offenders. Known as the "Prison Reform and Recidivism Act" or the "Don't Come Back Act" there was very little action on either of these bills after their introduction and both eventually died in Criminal Justice Committee.

Participation in Correctional Education Classes in FY 2008-09

Enrollments*	Mandatory Literacy	Adult Basic Education	ITA ¹	GED	Vocational	Total
Number of Courses	1,700	8,086	6,201	2,064	5,034	23,085
Number of Inmates	1,700	8,086	6,201	2,064	4,789	***22,840
Completions**						
Number of Courses	412	557		1,953	1,881	4,803
Number of Inmates	412	557		1,953	1,562	***4,484
<small>* "Enrollments" includes inmates enrolled as of 7/1/08 and new enrollments through 6/30/09. ** "Completions" are from 7/1/08 through 6/30/09. *** Inmates who participated in Mandatory Literacy, Adult Basic Education, GED and Vocational courses get counted for participation in all four programs. "Number of Courses" and "Number of Inmates" are different for vocational counts since it is possible for a given inmate to be involved in more than one course in this program year. For greater detail, Adult Basic Education (course "9900004") is shown in a separate column from the GED (course "9900026"). "Completions" are defined as a CMP, ATT or CXS code on the DC32 screen for MLP and ABE participants, a GED certificate for course "9900026" participants, and a vocational certificate for vocational program participants. ¹ITA=Inmate Teaching Assistant Program. Note that none of the counts in the above tables include program participation or certificates earned at private facilities.</small>						

Recommendation: The DOC should continue to aggressively look for innovative ways to partner with community colleges and public and private workforce development entities to improve the education and skill levels of inmates.

D. Expand life management skills training

OPPAGA notes that there was a lack of programming addressing criminal thinking.⁴² This component was to be added to DOC’s 100-hour transition / release program; however, during FY2008-09, 8,850 inmates (26.9 percent of all released inmates who completed the course) took the course via self-study. This is less than optimal not only because of the low literacy rate of the inmates but because without the interaction with a facilitator, the results can be negligible.

⁴² OPPAGA, “Department of Corrections Should Maximize Use of Best Practices in Inmate Rehabilitation Efforts”, Report No. 09-44, December 2009.

Expanding currently available rehabilitative and training programs to those offenders who are on waiting lists, or are otherwise eligible to participate in them, could curb the rising inmate population and eliminate the need for the continued expansion of state prisons.

Recommendation: *The DOC should continue its efforts to provide evidence-based programming to address criminal thinking and to provide release programming through facilitators rather than relying on self-study.*

E. Expand faith- and character-based prisons

OPPAGA has found that faith- and character-based prisons improve institutional safety, achieve lower recidivism rates and attract more volunteers. Wakulla County's recidivism rate, for example, is 15 percent lower than that of comparable prisons. Yet these more effective prisons had a waiting list of 8,890 inmates for the institution-based programs and 1,600 for the dorm-based programs at the time of October 2009 study.⁴³

Recommendation: *The DOC should continue to expand its faith- and character-based prisons.*

F. Help inmates apply for Medicaid, Social Security Income, and Veterans benefits prior to release

Receiving the benefits of social programs to which they are entitled upon release will help those ex-offenders succeed in the community and reduce the likelihood that those individuals will return to prison. Helping inmates apply for those social benefits before release can improve their chances of successful reentry.

Recommendation: *The Legislature should expand programs that help reentering inmates apply for government benefits for which they are qualified.*

15. Review and revise state-created employment restrictions based on criminal records

Gainful employment is essential to any strategy to reduce recidivism, and thus to reduce crime and make communities safer.⁴⁴ However, among the many hurdles facing people coming home from prisons and jails attempting to successfully reintegrate into society, getting a good job is often one of the most daunting challenges.

⁴³ OPPAGA, "Faith- and Character-Based Prison Initiative Yields Institutional Benefits; Effect on Recidivism Modest", Report No. 09-38, October 2009.

⁴⁴ "Finding and maintaining a job is a critical dimension of successful prisoner reentry. Research has shown that employment is associated with lower rates of reoffending, and higher wages are associated with lower rates of criminal activity. However, former prisoners face tremendous challenges in finding and maintaining legitimate job opportunities. . . ."Baer, et al. Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio, Urban Institute, January 2006, citing, Jared Bernstein and Ellen Houston, *Crime and Work: What We Can Learn from the Low-Wage Labor Market* (Washington, DC: Economic Policy Institute, 2000); Bruce Western and Becky Petit, "Incarceration and Racial Inequality in Men's Employment," *Industrial and Labor Relations Review* 54, no. 3 (2000): 3-16. A Canadian study found that "Offenders who were employed were convicted of less than half the convictions (22.2% versus 42.9%) and one quarter of the new violent convictions (5.6% versus 20.6%) of offenders who did not obtain employment in the first six months of release." Gillis, et al., Prison Work Program (CORCAN) Participation: Post-Release Employment and Recidivism, Research Branch, Correctional Service Canada, March 1998.

Equally daunting, for both the person with the record and for workforce staff who might attempt to help him search for jobs, is figuring out what occupations and places of employment are possibly open to people with criminal records.

Recognizing this challenge, Governor Jeb Bush, on the advice of the Governor's Ex-Offender Task Force, and concerned about Florida's stubborn recidivism rate and understanding that gainful employment reduces recidivism, issued an executive order in 2006 requiring state agencies to inventory the employment restrictions they administer, provide data on their impact and recommend reforms. Bush was the first governor to order such a review, which was hailed as a "landmark" in the Washington Post.

The Florida inventory, the findings of which were laid out in the Task Force's report to the Governor,⁴⁵ revealed a vast, bewildering and unwieldy patchwork of hundreds of state-created restrictions of widely varying severity, often regardless of the trust and responsibility required of the job, affecting over 40 percent of Florida's public and private sector jobs.

The Task Force reported that sometimes the restrictions offer the employer a measure of hiring discretion after reviewing a background check. Sometimes they give the employer the right to assess the relevance of the past crime to the job. Sometimes they provide the job seeker with an opportunity to demonstrate their rehabilitation. But often the restrictions offer little flexibility to either employers or people looking for work.

Each restriction has its own nuances. Some restrictions put jobs or places of employment off-limits to anyone with a record of a criminal conviction. Some put them off-limits only for those convicted of certain crimes. Sometimes the restriction creates a lifetime ban. Sometimes the restriction is time-limited. Sometimes the time limits depend on the crime. For employers, it's a minefield. Hiring in violation of the restrictions can lead to a loss of a business license and other harsh penalties.

For job seekers with a criminal record, the impact of restrictions are often both unknown and unknowable until after incurring the costs of a course of study, tests, and fees and the application for a job or license is finally reviewed.

A significant first step taken this past session with the passage of HB 448, known as the "Jim King Keep Florida Working Act." HB 449 requires state agencies to prepare reports that identify and evaluate restrictions on licensing and employment for ex-offenders. It also prohibits state agencies from denying application for license, permit, certificate, or employment based solely on person's lack of civil rights.

Recommendation: The Legislature and the Governor should revisit and adopt the Task Force's common sense employment restrictions reform recommendations.

⁴⁵ "Key Findings and Recommendations", Based on the Task Force's Analysis of the State Agency Responses to Executive Order 06-89.

16. Expand the Florida Accountability Initiative for Responsible (FAIR) Probation

Despite, as OPPAGA reported in April 2010, rescission by DOC of its zero-tolerance policy on probation violations adopted in 2003 and a concomitant decrease in the number of technical violators sent to prison, in the 2009-10 fiscal year, 7,479 people were sent to prison on technical probation violations.⁴⁶

FAIR, modeled after Project HOPE, designed by Judge Steven Alm in Hawaii, is a model that challenges what is often in actuality and in perception a kind of “randomized severity” of sanctions; that is, sometimes the violation will be punished harshly, sometimes mildly, and sometimes not at all.

A program evaluation of HOPE commissioned by the National Institute of Justice was completed in 2009 and found that among HOPE participants, compared to the control groups: positive drug tests were reduced by 86 percent; missed probation appointments were reduced by 80 percent; revocations of probation were reduced by more than 50 percent; and arrests for new crimes reduced by more than 50 percent.⁴⁷

Like HOPE, FAIR targets probationers who are at the highest risk of reoffending and discourages such offending with swift, predictable, and immediate sanctions – typically resulting in several days in jail – for each detected violation, such as detected drug use or missed appointments with a probation officer.

A strong nexus exists between drugs, crime, and incarceration. FAIR Probation works to lower heavy drug consumption and improve public safety. FAIR Probation is a way to support Florida’s drug courts by maximizing limited treatment space. In order to lower incarceration costs and improve public safety, community supervision must be strengthened in order for judges to view it as a viable alternative. FAIR Probation works to make community supervision a cost-effective alternative by instituting swift and certain consequences for non-compliance. The keystone of the project is creating personal responsibility on the part of the offender.

FAIR Probation has not yet been initiated in Florida. FAIR Probation is close to being piloted in Circuit 9 (Orlando). All stakeholders (judge, county jail, prosecutors, public defenders, and probation) have been briefed and are close to starting after January 1. Alachua County (Gainesville, Circuit 8) has also been in early discussions about starting the project.

Recommendation: The DOC should work with the state courts to implement FAIR as a pilot and expand the program if it proves effective. Strengthening community supervision is a viable alternative to costly incarceration by creating and expanding the Florida Accountability Initiative for Responsible (FAIR) Probation.

⁴⁶ OPPAGA, “Zero Tolerance Policy Rescinded and Alternatives Implemented to Address Technical Violations”, Report No. 10-39, April 2010.

⁴⁷ The Pew Center on the States, “The Impact of Hawaii’s HOPE Program on Drug Use, Crime and Recidivism”, January 2010.

17. Expand Veterans Courts

Studies have found that anywhere from 20 to 50 percent of veterans returning from Iraq and Afghanistan suffer from Post Traumatic Stress Disorder (PTSD). Furthermore, about half of these individuals do not seek treatment. PTSD and other mental health disorders are strongly linked to drug use and related criminal behavior. It is estimated that approximately 10 percent of all individuals with criminal records are veterans.

Many state and local governments across the U.S. have instituted veterans courts to offer treatment and diversion for non-violent offenders in this group, with promising results. For example, a veterans court in Buffalo has a 90 percent graduation rate and no incidence of recidivism. According to Florida Senate research, 10 states have or are in process of passing legislation to expand veterans courts.

The momentum to initiate such programs in Florida is also growing. Palm Beach County implemented a veterans court in 2010. Given the success rate of existing veterans courts targeting non-violent offenders in other states, instituting and expanding similar programs in Florida could help reduce recidivism and save valuable tax dollars. Such programs are also eligible for Federal grants, saving additional state funds.

Two bills, SB 138 and HB 17, would have given veterans found to have committed criminal offenses that allege offenses resulted from posttraumatic stress disorder, traumatic brain injury, substance use disorder, or psychological problems from service in a combat theater in the U.S. military, a hearing on the issue before sentencing.

Recommendation: The Governor should convene a task force of veterans' affairs and criminal justice leaders to identify and resolve issues of veterans' encounters with the criminal justice system and to establish a framework for expanding veterans' courts.

18. Reduce costs of inmate hospitalization (in non-DOC hospitals)

Inmates requiring hospitalization in non-DOC facilities cost the state millions of dollars each year. Estimates of the cost of hospitalization put the total cost at approximately \$50 million annually. Paying these costs through Medicaid would lower the total cost to the state because Medicaid is majority funded by the federal government and often pays lower hospitalization rates. While Medicaid will not pay for care provided in DOC facilities, the state should ensure that all potential costs of hospitalization at non-DOC facilities (i.e., when prisoners have to be taken to community hospitals) are shifted to Medicaid.

Recommendation: The Legislature should ensure that inmates remain Medicaid-eligible during incarceration so that Medicaid can cover hospitalization costs when inmates receive care in non-DOC settings.

Alternatively, the state reimbursement rate could be set at the Medicaid rate instead of 110 percent of Medicare rate.

19. Implement a Continuum of Care model through Correctional Public-Private Partnerships

Expanding the use of Public-Private Partnerships (PPP) to create a continuum of care in corrections - one that follows offenders from intake, through prisons and into post-release services - would create a more integrated and coordinated system of programming and management to provide ideal programming continuum and optimize outcomes while lowering costs. Since the introduction of corrections PPPs in the United States in the 1980s, governments at all levels have found that they can play a critical role in driving down corrections costs (5 to 15 percent on average, though sometimes far more), stretching limited tax dollars and improving the quality of prison services - thus, improving offender outcomes in terms of behavioral changes through rehabilitation.

Florida has experience with implementing correctional PPPs. Currently, seven (or 11 percent) prison facilities in Florida are operated under PPPs with private management firms. Further, the 2011 Legislature passed Senate Bill 2000 (the General Appropriations Act for FY 2012-13), which directs the DOC to privatize nearly 30 currently state-run correctional facilities in Region IV, which spans 18 counties and facilities, including correctional institutions, work camps, road prisons, work release centers, reception centers, re-entry centers, and affiliated annexes.

If positioned properly through performance metrics and contractual obligations, extending the PPP model to create a continuum of care would better orient the system toward high performance and ensure that offenders are always in *the right place at the right time for the right programs* to maximize the likelihood of a success. However, it cannot be stated more strongly, that the proper performance measures must be put in place, enforced, and monitored by the state to ensure the higher return on investment and quality of care that the continuum of care model can provide. **The key in pursuing such partnerships is that the state can realize savings and improve performance and outcomes. Minimal performance is not sufficient; improvement in performance is expected and can be built into contractual expectations and performance obligations.**

Some keys to success in the continuum of care PPP model are:

- (1) Collaboration between DOC and the private sector to develop the framework and implementation of the model;
- (2) Define cost and performance metrics to establish accurate cost accounting at the facility level, as well as any additional cost considerations necessary in moving a public operation to a public-private venture (e.g., employee benefits), evaluate how each facility is performing against specific service delivery metrics, and set performance targets and specific outcomes within the contract;
- (3) Use performance-based PPP contracts to capture a broad range of service delivery goals beyond savings. Contracts should incorporate quality assurances and controls, create incentives for efficiency and performance in project delivery, and include sanctions for private companies that do not meet the contract requirements;

(4) Performance should be measured and tracked by DOC. The DOC needs to develop and implement robust contract monitoring systems and performance measurements to make sure that the private sector is upholding its contractual performance targets; and,

(5) Benchmark performance across the entire system, not just the facilities that are under the PPP contract, as the contractual performance metrics can be used to measure the performance of all facilities in many regions, which can lead to an overall improvement of the system.

Recommendation: The Legislature should implement the continuum of care correctional model through Public-Private Partnerships in other DOC Regions across the state. Cost and performance improvement is expected and can be properly structured through contracting and monitoring. The DOC should place highest priority on and be held accountable for designing, implementing, and monitoring quality performance measures and benchmarks to ensure the state is receiving improving prisoner outcomes and cost-savings over time and throughout the system.

Section IV: Recommendations related to juveniles in the justice system

Getting smart on crime requires efficient and effective use of limited resources in prevention, diversion, and intervention programs, especially when it comes to juvenile justice.

20. Increase operational efficiencies by aligning lengths of stay with best practices

Texas, North Carolina, and Virginia have adopted legislation to keep misdemeanants out of state custody and have reduced commitment rates substantially. In all three states, the state not only realized significant cost-savings as a result of the legislation, but also saw improvements in public safety. In Texas, youth cannot be committed to state residential facilities for misdemeanor offenses unless adjudicated for four or more prior offenses. This resulted in a 36 percent reduction in commitments in the past three years. At the same time, juvenile arrests for violent offenses dropped. North Carolina has adopted similar legislation that restricts youth from being committed to residential facilities for misdemeanor offenses or violations of misdemeanor probation. This had the effect of reducing commitments by 61 percent from 1998 to 2008. Over the same time period, juvenile arrests for violent offenses dropped by 20 percent. Legislation in Virginia bars youths from commitment to residential facilities unless the youth has been previously adjudicated for a felony or three or more Class 1 misdemeanors on separate occasions. Virginia saw a 50 percent drop in commitments from 1999 to 2009, and a 36 percent drop in juvenile arrests for violent offenses.

Senate Bill 2114, which was passed in the 2011 Legislature, restricts courts and the DJJ from placing youth in a residential facility for misdemeanors unless adjudicated for three or more prior offenses, among other things. In addition, in response to data showing that lengths of stay (LOS) had increased by 30 percent in residential facilities, in spite of research showing no benefits in reductions of recidivism, Governor Scott and Secretary Walters committed to reducing LOS to best practices. Further, the research on LOS is even more pointed. One argument for increasing length of stay is that it allows more time for therapeutic interventions. However, the research

shows us this is simply not the case. There is a point at which the evidence tells us that the length of stay is not correlated with better outcomes, including recidivism and self reported offenses.

Most youth are kept in moderate-risk facilities for an average stay of 8 months. **Research shows that for institutional stays between 3 and 13 months, there is no marginal benefit for retaining a youthful offender longer for institutional stays between 3 and 13 months, and that the response to this increase remains flat through this period.**⁴⁸ The cost-benefit question for this, then, is that if there is an evidenced-based optimal point at which benefits of institutional length of stay cease, then why would we keep low-and moderate-risk youth in longer than this 3-month period?

For higher risk children, the research is less clear on optimal lengths of stay, but we know that the state's lengths of stays for these youth has also increased by 30% over time, adding two months to overall stay. Research still tells us that more commitment time results in deterioration in the child. Therefore, rolling back the length of stay to previous levels, 2000-2001, will result in both cost savings and improved public safety.

As a result of both the reductions of misdemeanor commitments to residential and reforms in length of stay, fewer children will be in residential facilities and for shorter periods of time, allowing DJJ to remove an estimated 874 beds from its system. However, only 245 of those 874 beds have been cut by the Department (Dozier – 121 beds and Desoto – 124 beds), resulting in excess bed capacity of approximately 600 beds. **If these excess beds were removed, the state could save \$13 million. This is a conservative estimate because it assumes all removed beds were non-secure residential beds.**⁴⁹ While Florida must continue to incarcerate youth who pose serious risks to public safety, detention and incarceration of young people should be an option of last resort that is further refined by research to save taxpayer resources and improve public safety

Recommendation: The Legislature should ensure that Florida's taxpayers see the benefits of juvenile justice reforms started last year and further reduce the use of expensive, ineffective residential programs in two ways: 1) by limiting the commitment of juvenile misdemeanants and, 2) aligning Length of Stay to best practices and research-based findings of no more than three months for moderate and low-risk youth and targeted to 2001-2002 levels for high-risk youth.

21. Expand evidenced-based programs that use proven approaches such as Multisystemic Therapy (MST) and Functional Family Therapy (FFT) to avoid custodial care of juveniles

There are community-based, family-centered alternatives to residential juvenile justice commitments that utilize proven interventions – approaches such as MST and FFT – that are successful in turning delinquent youths' lives around. As an example of one such program, according to a 2009 evaluation, youth who successfully completed the Redirection Program were

⁴⁸ Loughran, T., Mulvey, E., Schubert, C., Fagan, J., Piquero, A., & Losoya S. (2009). *Estimating a Dose-Response Relationship between Length of Stay and Future Recidivism in Serious Juvenile Offenders*. *Criminology*, 47(3), 699..

⁴⁹ Southern Poverty Law Center, *Opportunities to Strengthen Florida's Juvenile Justice System*, September 17, 2010.

31 percent less likely to be subsequently arrested than similar youth who successfully completed residential commitment programs.

An April 2010 OPPAGA study found that the Redirection Program had achieved \$51.2 million in cost savings for the state since it began five years previously, due to its lower operating costs when compared to residential delinquency programs.⁵⁰

This program began as a way to redirect juvenile offenders with non-law probation violations from residential commitment to MST and FFT and has expanded to serve additional youth, such as nonviolent offenders under consideration for commitment due to misdemeanors and third-degree felonies. Expanding programs that offer community-based, family-centered approaches such as MST and FFT could result in much greater savings in the first year.

Recommendation: *The Legislature should expand evidenced-based programs that use proven approaches like MST and FFT to serve more youth. Expansion should target (a) underserved counties; and (b) gang-involved youth; while new approaches should develop programs to (c) serve youth who commit certain sexual offenses. The Legislature should also examine potential savings from expanding such programs to include youth who have committed certain third-degree felonies.*

22. Expand the use of juvenile civil citations

Civil citation programs are an alternative to arresting and taking children who commit misdemeanors into custody. Civil Citation emerged as a way to replace the existing practices of the current arrest model and incorporate early intervention and effective diversion programs for juveniles who commit minor crimes. As stated in Florida Statutes, the Civil Citation process was established “for the purpose of providing an efficient and innovative alternative to the custody by the Department of Juvenile Justice of children who commit non-serious delinquent acts and to ensure swift and appropriate consequences.”

The program allows juveniles who have committed a misdemeanor to complete community service hours or participate in intervention programs as an alternative to being arrested and taken into custody by the Department of Juvenile Justice (DJJ). The program is implemented at the local level in coordination with the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved. The 2010 Legislature passed House Bill 997 to require that juvenile civil citation programs be established at the local level.

Authorized by s.985.301, *F.S.*, the program allows “any law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor [to] issue a civil citation assessing not more than 50 community service hours, and may require participation in intervention services appropriate to identify the needs of the juvenile.”

One place to start is in our schools. Based on recent data, approximately 11,492 students were arrested in school for misdemeanors.⁵¹ The cost saving per civil citation would be \$4,614

⁵⁰ Office of Program Policy and Government Accountability. “Redirection Saves \$51.2 Million and Continues to Reduce Recidivism,” Report No. 10-38, April 2010.

⁵¹ Department of Juvenile Justice, “School-related Delinquency Referrals Update – June 2010 Assessment”, June 2010.

according to a recent study by Florida Juvenile Justice Foundation or \$1,467 according to the 2009 Hillsborough County Study.⁵² **Using the number from the first study for Scenario 1 and the second study for Scenario 2, the annual cost savings of forbidding the arrest of misdemeanants on school grounds and instead using Civil Citation programs is estimated to range from \$16.9 million to \$53 million.** Given the estimated short-term annual savings of \$16.9 to \$53 million, Civil Citation programs should be implemented throughout the state. Keeping juveniles away from prisons will also generate long-term economic benefits in the form of increased output and employment.

Recommendation: *The Legislature should expand the Civil Citation program by amending s.1006.13(1), F.S., to require Civil Citations be used for all school-based misdemeanor arrests and forbid the arrest of misdemeanants on school grounds.*

23. Increase operational efficiencies and public safety by aligning the average length of stay by delinquents with best practices in residential facilities

Over the past eight years, the average length of stay for delinquents in residential facilities has been steadily increasing, even as the number of commitments has fallen. This increase cannot be explained in the change of profile of youth committed to DJJ. In fact, the percentage of youth committed for misdemeanors or probation violations was approximately the same in FY 2008-09 as it was in FY 1999-2000.⁵³ Increases in the average length of stay have significant cost implications for the state, almost \$20 million per year. Furthermore, there is evidence that increased lengths of stay may actually reduce public safety.

The Florida Department of Juvenile Justice's 2008 Blueprint Commission Report concluded from the best available research: "...youth who are kept in programs for prolonged length of stays after treatment goals are achieved often begin to deteriorate and may be more likely to re-offend once release is finally achieved."⁵⁴

The Blueprint Commission recommends the creation of small, community-based programs that use a continuum of care and the implementation of an "offender review" process that systematically identifies and reviews non-violent and non-serious offenders as well as those who have made significant progress in their treatment programs. Suitable candidates would be referred to the courts for early release or "step down" into community-based programs.⁵⁵

Another way to reduce the length of stay is to count services and education received in detention towards the completion of the youth's treatment plan, per the Blueprint Print Commission's recommendation. The Commission also suggests counting these services in competency restoration.⁵⁶ This recommendation reduces cost by eliminating the duplication of services.

⁵² Dewey & Associates Inc., "Civil Citation of Hillsborough County, Cost Savings Analysis," July 2009.

⁵³ Office of Program Policy Analysis and Government Accountability. "Misdemeanant and Non-Law Violation Youth in Juvenile Justice Commitment Beds," Report No. 01-49, 2001.

⁵⁴ Florida Department of Juvenile Justice., "Report of the Blueprint Commission: Getting Smart About Juvenile Justice," January 2008, p. 69. Available at: www.djj.state.fl.us/blueprint/documents/Report_of_the_Blueprint_Commission.pdf.

⁵⁵ *Ibid.* at 41.

⁵⁶ *Ibid.* at 42.

Recommendation: *Florida should examine the increasing average lengths of stay by youth offenders in residential facilities. One possible option is that length of stay be limited to the completion of treatment goals, and enact the Blueprint Commission’s specific recommendations to (1) implement an offender review process that would allow for the early release of suitable candidates or a “step-down” to less restrictive, community-based care; (2) count education and services received in detention towards the completion of the youth’s treatment plan.*



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Introduction

This section highlights areas of the non-Medicaid healthcare budget where policy changes will increase efficiencies and generate savings without reducing services. Budget allocations for health care expenditures are increasing each year. This chapter proposes several recommendations to reduce expenditures in state health care that are fundamental changes needed to keep costs affordable while maintaining quality benefits in a competitive job market. These changes include containing state health care liabilities, controlling the cost of care, and reducing waste and fraud within the system. The most effective way to control costs is through the application of free-market principles. Allowing more insurance providers to offer services will facilitate increased competition among providers. Healthy competition results in a higher quality of service at lower costs. More insurance options also offer employees additional control over their health care allowing employees to select plans that best suit their individual needs.

Increasing health care costs are not specific to Florida - health care is growing at unsustainable rates across the country. Despite many efforts, health care costs in the U.S. are increasing rapidly. According to the Organization for Economic Co-Operation and Development, the U.S. has had one of the highest average annual growth rates in per capita spending on health care since 1980. Despite significantly higher relative levels of spending, the U.S. does not appear to provide health care quality or achieve benchmarks in line with such expenditures, when compared to other developed countries.¹ Increasing health care costs also directly affects individuals and families. From 1999 to 2010, health insurance premiums have more than doubled.²

Any solutions for the skyrocketing healthcare costs must be comprehensive. Overutilization of benefits, unhealthy life styles, a lack of competition among service providers, billing fraud, claims errors, and a lack of accountability are the fundamental issues in need of reform. Potential reforms include the implementation of the defined contribution and health investment plans. In addition, providing incentives based on controllable wellness indicators will promote healthy behaviors and reduce the overutilization of healthcare services.

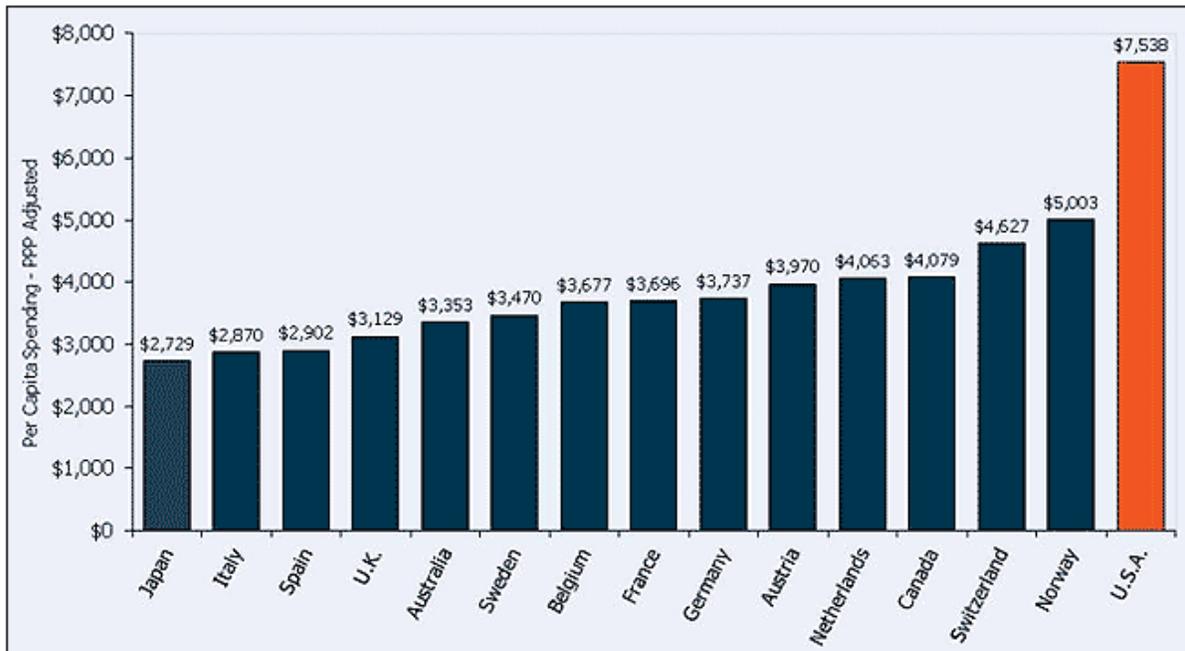
The Legislature must take action to reduce health care costs by eliminating fraud and waste while improving the delivery of services. The recommendations in the subsequent section are drawn from successful examples in the Federal Government and best practices in other states. The expeditious implementation of these recommendations will generate immediate cost-savings for Florida taxpayers and shift the health care system towards positive change. Figure one below illustrates per capita spending for large developed countries. Per capita, the U.S. ranks number one in the world for total health care expenditures. To put this into perspective, the U.S. spends over 50 percent more than Norway, the second highest country.³

¹ Kaiser Family Foundation, "Wage and Benefits, a long term view", November 2009.

² *Ibid.*

³ McCarthy, Michael. "U.S. health costs, already highest, rising faster as well." May 4, 2011. *Seattle Local Health Guide*. Retrieved from <http://mylocalhealthguide.com/u-s-health-cost-already-highest-rising-faster-as-well/>.

Figure 7: Countries with the Highest Total Health Care Expenditures Per Capita



Source: Organisation for Economic Co-operation and Development (2010), "OECD Health Data", *OECD Health Statistics* (database). doi: 10.1787/data-00350-en (Accessed on 14 February 2011).

Notes: Data from Australia and Japan are 2007 data. Figures for Belgium, Canada, Netherlands, Norway and Switzerland, are OECD estimates. Numbers are PPP adjusted.

Healthcare Reform Recommendations

24. Implement a Defined Contribution Model

Defined contribution health plans emerged in the 1980s as an effective measure to control escalating health care costs. As health care costs outpaced inflation during this period, public and private employers were forced to seek cost control measures in the form of higher premiums, co-payments, and deductibles. While the conventional employer-sponsored health plans define specific benefits and the employee's premium rates, the defined contribution health plans set a fixed amount toward healthcare coverage for each employee.

Defined contribution is a consumer-oriented health insurance plan which allows employees to be more involved in their health care choices. Even though there are many forms of defined contribution health insurance plans, they all have key elements in common. An employer makes a fixed contribution towards health care coverage for each employee, and employees are provided various health care plans from which to choose. The different plans vary by deductible, co-payment amount, plan style, premium, and coverage. It is up to the employee to decide which plan will best fit their needs.

The cost-savings from the defined contribution model can be realized immediately if the state sets premium rates below existing averages. Florida currently contracts with five insurance companies who offer health plans to state employees at various rates. The state could set the defined rate based on 1) the lowest existence rate among all providers; 2) 10 percent below the average rate of all providers; or 3) 10 percent below the existing lowest rate.⁴ The estimated annual savings of these three options range from \$344 million to \$396 million.

Federal and State Examples

The Federal Employees Health Benefits Program

The Federal Employees Health Benefits Program (FEHBP) is similar to the defined contribution model. The program provides health insurance to most federal employees and retirees, including members of Congress, covering about eight million individuals. The FEHBP allows insurance companies, employee associations, and labor unions to market health insurance plans to federal employees. The program is administered by the United States Office of Personnel Management (OPM) and has been in place since 1960. Choices among competing health plans are available to employees during an "open enrollment" period. After the annual enrollment, changes can be made only upon a "qualifying life event" such as marriage, divorce, etc. Premiums vary from plan to plan and are paid by both the employer and employee. The employer pays an amount up to 72 percent of the average plan premium for single or family coverage, and the employee pays the remaining balance. The exact dollar amount is calculated annually based on the chosen plan's premiums. The Federal Government's contribution for a chosen plan is capped at a certain rate of average cost for all plans. Employees choose any plan they like; however, they have to pay for the expensive choices.

⁴ The estimated rates for various scenarios do not include the cost of PPO plans which currently serve almost 50 percent of the state employees. The insurance premium paid the providers is per contract, not subscriber.

The FEHBP success can be largely attributed to the application of free market principles. Employees are incentivized to search for better plans while providers are required to provide competitive benefit packages at lower prices. Insurance companies respond to new demands by offering restricted provider networks, which lower costs. The most popular option offered through the FEHBP is the Blue Cross Blue Shield Standard Option plan (BCBS-SO) covering approximately 60 percent of all program participants.⁵ The BCBS-SO plan offers services through a network of Preferred Provider Organizations (PPO). Patients pay reduced rates for services provided through the preferred network of providers. If they choose to go outside of the network, they are required to pay a larger share of the service cost. One of the most prominent features of the FEHBP is the choices it allows. It is important to note that the FEHBP is not limited to PPOs. It also offers HMOs, high deductible health insurance plans, and other consumer-driven plans.⁶

Utah's Experience with the Defined Contribution Model

In fall 2009, Utah implemented a defined contribution model statewide. The state created a health exchange system to bring competition among health care providers. The system is not limited to state employees; rather, it is accessible by all workers in the state. Employers offer workers a tax-free contribution toward the health plan of their choice. Employees then select the benefit plan they prefer from a variety of options offered by competing insurers through the health insurance exchange. The Utah model includes three important components: 1) a “premium aggregator” feature to allow employees to combine contributions from more than one employer; 2) a “risk adjustment” system to compensate for any adverse selection effects, such as individuals in poorer health choosing certain plans in disproportionate numbers; and 3) funding for brokers to help employers participate in the system and help employees choose a plan that fits their needs and preferences.⁷

Michigan's Switch to Defined Contribution

Introduced June 2011, Michigan Senate Bill 407 proposes major changes to the state's defined contribution retirement health benefit for state employees.⁸ If passed, the bill would transition state employee post-retirement benefits to a defined contribution health savings account system. The bill would also provide coverage for only vested employees in the defined benefit plan or currently retired employees in the defined contribution plan as well as eliminate retiree health insurance for all employees in the defined contribution plan hired after 1997.

Advantages of Defined Contribution Model

The defined contribution model is an effective way for the state to manage increasing health care costs. The model can also provide greater flexibility and control for employees when choosing

⁵ “Basic Facts about the Federal Employee Health Benefit Program,” July 2009, Consumers Union.

⁶ Federal Employees Health Benefits Program. 2011. *U.S. Office of Personnel Management*. Retrieved from <http://www.opm.gov/insure/health/planinfo/index.asp>

⁷ “Utah's Defined-Contribution Option: Patient-Centered Health Care.” July 30, 2010. *The Heritage Foundation*.

⁸ Senate Bill 407: Public Employee Retirement Health Care. Fiscal Analysis. *Michigan State Senate*. June 2011. <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/Senate/pdf/2011-SFA-0407-S.pdf>

an appropriate healthcare plan. Florida currently offers a defined benefit plan which includes full coverage health insurance. The majority of these insurance premiums are paid for by the state. The defined contribution plan allows employees to choose a plan more aligned with their specific needs. As a result, the defined contribution plan saves money by only covering care selected by employees instead of over-insuring unnecessary items.

Defined contribution health plans are considered a free market solution to high healthcare costs.⁹ Health care insurance providers are expected to be more efficient and creative in their benefit plans as a result of induced market competition. Providers will be forced to modify their business model and begin selling their plans to employees, not employers. Market competition will result in better contracting for the state and lower insurance premium rates for employers. As a result of more competition, providers will be motivated to offer a price concession, improved quality, and access to service.

Challenges of Defined Contribution Model

Opponents argue defined contribution offers little savings and shifts the costs from employers to employees. However, these potential shifts in cost will be counteracted by the savings in services through preferred network providers. Opponents also claim employees will not have the authority or options to choose the plan that fits their individual needs. To combat this, the state should establish ombudsmen that understand the needs of the employee while clearly explaining the available options.

Other Options

Individual and Family Coverage

Currently, state employees can purchase either individual coverage or family coverage, which covers both spouses and children, at a slightly higher price. This binary option gives the same price to a young, newly married employee as it does to an older employee with several children, effectively forcing the former to subsidize the latter. Florida should explore offering an expanded range of coverage, such as 1) Individual, 2) Couple, 3) Individual with Children, and 4) Couple with Children. Such a structure would more fairly price insurance and avoid punishing young married couples.

Multiple Options within a Single Carrier

The models outlined previously carry some threat from adverse selection, in which individuals who care less about the quality of benefits than price, typically the young and healthy, migrate toward less expensive plans with fewer benefits. Those who value benefits more, mostly older and unhealthy individuals, flock toward more inclusive plans. This further increases the costs in the higher benefit plans, causing the healthier employees of that group to drop out in favor of the less expensive plans. This cycle can eventually drive all but one provider out of business.

⁹ “Defined Contribution It would Change Everything,” Managed Care, September 2010.

However, an alternative model exists in which the state competitively selects one provider that all employees are enrolled in one of three multiple plan options. The state employer would pay for all or part of the lowest tier option, and employees that desire a higher level of benefits could pay more to “upgrade” to a higher tier during open enrollment. This model avoids adverse selection problems, as employees cannot switch to a different provider, so that chronically unhealthy employees would not be clustered in one plan.

Additionally, the single carrier model could be adapted to cover regions, so that coverage could be provided by multiple providers. By adopting this regional model, with the state paying 90 percent of the lowest “first tier” premium (adjusted by a regional cost of care index to account for differences in cost throughout the state), Florida could both save upwards of \$440 million and foster a competitive marketplace for health care for government employees.

The estimated annual savings to the state from implementing a defined contribution health plan would range from \$344 million to \$440 million.

Recommendation: The Legislature should direct DMS, or hire a consulting firm, to design a Defined Contribution model combined with incentives for high-deductible insurance plans. The model will succeed if it includes important changes in insurance regulations, contains fairly negotiated individual benefit plans, and provides a comprehensive support system for consumers. The defined contribution premium should be determined following a thorough study of the causes of the cost difference among existing insurance plans. A simplistic approach will likely force some providers out of the market and result in even greater cost in the long-term. Indeed, the success of proposed changes will largely depend on a fair and comprehensive approach in determining defined contribution rates.

25. Provide incentives based on controllable wellness indicators

Many governmental and private entities, including other state governments, offer incentives to employees based on controllable wellness indicators; primarily tobacco use and body weight level. Reportedly, these types of incentive programs have resulted in a much slower increase in overall health care costs for some employers. Long used by private industry, state governments are realizing the benefits of incentivized wellness programs for both the employee and employer. The programs are intended to encourage and support state employees to participate in tobacco cessation and weight loss programs. Successful completion of these programs results in the improvement of personal health and increases work-related productivity. Research indicates positive results and demonstrates that incentivized wellness programs improve the health of employees while also benefiting the organization.¹⁰

The concept of wellness programs is not new to Florida. In 2006, Florida began implementing a policy to reward Medicaid recipients up to \$125 a year for engaging in specific wellness and

¹⁰ Hilzenrath, David. “Wellness Incentives Could Create Health Care Loop Holes.” October 16, 2009. *The Washington Post*. Retrieved from: <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/15/AR2009101503036.html>

healthy behaviors.¹¹ An incentive program for state employees could especially yield benefits because of the longevity of the employer-employee relationship; state workers tend to stay with the state for long periods of time, therefore a wellness program would likely have a high return on investment for the state.

Public and private entities have realized significant savings through the implementation of employee wellness programs. According to a study in the peer-reviewed journal *Health Affairs*, private companies with wellness programs have seen a 28 percent decrease in sick leave, a 26 percent reduction in adjunctive health care costs, and a 30 percent reduction in disability and workers compensation costs.¹² North Carolina estimates that the health incentive programs save \$2 for every \$1 spent. Oklahoma estimates the health incentive program saves \$2.30 for every dollar spent.¹³ According to the Wellness Council of America, a \$1 investment in wellness programs saves \$3 in health care costs.¹⁴

The Evidence for the Effectiveness of Wellness Programs

Numerous empirical studies have shown that poor diet, addiction, and lack of exercise lead to costly medical conditions. One leading cause of preventable disease is smoking. A U.S. Center for Disease Control and Prevention study revealed that from 1997-2001 smoking caused approximately 438,000 premature deaths in the United States annually and approximately \$92 billion in annual health-related economic losses.¹⁵ In 1998 alone, smoking-attributable personal health care medical expenditures reached \$75.5 billion.¹⁶

Numerous states have incentivized wellness programs for their employees. These programs provide a variety of discounts to employees, ranging from \$5-\$500 dollars in value, and including premium discounts for their insurance, gift cards, and reduction in co-pays.

The 2011 Legislature passed House Bill 445 which permits group or individual health insurance and Health Maintenance Organizations (HMOs) to offer voluntary health and wellness programs to the insured. The bill also allows rewards and incentives to be offered for participation in the program. The rewards and incentives include premium discounts and modifications to co-payments, deductibles, or co-insurance. The Legislature should enhance and expand current incentives to state and local employees. Following the proliferation of successful wellness

¹¹ “Enhanced Rewards Program.” AHCA Policy letter. (2006). Retrieved from http://ahca.myflorida.com/Medicaid/medicaid_reform/enhab_ben/enhanced_benefits.shtml

¹² Iglehart, John. “Influences on the Health of Populations: A Closer Look.” *Health Affairs*, Volume 21, No.2, March 2002. Retrieved from <http://content.healthaffairs.org/content/21/2/7.full.pdf+html>

¹³ Hsieh, Jason. “State Employee Health Management Initiatives.” Issue Brief July, 2009.. *National Governors Association*. Retrieved from www.nga.org/Files/pdf/0907HEALTHMANAGEMENTINITIATIVES.PDF

¹⁴ Good, Crystal. “Wellness Matters.” Wellness Councils of America. (2006) Retrieved from www.welcoa.org/freeresources/pdf/wellness_matters_jk.pdf

¹⁵ Center for Disease Control and Prevention (U.S. Department of Health and Human Services), “Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses --- United States, 1997-2001,” *Morbidity and Mortality Weekly Report (MMRW)*, April 12, 2002, 51(14): 300-3; available electronically at www.cdc.gov/mmwr/preview/mmwrhtml/mm5425a1.htm, “Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses --- United States, 1995-1999,” *Morbidity and Mortality Weekly Report (MMRW)*, July 1, 2005, 54(25): 625-8; available electronically at www.cdc.gov/mmwr/preview/mmwrhtml/mm5114a2.htm.)

programs, Florida's health care and insurance cost will reduce dramatically.¹⁷ **Every one percent reduction in Florida's employee health care expenditures saves \$12 million for the taxpayers annually.**

Recommendation: *The Legislature should direct the Department of Management Services and the Agency for Health Care Administration to implement a program to provide incentives and disincentives for state employees based on controllable wellness indicators.*

26. Require all classes of employees to pay same premiums for health insurance

The state of Florida Personnel System (SPS) is divided into six primary categories each with its own rules, regulations, wages, benefits, and collective bargaining. The six categories include State Universities, Justice Administration, State Courts, Legislature, Lottery, and the State Personnel System. The SPS represents the largest of the state's total established positions. Florida is one of the few states paying the majority of health insurance premiums for its employees. Career Service employees, of which there are 114,006, comprise the majority of the SPS.¹⁸ The main problem with the state's health insurance system is the remarkably low insurance premiums paid by employees.

According to a study by the Kaiser Family Foundation, the national average of annual insurance premiums paid by employees is \$900 for individual and \$3996 for family.¹⁹ This is substantially more than the premiums paid currently by state employees. The chart below shows the annual premiums paid by employees in the different classes and potential savings if state employees are required to pay premiums that align with national averages.

Figure 8 lists the annual contribution for Career Service (CS), Select Exempt Service (SES), and Senior Management Service (SMS) under current premium contributions. CS employees pay \$600 a year for individual insurance and \$2,160 for family. SMS and SES employees pay only \$100 a year for an individual and \$360 for a family. The national average for annual premiums is \$900 for an individual and \$3996 for a family.

¹⁷ House Bill 445. "Wellness or Health Improvements Programs." *Florida House of Representatives*. (2011), Retrieved from <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=45274&SessionIndex=-1&SessionId=66&BillText=&BillNumber=445&BillSponsorIndex=0&BillListIndex=0&BillStatuteText=&BillTypeIndex=0&BillReferredIndex=0&HouseChamber=H&BillSearchIndex=0>

¹⁸ Department of Management Services. Insurance Premium Report. July 2011. *Division of State Group Insurance*.

¹⁹ The Kaiser Family Foundation. *Employee Health Benefits*. 2010. <http://ehbs.kff.org/pdf/2010/8086.pdf>

Figure 8: Current Insurance Premiums

Employee Classification	Number of Employees Enrolled	Annual Premium Paid by Employee	Annual Premium Paid by State	Total annual cost to state for employee health insurance
<i>Career Service</i>				
Individual Plan	46,327	\$600	\$5,998	\$277,869,346
Family Plan	60,986	\$2,160	\$12,760	\$778,181,360
Spouse Plan	6,693	\$360	\$14,920	\$99,859,560
Sub Total	114,006	\$3,120	\$33,678	\$1,155,910,266
<i>Select Exempt & Senior Management Service</i>				
Individual Plan	7,438	\$100	\$6,498	\$48,332,124
Family Plan	17,847	\$360	\$14,560	\$259,852,320
Sub Total	25,285			\$308,184,444
Totals	139,291			\$1,464,094,710

Figure 9 represents the cost savings for Florida if all CS, SMS, and SES employees paid the same premiums for individual, family, and spouse plans, in line national premium averages. The annual payments are drawn from national averages for each premium.

Figure 9: Insurance Premiums after alignment with national averages

Employee Classification	Number of Employees Enrolled	Annual Premium Paid by Employee	Annual Premium Paid by State	Total annual cost to state for employee health insurance
<i>Career Service</i>				
Individual Plan	46,327	\$900	\$5,698	\$263,971,246
Family Plan	60,986	\$3,996	\$10,924	\$666,211,064
Spouse Plan	6,693	\$1,800	\$13,480	\$90,221,640
Sub Total	114,006	\$6,696	\$30,102	\$1,020,403,950
<i>Select Exempt & Senior Management Service</i>				
Individual Plan	7,438	\$900	\$5,698	\$42,381,724
Family Plan	17,847	\$3,996	\$10,924	\$194,960,628
Sub Total	25,285			\$237,342,352
Totals	139,291			\$1,257,746,302

(Employee totals include state agencies, universities, and other non-state agencies.)
Source: Personal communication with Division of State Group Insurance. July 2011.

If Florida required all employees pay the same premiums for health insurance, it would save the state \$206.3 million annually.

Several bills were introduced in the 2011 Florida Legislature in an effort to reform the health insurance subsidy and require employees to pay more towards their benefits. Of the three bill introduced, Senate Bill 2126, Senate Bill 2102, and House Bill 7255, none were successfully adopted by the Legislature. SB 2126 attempted to reform the defined contribution plan and increase employee contribution for health care. The bill required the Department of Management Services to offer four levels of benefits to employees: platinum, gold, silver, and bronze. Each level offered different benefits and associated costs. Lower plans even offered sharing potential

cost savings with employees.²⁰ SB 2102 required all employees to pay \$50 a month for individual and \$200 for family coverage. The bill also attempted to cap the state's contribution at the cost of the most inexpensive plan.²¹ Total cost savings estimated for the full implementation of SB 2102 was estimated at \$338,778,744. HB 7255 was similar to SB 2126 as it required employees to pay the difference between plan costs and the state's contribution. It also allowed the employee to pay a pro-rated amount if they selected one of the platinum-bronze plans.²²

Substantial savings would be realized by the state for partial or full implementation of insurance premium payment reform. An alternative to this option would be to use a tiered system based on the salary class of the employee, such as using staggered premium payments based on annual earnings. For example, employees who earn more would pay more in annual premiums. This would make the health insurance burden more equitable for both the state and employees.

If all classes of state employees were required to pay the national average for individual, spouse, and family health insurance premiums, the state would save an estimated \$206.3 million in FY2012-13 and annually thereafter.

Recommendation: The Legislature should modify current health insurance subsidies and employee annual health insurance premium payments to align with national averages and reflect equality across all employee classifications.

27. Promote Health Investor HMOs and PPOs (Health Savings Accounts)

Florida currently has four types of health insurance plans; a standard statewide Preferred Provider Organization (PPO) plan, a Health Investor PPO plan, a standard Health Insurance Maintenance Organization (HMO) plan, and a Health Investor HMO plan. Both Health Investor and standard PPOs are administered by Blue Cross Blue Shield and Caremark of Florida.²³ Health Investor plans for HMOs and PPOs are very similar to their standard counterparts when comparing benefits and restrictions. However, Health Investor Plans have a less expensive monthly premium and offer monetary incentives for efficient utilization of care.

Health Investor PPOs and HMOs are high-deductible plans executed through Health Savings Accounts (HSAs). HSAs have considerable potential for controlling insurance costs of the state. Monetary deposits by the employer in HSAs become enrollees' permanent property. Employees are able to withdraw and transfer money for medical and health care services at their discretion. This money is accessible for various health expenses such as deductibles and co-payments. If the employee is healthy or chooses to reserve HSA deposits, the money saved becomes an asset for the employee. The state benefits from Health Investor accounts through a paradigm shift in health care consumption from a "use it or lose it" mentality to one of using services only when medically necessary. Although other states using HSAs have shown benefits for both employers

²⁰ Florida Senate. SB 2126 Department of Management Services. 2011. <http://www.flsenate.gov/Session/Bill/2011/2126>

²¹ Florida Senate. SB 2102 Health Insurance Benefits for State Employees. 2011. <http://www.flsenate.gov/Session/Bill/2011/2102>

²² Florida Senate. HB 7255 State Group Insurance Program. 2011. <http://www.flsenate.gov/Session/Bill/2011/7255>

²³ Myflorida.com. *My benefits*. http://www.myflorida.com/mybenefits/Health/Medical_Plans/Medical_Plans.htm

and employees, only one percent of Florida state employees are enrolled in Health Investor plans.

In 2005, Indiana implemented a Health Investor (Health Savings Accounts) option for its employees. The state deposits \$2,750 annually into an account controlled by the employee. The monthly premiums for the health insurance plan are paid by the state. The HSA option has generated significant changes in employee behavior. In 2009, state workers visited emergency rooms and physicians 67 percent less than workers with other plans. In addition, HSA participants were more inclined to use generic drugs and use overall medical resources less frequently. HSAs have reduced the overuse of health benefits, saving the state of Indiana millions since 2005.²⁴

Recommendation: *The Legislature should direct DMS to develop and incentivize participation in competitive Health Investor plans through Health Savings Accounts in conjunction with the proposed defined contribution health plan.*

28. Consolidate and/or outsource pharmaceutical repackaging

According to a 2009 OPPAGA report, the Agency for Persons with Disabilities (APD), Department of Juvenile Justice (DJJ), and the Department of Corrections (DOC) have separate contracts for the disbursement of drugs at the various facilities across the state. The costs for these contracts exceed the unit cost for the same activity performed by the Department of Health (DOH) Central Pharmacy. OPPAGA recommended either in-sourcing the function with DOH, or outsourcing it for potential cost savings.²⁵

Currently, several Florida agencies purchase pharmaceutical drugs through a contract with a large group purchasing organization called Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP). The alliance contracts with Cardinal Health, a wholesale drug supplier for statewide drug purchases. This contract is managed through DOH's Central Pharmacy on behalf of the agencies.

As a result of escalating costs, the 2011 Legislature passed Senate Bill 2002 modifying the state pharmaceutical purchasing arrangement. The bill directs the Department of Management Services to solicit group purchasing organizations and other vendors to offer a new system for drug purchasing (excluding Medicaid). The purchasing group is directed to establish a preferred drug list utilizing generic drugs to enhance cost efficiencies. Once a group contract has been established and approved by the Legislature, participation with MMCAP will be terminated.²⁶

The OPPAGA study revealed that the state could attain cost-savings by consolidating all drug repackaging under DOH's Central Pharmacy or a private vendor. The report compared the dose and script dispensing fees paid by APD with DOC and DJJ. The report also compared the

²⁴ Mitch Daniels, "Hoosiers and Health Savings Accounts", March 2010. *Wall Street Journal*.
<http://online.wsj.com/article/SB10001424052748704231304575091600470293066.html>

²⁵ "Feasibility of Consolidating Statewide Pharmaceutical Services." Office of Program Policy and Government Accountability of the Florida. March 3, 2009. Retrieved from
www.oppaga.state.fl.us/Monitor/docs/Reports/pdf/Feasibility_of_Consolidating_Statewide_Pharmaceutical_Services.pdf

²⁶ Senate Bill 2002. Florida Statue 2011-47 Section 78.

contracts for repackaging and filling prescriptions with DOH's Central Pharmacy. OPPAGA concluded that consolidation under DOH is potentially a more cost-effective option. Medication repackaging was recently implemented for specific medications in the DOC. These medications are now dispensed in blister packs, allowing refunds on unused medications. Changing from a private vendor to the Department of Health generated a 66 percent savings for the DOC, or \$1.4 million in FY2009-10.²⁷ **Consolidating all state drug repacking services through DOH, either at their facilities or contracting with an outside vendor, would save \$2 million annually.**

Recommendation: *The Legislature should require all agencies to consolidate their drug repackaging services under the Department of Health.*

29. Expand use of Section 340B purchasing for pharmaceuticals

The 340B Drug Pricing Program was established in 1992 and limits the costs of covered outpatient drugs for federal purchasers and for certain federal agency grantees. Qualified entities that participate in this program realize significant savings on pharmaceutical purchases. Section 340B prices are on average 49 percent lower than average wholesale prices and 24 percent lower than that available to group purchasing organizations. Maximizing utilization of Section 340B purchasing for other state drug purchases would produce significant immediate and recurring savings.

Although state and local government entities are generally not directly eligible to participate in the Section 340B purchasing program, one of the primary methods that these entities can reduce drug expenditures for vulnerable populations is through partnerships with Section 340B qualifying entities. Partnerships with qualifying entities are increasingly used by states to provide reduced price Section 340B pharmaceuticals to mental health facilities, nursing homes, and prison populations. For example, the Texas prison system partnered with a disproportionate share hospital (DSH) several years ago to provide the state corrections population with healthcare services and access to Section 340B pricing; thus saving the State of Texas more than \$10 million annually. Every state has Section 340B providers, particularly DSH hospitals and Federally Qualified Health Centers (FQHC), which includes the DOH.

The DOC operates 63 correctional facilities statewide with a population of 102,000 inmates. Twenty-two are "HIV cluster prisons," housing most of the HIV-infected inmates to allow for the concentrated and intensive medical care such inmates need. The average cost of treating an inmate with HIV is \$1,863 per month.²⁸ Florida has approximately 3,000 prisoners who are HIV positive or have AIDS. The Legislature allocated \$24.1 million to the DOC for treatment of infectious disease for FY2011-12.²⁹

²⁷ Florida Department of Corrections. 2010 Annual Report. P. 57 http://www.dc.state.fl.us/pub/annual/0910/pdfs/AR_09-10_Final.pdf

²⁸ Kitahata, et al, "Effect of Early versus Deferred Antiretroviral Therapy for HIV on Survival," New England Journal of Medicine, April 30, 2009; Volume 360, Number 18, pages 1815-1826.

²⁹ Florida Appropriations Act. Ch.2011-69. <http://laws.flrules.org/2011/69>

Although the DOH is the only state agency that can purchase drugs at federal 340B prices because DOH is the recipient of federally awarded programs and is responsible for the administration of the FQHC, Florida may be able to expand some of its pharmaceutical purchasing through the 340B program. DOH is piloting an initiative with the DOC to purchase drugs for patients with HIV/AIDS and sexually transmitted diseases (STDs) through the 340B program. Physicians employed by the DOH will treat inmates in the pilot program, and because of direct treating relationship, DOH will be authorized to purchase drugs under Section 340B for inmates in the pilot project. The pilot program is currently being used in nine correctional institutions. The DOC is working with two county health departments to provide STD and HIV/AIDS care for inmates. The program saved the state \$4.9 million in FY 2009-10.³⁰ **Based on the savings from the pilot program, expansion to all DOC facilities could produce an estimated annual savings of \$34.3 million.**

The state should also expand this type of DOH partnership to purchase section 340B drugs for other state entities, such as Department of Children and Families, DJJ, and other entities that provide outpatient pharmaceuticals directly to patients in the state's care. An analysis by the Florida Department of Health's Bureau of Statewide Pharmaceutical Services found that the state would have saved \$7.4 million over three years if it purchased the top 50 most prescribed medications at 340B prices.³¹

Recommendation: *The state should expand the use of the Section 340B program to acquire inexpensive pharmaceuticals through the establishment of partnerships with associated state agencies and Section 340B providers.*

30. Implement a pre-payment audit system

The state pays for the prescription drugs for a number of individuals through a myriad of programs, including the Division of State Group Insurance (DSGI) of the Department of Management Services (which administers the state employees' health insurance program) and the Medicaid program. To facilitate the distribution of prescription drugs to beneficiaries, the state – like most third-party payers including states and non-governmental entities – contracts with a Pharmacy Benefit Manager (PBM) to administer the processing and payment of prescription drug claims made on behalf of beneficiaries by the drug dispensers (i.e., the pharmacies). Claims from PBMs can number in the hundreds of thousands and auditing them to ensure accuracy is a daunting task that has typically been done by examining only a sample of the claims. Implementing automated technology would now allow the state to conduct a pre-payment audit of the 100 percent of the claims submitted by the PBM for a number of potential errors, including beneficiary eligibility and price accuracy. Furthermore, this service can be done on a contingency service.

Industry experts estimate that the error rate for PBM claims is likely 3-5 percent for overcharged claim identification. The state purchases approximately \$2.1 billion worth of pharmaceutical

³⁰ Florida Department of Corrections. *2010 Annual Report*. P. 57 http://www.dc.state.fl.us/pub/annual/0910/pdfs/AR_09-10_Final.pdf

³¹ OPPAGA, "Research Memorandum: Feasibility of Consolidating Statewide Pharmaceutical Services," March 3, 2009.

drugs annually. Assuming 3 percent overpayment error rate, implementation of a pre-payment audit system could reduce state payment by more than \$60 million annually. **Assuming a contingency fee of one-third (33.3 percent) of all identified claims (i.e., money saved by the state), implementation of a pre-payment audit could generate \$40 million in cost savings annually.**

Recommendation: *The state should implement a pre-payment audit system for prescription drug invoices submitted the state for payment on a contingency basis to reduce overpayments due to claims errors.*

31. Coordinate with the Federal Government in the deportation of undocumented aliens in mental health facilities

The Department of Children and Families (DCF) provides mental health treatment for criminals who are mentally ill. Florida's Constitution requires the state provide competency restoration services for all residents in an effort to maintain public safety. As of November 2009, Florida housed 86 undocumented aliens in mental health facilities throughout the state. The state lacks the authority to remove undocumented aliens due to federal deportation restrictions. Of these aliens, 67 percent were mandatorily committed by judges due to violent crimes or sex offenses.³² The primary origin of these aliens is Central America and the Caribbean Basin. Although the number of aliens in mental health facilities has remained constant for over five years, treatment costs remain high. The current population of aliens in mental health facilities has cost the state \$15.3 million due to extended care related to mental illness. The main issue contributing to this preventable cost is DCF's inability to identify and confirm illegal alien status.³³

Florida currently spends \$9 million annually to treat and house undocumented aliens in state mental health facilities. The majority (75 percent) of this funding is allocated from general revenue with the remaining funding (25 percent) received from a federal grant trust fund.³⁴ To alleviate this cost, the state must enhance coordination with the U.S. Department of Homeland Security's office of Immigration and Customs Enforcement (ICE). Implementing an identification procedure for potential aliens can enable mental health facilities to determine legal status and allow these facilities to report illegal aliens to ICE. As a result, ICE can remove aliens from state care and deport them to their country of origin. **If the state establishes a procedure for identifying and reporting undocumented aliens to ICE, the state would save a minimum of \$9 million annually.**

Recommendation: *The Legislature should direct the Department of Children and Families coordinate with the office of Immigration and Customs Enforcement to implement an identification procedure for undocumented aliens.*

³² Better coordination between Florida and the Federal Government could expedite removal of undocumented aliens in mental health institutions. *OPPAGA*. February, 2010.

³³ Better coordination between Florida and the Federal Government could expedite removal of undocumented aliens in mental health institutions. *OPPAGA*. February, 2010.

³⁴ *Ibid.*

32. Expand the role of Advanced Registered Nurse Practitioners & Physician Assistants

Advanced Registered Nurse Practitioners (ARNP) and Physician Assistants (PA) are highly trained graduate-level medical professionals. These professionals work predominately in primary care, however, a percentage comprise specialty fields. ARNPs and PAs are both state and nationally certified. They treat both physical and mental conditions through analyzing patient history, physical exams, and interpreting diagnostic tests results. ARNPs and PAs diagnose disease and suggest appropriate treatment for the patients, including prescribing medication. In the majority of routine medical visits, ARNPs and PAs can serve as the primary health care provider and remain an efficient and effective alternative to primary care physicians. According to Florida law, ARNPs and PAs are permitted to independently manage common medical problems and may initiate, monitor, alter or order drug therapies as a nursing function. Any drug therapy that an ARNP or PA prescribes, initiates, monitors, alters, or orders must be within their scope of practice, knowledge, and training, and must be authorized by the supervising physician.³⁵ Several states have granted ARNPs and PAs the authority to prescribe controlled substances independently with 47 states allowing this authority under a physician's supervision.³⁶ A number of research reports have revealed that the prescription habits of ARNPs and PAs are identical to their physician colleagues. This is an important factor when addressing the potential dangers of controlled substances and the negative impacts of pain clinics in Florida.

Expanding the scope of practice for Advanced Registered Nurse Practitioners (ARNPs) and Physicians Assistants (PAs) can generate potential cost savings of \$7 million to \$44 million annually for Medicaid, \$744,000 to \$2.2 million for state employee health insurance, and \$339 million across Florida's entire health care system.³⁷ **If the legislature grants ARNPs and PAs the ability to grant prescriptions independently and bill insurance directly, the state would save \$339 million annually.**

Recommendation: There are two phases of implementation available that will produce varying levels of cost savings. The first recommendation phase requires the Florida Legislature to grant ARNPs and PAs prescription authority for controlled substances with the supervision of a physician and within the scope of their practice. The second phase expands the scope to allow ARNPs and PAs to practice independently of a physician. This includes prescription of controlled substances and direct billing to Medicaid and insurance providers. To achieve this, the Legislature must clarify s.458.347, F.S., and s.459.022, F.S., to define the scope of practice for ARNPs and PAs. In addition, the Legislature must create language to allow ARNPs and PAs to conduct direct billing in the same manner as physicians. The final step would be to amend the administrative rules governing this area of practice under the Florida Department of Health.

³⁵ "Authorization for Advanced Registered Nurse Practitioners to Prescribe Controlled Substances." *Florida Senate. Committee on Health Regulation*. October 2008. Interim Report 2009-117

³⁶ *Ibid.*

³⁷ OPPAGA, "Expanding Scope of Practice for Advanced Registered Nurse Practitioners." Research Memorandum, December 30, 2010. The \$339 million in savings across Florida includes small businesses and individuals who purchase insurance directly through providers.



Government Cost Savings Task Force

Procurement Reform

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Introduction

State agencies in Florida purchase large quantities of goods and services annually. These purchases include professional and construction services as well as off-the-shelf and proprietary commodities needed to support agency activities, such as office supplies, vehicles, and information technology. Establishing the most proficient processes for the procurement of these goods and services, however, remains an unresolved issue. Generally, relevant reforms have fallen into either of two broader categories: outsource purchasing to the private sector or internally centralize agency purchases through a single administrative entity, such as in the shared services model. While some states have chosen to decentralize all of their procurement processes without a centralized entity, other states, including Florida, have opted for the centralized model. However, it remains decentralized in its implementation resulting in a lack of transparency to identify inefficient and wasteful procurement processes and contracts while identifying good contracting and purchasing processes and procurements..

The Department of Management Services (DMS) is responsible for overseeing state purchasing activities in Florida. The DMS's Division of State Purchasing establishes statewide purchasing rules, and negotiates contracts and purchasing agreements that leverage the state's buying power. DMS also oversees the state's electronic procurement system, **MyFloridaMarketPlace (MFMP)**, which was designed to enable state agencies to procure commodities and contractual services online and electronically communicate information on purchasing activities to the state's accounting system, **Florida Accounting Information Resource Subsystem (FLAIR)**, to optimize state procurement (FLAIR is operated by the Department of Financial Services).

For several reasons, however, Florida's procurement system does not capture all of the procurement data that could be used to improve state agency purchasing practices. A lack of adherence to and enforcement of the instituted procurement rules has allowed many state purchases to occur without the proper cost-saving safeguards in place. Many state purchases are not made through or recorded in MFMP, even though they should and can be acquired in this way. Additionally, certain goods and services are currently exempt from the requirements (e.g., legal services and academic lectures) as are certain agencies (e.g., Department of Agriculture and Consumer Services). As a result of these deficiencies, the state's ability to strategically purchase goods and services remains limited.

Background

The Legislature enacted numerous laws to help ensure that state purchases obtain the highest overall value; agencies are to procure goods and services in an accountable, effective, and economical manner; and vendors are afforded fair and open competition. For example, Ch. 337, Florida Statutes, governs procurement of transportation-related construction projects, while Ch. 255, Florida Statutes, specifies the competition and solicitation requirements for acquisitions relating to construction of public property. In FY 2009-10, the state spent a total of \$1.18 billion

on public construction services, including related architectural and engineering services.¹ Purchases of goods and services that are not related to construction are governed by s. 287.057, Florida Statutes.

Figure 10: Statutory Definition of Types of Goods and Services

Florida Statute	Type of Goods and Services
Section 287.055	Professional Construction Services
Chapter 337	Transportation Construction
Chapter 255	Public Property Construction
Section 287.057	Non-Construction

As provided in s. 287.057, Florida Statutes, agencies may use a variety of procurement methods if the contract for goods and services is in excess of the threshold amount provided for in Category Two (\$35,000 or more).² The procurement method chosen depends on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include:

- **single source contracts**, used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- **invitations to bid (ITB)**, relies solely on the lowest price and is used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor’s experience will not greatly influence the agency’s results;
- **requests for proposal (RFP)**, used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- **invitations to negotiate (ITN)**, used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services.

Approximately \$4.8 billion in goods and services were purchased by state agencies in FY2009-10.³ As **Figure 11** shows, approximately \$1.6 billion of the \$4.8 billion spent on goods and services, just 33 percent of these purchases, were through MFMP. A majority of these expenditures, \$3.2 billion, were made outside of the MFMP system.⁴

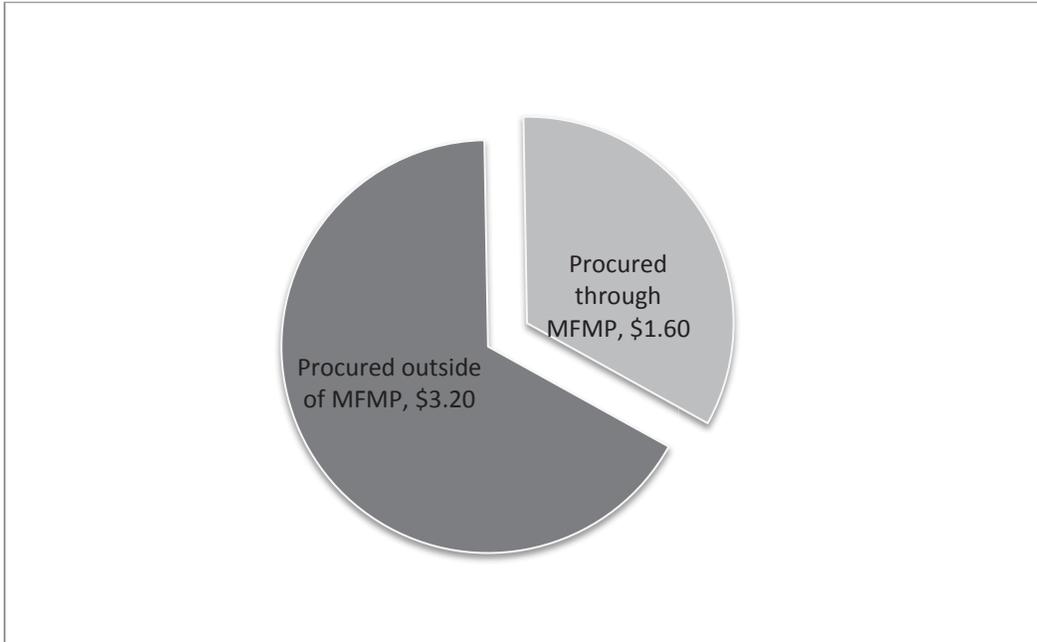
¹ As identified through FLAIR data

² *Florida Statute*, s.287.057(1), 2011.

³ As identified through FLAIR

⁴ As identified through a crosswalk between FLAIR object codes and MFMP commodity codes.

Figure 11: Total State Expenditures on Goods and Services in FY 09-10 (in Billions)



Source: MyFloridaMarketPlace FY 09-10 Purchase Order Data and FY 09-10 FLAIR Data

Many of the outside purchases could have been secured at lower prices had agencies utilized MFMP as their purchasing vehicle. Furthermore, the state could have accomplished additional cost-savings had many of the exempted goods and services been subject to the procurement requirements established for other products, such as telecommunication purchases in the SUNCOM program.

Competitive Bidding Exemptions

As previously mentioned, agencies ordered about \$1.6 billion worth of goods and services in the MFMP system in FY2009-10. The majority of expenditures through MFMP were made through competitive contracts. In FY2009-10, only 32 percent of purchases made through MFMP were goods acquired through State Term Contracts (\$512 million) and 21 percent were made through Alternate Contract Sources (\$336 million). During the same year, 16 percent of procurement spending made through MFMP were exempted from competitive purchasing requirements. This equates to about \$256 million in spending on exempt items including statutorily exempt spending, such as health care and university services; emergency spending; purchases made from other government agencies; and purchases from government programs such as PRIDE and RESPECT.⁵

Prior to 2010, over half of non-construction related acquisitions by state agencies were exempted from competitive processes. These goods and services were not competitively bid because (1) their value was below the cost threshold of \$25,000 (now \$35,000) and, therefore, were

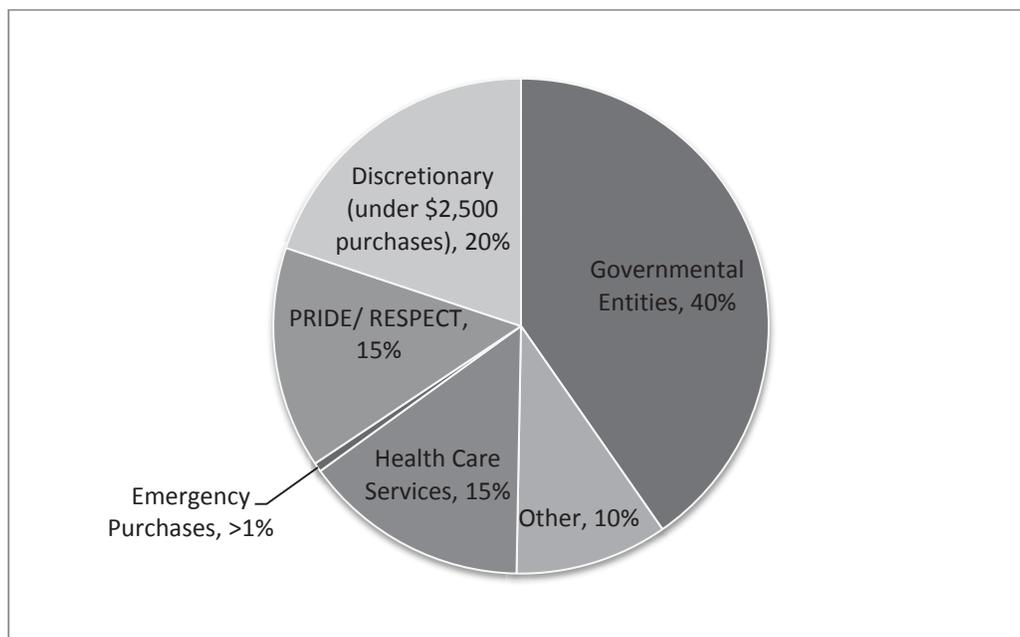
⁵ PRIDE is a private/state endorsed correctional work program; RESPECT is a state sponsored blind/handicapped work program.

statutorily exempted from the formal competitive process⁶; or (2) single source justifications were made. Additionally, agencies are not required to use competitive processes when emergency conditions exist that preclude the use of these processes.

In 2010, Legislation was enacted to strengthen Florida’s competitive bidding requirements. Senate Bill 2386 removed up to \$125 million in annual purchases of certain types of services from the list of services exempted from competitive bidding requirements, including auditing services, legal services, academic program reviews, health services, and Medicaid services.

Section 287.057(5)(f), *Florida Statutes*, provides 12 types of non-construction services to be exempted from competitive bidding requirements, regardless of whether the purchase exceeds the applicable cost threshold. **Figure 12** highlights these services as well as other exempt purchases by type. The categories of exempted services that account for the bulk of these purchases were from other governmental entities (40 percent), such as universities, and purchases on discretionary items under \$2,500 (20 percent). Government approved programs (PRIDE and RESPECT) (15 percent) and purchases for the provision of health care (15 percent) also accounted for a significant portion of these exempt services.

Figure 12: Most Competitive Bid Exemptions Are For Items Under \$2,500 and Purchases From Other Governmental Entities



Source: MyFloridaMarketPlace FY 09-10 Purchase Order Data and FY 09-10 FLAIR Data

Though authorized by law, the large value of purchases that are exempt from competitive processes continues to limit assurances that the state is receiving the best value for their procurements. For example, eliminating the minimum value threshold for competitive bidding

⁶ Florida Administrative Rules, “Rule 60A”, State of Florida, 2011.

requirements or reducing the items and state entities that may be exempt from competitive bidding processes could yield considerable cost-savings. Another consideration is addressing the long timeframe is typically takes to formal competitive bidding processes. The state needs to address this formal process to streamline competitive bidding procurements so as to achieve a higher level of savings without jeopardizing service delivery and quality.

Increasing the number of items that must be acquired through one of the defined competitive bidding methods is crucial for saving taxpayer dollars. Furthermore, better enforcement of these requirements will ensure that a higher volume of procurements will be made through MFMP.

Lack of Compliance with State Term Contracts and State Purchasing Agreements

State Term Contracts and state purchasing agreements are set in place to ensure that purchasers acquire the best values, yet they are not adequately utilized. These agreements are created and used when multiple purchases of standard commodities and services are anticipated, for example: office supplies, uniforms, motor vehicles, and management consulting services. These contracts are with vendors selected through a competitive process, and agencies are generally required to use them when they are available. The Department of Management Services currently manages 62 State Term Contracts that may be used by state agencies and local governments and 16 Alternate Contract Source agreements. Agencies are also permitted to enter into their own term contracts for commodities and services.

State Term Contracts establish suppliers and prices for selected goods and services for a period of time without guaranteed purchase quantities. State Term Contracts also consolidate normal requirements of all agencies into one agreement. Florida law requires that State Term Contracts be utilized by all state agencies for purchases of applicable goods and services.⁷

One of the primary objectives of the state term contracting process is to achieve increased value from the goods and services purchased by state agencies by leveraging the volume of statewide purchases of selected goods and services to obtain lower prices. Vendors are encouraged to provide lower costs in exchange for assurances that all state agency purchases for the associated goods or services will utilize the selected vendor. Any associated reductions in profit margin will therefore be made up with increased purchase quantities.

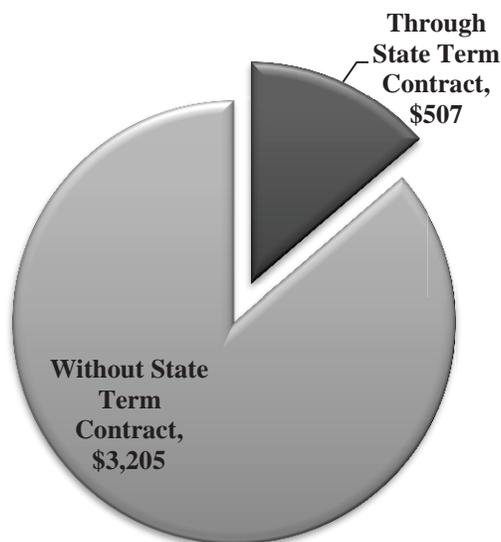
In addition to providing increased value for purchased goods and services, the state term contracting process can also serve to improve the efficiency of the state agency procurement processes. State agencies can reduce procurement costs for commonly purchased goods and services through utilization of State Term Contracts because costs associated with competitive bidding requirements are significantly reduced or eliminated.

For the state term contract process to be effective, vendors and the state need assurances that agencies will utilize only selected vendors. Documented sales volumes and high compliance rates mean vendors can confidently rely on historical sales volume to calculate competitive state

⁷ As specified in Section 287.056, F.S., 2011.

term contract bids. To maximize cost savings, there needs to be assurances that state agencies are utilizing State Term Contracts to purchase all applicable goods and services. As **Figure 13** shows, however, many agencies still do not fully comply with State Term Contracts

Figure 13: State Term versus Non-State Term Contract Purchases (in millions)



Source: MyFloridaMarketPlace FY 09-10 Purchase Order Data and FY 09-10 FLAIR Data

The above figure shows that 86 percent of expenditures that are subject to State Term Contracts and that are not acquired through MFMP by other means far exceeds the purchases that were made through State Term Contracts. The data indicate that up to \$3.2 billion in non-compliant purchases could have been performed in FY2009-10. For MFMP to function as intended it is imperative that the majority of non-compliant spending be reined in.

Insufficient Contract Data and Lack of Modernized Technology

The final caveat to improving Florida’s centralized procurement model relates to improving the data collected to accurately gauge the system’s efficiency. There are several reasons why MFMP is not capturing all of the procurement data that could be used to improve state agency purchasing practices. Specifically, some agencies are still exempted from using the system, while others are only utilizing a few functions of the system. For example, the Department of Agriculture and Consumer Services is exempted by statute from using MFMP to record its purchases and the agency uses its own purchasing system to manage acquisitions.

Furthermore, many purchases made by state agencies are not recorded in MFMP. For example, construction-related purchases, including professional architectural and engineering services, are still not required to be documented in the system. Moreover, state agencies are required to record only non-construction related goods and services through MFMP if made through a purchase order. As such, non-construction related purchases made through purchasing cards or agency-

specific two-party contracts are not required to be recorded in that system. As a result, the state's ability to strategically purchase goods and services remains limited.

It is no secret that Florida suffers from a decentralized purchasing and accounting system that is out-of-date (FLAIR is more than 20 years old). As a result, the processes are cumbersome, often manual, and prone to error. Consolidating all of these IT systems and services is a prudent step in the right direction that would allow Florida to better monitor and track purchasing and payments at a lower cost (reduced administrative, staff, and overhead costs). An integrated platform, such as an Enterprise Resource Planning (ERP) system, would allow state government to reconcile the problems within and between FLAIR, MFMP, and budgeting appropriations system. Some states, such as Michigan and North Carolina, have successfully integrated ERP systems, and many other states are in various stages of implementation and development of enterprise systems.

More comprehensive purchasing information would help the state identify situations in which agencies are using numerous suppliers that are providing similar goods and services — often at varying prices — and where purchasing costs can be reduced and performance improved through state-level agreements. This data would help agencies and other entities to monitor compliance with state-level agreements and state procurement laws. To help ensure that the state receives the best value from its purchases, we continue to believe that agencies should integrate procurement information across the state's purchasing and accounting systems.

Conclusion

The current state procurement process suffers from a lack of enforcement, transparency, and linearity. Items that should be subject to competitive requirements remain exempt without due cause. Most importantly, multiple databases, some detrimentally outdated, continue to use separate classifications for goods and services make it extremely difficult to track agencies' compliance with competitive requirements and increase the amount of manual, administrative processes needed to complete state procurements, contracting, and purchasing, which continue to sustain higher costs to the state than under an enterprise-wide purchasing, accounting, and auditing system.

Procurement Reform Recommendations

Section I: Increase Competition

33. Remove (more) competitive procurement exemptions

In order to achieve the best value for Florida taxpayers on state purchases of goods and services, Florida law requires that “the competitive solicitation processes shall be used for procurement of commodities or contractual services in excess of the threshold amount provided for in Category Two (\$35,000).”⁸ However, the same section of the code also identifies certain goods and services that are exempt from this competitive bidding requirement. Examples of these exemptions are single source contracts, emergency procurements, and alternate contract sources of commodities and services.⁹ The 2010 Legislature acted on this issue by eliminating some of the types of goods and services exempted from competitive bidding requirements. However, further reductions are possible. Some of the currently exempt goods could be further commoditized so as to be competitively bid, and currently exempt services should be competitively bid within pre-qualified vendors, particularly for Invitations to Negotiate.

Further reductions in competitive bidding exemptions can result in significant cost savings. Based on analysis of payments issued through the state accounting system, FLAIR, for FY2009-10, it is estimated that \$59 million of goods and services purchased by state agencies were exempt from competitive bidding requirements by statute. Utilization of competitive bidding can serve to reduce the cost of goods and services by 10 to 15 percent. **If competitive bidding was required for 50 percent of these purchases, and savings conservatively estimated at 10 percent, the state could realize a savings of \$2.9 million.**

Recommendation: *The Legislature should reduce the types of goods and services exempted from competitive bidding requirements. Currently exempt goods should be further commoditized and exempt services should be competitively bid within pre-qualified vendors, particularly for Invitations to Negotiate. The Legislature should further require an annual report be presented to the Legislature, the Governor, and the public that details to what extent competitive bidding and procurement is being utilized and recommend which currently exempt goods and services should be further commoditized and, therefore, no longer exempt from competitive procurement practices as required by Florida Statute.*

34. Require justification for single source contracting

Contracts that are awarded using competitive procedures but where only one offer is received have recently gained attention as an area of concern. Bids, request for proposals, or solicitations that yield only one vendor deprive agencies of the ability to consider alternative solutions in a reasoned and structured manner. Consequently, the state may not be obtaining the best value for

⁸ Florida Statute, s.287.057(1), 2011.

⁹ Florida Statute, s.287.057(3), 2011.

the goods and services it purchases under sole source contracts. Many state agencies utilize sole source contracts due to the long length of time it takes to conduct the competitive contracting process. As agency appropriations are made on a year-to-year basis, top state government officials have explained that agencies are typically hesitant to engage in competitive bidding for projects – a process that typically takes nine months from beginning to end, leaving little time to complete the project.

Due to the cumbersome contracting process, a serious review of the competitive contracting process needs to be undertaken by the Legislature and DMS to identify ways to streamline the process, making it more advantageous for the agencies and the vendors to enter into competitive contracts rather than sole source contracts.

Currently, before entering into any single-source contract that exceeds \$35,000, the agency must provide a written determination of why the commodity or service is only available from one vendor and provide notice of its decision to enter into such a contract.¹⁰ In 2010, the Legislature required all state agencies to notify the Department of Management Services (DMS) of any intended decisions to enter into a single-source purchase contract if the amount of the contract does not exceed \$195,000. If the contract amount exceeds \$195,000, the Department of Management Services must review and approve certification of the single source contract.

In FY2009-10, \$197 million of the goods and services purchased by state agencies that were subject to competitive bidding requirements were purchased as single source contracts. Since there is no external oversight of compliance with notification requirements and requirement to verify the written and final determinations of single source purchases below \$195,000, DMS has no way of determining whether this reflects all applicable state agency purchases. However, **a 5 percent savings from the reduction of procurement from single source vendors would save nearly \$10 million.**

Recommendation: *The Legislature should require all agencies to complete a two-step competitive process in lieu of a sole source contract. First, agencies should be required to work with pre-qualified vendors that can offer needed services. Then, the agency can use price as a determining factor in the award of the contract (particularly for Invitations to Negotiate). The Legislature should also require DMS to ensure that the agency went through the two-step competitive contracting process.*

The Legislature should also amend s.287.057(3)(c)(1), F.S., and Rule 60A-1.045 should be amended so that DMS is required to approve and certify the single source contracts that are valued between \$35,000 and \$195,000.

Finally, the Legislature should require DMS to establish a listing of vendors who wish to be notified of any pending single-source acquisition for each commodity code. This would help ensure that potential vendors are aware of these procurement opportunities, and provide them with the opportunity to participate in the competitive bidding process.

¹⁰ Rule 60A-1.045, Florida Administrative Code, 2011.

Section II: Improve State Term Contracts

35. Reduce use of multiple vendors on State Term Contracts for proprietary goods and services to reduce price through negotiation

Non-construction commodities purchased by the state can be categorized as either “proprietary goods” or “off-the-shelf commodities”. Proprietary items tend to be big ticket, durable good items such as automobiles, light trucks, copiers, IT equipment, etc. These products are offered by a limited number of vendors and standardization of these items provides for better contract pricing along with better after sale servicing. Off-the-shelf commodities are typically lower-priced, consumable items such as paper products, food products, office supplies, recreational equipment, etc. These types of products are offered by many vendors and lend themselves to more competition across a broad product offering. Multiple vendor contracts are permitted to be awarded for off-the-shelf commodities as no single vendor can provide the best pricing on a wide product offering. The agency purchasing professionals are expected to solicit the best price and terms for the purchase of these items.

Many of the current State Term Contracts for proprietary commodities include multiple vendors for the same product. Use of multiple vendors for proprietary commodities limits the effectiveness of the state term contract process. Awarding State Term Contracts to multiple vendors limits the effectiveness of the process because vendors cannot reliably predict sales volume. This uncertainty limits vendors’ ability to provide the lowest price because expected profits from a state term contract award cannot be reliably calculated. Consequently, much of the potential cost savings associated with the state bulk purchasing power is not being realized. While there may be legitimate reasons for using multiple vendors for proprietary commodities, such as efficiencies associated with a vendor’s geographical proximity, these reasons should be documented.

In addition, vendors of proprietary products are less likely to participate in the state term contract process knowing they are not guaranteed to be the recipient of all agency purchases. Vendors may choose to instead separately solicit agencies by developing relationships with state agency procurement.

Recommendation: *The Legislature should amend s.287.042(13), F.S., to specify that only contracts for off-the-shelf commodities can be awarded to multiple suppliers. DMS should also establish and document criteria for categorizing commodity classifications as either proprietary or off-the-shelf thereby simplifying the determination of when to use a single vendor versus multiple vendors for a state term contract. The Legislature should also mandate that AEIT develop and implement standards for all Information Technology purchased by the state and require that these standards must be adhered to so agencies do not purchase proprietary systems that are not compatible with other systems across the state, which would continue to increase the decentralized, non-linearity of the current system.*

36. Enforce agency utilization of State Term Contracts

In FY2009-10, approximately 468,767 requisitions with a value of nearly \$1.6 billion were processed through the state on-line purchasing system, MyFloridaMarketPlace (MFMP). State agencies spent \$507 million in competitive purchases through State Term Contracts or similar competitive agreements outside of MFMP. However, it is estimated that agencies spent an additional \$3.2 billion outside of the centralized MFMP system, and did not utilize State Term Contracts or similar competitive agreements.¹¹

State agencies are not required to purchase goods from MFMP. Consequently, agencies can circumvent the state term contract process and select other vendors even when state term contract vendors and price information is made available in MFMP.

Noncompliance with State Term Contracts for purchases of applicable goods and services reduces the cost savings agencies realize from State Term Contracts. DMS has estimated that the state has realized savings of up to 25 percent when agencies purchase goods and services through a state term contract. However, it should be noted that agency purchasing managers have cited many examples where purchasing outside of the state term contract is actually cheaper for the state, and likewise, examples have been cited where the State Term Contracts do not offer the newest or most useful versions of important products (such as computers and related equipment). Agencies are permitted to ask for a “request for quote” from DMS to provide price and contract conditions of State Term Contracts and MFMP so that the agency may determine if the price, terms, and conditions of the purchasing agreement are more or less favorable to the agency’s needs.¹²

To help ensure adequate monitoring of State Term Contracts and effectiveness of purchasing, DMS should require agencies to use existing MFMP procurement functionality to electronically document reasons for not using the applicable state term contract. For example, information from this documentation can be used to identify goods and services appropriate for future State Term Contracts. Also, this information can be used to better allocate compliance monitoring resources to state agency procurement processes with indications of significant noncompliance or ineffective procurement processes.

Assuming that only half of the \$3.2 billion in expenditures for which State Term Contracts were available but were not used, and assuming that using the state term contract saves only 20 percent (instead of the 25 percent estimated by DMS), **the state would save approximately \$320 million on the purchase of goods and services if the economies of scale achieved through State Term Contracts were actually realized.**

¹¹ The estimate of spending outside of MFMP and State Term Contracts by state agencies was determined by identifying payments associated with object codes with State Term Contracts, as provided by DMS. Object codes with State Term Contracts were identified through a crosswalk between the commodity codes used to document the type of good and service, and also serve as the definition for the specific goods and/or services when developing a state term contract.

¹² *Florida Statute*, s.287.056(2), 2011.

Recommendation: *To help ensure adequate monitoring and enforcement of State Term Contracts and MFMP, DMS should edit the system to require agencies to use existing MFMP procurement functionality to electronically document reasons for not using the applicable state term contract. DMS should be required to approve an agency's exemption from utilizing MFMP when purchasing off-the-shelf commodities worth more than \$2,500. The Legislature should provide DMS the authority to levy sanctions on agencies who do not utilize MFMP without appropriate review or approval.*

37. Make State Term Contracts available for state-sponsored construction purchases

Ch. 337, Florida Statutes, governs procurement of transportation related construction projects, while Ch. 255, Florida Statutes, specifies the competition and solicitation requirements for acquisitions relating to construction of public property. In addition, Florida law includes agency-specific provisions and procedures for the purchase of goods and services. For example, Ch. 1013, F.S., provides competitive bidding requirements for educational facilities.

The state of Florida purchases approximately \$3 billion in construction related goods and services on average each year (the recent PECO-funded construction freeze and economic downturn have deterred some construction purchases this year). Many of these purchases are for commodities, such as concrete, paint, and drywall, where product specifications can be sufficiently defined to allow for product selection criteria to be limited to price and terms of delivery. However, currently DMS does not have jurisdiction to establish State Term Contracts or require that agencies use applicable State Term Contracts when purchasing construction related goods and services.

State Term Contracts can reduce the cost to purchase goods and services by up to 25 percent. In FY2009-10, approximately \$507 million of goods and services were purchased through a state term contract. **If just 10 percent, or \$300 million, of the \$3 billion in construction related goods and services purchased annually were subject to a state term contract, and DMS was able to achieve a price reduction of 10 percent, the state could realize \$30 million annually.**

Recommendation: *Section 287.056, F.S., should be modified to allow DMS to negotiate State Term Contracts for construction related goods and services, which exhibit the characteristics of a commodity. Additionally, DMS should ensure that the state recovers the savings from use of STC for construction related to the leasing of facilities by the state.*

38. Increase the use of State Term Contracts to achieve economies of scale by requiring Local School Boards and Community Colleges to use State Term Contracts unless local items can be purchased below the lowest STC cost

Access to State Term Contracts is made available to all local school boards; however, actual utilization of the contracts is limited for various reasons. The most popular excuse for not using these contracts is because local businesses and residents provide the bulk of the funding for local school board budgets and those administrators prefer to keep their money local.

Increasing utilization of State Term Contracts by local school boards would allow the state to increase its ability to obtain lower prices by providing assurances of greater sales volume to potential vendors.

Based on expenditures for general support of students (e.g., student transportation, construction services, and maintenance of school facilities) and **assuming a 5 percent reduction in cost could be achieved through increased use of State Term Contracts that leverage higher volume order for commodities, the state could save \$44.44 million annually.** Increasing the use of State Term Contracts by local school boards and community colleges could produce significant yet indeterminate savings for both the state and counties.

Recommendation: *As with state agencies, local school boards and community colleges should be required to use State Term Contracts where available, but with an exception allowing for off-contract purchasing if the pricing for such purchases will be less than or equal that offered on state term contract.*

39. Require the Citizens Property Insurance Corporation to comply with Chapter 287 except in emergency situations

The Citizens Property Insurance Corporation (CPIC) was created by the Legislature as a non-profit organization focused on providing Florida homeowners with property insurance. CPIC currently employs its own competitive bidding procedures outside of DMS. As with the inclusion of Local School Boards and Community Colleges, increased utilization of State Term Contracts by CPIC would allow the state to increase its ability to obtain lower prices by providing assurances of greater sales volume to potential vendors. **A 1 percent savings from the increased utilization of State Term Contracts by CPIC could produce an additional \$3.2 million for the state.**

Recommendation: *As with state agencies, Citizens Property Insurance Corporation should be required to use State Term Contracts unless they can justify utilization of another vendor by obtaining a lower quoted price or better terms of delivery. In addition, Citizens Property Insurance Corporation should be required to comply with all other competitive bidding requirements as specified in Chapter 287, Florida Statutes.*

40. Allow State Contracts to use a “hold-back” percentage of contract value for contingency contracts in lieu of a performance bond

Under law, the state requires all contractors to hold a “performance bond”, which is a type of surety bond, until the project is completed as insurance that the contractor will complete the terms of the contract or project. A performance bond is an obligation, expressed in writing, to pay a fixed and liquidated sum on the occurrence or nonoccurrence of a specified condition or event. A performance bond is required of successful bidders for state construction and maintenance contracts in an amount equal to the awarded contract price. Typically, the performance bond constitutes one to three percent of a vendor’s contract price. If it is a multi-

year contract, the contractor may be allowed to hold incremental annual contract bonds that cumulatively total the full, awarded, multi-year contract price. The performance bond secures the contractor's promise to perform the contractual obligations at the agreed upon price within the time allowed.

However, the requirement to furnish a performance bond can cause undue burden on contractors, particularly smaller firms due to the higher costs associated with acquiring and holding this type of financed loan. Instead, contractors could be required to accept a “hold-back” requirement as insurance to the state, which would provide the state with similar protections against nonperformance, but allow a larger array of contractors to engage in projects with the state.

“Hold-back” in the context of contract law refers to a requirement in some contracts under which an owner engaging a contractor must hold a particular percentage of payment for a stipulated length of time in order to ensure all parties working on a contract are paid. The amount of hold-back, typically a percentage of the contract price (10 to 20 percent), and time of hold-back varies by contract and jurisdiction. The cost of state contracts may be reduced by offering the option to use a “hold-back” percentage of the contract instead of requiring a performance bond. Contracting vendors who choose to utilize a ‘hold-back’ option should also be required to demonstrate why the ‘hold-back’ option is more favorable than a performance bond and how it will better benefit the state (e.g., reduced contract cost for the state, etc.).

Recommendation: *The Legislature should amend s.337.018, F.S. to allow prequalified vendors the option to use a ‘hold-back’ percentage of the contract instead of requiring a performance bond for contracts not exceeding \$100 million. The Legislature should require DMS to establish a two-step process for vendors who choose a ‘hold-back’ option.*

- 1. Evaluate vendors and establish criteria for “qualified” vendors that is based on past project and purchase order performance, and financial soundness*
- 2. Conduct a risk analysis based upon the nature of the project, its cost and the benefits that will accrue to the state, as demonstrated by the vendor, as a result of electing to use a ‘hold-back’ (e.g., demonstrating a reduced contract cost for the state, etc.) to determine an appropriate percentage (between 10 and 20 percent) to ‘hold-back’ for the duration of the contract.*

Section III: Improve Oversight and Transparency

41. Utilize an Automated State Contract Reporting system to ensure contracts are provided at the best price and terms for the state

The state is currently developing an automated system for all state contracts that will provide extensive detail on the price, terms, and conditions of each contract entered into by a state agency regardless if it is through DMS or contracted by an individual agency. Such a system will greatly enhance the transparency and accountability of contracted goods and services as well as save the state significant taxpayer dollars by allowing the state to determine the price of the

contract per year and find areas of the contract that may not be in the state's best interest, particularly at times of renewal or renegotiation.

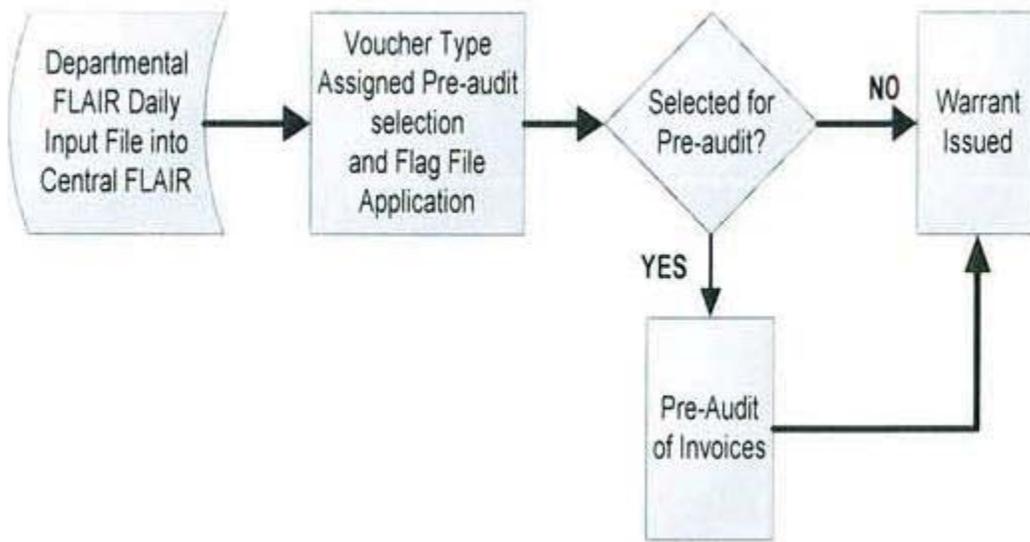
Recommendation: *The Legislature and Executive should fully utilize the automated state contract management system to identify areas (price, terms, conditions, etc.) of contracts that may not be in the best interest or best value for the state.*

42. Expand and enhance oversight of agency contract management through compliance auditing of all State Contracts

Currently, there is little oversight of state agency contract management processes, despite the fact that DFS has numerous auditors assigned to conduct pre-audits of vouchers submitted by state agencies. The pre-audit process begins with the submission of a voucher by state agencies. Vouchers are authorizations for payment associated with one or more vendor invoices. Information required to be provided by state agencies on vouchers is designed to allow the Department to ensure that each voucher is properly recorded and there is sufficient authorized funding. In addition, authorized employees at each state agency are required to certify transactions identified on the voucher were made in accordance with Florida law and goods and services were received.

Pre-audits are conducted on all contracts that exceed \$35,000, and for contracts under \$35,000, a random sample is audited. As shown below, the pre-audit process compares information on vouchers, such as invoice amount and vendor name, with the information included on associated invoices. This comparison verifies that the vendor and state agency are in agreement that the stipulated goods and services were provided for an agreed-upon cost. In addition, to verify that the transaction represents a legal obligation, state agencies are required to provide copies of documentation certifying the good or service was provided in accordance with the contract. For invoices selected for pre-audit, funds are not authorized for disbursement until the pre-audit process is completed.

Figure 14: The DFS pre-audit process



These pre-audits identified discrepancies in less than one percent of the invoices. The vast majority of these errors were associated with discrepancies between the identified invoice and voucher amounts. For each pre-audited invoice with identified discrepancies, the Department notifies the agency of the associated discrepancy via a return form. State agencies are to remedy the associated discrepancy as a condition of releasing the invoice for payment.

Implementation of a continuous monitoring system would also allow for redeployment of most of the existing pre-auditing staff to perform compliance monitoring of state agency procurement processes. There are two options to implement automated pre-auditing for all state warrants: (1) Implement an Enterprise Resource Planning (ERP) system that would have this capability built into it, or (2) layer an auditing system/program on top of the current system. While this new layer of technology would likely cost less overall, it does constitute investing more into an antiquated system instead of addressing the overall deficiency of the state's current payment and accounting system.

Improvement by agencies as a result of pre-audits would help ensure that future state agency acquisitions are compliant with state law and prescribed standards and have been reviewed to limit fraud or error. While the full extent of noncompliance by state agencies is not identified, significant cost savings could be achieved through the use of automated compliance auditing of State Term Contracts.

Recommendation: *The Legislature should require that DFS implement and conduct automated compliance monitoring over state agency procurement processes and to include compliance with contracting requirements. Through the use of continuous monitoring software, DFS could monitor 100 percent of the warrant requests while achieving the same level of assurance.*

43. Create and maintain an enterprise clearing house of all Agency Term Contracts (ATC) and require prior approval of ATC

The state does not maintain a database of state agency term contracts and MyFloridaMarketPlace (MFMP) does not capture complete information about agency procurements, which continues to diminish the state's ability to achieve the best value.

Agency term contracts are similar to State Term Contracts, except they only apply to purchases by the contracting agency and do not require approval of DMS. The state will continue to miss opportunities to leverage its vast purchasing power when buying commercial goods and services unless it takes steps to improve the management and oversight of these contracts.

In FY2009-10, agencies placed \$1.6 billion in purchase orders in MFMP, or 32 percent of the universe of agency purchases for goods and services that have typically been processed through this system. The remaining purchases were completed in FLAIR or agency systems. More comprehensive purchasing information would help the state identify situations in which agencies are using numerous suppliers that are providing similar goods and services.

Assuming that one quarter of the purchases made outside of MFMP were through Agency Term Contracts (\$800 million) and assuming the price of these contracts were reduced by five percent due to the increased oversight and approval of Agency Term Contracts (e.g., more State Term Contracts, more volume, less misuse), the state would save \$40 million annually.

Recommendation: *To help ensure that multiple term contracts are not being negotiated for similar goods and services, the Legislature should require DMS approval of agency term contracts and should create and maintain a database of all effective agency term contracts information, including minimally: contract amount, method of procurement, contract begin and end date, and vendor identification.*

44. Improve internal audit oversight (through OIG)

Strengthening the role of the Office of the Inspector's General would serve to improve oversight of state agency procurement practices. Currently, most state agency's Office of Inspector's General lack sufficient resources to provide adequate assurances that agencies are efficiently and effectively procuring goods and services. These resources include incentives for performance and the hire and retention of talent.

In FY2009-10, the state purchased \$4.8 billion in goods and services. These purchases were subject to state procurement laws, which are designed to ensure the state receives the best value possible. By providing additional assurances, state agencies are complying with these procurement laws through increased oversight. The state can expect to reduce overall expenditures for the goods and services it buys, with no reductions in quality or quantity.

Improved procurement practices through increased audit oversight by the Office of Inspector's General in state agencies can result in overall savings to the state. For example, **if this increased**

oversight produced a 5 percent reduction in the cost of goods and services purchased by the state, based on FY2009-10 annual expenditures, it would result in an annual savings of \$265 million.

Recommendation: *Each agency's internal audit function should be staffed with procurement expertise and experience needed to adequately perform assessments of state agency procurement operations. The Inspector's Generals should set goals for cost-savings and volume of audits, which should be incentivized (e.g., bonuses and savings-sharing). Finally, the Governor's Office of the Inspector's General should be required to publish a quarterly report to be presented to the Governor, Cabinet, and Legislature that reviews the state's compliance with its procurement laws, reports its audit findings, and document the status of implementation of these findings by the agency.*

45. Integrate procurement information across state purchasing and accounting systems

The effectiveness of the state's procurement system is limited because MFMP does not contain records of all state agency procurements. Only a small portion of state acquisitions are being made through MFMP. Specifically, the department reports that in Fiscal Year 2009-10, agencies placed \$1.6 billion in purchase orders in MFMP, or 32 percent of the \$4.8 billion universe of agency purchases for non-construction goods. The remaining purchases were completed in FLAIR or agency systems.

As a result, the state's ability to strategically purchase goods and services remains limited. More comprehensive purchasing information would help the state identify situations in which agencies are using numerous suppliers that are providing similar goods and services — often at varying prices — and where purchasing costs can be reduced and performance improved through state-level agreements. This data would help agencies and other entities to monitor compliance with state-level agreements and state procurement laws.

Recommendation: *To help ensure that the state receives the best value from its purchases, agencies should be required to integrate procurement information across the state's purchasing and accounting systems. Future data coordination improvements to the systems should include, at a minimum,*

- 1 Establishing a uniform product classification system for FLAIR and MFMP*
- 2 Assuring that the MFMP interface with FLAIR is accurate and updated continuously*
- 3 Taking steps to facilitate more extensive use of the contracts function of MFMP*
- 4 Establishing State Term Contracts for goods and services by product class*

Section IV: Improve/Encourage Efficiency in Procurement

46. Require purchase of generic equivalents when available for off-the-shelf commodities

Currently, many state agencies purchase brand name products over their generic, less expensive equivalents that do no compromise warranties or maintenance when purchasing off-the-shelf commodities. Off-the-shelf commodities are typically lower-priced, consumable items such as medical supplies, paper products, food products, office supplies, and recreational equipment. Ensuring that state agencies purchase generic brands for these type purchases would save the state significant funds.

For example, DMS recently awarded a multi-vendor, state term contract for a wide range of office supplies with an annual contract value of \$42 million. These office supply products are offered to agencies in a catalog which contains approximately 40,000 items. Agencies are authorized to purchase any of these products offered in the catalog at the contract price and be in compliance with procurement legislation. Virtually every brand name product in this catalogue has a generic equivalent at a fraction of the price of brand name product. Based on the purchasing history provided in the office supply contract Invitation to Negotiate and the pricing offered by the winning vendors, the state could save over \$16 million on this \$41 million contract by simply requiring the use of generic equivalent products. **Apply that 39 percent savings to only half of the \$1.6 billion purchased through MFMP and the state could save \$305 million annually.**

Recommendation: *The Legislature should require state agency procurement officers to purchase the generic version of the off-the-shelf products unless the purchase of brand name products is cheaper than the generic equivalent.*

47. Explore use of the E-Mall system for off-the-shelf commodity purchases

The U.S. Department of Defense currently employs a procurement software platform called “E-Mall” for their commodity procurement process. The DOD EMALL is the single web based entry point for military and federal agency purchasers to find and acquire off-the-shelf, finished good and services, from the commercial marketplace and government sources. The DOD EMALL offers cross-store shopping to compare prices and other best value factors to ensure that they receive the best value. To insure adequate competition, there are currently 1,887 commercial vendor contracts hosted on DOD EMALL, of which 1,030 are small businesses. Participating vendors electronically upload their product offering catalogue including the pricing they are offering to the government. Each item recorded contains associated identification information, vendor information and pricing. An integrated search engine allows for quick and easy product search by reference to the product’s National Stock Number (NSN), product name, catalog or manufacturer part number, keyword, or product characteristics.

Instituting an E-Mall style web-based software platform for state purchasing personnel and end users would facilitate their finding the items that best address their needs and would allow them

to compare prices between approved vendors quickly and efficiently. This system would streamline the procurement process and concurrently save the state money through efficiencies, headcount reductions, and increased competition among multiple vendors. This platform could also be integrated with the FLAIR accounting system to better track purchases by state agencies make and ensure lowest cost purchases are made.

Recommendation: *The Legislature should require DMS to explore a “piggy-back” onto the contracts under the E-Mall platform, which would enhance savings for the state and avoid the cost of implementing a new purchasing platform for state agency purchasing officers and end users to make all of their purchases of off-the-shelf commodities. DMS should be required to report its findings to the Governor, Cabinet, and Legislature by June 31, 2012.*

48. Explore an E-Cloud model for state purchases of commodities

Today, many private sector businesses are utilizing new technology to procure commoditized goods and services. The “E-Cloud” or “Purchasing Cloud” model allows businesses and the public sector alike to create a purchasing platform whose program and data is stored and delivered over the internet (or intranet, if needed). The “E-Cloud” model reduces overall IT capital costs, IT operating costs, streamlines and simplifies the procurement process, decreases staff needed, and allows flexibility without added cost.

There are several components that can be built into the cloud, including a procurement platform, where buyers can log-on and see what good or service government needs, at what quantity, and the maximum price they are willing to pay for it. The Federal Government utilizes “cloud computing” through its “Cloud-First” policy that began implementation earlier this year. This initiative spans over more than just procurement and includes management of assets, data, and other various activities. Currently, the Federal Government is switching over lower security risk agencies to the program, such as the General Services Administration and the Department of Agriculture.

Recommendation: *The Legislature should direct the Agency for Enterprise Information Technology to conduct a feasibility study on the “E-Cloud” model for procurement in Florida.*

49. Reduce the cost of procurement by reducing the number of agency Procurement Officers across the state

Each agency currently employs one or more purchasing officers to spearhead the acquisition of goods and services. As a result of each agency utilizing their own procurement officers for certain purchases, many agencies award different contracts to different vendors for the same item at varying prices. This results in higher overhead costs, thus increasing the cost of procurement.

It is difficult to estimate how many procurement officers the state employs given the variety of titles used for these positions across state government. Further, some state employees in smaller agencies or departments are tasked with procurement duties but, because it is not their full time job, they may have a job title completely unrelated to procurement, which makes identification

of procurement officers even more difficult. In order to identify and eliminate unnecessary silo of procurement within government, uniform job titles should be applied to all procurement officers across all state agencies and government entities.

By consolidating and requiring the purchase of *all* goods and services conducted by state agencies to go through one centralized purchasing authority, a benchmark for procurement of certain items could be established whereby one vendor is awarded a contract for certain items and no agency spends more than another on the same commodity or service. Furthermore, employees would be better equipped in a centralized purchasing center with technology, access to expertise, and working closely with peers in procurement, which would result in fewer errors and access to the most up-to-date information and technology. The state could save more funds through reduced overhead costs associated with procurement practices and provide the centralization needed to properly monitor and evaluate agency procurement practices.

In lieu of a completely centralized procurement center, a pilot program could be implemented within 4 to 5 agencies to identify all procurement officers, identify and eliminate any silos, and streamline and centralize their procurement operations. These agencies should also be required to apply benchmarks to their procurement practices and report annually on their benchmarked performance.

Recommendation: *The Legislature should establish a central purchasing authority to handle the procurement needs of agencies for all goods and services to streamline the purchasing of all goods and services. A pilot program to consolidate and centralize procurement centers should also be instituted within 4 or 5 agencies with established benchmarks and goals applied to their procurement practices. These agencies should also be required to report annually on their benchmarked performance to the Governor and Legislature. The Legislature should also require a uniform job title for all procurement officers across state government.*

50. Increase the penalty for P-card misuse and abuse

Article II, Section 8(c) of the Florida Constitution states “Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.”

Currently many state employees receive purchasing cards (also referred to as P-cards), which are essentially “company” credit cards, to make payments for the procurement of certain goods and services. In FY2009-10, state employees purchased nearly \$200 million through the use of P-cards.¹³ In some cases, employees make purchases that are irrelevant to the satisfactory completion of their tasks and they are required to reimburse the state for the amount that was inappropriately charged.

¹³ Florida Department of Financial Services Bureau of Auditing, 2010.

The Department of Financial Services does not record the dollar value of P-card misuse and each agency enforces its own penalties for the repeated misuse of these cards. By reporting misuse of P-cards to the Department of Financial Services, a more complete picture of total misuse of P-cards could be assessed and employees that repeatedly misuse P-cards would be more easily identified across all agencies. Further, DFS maintains a comprehensive P-card Procedures Manual that it is encouraging all agencies to adopt as their policies and procedures for P-cards. Standardizing the reporting process and sanctions for P-card misuse could provide a greater disincentive for employees to misuse or abuse P-cards.

Recommendation: The Legislature should require all government entities utilizing the P-card program to adopt the Purchasing Card Procedures Manual of the Department of Financial Services to standardize the policies and procedures for P-card misuse. The Legislature should require penalties encoded in statute for repeated misuse to immediately stop employees from using P-cards for any purposes that are not relevant to work. The Legislature should also require all state agencies to report the misuse of P-cards to the Department of Financial Services.

51. Create a separate personnel classification for Procurement Officers across state government

In state government, the lack of pay increases and employees bonuses can act as a disincentive to employees to work toward performance goals and targets. Given that there are many opportunities to enhance state contract pricing, terms, and conditions that would save money, procurement officers should be further incentivized to do so. Creating a separate personnel classification that would allow for performance pay and bonuses for achieving specific savings targets would incentivize procurement officers to find the best deal and most favorable terms and would enhance the retention of talented procurement officers rather than lose them to the private sector, which often provides these types of programs. The state could achieve significant savings if procurement officers were tasked with performance measures and savings targets on a recurring basis.

***Recommendation:* The Legislature should create a separate personnel classification for procurement officers that would allow for performance pay, raises, and bonuses based on established targets and benchmarks in order to incentivize procurement officers to procure goods and services at the best contract terms and price, particularly when procuring commodities, as well as attract and retain talented procurement officers. The Legislature should also require a quarterly report be provided to the Governor and Legislature on the benchmarked performance and achieved savings of this personnel classification. If this model produces tangible benefits and savings over time, the Legislature and Governor should explore expanding this personnel classification to include other employment classifications and positions to incentivize more efficient and effective government operations and delivery of services.**

52. Study and review the bid challenge process for cost efficiencies and streamlined procedures

Bid protests and challenges to competitive contract procurement and awards in Florida are controlled by a myriad of unique and complex statutes, rules, policies, and law. Florida's competitive procurement process is aimed at the protection of the public against collusive contracts, fraud, bias, and favoritism. Among other things, it is designed to secure fair competition on equal terms to all bidders, to secure the best values at the lowest possible expense, to provide an opportunity for an exact comparison of bids, and to assure that the most responsive bid is accepted.

Florida's Administrative Procedure Act at Section 120.57(3), Florida Statutes, and Rules found in Chapter 28-110, Florida Administrative Code, generally govern state agency competitive bidding disputes including notice requirements, the time frames for protests, and hearing procedures. Section 120.56, Florida Statutes, authorizes the Division of Administrative Hearings (DOAH) to conduct hearings on bid protests from agencies that are subject to the Florida Administrative Procedure Act (APA).

Vendors (bidders and proposers) may challenge the published bid specifications and the ultimate award of the bid itself. As to each, a separate 72 hour deadline applies. If a bidder wishes to challenge the terms, conditions, or specifications contained in the solicitation (including any provisions governing the methods for ranking bids, awarding contracts, reserving rights for further negotiation, or modifying or amending any contract) the notice of protest must be filed within 72 hours after posting of the solicitation.

Subsequent to the filing of any protest, a formal written protest must be filed within 10 days after the notice of protest is filed. The following is a list of some of the more common categories of grounds for protest that commonly arise in bid protest cases:

- *Sunshine Act Violations*
- *Improper Ex Parte Communications*
- *Non-Responsive Bids: Material Variances vs. Minor Irregularities*
- *"Non-Responsible Bidder" Issues*
- *Arbitrary Scoring and Evaluation Errors and Methodologies*

Once the protest is filed, and assuming there are disputed issues of fact, the agency refers the matter to DOAH for an expedited formal hearing before an administrative law judge pursuant to the detailed provisions of Section 120.569, F.S. and Section 120.57, F.S. The hearings are full evidentiary hearings that will typically take 1 to 3 days. In highly complex procurements the hearings can sometimes last for a week or more. Following the hearing, proposed recommended orders are submitted.

In FY2009-10, the expenditures for the Adjudication of Disputes by DOAH were more than \$8.5 million and DOAH conducted 3,986 hours of hearings. **If the DOAH could reduce the amount of final hearing hours by 30 percent, the state could save \$2.6 million annually.**

Recommendation: *The Legislature should require DMS to conduct a study of the bid protest process for state procurement activities. Consideration should be given to providing less cumbersome and expensive options, such as utilization of mediation services for procurement valued below an established dollar threshold. Simplification of the bid protest process would reduce the overall cost of participating in the state's procurement process and help to ensure Florida received the best value for the goods and services it purchases.*



Government Cost Savings Task Force

General Government Reform

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Foreword

The Government Cost Savings Task Force for FY2011-2012, made thirty five specific recommendations to reform general government processes. Of these recommendations, some form of four recommendations were implemented by the Florida Legislature and signed into law.

2011 Implemented Legislation:

1. Fully Utilize State Owned Space

- Senate Bill 2000 includes language encouraging better utilization of state owned space. Senate Bill 2002 also requires that each agency to submit a list of buildings that are available for immediate lease and/or are surplus (not needed by the state and eligible for immediate sale).

Total Savings: \$2.5 million

2. Consolidate and Co-locate

- Senate Bill 2002 requires state agencies to determine if possible savings can be derived from consolidating, co-locating, or restacking office space. If found, funds to facilitate such an action from appropriated funds among agencies may be transferred by the Office of the Governor.

3. Lease Renegotiation

- Senate Bill 2002 requires the Department of Management Services (DMS) to renegotiate all private leases expiring before June 30, 2013 that are over 2,000 square feet in order to achieve cost reductions in future years. It also requires that Tenant Brokers be used in renegotiations of leased space over 150,000 square feet. The bill also allows the use of a tenant broker for renegotiation of leases to review the space needs of each agency, explore the possibilities of co-location, and review the length and conditions of renewals and renegotiations. The Task Force continues to recommend that the state pursue further reforms into this area.

4. Increase Use of Electronic Receipts

- Senate Bill 170 requires each state attorney and public defender to electronically file court documents with the clerk of the court, and receive court documents from the clerk of the court. The Task Force continues to recommend the expansion of the use of electronic receipts in other areas of government.

5. Reduce Travel Costs

- Senate Bill 2002 limits travel expenditures by agencies to only activities that are critical to each state agency's mission. No funds may be used for travel to foreign countries, conferences out of state, or staff-training activities unless approved in writing by the agency head. The Task Force continues to

recommend that more restrictions be placed on taxpayer-funded travel by agencies.

6. Expand use of teleconferencing (including online meetings and video conferencing) to reduce state travel expenses

- Senate Bill 2002 requires that agency heads consider the use of teleconferencing or other electronic communication to meet the needs of an agency activity before approving mission-critical travel. The Task Force continues to recommend that further action be taken to expand the use of teleconferencing and other travel-less meeting technologies.

Introduction

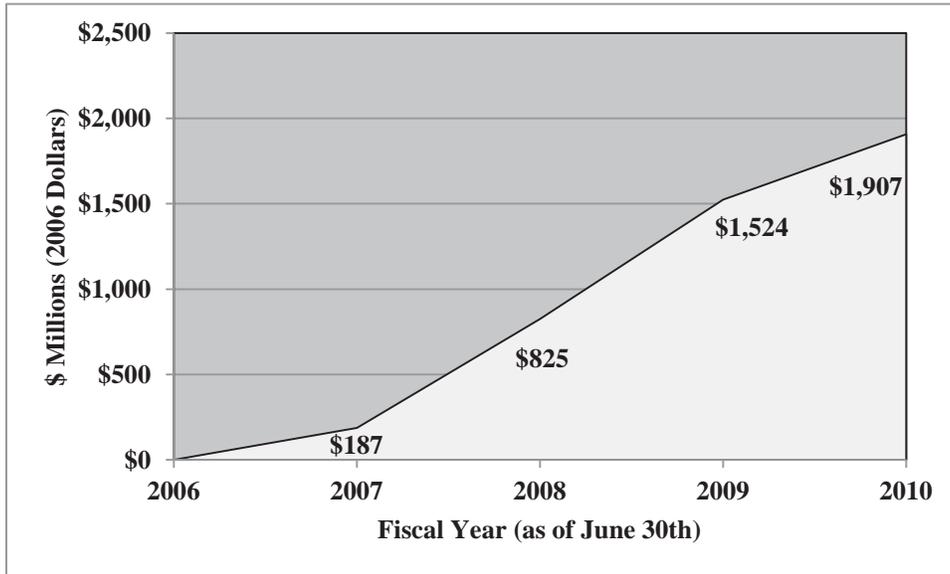
While Florida's state agencies offer a myriad of valuable--and in some cases, indispensable--services to the state's residents, there is always room for improvement when it comes to making agencies more efficient and accountable in terms of the value they add for Florida taxpayers. Absent the market incentives and profit motives that determine how private businesses distribute their resources, agencies must take this responsibility upon themselves for the benefit of all of Florida's taxpayers to improve the efficiency of their operations. During these fiscally trying times, it is especially crucial that we reexamine the day-to-day operations of state agencies to ensure that Floridians are receiving the best value for their hard-earned tax dollars.

Many state employees strive to improve the methods by which government functions. Evidence of this can be found by examining the Florida TaxWatch Prudential-Davis Productivity Awards in which cost-saving measures enacted by state workers over the past 23 years have totaled \$7.1 billion in cumulative added value. However, during the past five years, as Florida's general revenue collections have declined by more than 22 percent, controllable spending¹ (adjusted for inflation and changes in the state workforce) by state agencies has grown considerably. Obviously, such as trend is neither prudent nor sustainable.

Figure 15 illustrates the growth in aggregate spending by state agencies since 2006 - spending by agencies during the previous five years has outpaced the growth in inflation and full time equivalent employees (FTE). Had state agencies controllable expenditures remained perfectly in balance with the growth in inflation and the state workforce, spending above the 2006 established baseline would be equal to zero. Yet, in FY2009-10, agencies expended more than \$1.9 billion above the 2006 baseline. While some of these increases may be rationalized as changes in the scope of work of certain agencies, the sheer magnitude of the overage infers that a sizeable portion of this escalation is likely due to insufficient cost controls and inefficient operations.

¹ "Controllable expenditures" refers to spending on those items which agencies have discretion over spending (e.g., office supplies, travel, fees and services, etc.) as identified by object codes assigned to these items in Florida Accounting Information Resource (FLAIR) data provided by the Florida Department of Management Services.

Figure 15: Aggregate Spending by State Agencies in Florida Exceeds Growth in Inflation and Full Time Equivalent Employees (FTE) Against 2006 Baseline

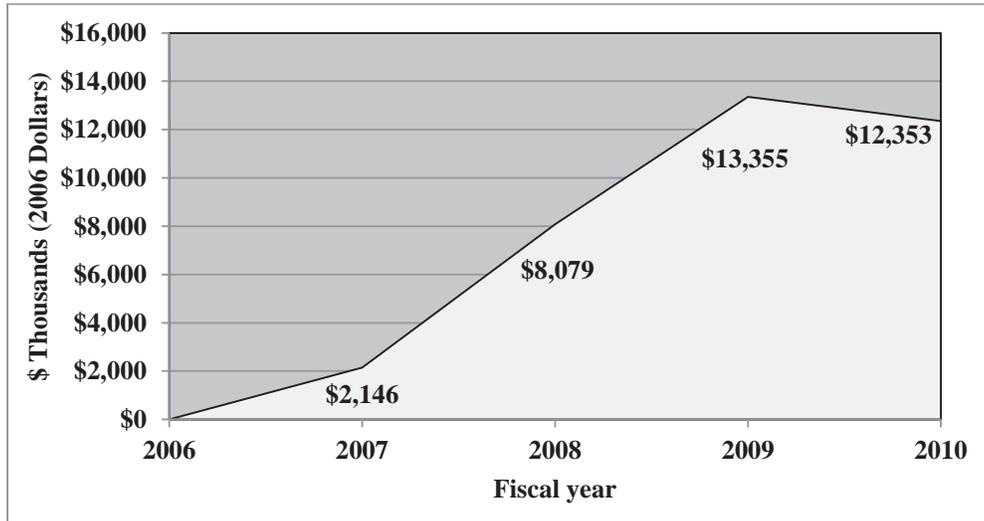


Source: Florida Accounting Information Resource (FLAIR) data provided by the Department of Management Services.

Florida currently has multiple processes across state agencies that perform the same function. Eliminating redundancy in function by standardizing and/or consolidating these processes to achieve best practices would result in substantial cost savings. Agencies would also benefit from keeping up with and harnessing available technology and exercising more prudence in the acquisition and utilization of resources to accomplish their respective missions.

As an example, **Figure 16** shows that total expenditures on office supplies in FY2009-10 were \$12.4 million above the 2006 baseline. In fact, during four out of the previous five years spending on office supplies continuously outpaced growth in inflation and FTEs. Taking a more conscientious approach to how office resources are allocated and limiting spending on surplus or otherwise unnecessary items would significantly reduce the expenses incurred by the state.

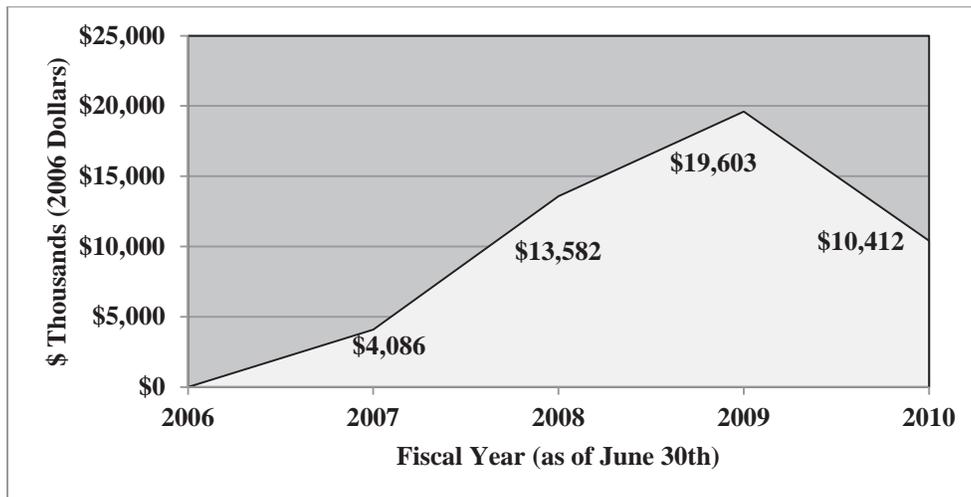
Figure 16: Aggregate Spending on Office Supplies by State Agencies in Florida Exceeds the Growth in Inflation and Full Time Equivalent Employees (FTE) Against 2006 Baseline



Source: Florida Accounting Information Resource (FLAIR) data provided by the Department of Management Services.

Travel expenses incurred by the state have also increased over time. **Figure 17** shows that travel spending in FY2009-10 was \$10.4 million above the 2006 baseline. This has occurred at a time when major advances in telecommunications and teleconferencing technologies have occurred that would serve as successful cost-saving alternatives to the comparatively high expense associated with land and air travel. Replacing costly long-distance travel with teleconferencing would free up funds and resources for use on other important tasks. This type of conscientiousness with improved oversight and greater discretion over travel would further save taxpayer dollars.

Figure 17: Aggregate Spending by State Agencies in Florida on Travel Exceeds the Growth in Inflation and Full Time Equivalent Employees (FTE) Against 2006 Baseline



Source: Florida Accounting Information Resource (FLAIR) data provided by the Department of Management Services.

Reducing costs and increasing efficiency must be conducted without compromising the quality and level of core services provided to Floridians. Rather than implement across-the-board cuts, the state's workforce would benefit from the review and implementation of innovative practices already used in other states as well as in the private sector.

In this section, Florida TaxWatch offers ideas and recommendations to help rein in superfluous spending and make Florida's government agencies function more efficiently. The following recommendations combine proven-successful private market practices with measures undertaken successfully by other states to ensure greater efficiency in state government, now and in the future.

General Government Reform Recommendations

Section I: Utilize Available Guidelines and Benchmarks to Increase Efficiency

53. Adjust annual budget appropriations to reduce “fourth quarter dumping”

The common “use it or lose it” budget mindset is a pervasive disincentive for most governments to save money. This encourages state agencies to spend all unused funds at the end of the fiscal year or otherwise risk having future budgets reduced. This creates a phenomenon known as “fourth quarter dumping,” when analysis of the end of a fiscal year reveals a spike in agency spending. Often times, office supply distributors are one of the only beneficiaries of the “use it or lose it” policy.

The Bureau of Auditing under the Department of Financial Services audits payments by agencies to ensure they are made in accordance with established contracts, legal authority, and state and federal law. While the Bureau of Auditing is able to question an agency’s excessive spending, it does not have the legal authority to question an agency’s rate of spending.

Florida TaxWatch conducted an analysis of “fourth quarter dumping” by examining the combined “controllable spending” by state agencies. “Controllable spending” is the discretionary spending of state agencies related to their operation. The analysis was conducted using transaction-level payment data recorded by the state’s accounting system, FLAIR, as provided by the Department of Financial Services (DFS). The analysis revealed that “controllable spending” in June 2009 was \$159.6 million more than the overall monthly average during FY2008-09. This figure does not include expenditures that were made during the “carry forward” period, which is where agencies are able to spend the remainder of their budget from the previous fiscal year between July 1 and September 30.

Considerable savings would be realized if the Legislature accounted for this overage by benchmarking “controllable spending” so that discretionary expenditures in June were to be limited to the yearly average of an agency’s “controllable spending.” Using this method, a June benchmark could be used to allocate all agency funds accordingly. Certainly, not all of the June spending is due to wanton last minute spending of state agencies; some of the “excess” spending is likely appropriate and may represent the agencies simply waiting to purchase lower priority items if its larger needs were taken care of earlier in the fiscal year. Still, **if only 50 percent of the June overage is attributable to true “fourth quarter dumping,” and future appropriations were reduced by that amount, \$80 million in cost-savings could be realized.**

Other states have been dealing with this issue for years. As far back as 1995, Maine passed a performance-based budgeting bill that “allocates resources based on the achievement of measurable objectives.” This method has proven successful as state spending has been more consistently balanced among the twelve months, with no spikes near the end of the fiscal year.²

More recently, Missouri lawmakers had to deal with a massive shortfall in state revenues that was largely brought on by “use it or lose it” spending. For example, one state agency bought new

² Gramlich, Jeffrey, Mainebiz, “Use it or lose it” July 11, 2005 Vol 11 No. 14

computers for each employee every year in order to exhaust its budget. Needless spending of this type forced lawmakers to cut \$500 million from the proposed \$24 billion budget in 2010. The Senate also set up a web site to solicit money-saving ideas. One proposed solution was to insist that department directors be more forthcoming about their priorities, which would allow lawmakers to make more informed decisions about fund allocation and would remove the burden of a director feeling he or she had to use up all their funding or risk receiving a smaller budget the following fiscal year.³

Recommendation: *The Legislature should adjust the total budget appropriations to account for the practice of overspending in June. The adjustment can be made through partial release of appropriations in only in specific procurement categories. The Legislature should also explore eliminating the carry forward process.*

54. Benchmark operating expenses for each state agency

While excessive state government spending may be the most noticeable later in the fiscal year, it has been known to occur in earlier months as well. Creating a benchmark against which to compare expenditures over time illuminates where discretionary operating expenses have grown more than would be expected due to normal inflation and an increased workforce.

Florida TaxWatch created a benchmark to apply to each agency and budget entity in order to identify budget entities that increased expenses above the benchmarked amount. To do so, payment data from FLAIR, the state's accounting system, was analyzed from FY2005-06 through FY2009-10.

In FLAIR, the nature of goods and services purchased by agencies or agency subdivisions, known as budget entities (which are essentially business units within agencies), are identified by specific object codes.⁴ Florida TaxWatch conducted an analysis of the object codes of goods and services that directly contribute to the services provided by the agency and are purchased by budget entity decision makers that have procurement selection authority. A benchmark was created by determining the total amount of payments made for these specified object codes. To do this, object code payment analysis was conducted for each budget entity in each fiscal year starting with payments made in FY2005-06.

Payment data from FY2005-06 was used as a baseline to control for inflation and the number of employees (i.e., FTEs) employed within each budget entity.⁵ Changes in the number of employees were accounted for by observing the changes in authorized FTEs during the period under review, as identified in appropriations bills. The FY2005-06 baseline was then multiplied by the number of FTEs authorized within the budget entity in FY2009-10 to create the benchmark. The below exhibit depicts this methodology:

³ Ganey, Terry, "Use it or lose it budget habit criticized", Columbia Daily Tribune, March 19, 2010. www.Columbiatribune.com/news/2010/mar/19/use-it-or-loe-it-budget-criticized/

⁴ According to the Florida Department of Financial Services: "Expenditure object codes are used to identify the type of services, materials, or other charges for which funds are expended using the State's accounting system - Florida Accounting Information Resource (FLAIR). Six digits are defined for the code..."

⁵ The Urban Consumer Price Index (CPI) was used to adjust for price inflation between 2005 and 2010.

$$\left(\frac{\text{Base year Expenditures} \times \text{Inflation rate}}{\text{Base year FTEs}} \right) * \text{FY2009-10 FTEs} = \text{FY2009-10 Benchmark}$$

In applying this benchmark to state agencies and budget entities, approximately 30 percent of the budget entities had operational expenditures above their benchmark. The difference between the actual amount of operational goods and services purchased in FY2009-10 and the benchmarked amount totaled \$1.489 billion.

The examination of the budget entities that drove a billion dollar increase in purchases (compared to the benchmark) will likely identify areas for targeted budget cuts. **Reducing only 10 percent of the increased spending would save \$149 million. Reducing 50 percent of the documented increase in spending on goods and services would result in \$745 million in cost-savings.**

Recommendation: *The Legislature should utilize benchmarking as a tool to conduct further analysis on where budget cuts may be most palatable. For those budget entities where actual FY2011-12 expenditures exceeded the calculated benchmark, appropriated amounts should be closely scrutinized for potential reductions. This added scrutiny may also reveal systemic flaws in the budgeting and spending processes that could be corrected, yielding further savings.*

Section II: Optimize the State Real Estate Portfolio

As of 2010, the state of Florida owned or occupied more than 59 million square feet of space, and invested more than \$244.4 million in annual lease payments for 14.1 million square feet of workspace. These leases provide the work facilities for the majority of the more than 120,000 state employees. Florida’s real estate portfolio provides for numerous uses in addition to traditional office functions, including recreation centers, dormitories, clinics, laboratories, prisons and more than a dozen other categories.

According to the Department of Management Services’ (DMS) *2010 Strategic Leasing Plan and Master Leasing Report*, DMS oversees only a portion of the entire portfolio, with 72 buildings totaling more than 5.1 million square feet that are leased to state agencies throughout Florida. DMS also manages another 41 owned buildings that are not available for lease and consist of properties like the Historic Capitol. It should also be noted that more than 45 million square feet owned by the state is not managed by DMS.

In addition to the state-owned real estate portfolio, DMS has oversight authority for a leased real estate portfolio that totals more than 8.3 million square feet.⁶ However, many leasing functions are de-centralized, which allow agencies considerable decision-making authority over occupancy decisions.

It is important to note that the estimated cost-savings identified in each of the following recommendations assumes that the particular strategy is employed independent of any other strategy. It is recommended that all strategies be implemented in a thoughtful, comprehensive

⁶ Department of Management Services, “2010 Strategic Leasing Plan and Master Leasing Report”, State of Florida, 2010.

manner to achieve maximum effectiveness, however, the resulting savings may differ from the sum of these estimates.

Furthermore, the estimated savings identified in these recommendations assume these strategies are employed on a distinct group of leases (i.e., leases expiring in the next two to three fiscal years) since the recommendations are most effective at or near a lease expiration. If the state adopts these strategies and solidifies these as the operational standard for future lease activity, recurring savings could be achieved for years to come.

55. Maximize use of leased space

According to the *2010 DMS Strategic Leasing Plan and Master Lease Report*, state agencies were expected to spend \$150.6 million on 979 private and other government leases totaling approximately 8.3 million square feet. These leases are primarily used to house approximately 32,000 FTEs resulting in an overall current average of 255 square feet per FTE, and 235 square feet per FTE for only office-type spaces.⁷

State agencies would achieve greater cost savings by reassessing and updating space standards where feasible in order to ensure more efficient use of leased space. While savings can be significant, right-sizing locations does not happen overnight or even over a single fiscal year. Right-sizing can typically only happen at lease expiration, since it frequently requires either a renovation or relocation to new space. Therefore, potential savings must be projected over a number of years. However, once these efficiencies are achieved, recurring savings will be generated.

In 2009, work completed pursuant to Senate Bill 44A revealed the potential to reduce the required space allocation to an average of 206 square feet per FTE. [The target of 206 square feet per FTE was calculated utilizing the methodology found in DMS' Space Allocation Worksheet (SAW). The SAW targets 180 square feet per FTE but then adds square footages for public use and special use spaces]. However, studies have suggested that space utilization standards could be decreased to approximately 180 square feet per FTE.⁸

DMS has estimated that there are 217 leases of office-type space with a total area of 1.75 million square feet that will expire in FY2011-12 and FY2012-13.⁹ If an aggressive space reallocation program had been implemented for FY2011-12 with the target of an average of 180 square feet per FTE, the significant recurring savings would have been realized, even accounting for estimated relocation costs. **Figure 18 shows that implementing a 180 square foot space allocation standard in office space with recent lease expirations would generate more than \$10 million in savings over the coming years.**

⁷ According to the *2010 Master Leasing Report* data for private and government leases of all space types.

⁸ Division of Real Estate Development and Management, "State of Florida Surplus Real Estate and Private Lease Renegotiation Plan", Department of Management Services, March 3 2009.

⁹ Based on *2010 Master Leasing Report* data for private and other government leases of office-type space expiring 7/1/2011 – 6/30/2013, excluding nominal leases.

Figure 18: Estimated Savings with 180 sq. foot Space Allocation Standard

Fiscal Year	Potential savings¹⁰
FY 2012/2013	\$1.9 million
FY 2013/2014	\$5.2 million
FY 2014/2015 and years thereafter	\$6.6 million

Recommendation: *The Legislature should direct DMS to review and develop new space standards appropriate to each agency with the goal of reducing space allocations for office space, as possible. It is anticipated that the actual space needs of each agency will vary, with some office functions and locations requiring more space, but the overall target should be 180 square feet per FTE. Once adopted, these standards should be enforced by DMS, reviewed regularly, and agencies should be required to justify any exceptions to the space standard requirements based on specific guidelines that are crafted to ensure safety in the workplace.*

56. Increase the use of competitive procurements for leased space

In order to achieve the best value for the taxpayers on property leases, Florida law requires agencies to competitively bid contracts for leased space of 5,000 square feet or more. However, two primary non-competitive practices exist. First, some leases include renewal options that are negotiated at the time of lease execution and can be executed upon expiration without further competitive solicitation or negotiation. Secondly, s.255.25(3)(c), *Florida Statutes*, allows agencies to avoid competitive bidding once the base lease term and renewal options have been used (with only minimal restrictions). This scenario is referred to as a replacement lease action, more commonly known as a “stay-in-place” lease action. Additionally, for leases less than 5,000 square feet that do not have any remaining renewal options, agencies have the ability to complete a lease modification, which allows a lease to be extended without the requirement of any competition.¹¹

¹⁰ The current efficiency in these locations averages approximately 222 square feet per FTE. Improving efficiency to 180 square feet per FTE would result in a reduction of approximately 42 square feet per FTE, for a total of 330,164 square feet in potential excess space that could be eliminated over two fiscal years. The impact of those savings can be estimated by multiplying that square footage by the average private leased rate for these office-type spaces of \$19.94 per square foot. Assuming 165,082 square feet are eliminated during FY 2011/2012, the FY 2012/2013 savings could be \$3,291,735.08 less an estimated \$2.00 per square foot of remaining space in relocation and other costs (\$1,423,980). The savings in FY 2013/2014 include the recurring savings from the previous fiscal year plus the savings from rolling over the other half of the leases that would be right-sized in FY 2012/2013. Future year savings are estimated based only upon improving efficiency in those spaces leased in FY 2012/2013 and FY 2013/2014. If additional square footage is right sized, then additional savings are possible.

¹¹ *Florida Statutes*, 255.25(3)(c): “The department may approve extensions of an existing lease of 5,000 square feet or more of space if such extensions are determined to be in the best interests of the state, but in no case shall the total of such extensions exceed 11 months. If at the end of the 11th month an agency still needs that space, it shall be procured by competitive bid in accordance with s. 255.249(4)(b). However, an agency that determines that it is in its best interest to remain in the space it currently occupies may negotiate a replacement lease with the lessor if an independent comparative market analysis demonstrates that the rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable

Prior to utilizing a “stay-in-place” lease, agencies frequently exercise renewal options. While renewal terms are competitively negotiated at the time of lease execution, frequently those terms are not in line with the market by the time the lease expires, which is typically 3 to 10 years from the time of the initial solicitation. This is especially true during a declining market, such as what is currently being experienced. Despite favorable market dynamics, many of these renewal options are exercised without any consideration of current market conditions, and they only require justification for the amount of space, not the rate. While a full new competitive procurement may not always be advisable or beneficial, state agencies should allow enough time to assess market options and determine whether a competitive solicitation would produce savings or if the current renewal options could be improved.

Since Florida TaxWatch first raised this issue in 2010, some agencies such as the Department of Revenue have voluntarily eliminated the use of “stay-in-place” leases. However, even despite the initiative of these agencies, “stay-in-place” leases are still frequently used by most agencies.

Given the two exceptions for leases over 5,000 square feet and typical practices for leases under 5,000 square feet, it is estimated that 60 to 70 percent of all lease activity currently utilizes less competitive practices such as renewals, modifications, and “stay-in-place” leases. Enhanced competition is estimated to reduce lease rates by 5 to 15 percent compared to less competitive approaches.

Senate Bill 2002, passed in 2011, requires DMS to renegotiate all private leases expiring before June 30, 2013 over 2,000 square feet, and to use a tenant broker for all spaces over 150,000 square feet.

Given the amount of time it takes to competitively solicit space and the number of commitments that have already been made for leases expiring in FY2011-12, it will take several years to realize the full impact of savings from enhanced competition. However, **aggressively applying competitive approaches to most lease transactions could result in potential recurring annual savings of \$1.1 million to \$4.0 million by FY2013-14, depending on how many leases are more competitively bid and the success of those negotiations.**¹²

Recommendation: *DMS should work with agencies to reduce the use of “stay-in-place” leases, modifications, and renewals that do not sufficiently consider market dynamics and ensure that, in all instances where a “stay-in-place” lease, modification, or renewal is approved by DMS, it is due to the fact that it produces savings to the state and/or it can be clearly demonstrated by the agency to be in the best interest of the state.*

lease plus documented moving costs. A present-value analysis and the consumer price index shall be used in the calculation of lease costs. The term of the replacement lease may not exceed the base term of the expiring lease.”

¹² Using DMS data from November 2010, the lower end of this range assumes 50 percent of the leases expiring 7/1/2011 through 6/30/2013 (1,153,827 of 2,307,655 total square feet) achieve savings of 5 percent of the average lease rate of \$19.35. The higher end of this range assumes 60 percent of expiring leases achieve 15 percent savings from the average lease rate. The DMS data set is used in this case rather than the *2010 Master Leasing Report* because the latter includes other government leases, which would likely not be competitively procured.

57. Improve the negotiation of tenant improvements for private sector leases

Florida law currently forbids the use of state funds for Tenant Improvements (TI) in space not owned by the state, unless the state is granted a security interest in the property, which is not feasible in most cases.¹³ When private sector leases are negotiated, agencies outline their space requirements and landlords that respond to the solicitation must agree to provide a “turnkey” build out, which allows for the agencies’ specifications to be met at no out-of-pocket cost to the state. The cost of improvements can be significant at times, and these costs are factored into the lease rate that is quoted by prospective landlords. Thus, while they are not paid for directly, these costs impact the lease rates paid by the state. Working in cooperation with its Tenant Brokers, several agencies such as the Department of Health and the Agency for Workforce Innovation have identified opportunities to reduce costs related to TI.

There are several opportunities to reduce rental rates through improved negotiation of TI that should be more fully implemented. For example, when DMS identifies new space standards for agencies, it should also work with agencies to modify specifications and identify opportunities to “value engineer” them and reduce their cost.

The following concepts should be required for Tenant Improvements in solicitations for new space:

- A standard form with the breakdown of estimated TI costs so that it is clear what portion of the rate is rent and what portion is amortized TI costs.
- A shared savings provision that allows the state to receive a portion of savings from the initial estimates provided in the Invitation to Negotiate (ITN) response should actual costs be lower.
- Include a reconciliation provision that allows the state to review costs to validate savings and outlines the timing for the reconciliation that could occur both during and after construction.
- A provision that allows savings from TI to be utilized as free rent.
- A provision that requires the landlord to bid the improvements (or at least bid the major subcontractor components).
- Provisions to ensure the renewal rate no longer amortizes TI from the initial term.

Estimated savings of \$1 million to \$3 million could be achieved in any given year without significant changes to the type of space being built out. Those savings could be increased if the specifications currently utilized by many agencies are further modified.

Recommendation: The Department of Management Service should review and implement ways to improve the negotiation of Tenant Improvements for leased property with targets for reduced costs.

¹³ s.287.05805, F.S. states: “Contract requirement for use of state funds to purchase or improve real property. Each state agency shall include in its standard contract document a requirement that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.”

Section III: Standardize the Business Process

58. Standardize sick and annual leave accrual

State employees with the pay plan designations of Select Exempt Service (SES) and Senior Management Service (SMS) are permitted to accrue a total 480 hours of unused annual leave for which they receive a reimbursement upon voluntary or involuntary separation. Departing employees are paid 100 percent of their hourly wage at the time of termination for every hour of annual leave accumulated. The payout scheme for Career Service (CS) employees is the same; however, the maximum amount of accruable hours is capped at 240.

SES and SMS employees receive 176 hours of annual leave at the start of each fiscal year. In addition to the maximum accruable 480 hours, SES and SMS employees also receive a remittance for any unused hours during the year of separation, bringing the maximum possible hours of payable annual leave to 480. This amount is the same for CS employees; however, they do not receive 176 hours of annual leave at the beginning of each fiscal year but rather accrue annual leave at 8.667 to 13 hours per month, depending on their years of service.

The 2011 session of the Florida Legislature did not make any changes regarding annual leave or accrual of sick leave. Senate Bill 2100, dealing with benefits, originally called for the elimination of “accumulated annual leave payments and overtime from compensation and average final compensation,” but this provision was stricken from the final version of the bill which became law effective July 1, 2011.

Limiting the total annual leave hours permitted for accrual by all SMS, SES, and CS employees to 240 will result in \$1.76 million in annual cost savings for the state (\$1.4 million in annual leave payouts; \$360,000 in pension benefits). If annual leave reimbursement is completely eliminated, as is common in the private sector, the state would save \$10.1 million annually (\$9.6 million in annual leave payouts; \$430,000 in pension benefits).

The Legislature should also require that agencies strictly enforce current law that states that employees use compensated leave time before sick leave. If agencies strictly enforce this, the state will reduce its liability and the amount the state has to pay out when an employee leaves employment with the government.

Recommendation: The Legislature should make one of the following two amendments to the current annual leave accrual policy: 1) Cap the maximum amount of accrued annual leave hours permitted for CS, SES, and SMS employees at 240; or 2) adopt a “use it or lose it” policy, in which all unused annual leave hours are wiped out at the end of each fiscal year with no reimbursement for any unused hours. The Legislature should also require that agencies strictly enforce current law that states that employees use compensated leave time before sick leave.

59. Standardize payroll cycle

Florida currently has more than 10 different payroll cycles. Simplifying the number of payroll cycles throughout state government would reduce costs, and the state should evaluate options to

reduce the number of pay periods. Fewer paychecks (for the same annual salary) produce savings as fewer payroll cycles reduce administrative costs and increase interest earned without adversely affecting employee pay levels.

Figure 19 shows the potential annual cost-savings that would result if only 10,000 state employees were shifted from a weekly paycheck cycle to 1) bi-weekly, 2) semi-monthly, or 3) monthly payroll cycles.

Figure 19: Annually Per 10,000 Employees Migrated From Weekly to New Pay Cycle

	Cost Savings Per Paycheck ¹		Est. Interest Gain
	\$2.00	\$10.00	2.50%
Weekly to Bi-Weekly	\$530,400	\$2,652,000	\$2,629,500
Weekly to Semi-Monthly	\$571,200	\$2,856,000	\$2,436,100
Weekly to Monthly	\$816,000	\$4,080,000	\$3,747,700

¹ Including materials, production, systems, 2% reissues, and distribution.

Assuming \$10 cost savings per paycheck over three payrolls cycles for 10,000 employees, the state could save \$9.59 million (not including interest gains).

Recommendation: *The Legislature should direct the Human Resources department of each agency and People First under DMS to reduce the number of payroll cycles and evaluate opportunities for reducing the number of pay periods without adversely affecting employee salary levels to reduce costs.*

Section IV: Reduce Cost of Communications (with vendors or payees)

60. Eliminate the printing and mailing of paper checks for state disbursements by expanding the use of debit card programs.

Disbursing payments via paper checks is far more expensive than using electronic payment disbursements. Thus, increasing the use of electronic payments via debit cards saves money by eliminating costs for check printing, check stock, and postage.

The state disburses payments to a wide array of recipients, including payroll and retirement benefits, unemployment compensation payments, child support payments collected on behalf of custodial parents and payments to vendors for goods and services purchased by state agencies. Although many of these payments are already being made electronically, the use of electronic payments could be increased.¹⁴

The traditional form of electronic payments used by the state has been electronic transfers, often known as direct deposits; however, this option is not always available for all payment recipients, especially individuals (as opposed to vendors) who may not have checking accounts or ready access to traditional banking institutions. The increasing prominence of debit cards provides an alternative form of electronic payment that can serve this population and allow the state to shift almost entirely away from paper checks.

¹⁴ The exact percentage of electronic payments compared to paper checks was not determinable with the information available.

Electronic payment cards (EPC) are essentially prepaid, rechargeable debit cards that the recipient can use at most retailers or ATMs. Once the recipient has an EPC, direct deposits can be made to the EPC account at negligible cost to the state.

Florida already has a near-universal electronic payment program in place for Child Support Enforcement (CSE) payments through the Department of Revenue (DOR) and for unemployment compensation benefits through AWI. Current law requires that outbound child support enforcement payments be made either by direct deposit or electronic payment card, except for exceptional cases.

Electronic payments through EPC have been implemented for a variety of payments by numerous states and at the federal level. The largest program to-date is the disbursement of Social Security benefits. Congress has now required that the Social Security Administration phase out all printed checks. Once all recipients move to either a debit card or direct deposit, the U.S. Treasury expects to save \$42 million per year.

Unemployment Compensation: More than 20 states currently operate an outbound electronic payment program, including Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, and Virginia.

Effective 2011, Florida's unemployed will no longer be able to receive unemployment benefits by check. Payments will be only by debit card or direct deposit. There is no fee to use the card for purchases, and cardholders can use it for free within the network, but are charged fees up to \$3 per transaction outside the network. Florida is the first state in the nation to include a provision to receive a portion of merchant fees in its contract with the debit-card vendor. Initial savings are projected to reach \$8 million a year in postage alone once everyone is off printed checks.

Child Support Enforcement: In addition to Florida, most states disburse child support payments through electronic payments, including: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Workers' Compensation Benefits: During the 2011 session, the Florida Legislature passed House Bill 1087, which allows the use of prepaid cards for the provision of workers' compensation benefits to an injured employee if certain conditions are met. The bill became effective on July 1, 2011.

Payroll and retirement benefits: While Florida currently uses direct deposit when the option is available, several states also disburse payroll and retirement benefits via an electronic payment card when direct deposit is not available, including Virginia, Indiana, and Georgia. Requiring all

payroll and retirement benefits to be distributed through electronic payments (by incorporating EPC) would produce significant savings for the State of Florida.

Assuming a \$2 per check savings using electronic payment disbursements (a generally accepted conservative estimate), the projected future annual savings for Florida are shown in the following table by major program area.

Figure 20: Estimated savings by increasing the use of electronic payments compared to paper checks, FY 2010-11

Program	Payments per Month	Cases/Volume per Month	Monthly Savings	Annual Savings
TANF¹⁵	1	52,000 ¹	\$104,000	\$1,248,000
Foster Care	2	30,000 ¹	\$60,000	\$720,000
Pensions	2	50,000 ¹	\$100,000	\$1,200,000
Payroll	2	30,000 ¹	\$60,000	\$720,000
Total				\$3,888,000

If Florida eliminated printing and mailing paper checks, instead using electronic payments and debit cards, the state could save up to \$3.8 million in FY2012-13.

Recommendation: *The Legislature should require all agencies and programs to use electronic payments allowing checks to be printed only on an exception basis with justification.*

61. Further increase use of electronic receipts

Processing electronic payments to the state is significantly more cost effective than processing paper checks. Processing the dispensation of a check received via mail costs state agencies more than \$4; whereas the cost of processing an electronic payment is less than \$1, a savings of approximately \$3.¹⁶ Requiring electronic payments would reduce processing costs and therefore produce considerable cost savings for the state.

In addition, electronic payments generate more interest from deposits than payments received via paper check because electronic payments are deposited by the state within one business day, whereas the time to deposit for paper checks often exceeds 5 days.

¹⁵ Temporary Assistance to Needy Families

¹⁶ Estimate based on: Florida Department of Financial Services Office of Inspector General, "Payment Receipts Safeguards Can Be Improved While Achieving Significant Cost Savings," March 13, 2009 (Audit Number 09004), available at www.myfloridacfo.com/OIG/images/CashReceiptsAudit.pdf.

Analysis of payment receipts provided by DFS shows that state agencies other than DOR received 1.46 million payments (i.e., transactions) in FY2008-09. Assuming that 40 percent of these payment receipts were submitted via paper, there are approximately 584,000 paper payment transactions received each year by agencies other than DOR.¹⁷ **If half of these paper payments were converted to electronic payments, the state would save nearly \$1 million annually**, assuming a \$3 reduction in processing cost per transaction.¹⁸ **If 90 percent of paper payments were electronically processed, the state would save \$1.5 million annually.**

In 2010, the Florida Legislature passed legislation which required clerks of court to use electronic payment disbursement and receipts for all of its state payments.¹⁹

Recommendation: *The Legislature should mandate electronic payments and receipts for all state payments, except in extraordinary cases, through direct deposit or EPCs. The Legislature should direct that all payments made to the state must be made electronically, where feasible.*

62. Implement a statewide web-based mass notification system for messages and general communications

Currently, agencies communicate with constituents largely through traditional print, fold, and mail services. Establishing a web-based mass notification system capable of disseminating information to residents would improve communication and employee efficiency while decreasing the need for direct mail, printing, postage and other associated administrative costs. Such a communication system also has public safety ramifications, allowing critical information to rapidly reach a broad number of employees during emergencies.

Federal agencies and many states have implemented web-based notification systems such as the Federal Emergency Management Agency (FEMA). The implementation of a web-based notification system has allowed FEMA to provide real-time communication to the public, eliminating delays and increasing citizen safety in emergency situations.

In FY2009-10, state entities in Florida spent an aggregate \$58.7 million on postage, mailing, and printing costs. A 1 percent reduction in these costs due to the implementation of a web-based notification system could save nearly \$600,000 for the state, annually; however, the savings could be potentially greater.

Further savings of time and money could be achieved by utilizing social media such as Facebook and Twitter. The primary advantage to using social media is that it reaches Floridians where they typically spend time every day - online - and enables easy access to services and information. Floridians are seeking information through mediums they feel most at ease with, which for many, involves a form of social media. While many state agencies do maintain social media platforms, it is important that state agencies continue to be at the forefront of new trends and developments to get their message out in the most efficient and cost-effective manner possible.

¹⁷ Ibid.

¹⁸ \$876,000 based on FY 2008-09 data.

¹⁹ Florida Statute 213.13, 2010.

Recommendation: *To reduce costs and improve citizen communication, the Legislature should pass legislation requiring agencies to implement web-based mass notification system for all mission critical messaging and engage in free social media interfaces to disseminate more information to citizens, partners, and other sectors of government.*

63. Create an eLearning-based Centralized Learning Academy

Currently, state employee training is decentralized and each agency is responsible for providing technical and non-technical training to its own employees. However, many training courses, especially non-technical courses, are common to employees across state agencies. In the existing system, agencies individually develop or outsource, which results in waste and inefficient use of taxpayers' money.

Creating a "Centralized Learning Academy" using "eLearning" technologies will reduce training costs. Online eLearning can cut overall training costs by reducing employees' time away from work during training, the overhead associated with maintaining multiple education departments, and the costs of producing physical materials. For instructor-led training (ILT), the savings also includes program materials, meals and refreshments, facilities, cost of coordination, cost of job coverage during training, overhead of instructors, and any other cost incurred in providing traditional training. Furthermore, there are additional savings associated with the economies of scale by serving more state employees from multiple agencies simultaneously.

Studies that compare traditional classroom instruction to equivalent computer-based training instruction at Xerox, IBM, and Federal Express have shown that training time for the typical worker can be reduced by 40 percent through use of eLearning.²⁰

For example, Toyota has been utilizing eLearning since the turn of the millennium and has estimated a cost saving of at least 60 percent on training delivery per trainee against trainer's time.²¹

Other opportunities for cost savings through eLearning:²²

- Reduced training expense
- Reduced staffing expense
- Reduced reporting and record-keeping expense
- Reduced training and orientation time
- Reduced costs for printing educational materials
- Increased consistency of training materials

²⁰ "E-Learning Benefits and ROI Comparison of E-Learning vs. Traditional Training", David Boggs, CEO, SyberWorks, Inc [Internet]. Version 5. Knol. 2008 Dec 23. Available at <http://knol.google.com/k/mary-kaylofurno/e-learning-benefits-and-roi-comparison/nti9bs9a4lx/16>.

²¹ "Toyota estimates 60% time and cost-savings by implementing e-learning", April 9, 2002, Available at <http://www.elearnity.com/EKCLoad.htm?load=ByKey/DWIN5DNCPV>, accessed on July 5, 2011

²² "Calculating the Cost Savings Associated with eLearning", CareLearning.com, Available at <http://www.wha.org/education/pdf/caresavings.pdf>

According to a study by Caterpillar, the cost savings associated with eLearning rise proportionately with the size of the learning group. When employee groups run into the hundreds, cost savings can rise as high as 78 percent.²³

Even though the state training budget has been reduced from \$33.74 million in FY2008-09 to \$19.78 in FY2009-10,²⁴ there is likely still a potential 10 to 20 percent savings if training services are centralized using eLearning technology, which **would generate approximately \$2 to \$4 million in cost avoidance annually beginning in FY2012-13, not considering any potential upfront costs.**²⁵

Recommendation: The Legislature should direct DMS to coordinate state training functions, in conjunction with the State College System in order to help eliminate duplication in employee training and expand services with existing resources. The training center should work with higher education institutions to develop appropriate learning strategies and programs for state employees. The central training office should design uniform training curricula for issues that affect all agencies.

The training office should offer customized training, ILT, online learning, and employee certificate programs to all state employees, and agencies should be required to participate in existing programs rather than developing and offering courses in-house whenever the central courses can reasonably meet the agency's need.

64. Modernize and centralize print and mail operations through outsourcing

The State of Florida operates a wide range of inbound and outbound mail operations.²⁶ Some agencies outsource basic print and mail functions, while others have in-house facilities. Print and mail requirements and statements of work differ from agency to agency, and significant efficiencies could be gained by creating a centralized environment for sharing print and mail capabilities across agencies, which would result in greater synergies and cost savings.

The business of government remains paper-driven. States have attempted to reduce the flood of paper through the use of online services and user-friendly websites. However, there remains an over-reliance on the U.S. Postal Service, paper, and outdated processes of moving paper through and across agencies and to and from citizens. End-to-end management of digital and paper business processes (both inbound and outbound) has the potential to bring significant operational efficiencies that can deliver substantial cost savings.

While the State of Florida has outsourced much of its mail operation for a number of years, the current approach is focused on traditional manual mail processes and transaction pricing, which provides no incentive for the vendor to reduce paper usage or the number of mailings. Through

²³ Cost of dLearning vs. In-person Classes, CoursePark Learning Networks, April 27, 2011, available at <http://www.coursepark.com>, accessed July 5, 2011

²⁴ "State Personnel System Annual Workforce Report 2009-2010," Florida Department of Management Services.

²⁵ For the further information about eLearning and an example of the potential savings, see: "Return-on-Investment (ROI) from eLearning, CBT and WBT," *Ron Kurtus' School for Champions* website, revised October 2002; www.school-for-champions.com/elearning/roi.htm, accessed on January 28, 2010.

²⁶ Department of Management Services, Contract Number: 991-530-12-1, accessed July 12, 2011

technology, the State could substantially reduce costs by modernizing the entire business process of printing and mail processing by standardizing and centralizing these processes across agencies. These should include:

Inbound Mail

- Consolidate and upgrade operations to eliminate excessively redundant equipment and reduce manpower costs
- Scan mail and use work flow software to route the images to the proper work station
 - o Eliminates courier expense of manual delivery of hard-copy documents
 - o Improves processing turnaround time
 - o Creates a more secure environment and reduces risk associated with data breach
- Leverage technology to perform electronic sorting, reducing manpower costs
- Store electronic documents in centralized document repository
 - o Eliminates need to store hard-copy documents
 - o Future document retrieval requires less effort
 - o Improves security
- Use bar code mailings to facilitate return document processing
- Implement data capture technologies and automate certain manual processes

Centralized / Consolidated Print Facility

- Consolidate and upgrade operations to eliminate redundant equipment and reduce manpower costs
- Receive electronic print streams from individual agencies
 - o Eliminates manual courier pick-up of outbound mail from individual agencies
 - o Allows agencies to store all outbound material in a centralized document repository
- Implement multi-channel electronic communication and reduce paper generated
 - o Reduces postage and material expense
 - o Faster delivery
 - o Improves communication
 - o Electronic payment receipt and disbursement
 - o Reduces the frequency of mailings
- Redesign documents to facilitate improved flow
- Approach print requirements from an enterprise-wide perspective to gain shared efficiencies and savings

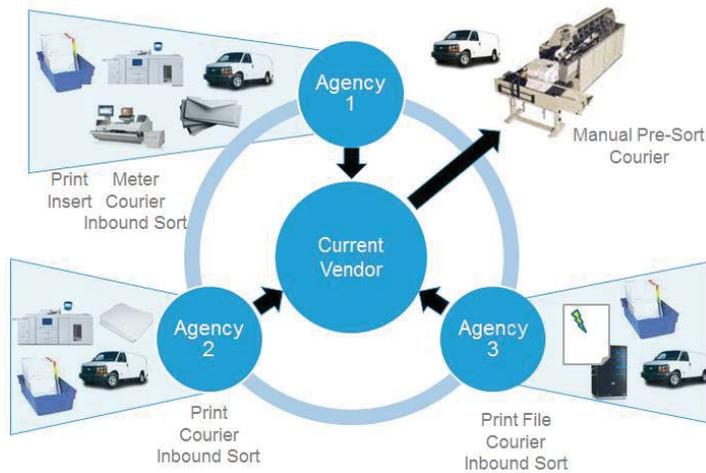
Outbound Mail

- Eliminate manual pre-sort by sorting documents electronically
 - o Eliminates current pre-sort fees
 - o Reduces courier expense
- Electronically consolidate documents being sent to the same

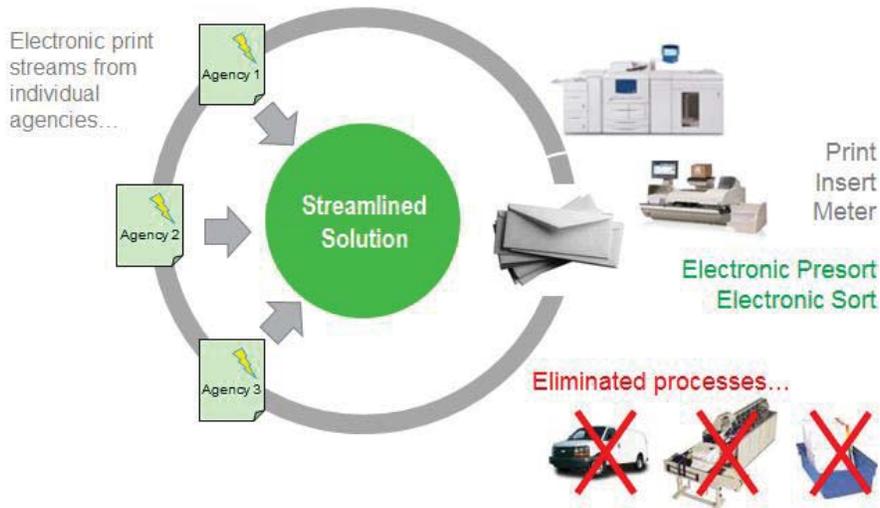
- Reduces postage expense
- Reduces material expense
- Reduce the weight of mail by changing the size of the envelope or its contents
- Increase postal rate discounts by adding zip+4, delivery point automation, and address correction
- Automate return mail processing

A high-level workflow comparison of the current process versus a streamlined process is detailed below.

Current Process



Streamlined



The centralization and consolidation of the print and mailroom functions via outsourcing has the potential to generate substantial savings from streamlined processes, reduced postage costs, eliminated and combined mailings, upgraded hardware efficiencies, and manpower reductions. The use of imaging and workflow software can eliminate the movement of hard-copy paper documents through the agencies while improving security and lowering the overall processing

time by reducing the number of touch points in the process. Also, industry experts report that postage savings of 10 to 15 percent are standard.

In FY2008-09, the state of Florida spent \$47 million on postage, so a 10 to 15 percent savings on postage and pre-sort fees alone **would generate \$4.7 to \$7 million per year** (assuming no upfront or implementation costs because outsourcing can eliminate the need for a capital outlay by having the vendor spread the costs over the contract duration) and annually thereafter. **Even more significant savings should be realized by automated workflow efficiencies that could be in the tens of millions annually.**

A leading US health insurance company with more than 30 million members outsourced its print and mail function and is gaining substantial efficiencies and cost savings. It has reduced print and mail operations costs by 20 percent, decreased postage costs by 25 percent and increased liquidity and balance sheet relief due to more predictable budgeting. Savings are in the tens of millions of dollars. The approach is a true partnership based on shared risk and rewards and involved a phased migration to a new, more efficient central processing center; implementing new technology and processes to evolve member communications from paper to electronic channels; and redesigning documents to reduce paper and postage. Member and provider fulfillment services involving over 1 billion pages per year are now handled effectively and seamlessly.

The United Kingdom's largest central civil government department, the Department for Work and Pensions (DWP), revamped its entire document supply chain to make information clearer and more easily accessible to UK citizens. Faced with stringent new government requirements, DWP looked to eliminate unnecessary duplication of print and mail functions by integrating document services across all 1,000+ offices. DWP transformed a fragmented supply chain for all its core print and related requirements. As a result, for the first time, all business print and marketing materials, stationery and reprographics are available to DWP staff through a single point of contact via the Government e-procurement exchange. The modernization will also result in substantial savings for DWP, in line with the UK Government's Efficiency Review targets, and the solution is providing a flexible, best-value shared service that serves as a government model.

Efficient print and mail operations can also be found in US government operations – from Medicaid claims operations to child support payment processing operations and Federal Government operations. For example, the Department of Education Federal Student Aid (FSA) Direct Loan program serves more than 12 million borrowers and uses a partner to manage mail operations, bringing efficiency and cost savings to the operation. Outbound communications to borrowers regarding loans have also improved with sophisticated email campaigns, well designed financial literacy programs, and other outreach to borrowers to provide education and counseling. As a result, the number of students defaulting on their Federal Direct Student Loans remains low, even in these tough economic times. And the FSA's borrower customer satisfaction scores are among the highest in the government and the financial services industry.

Recommendation: *The state should centralize, modernize, and outsource print and inbound / outbound mailroom operations. Most importantly, the State should NOT view outbound mail as commodity service. Rather the state should focus on competitive bids for modernizing business processes, digitizing outbound mail, combining mailings where possible, implementing mail scanning and workflow, and centralizing all mail operations and modernizing equipment.*

Section V: Reduce State Travel Expenditures

65. Reduce state travel costs

The state incurs significant travel costs for state agency travel and advisory boards. The state spent \$59.8 million in FY2009-10. While most travel is conducted by only a few agencies and typically confined within the state, hotel and mileage costs remain high.

To further reduce state expenditures on travel, OPPAGA suggests the Legislature consider several additional options, including:

- Reducing travel funding;
- Statutorily capping reimbursement for hotel expenses using the federal hotel reimbursement rate as a ceiling;
- Modifying per diem rates for the last day of travel;
- Contracting for travel agent services;
- Modifying the transportation model for travelers driving personal vehicles high-mileage for state business; and
- Directing agencies to procure the most cost-effective electronic conferencing services.²⁷

A 5 percent reduction in state spending on travel due to the implementation of these recommendations and modifying the discretionary travel system for state boards, such as instituting a needs-based “hardship fund” rather than funding all board members for travel expenses, and other methods of reducing travel costs could save the state \$3 million annually.

Recommendation: *The Legislature should require all agencies, boards, and other entities to review their travel expenses with specific reduction targets put in place for hotel and mileage costs. The state should also create a ‘hardship fund’ that will continue to fund the travel of certain individuals serving on advisory boards on a needs basis.*

66. Explore potential to consolidate boards and administrative support costs

The state government currently has more than 70 major boards and commissions that regulate industries and professions in Florida.²⁸ Several states have gone through a substantial revision and reorganization of their boards and commissions. For instance, the State of Washington

²⁷ OPPAGA, “State Agency Travel Costs are Down; Some Options Remain to Further Reduce Expenditures”, March 2011.

²⁸ State Commissions and Boards Listing." Division of Library & Information Services - Florida Department of State. 16 Mar. 2011. Web. 11 Nov. 2011. <http://dliis.dos.state.fl.us/fgils/boards.html>.

recently eliminated more than 140 boards and commissions, while consolidating the functions of numerous others.²⁹ Similar efforts have occurred or are currently underway in several other states, including Connecticut, California, Utah, Iowa, Oklahoma, New York, Michigan, Maine, Nevada and West Virginia. These entities should be considered for consolidation or possible abolishment if they are longer crucial to effective state government.

Recommendation: *The Legislature should require a comprehensive review of existing state boards and commissions for potential consolidation and elimination. Particular consideration should be given to eliminating boards that do not provide a core service such as public safety, health, education, or vocational licensing. Furthermore, the subsistence, lodging, and travel allowances given to the board and commission members should be reviewed as well as a means to reduce taxpayer expenses on these entities.*

67. Expand use of teleconferencing (including online meetings and video conferencing)

Teleconferencing is now being routinely used by the private sector to reduce travel costs associated with in-person meetings. The technology is well-established, inexpensive, and already widely available throughout state agencies and the Legislature. Increasing the use of teleconferencing for state government meetings would produce significant savings for the state, especially where the technology to conduct teleconferences already exists in state facilities.

According to a 1999 report by Kentucky’s Legislative Research Commission, at least twelve states use video conferencing for committee meetings involving state legislators and/or witnesses testifying from a remote location.³⁰ In FY2009-10, Kentucky state agencies spent more than \$59 million on travel. Even though this is a larger amount than Florida spends, it is a drop of 48 percent over the last four fiscal years. This came about as agencies modified their operations to further reduce costs, including limiting travel to mission-critical activities, and, not incidentally, increasing use of conferencing technology.³¹

This same approach should be implemented by the Florida Legislature, which spent around \$58 million on in-state travel in FY2009-10. Telephone conferences, online meetings, and video conferencing systems are readily available and would save travel time, increase employee productivity, and maintain group interaction.

Given the available technology, the Legislature could conduct some early committee hearings using teleconferencing. For example, if the Legislature held one out of every four meetings using teleconferencing, the state would save approximately \$500,000 per year in travel costs (not including any implementation costs). If one in ten committee meetings were held using teleconferencing, the savings would be \$200,000 per year in travel costs. If the same examples were applied to the Legislature’s annual travel budget, the state would save \$540,000 to \$1.35

²⁹“House Bill Report E2SHB 2617.” House Committee On State Government & Tribal Affairs, November 2010. <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bill%20Reports/House/2617-S2.E%20HBR%20PL%2010%20E1.pdf>.

³⁰ “Videoconferencing and the Kentucky General Assembly,” Research Report #287, Legislative Research Commission, Frankfort, KY (November 1999), p.11.

³¹ “State Agency Travel Costs are Down; some Options Remain to Further Reduce Expenditures,” OPPAGA Report No. 11-14, March 2011.

million annually (not including any implementation costs). Furthermore, expanding teleconferencing to replace a portion of all in-state travel across all state entities, including statutorily or constitutionally created advisory bodies, would increase the savings dramatically.

As noted above, in FY2009-10, the state spent approximately \$58 million on in-state travel. **A 10 to 25 percent reduction of in-state travel costs would yield a savings of \$5.8 to \$14.5 million annually** (not including any implementation costs).

Recommendation: *The Legislature should electronically conduct at least one in four meetings during committee week electronically to reduce travel costs and reduce travel-related appropriations for all state entities by at least 10 percent. The Legislature should also direct that each entity conduct their meetings via teleconferencing whenever possible without disrupting the quality of the services provided to taxpayers.*

68. Consolidate management of state-owned vehicles and small vehicle fleets

Florida's Division of Fleet Management (DFM), a branch of the DMS, oversees and sets the basic standards for the acquisition, maintenance, and replacement of state vehicles.³² Even though DMS is charged with the management of the state's vehicle fleet, it serves only an advisory role by allowing each state agency to be responsible for managing their respective fleets and referring to DFM when needed. This decentralized system allows for wasteful spending that could be saved with the coordination of resources.

Pooling smaller fleets composed of similar vehicles under a single, knowledgeable managing entity, and allowing vehicles to be shared between agencies, would promote more efficient allocation and reduce unnecessary costs. The management of these pooled fleets could be performed by the state. This could be done under the current authority of the Department of Management Services or by an agency with a larger fleet and professional fleet manager, such as the Department of Transportation. The lead agency would facilitate better standardization of vehicle requirements, utilization, maintenance, contracts, and disposal; all of which would save taxpayer dollars. Further, a single appropriation to one agency for vehicles would allow more oversight and transparency over how dollars are spent, rather than dispersing the appropriation amongst several agencies.

A study conducted by the state of Iowa found significant savings when large state agencies provided budget, accounting, and pre-audit support free of charge to smaller state agencies which only had a minimal effect on the staff's workload.³³ Other states have also seen significant savings from fleet consolidation. Illinois implemented a Fleet Management System and generated one-time revenue of \$1.1 million by identifying unneeded vehicles which were

³² In FY2008-09 the state spent \$13.3 million on the acquisition of 648 new vehicles. A significant portion of this acquisition cost could be averted if certain vehicles were rented instead of bought. Further, maintenance and fuels costs could be reduced significantly through the rental of vehicles. In FY2008-09, the state paid approximately \$18.3 million on fuel and \$11 million on maintenance.

³³ "Iowa Efficiency Review Report to Governor Chet Culver and Lt. Governor Patty Judge", Public Works LLC, 2009.

subsequently sold. Wisconsin reduced its state fleet by nearly 14 percent in a three-year period and through refined procurement procedures saved taxpayers \$26.3 million.³⁴

Furthermore, the state could save a significant amount of money by requiring a statewide contract for fuel (bulk gasoline and diesel), which can be negotiated for a lower price. Additional fuel efficiency savings could be achieved through management of vehicle location and placement of newer and more fuel efficient vehicles in the areas with the largest travel routes. Industry experts estimate that fuel and maintenance costs of fleets could be reduced significantly within two years if management of these fleets were consolidated or outsourced.

In February 2011, there were 18,320 vehicles that were part of 30 state fleets. Twenty-one of these 30 fleets have less than 500 vehicles. In FY2009-10, these small fleet vehicles cost \$7.3 million in combined fuel and maintenance costs.³⁵

If all of the small vehicle fleets were pooled under one agency and the fuel and maintenance costs decreased by just 10 percent, then the state would realize a \$365,500 savings over two years. Further, if the state achieved a twenty percent savings on repairs under a more centralized system, the state would save \$1.9 million.

Recommendation: The Legislature should require the consolidation of small vehicle fleets agencies to an agency with a larger fleet or the Department of Management Services. The consolidated entity should be required to use a centralized contract for fuel, maintenance, and services to enhance cost-savings over time. The state should also require the use of metrics (simple ratios or data points) to determine the performance of fleet consolidation across all fleets. Among the data to be analyzed would be miles driven, fuel consumption, repair costs, and number of vehicle out-of-service-days.

69. Increase use of rental vehicles instead of purchased vehicles

By using rental vehicles in appropriate state agencies and circumstances, the state of Florida could realize substantial savings. Fuel and maintenance costs could be reduced significantly through the rental of vehicles. In FY2008-09, the state paid approximately \$18.3 million on fuel and \$11 million on maintenance.

Several other states have successfully done this, including Virginia, where in 2006 the state Office of Fleet Management Services (OFMS) contracted with a private rental company to provide the state with vehicles on demand for “short-term” travel by state employees at discounted rates. “Short-term” travel refers to temporary use of a vehicle, but has no limited time period as long as the vehicle is not a stable part of the job (e.g., police vehicles), it can be considered as short-term use.

If Florida reduced the size of its vehicle fleets by 10 percent by utilizing a short-term rental car contract, instead of purchasing new vehicles, the state would save \$10.7 million in

³⁴“Reform Bills in 2011”, Minnesota Republican House Caucus, 2011

<http://www.minnesotahousegop.com/storage/031611ReformPowerpoint.pdf>.

³⁵ Department of Management Service, Equipment Management Information System, February 2011.

replacement costs. These savings would be in addition to significant operational cost-savings that would be incurred.

Recommendation: *The Legislature should require a contract for a private vendor be competitively bid to provide rental vehicles to employees for “short-term” trips where the use of such vehicles would constitute reduced costs over the use of state-owned vehicles.*

70. Revise s.286.29, F.S., to include rental vehicles

Florida Statute 286.29 requires state agencies, state universities, community colleges, and local governments that purchase or lease vehicles to select vehicles with “the greatest fuel efficiency available for a given class when fuel economy data are available.” When rental vehicles are used for “short-term” travel by state employees, further savings can be realized by requiring rental vehicles to be the most fuel-efficient vehicles available. An exact cost-savings cannot be calculated because future use of rental vehicles cannot be determined, but using the most fuel-efficient vehicles will surely produce savings on fuel expenditures.

Recommendation: *The Legislature should require contracts with private vendors for rental vehicles to use the most fuel-efficient vehicles suitable.*

71. Explore metrics for fleet fuel efficiency and implement a minimum standard

In FY2009-10, the two largest vehicle fleets – the Department of Transportation and the Department of Highway Safety and Motor Vehicles – spent \$13 million on fuel.³⁶ Additionally, fuel costs for all vehicles that were part of state fleets with fewer than 500 vehicles exceeded \$4.65 million.³⁷ The average fuel-efficiency for all vehicles in this category was 18.78 miles per gallon.³⁸ Currently, the only requirement of the Florida state fleet is that it be “fuel efficient and use biodiesel and ethanol when available.”

Reducing fuel consumption by 10 percent for the top two fleets and all small vehicle fleets would have saved the state \$1.77 million dollars. Although state agencies have diverse needs and require the use of different types of vehicles, vehicles that require replacement should be replaced with hybrid vehicles, alternative fuel vehicles (where the geographic use of such vehicles matches the availability of fuel), or vehicles that are the most fuel efficient in their class to minimize gasoline consumption.

Recommendation: *The Legislature should require the Division of Fleet Management (DFM) set a target to reduce fuel consumption and develop a metric for tracking the fuel-efficiency of the vehicle fleet. A minimum fuel-efficiency standard should be established. The metric will help identify vehicles that do not meet the minimum standard. Since the cost of acquiring new vehicles may outweigh the savings from increased fuel efficiency, DFM should conduct a cost-benefit analysis to determine if it is cheaper to replace the vehicle immediately or wait until the vehicle’s usefulness expires. All candidates for replacement should be replaced with hybrid or*

³⁶ OPPAGA, “Centralizing Vehicle Fleet Operations and Implementing Cost-Saving Strategies Could Reduce State Spending”, April 2011.

³⁷ Data provided by the Florida Division of Fleet Management

³⁸ Calculated as total miles traveled divided by total gallons of fuel consumed by all vehicles.

alternative-fuel vehicles whenever feasible. Exceptions for emergency response vehicles provided by F.S. 286.29 should still apply.

72. Improve oversight of air and non-vehicular fleet

There is currently no comprehensive oversight of the state's non-vehicular fleet and agencies are not required to coordinate amongst themselves or report their use to DMS. The state's aircraft (airplanes and helicopters) is spread out amongst six state agencies for the following purposes: environmental protection; aerial mapping and photography; emergency response; and passenger service.³⁹ The aviation programs for the Department of Agriculture and Consumer Services owns 31 aircraft; the Department of Highway Safety and Motor Vehicles owns 8 aircraft; the Department of Law Enforcement owns 3 aircraft; the Department of Management Services owns 2 aircraft; the Department of Transportation owns 1 aircraft; and the Fish and Wildlife Conservation Commission owns 16 aircraft.⁴⁰

As each agency operates its own aircraft unit, agencies may be wasting taxpayer dollars through such practices as underutilizing aircraft, not charging other government agencies or entities for use of their aircraft, or using older aircraft that is not cost-effective or reliable to operate. Without centralized oversight of the state's current aircraft and non-vehicular fleet, it is impossible to gauge the efficiency of their use, storage, and maintenance. For example, agencies may store their airplanes at the same airport, but in different hangars; operate separate mechanical shops; and maintain separate contracts for fuel and parts. By entering into statewide contracts for services, such as fuel and maintenance, and centralizing coordination of the operations of state-owned aircraft, the state could save a considerable amount of money.⁴¹

Georgia recently consolidated its aviation programs into one fleet to centralize its administration, reduce the cost of services and staff, and standardize the training, maintenance, and aircraft owned.⁴² By directing state agencies to centralize all of its aircraft into a single aviation authority similar to Georgia, significant cost-savings could be achieved through greater oversight and accountability of how these specific assets are utilized and maintained.

Recommendation: *The Legislature should require all state agencies with aviation programs to consolidate into one centralized aviation authority to enhance accountability, oversight, and efficiency in the use, maintenance, and storage of state-owned aircraft.*

³⁹ In 2011, the Executive Aircraft Program was eliminated and the disposal of aircraft no longer needs to be approved by the Department of Management Services. Therefore, the state no longer owns any aircraft for the purpose of transporting state officials. The sale of these two airplanes on February 13, 2011 resulted in \$3.7 million.

⁴⁰ As of March 2011.

⁴¹ OPPAGA, "Centralizing Aviation Operations and Implementing Cost-Saving Strategies Could Reduce State Spending", March 2011.

⁴² Georgia Code, Title 6, Chapter 5, Aviation Authority, 2009.

Section VI: Other

73. Increase use of Owner Controlled Insurance Programs (OCIPs) for construction projects

Presently, many construction projects require each project-related party to provide workers' compensation and general liability coverage. Use of an Owner Controlled Insurance Program (OCIP) where the owner elects to purchase workers' compensation and general liability coverage for all project-related parties can save between 1 to 2.5 percent in construction project costs. In FY2008-09, construction costs were \$628,116,706 (excluding building and construction materials); **if the state saved only 1 percent of the total cost by using OCIP, the savings would be approximately \$6.28 million annually.**

Recommendation: *The Legislature should require agencies to use OCIP where possible for construction projects.*

74. Implement Managed Print Services to reduce cost and improve service in state office print environments

Managed Print Services (MPS) is the ability for a service provider to take primary responsibility for meeting office output needs, including copiers, printers, multifunction devices and fax machines in a unified fashion. While this can be done internally, the term is usually associated with outsourcing the work to an external vendor.

MPS has garnered the attention of industry research and consulting firms such as IDC and the Gartner Group. In June 2010, IDC referred to MPS as a “game-changing trend, enabling companies of all sizes to focus on the infrastructure costs associated with printing.”⁴³ In 2009, the Gartner Group characterized MPS as a generic term for a service offered by external providers designed to drive costs down while increasing productivity and efficiency.⁴⁴

Typical Office Environment: In the State of Florida today, each agency is responsible for managing its own print environment. There is little, if any, standardization of process or policy across agencies. Within agencies, printing and related costs are typically spread across numerous divisions and programs with little ability to control and manage costs. In many cases, there is no measurement of management of the cost of printing, especially at the office worker level, where printers are more often than not directly connected to PCs. This is the most expensive means of printing in the industry.

While the State simply does not know the characteristics or costs of its printing, the typical office printing environment in the public sector has the following characteristics. The average age of a device is over six years and is utilized only 1.4 percent of the time. There is one device for every two office workers, little standardization of equipment, and many of the devices are not connected to the network so they cannot be properly managed or secured. The average cost per

⁴³ IDC Executive Brief, Key Factors in Making an Informed Managed Print Services Decision, June 2010.

⁴⁴ Gartner, Magic Quadrant for Managed Print Services Worldwide, August 21, 2009.

employee per year for printing in this environment is \$450. Further, the amount of printing in the office is trending higher each year.

In contrast, a best practice office print environment that can be achieved with a managed print services approach has an employee to device ratio of ten to one. Utilization of the devices is 3 to 4 percent. Most or all of the devices are attached to the network and model types are standardized. This allows devices to be managed remotely and provides better compliance and security.

Typically entities that move to a managed print services environment save 20 to 30 percent of their output related costs. **For the state of Florida, this would represent savings in the range of \$12 to \$18 million dollars.**

Recommendation: *The state should require all agencies to assess the current costs and status of their print environments and move immediately to a managed print service.*

75. Expand use of Department of Corrections land for agriculture and other productive purposes

The Department of Corrections (DOC) currently sets aside land for agriculture on which “low-risk” inmates produce crops for self-sustenance. In FY2009-10, inmates cultivated approximately 1,700 acres on more than 30 different farms and gardens, and harvested more than 4.7 million pounds of produce. The crops are used to supplement inmate meals.⁴⁵ Expanding the use of correctional land for agriculture or other revenue-generating endeavors could reduce the cost of prison upkeep and generate revenue to offset the cost to the taxpayers of maintaining prisoners, which is currently \$19,469 annually per inmate.⁴⁶

With tougher immigration laws on the horizon, the supply of seasonal workers in Florida could be sharply curtailed. The Department Of Corrections should explore the possibility of providing low-risk inmates the opportunity to work in private crop fields as a means of fulfilling their work requirements. Such a plan has worked well in Colorado, since that state passed some of the nation’s strictest immigration laws in 2006. The mostly-female crop pickers provide a steady and dependable flow of labor to farmers.⁴⁷

Recommendation: *The Legislature should direct the Office of Program Policy Analysis and Government Accountability (OPPAGA) to identify any idle or underutilized DOC land and determine whether any portion of it could be turned to agriculture. Legislators should also consider raising extra revenue through the use of inmates as crop pickers in parts of the state where there are shortages of seasonal workers.*

⁴⁵ “Quick Facts about the Florida Department of Corrections”, Florida Department of Corrections website, accessed 6/28/2011 www.dc.state.fl.us/oth/quickfacts.html.

⁴⁶ *Ibid.*

⁴⁷ Eddy, David, “Inmate Field Workers”, May 2010 www.growingproduce.com/americanvegetablegrower/?storyid=3763 accessed 6/28/2011.

76. Form a compensation commission to determine actual competitiveness of state compensation with other states, local governments, and the private sector

National data show that state and local government employees earn on average 45 percent more in total hourly compensation (including wages and, health and other benefits) than their private sector counterparts.⁴⁸ Although such figures provide some insight into the existing disparities between public and private industry compensation, there are virtually no comprehensive studies that provide a thorough comparison of Florida's state employee compensation packages with those offered by other state governments, local governments, and private sector employers. However, the State Personnel System Annual Workforce Report 2009-2010 from the Department of Management Services, has the following statement:

“In 2009, state governments nationwide had an average of 216 state workers per 10,000 in population. Florida had a ratio of 117 workers per 10,000 in population, or 45.8 percent less than the national average. In 2009, the state government national average was \$72 in payroll expenditures per state resident. Florida's ratio was \$38 in payroll expenditures per state resident, or 47.2 percent less than the national average.”⁴⁹

Among the fifty states, Florida ranked 50th in payroll expenditures per state resident.

Conducting a study that provides a detailed analysis of how Florida's state government employee compensation packages compare to those of the state's private sector, local governments, and other state governments is essential to identifying where Florida ranks with regards to its labor expenditures. Comparing the marginal differences in Florida's state wages, sick and annual leave payouts, health insurance contributions, and other benefits by controlling for various employee characteristics (e.g., educational attainment, job type, age, and educational attainment) across these sectors can provide policymakers with a more accurate depiction of the composition of Florida's state workforce and a more adequate vantage point from which to make decisions for making the state's employee compensation package more competitive.

Recommendation: The Legislature should commission a study to determine the actual competitiveness of Florida's state government compensation with other states, local governments, and the private sector. The results of such a study will empower Florida's political leaders to make necessary improvements on how state employees are compensated.

77. Implement a fraud deterrent system for child care providers

As of May 2011, Florida pays an average of 10,715 child care providers for services provided to 229,663 children⁵⁰. Implementing an automated point-of-sale utilization program rather than relying on frequently unreliable provider self-reporting of attendance would reduce the incidence of aberrant payments and save the State of Florida tens of millions of dollars annually. An automated services program would reduce incorrect payments and fraud while saving administrative funds through the elimination of data entry activities associated with provider invoicing.

⁴⁸ Bureau of Labor Statistics National Compensation Survey, 2011.

⁴⁹ Department of Management Services, “2009-2010 Annual Workforce Report”, State of Florida, page 5.

⁵⁰ Florida Agency for Workforce Innovation Fact Book, http://factbook.flawwi.com/oel_1.aspx, accessed July 11, 2011

Parents or designated caregivers check children in and out of care with attendance verified through the use of a swipe-card or other point-of-sale verification method. Such automated programs are available from reputable contract service providers and are in use in other states. The program could be implemented quickly.

Similar programs are currently operational in Oklahoma, Indiana, Texas, Colorado and Louisiana. Ohio, Virginia, New Jersey, North Carolina and Alabama are currently in the implementation phase. These services have been documented to reduce state child care provider costs by 10 percent or more by eliminating payment of fraudulent and errant billings. Based on these cost reductions in other states, Florida could expect net annual savings of at least \$60 million.

States also made changes in their child care rules to maximize savings through automation. Additional administrative savings were realized through reassignment and attrition of data entry and audit staff, and through elimination of paper check printing and mailing. The savings realized is a product of both the technology and the strengthened rules which require providers to utilize the technology. The use of the technology without strong supporting rules (specifically requiring all providers to use the system) would result in fewer savings.

Assuming a minimal savings estimate of 10 percent⁵¹, the estimated savings for Florida would be \$72 million per year. Based on the operational costs experienced by other states, the service could be provided for less than \$12 million per year, **resulting in an estimated annual net savings of at least \$60 million per year on a conservative basis.**

Recommendation: The state should immediately contract for an automated point-of-sale child care utilization verification service and the Legislature should require all providers in the state system to utilize the service.

78. Require reimbursement of the training costs for certified law enforcement and corrections officers that terminate employment with the state prior to completing two years of service with the state

Florida expends significant resources on training and certifying state law enforcement and correctional officers each year. These newly trained and certified officers are often recruited and hired away from state service by local governments who then enjoy the benefit of not having to incur training and certification costs for new personnel. State government could reduce training and certification expenditures by requiring local governments to reimburse the state for training and certification costs for all certified officers who terminate their employment with the state for a job with local government prior to completing two years of service. Alternatively, the state agencies could require employment agreements, obligating the officers to reimburse such costs should they terminate state employment prior to completing two years of state service. This would ensure reimbursement regardless of the benefitting agency or government.

⁵¹ Oklahoma projected savings as published in the Hearing before the Health and Human Services Committee on Ways and Means, One Hundred and Ninth Congress.

Several states, including Tennessee, New York, California and Oregon have policies calling for partial or full reimbursement of training costs, depending on the officer's length of employment before departing.

Recommendation: *The Legislature should statutorily require reimbursement for training and certification costs incurred for all state law enforcement and corrections officers terminating employment prior to completing a minimum of two years of state service. Reimbursement could be required from the officer or a local government hiring the officer.*

79. Implement centralized statewide power monitoring and management for computers

Reducing personal computer energy consumption across agencies through power management could produce immediate and long-term savings for the state. Any organization that uses a large number of individual computers runs the risk of energy waste when individuals choose to turn off a machine's power-conserving settings or leave their computers running unnecessarily during off-hours. Implementing an automatic computer shutoff program would enable IT administrators to centrally manage and continuously enforce power management policies on all state-owned PCs without sacrificing manageability, usability, and security.

Power management solutions have been implemented in numerous states by outsourced contractors who can program automatic computer shut off throughout the entire network for a low cost. Examples include Miami-Dade County Public Schools, which also used the same idea to manage their air conditioning systems. IT administrators may be able to set up automatic shutoff in-house, either network wide or on individual computers.

Power management through automatic computer shutoff can provide a quick return on investment by reducing a single desktop computer's power consumption by as much as 60 percent, potentially saving \$25 per computer per year by reducing energy costs.⁵² **Based on the \$25 annual savings per computer, the estimated savings for Florida would be more than \$3.1 million annually.**⁵³ It should also be noted that lap-top computers for employees use up to 90 percent less energy than larger desktop models.⁵⁴

Recommendation: *The Legislature should direct the DMS to implement a power management through automatic computer shutoff program on or before July 1, 2012, either through an outsourced contract or internally.*

80. Modernize, consolidate, and outsource call centers

State agency call centers typically provide information about agency services, offer guidance on regulations, respond to consumer complaints, provide help in completing processes (e.g., obtaining a business license, applying for unemployment benefits), and refer customers to other agencies.

⁵² "Big Fix Power Management Lowers Power Bills and Shrinks Carbon Footprint", Miami Dade County Schools, 2007. http://www.energystar.gov/ia/products/power_mgt/MDCPS_Power_Mgt.pdf.

⁵³ Savings estimate based on 125,000 state owned computers.

⁵⁴ "Energy Efficiency Tips", Electric Power Associations of Mississippi, <http://www.epaofms.com/efficiencytips>, accessed July 12, 2011.

For a number of reasons, it is very difficult for the state to operate efficient call centers. In many cases, the demands on call centers can vary widely and change quickly due to external factors. For example, the demand placed on AWI's call centers sky-rocketed as the unemployment rate increased to record levels. Similarly, the demands on DHS&MV increased beyond their ability to respond effectively due to the implementation of RealID (a 2005 Act of Congress that modified federal law pertaining to security standards for state driver's licenses and identification cards). In 2010, DCF submitted a Legislative Budget Request (LBR) for \$17.4M to hire 354 call center agents for the ACCESS program. According to the LBR, the demand for food stamps has increased by 127 percent since 2007. As a result, 2.3 million calls come into the DCF-operated call centers each month (a 900,000 increase compared to April 2008). Only 38 percent of these calls are handled by the Automated Response Unit. The others are transferred to the call centers where two thirds ring busy or are dropped.

Situations such hurricanes, epidemics, and federal mandates can place extreme demands on call centers and result in very poor service to Florida citizens. When this happens, state-operated call centers cannot respond. Agencies cannot hire the incremental staff that is needed nor implement additional technology that may be required. Further, when demand goes down, agencies are sometimes reluctant to release staff.

It is a business not well-suited for the state. Private industry does not have the same constraints. There are numerous firms that have expertise in complex government programs that can provide best-practices and state-of-art technology to call centers. The state generally implements strict Service Levels Agreements (SLAs) that must be met by the contractor. Agencies that outsource call centers typically require the contractor to answer calls in two minutes or less. By contrast, it is not unusual to be hold for 15 minutes or longer in state-operated call centers, with many calls never getting through. Outsourcers can rapidly move staff levels up and down as needed – whereas the state cannot. It is important to note that outsourcing does not mean off-shore - the state routinely requires that all call centers performing state business be located within the State of Florida or at least within the United States.

Outsourcing and consolidating call centers can further reduce costs while improving service. Consolidated call centers can reduce redundant calls to multiple numbers, call center transfer costs, and staff hours spent handling routine requests, all of which help lower costs. A central facility allows for cross training of customer service representatives for routine customer assistance thereby reducing total staff requirements while providing surge capacity when a program within the call center experiences unusual demand.

According to OPPAGA's analysis, 21 state agencies spent \$149 million to operate 49 call centers in FY2008-09. At least 11 of these agencies operate multiple centers (which focus on different subjects or provide different types of services based on the different functions of the agency) and

nine centers operate multiple locations (i.e., the same call center function operates out of multiple physical locations). These 49 state contact centers utilize 2,882 FTEs.⁵⁵

Call center consolidation is becoming more common in the public sector, including department-wide consolidations at the state level and county or city wide consolidations. Although 39 state agencies have made efforts to consolidate these centers, the Legislature should consider further opportunities to achieve efficiencies and cost-savings.

Maximum benefits are achieved when centers that have similar functions are consolidated, according to studies of contact center consolidation in New York City and Georgia, which included server and data center sharing as well as physical location consolidation of specialty services.⁵⁶

Assuming a 1 percent spending reduction due only to appropriate consolidation of call centers, could save approximately \$1.5 million annually. However, the greater savings and benefit of vastly improved service would come from outsourcing to vendors with this expertise. Additionally, enhanced long term cost savings for the state will be achieved due to a reduction of management, facility, implementation, and equipment costs. Other cost savings may result from streamlined operations that save time and money due to reduced training and overall duplication.⁵⁷

Recommendation: *The Legislature should require that agencies with large call centers issue competitive bids to privatize the call centers within the geography of the state of Florida. Funding can be provided by transferring budget dollars for current FTEs.*

The Legislature should alternatively consider requiring the Agency for Enterprise Information Technology (AEIT) to include call center consolidation an enterprise service to be implemented by the SSRC or DMS. This would include consolidation of multiple call centers in the same agencies into a single call center, consolidation of call centers that have similar functions across multiple agencies into a single call center; and consolidation of all call centers into a single statewide center. It is important that the consolidated centers have accompanying websites with support information and duplicate content that is provided by call centers to reduce routine calls and provide easier access to information.

81. Increase energy efficiency in state-owned buildings

Currently, Florida Statutes regarding the building code requires that the state use more energy efficient methods to save money through reduced energy consumption.⁵⁸ The state should make efforts to expand each agency's knowledge on how to obtain financial reimbursement for energy retrofits made to buildings through DFS and provide additional training to each agency's

⁵⁵ OPPAGA, "Several Option Exist for Streamlining State Agency Contact Centers", Report No.09-43, Dec. 2009, p.1,5 available at: www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0943rpt.pdf

⁵⁶ New York City consolidated all of its 55 call centers into 2 in 2009 and expects \$300 million in cost savings. http://www.govtech.com/gt/731589?id=731589&full=1&story_pg=2

⁵⁷ Mitchell, Ike. "Call Center Consolidation", Computer Sciences Corporation, 2001.

http://www.usaservices.gov/pdf_docs/843_1.pdf

⁵⁸ s. 255.257(4)(c), F.S., 2011.

contract officers and managers on how to properly and effectively contract for energy retrofits permissible under the law.

Under this authority, all state-owned buildings should utilize tinting of the windows to reduce energy and cooling costs. In Florida, air conditioners run nearly year round in many state office buildings. By tinting windows with a polished aluminum film, it is possible to cut 66 percent of the heat that would normally enter the building, resulting in sharply reduced cooling and heating bills. By tinting windows in the state capitol in Honolulu, the government of Hawaii saved about \$14,000 a year. Further savings could be achieved by switching to more efficient lighting. At the current energy rates, the savings on electricity would pay for the retrofitting in about 15 years. However, if electricity prices went up, it could be paid off more quickly.⁵⁹

Performance contracting, outlined in s. 489.145 and s. 1013.23 provides for the implementation of conservation measures, upgrades of inefficient equipment, application of renewable technologies, and improved facility operations through a public-private partnership. Funding is administered through a DMS-qualified Energy Services Company (ESCO) that requires that the savings generated by the project be more than the amortized cost of design, construction, and performance monitoring. Additionally, the ESCO must provide a guarantee that they will cover any shortfall in savings throughout the duration of the contract. However, due to the complication of, and lack of understanding about, these contracts, they are often underutilized. More training and guidance is necessary to ensure these contracts are fully employed.

Recommendation: The Legislature and agencies should enforce currently existing law to ensure its larger buildings across the state are more energy efficient, including window tinting and energy efficient lighting. DFS and DMS should also expand its training of how to contract for energy retrofits and properly obtain financial reimbursement for it under current law.

82. Reduce state-funded personal communication devices

Given the exponential growth in hand-held communications in recent years, many states are finding a need to rein in their proclivity to issue the devices. As the state of Florida looks for cost-saving measures, it should closely examine its multi-million bill for cell phones, beepers, PDAs, and other devices, paying particular attention to devices that are underutilized based on the purpose and function for which it was issued to a state employee.

Two states are already showing promising results in exploring cost cutting in this area. According to a July 2010 report by the Virginia Auditor of Public Accounts, the state is spending \$6 million annually for 11,000 cell phones. On average, 4,500 of the cell phones, which cost the state \$160,000 monthly, went unused—that is, the devices had zero minutes of calls racked up. In May 2011, the state hired a telecommunications management firm to examine the employees' cellular usage patterns and identify potential savings opportunities, which were implemented by the state.

⁵⁹ Drewes, Paul, "Cooling off Hawaii's State Capitol will save tax dollars," KHNL-TV, August 5, 2009, accessed July 12, 2011, <http://www.k5thometeam.com/story/10856528/cooling-off-hawaiis-state-capitol-will-save-tax-dollars>.

Earlier this year in California, Gov. Jerry Brown asked that agencies dial back on their number of state-funded cell phones by at least 50 percent. The directive would eliminate approximately 48,000 phones, bringing the number of employees outfitted with the devices from 40 percent down to 20 percent. With each cell phone costing about \$36 a month, the mandate would save the state about \$20 million. Connecticut and Montana have also pursued similar policies.

In addition to reducing the number of cell phones, the state could issue monthly perquisites to employees for their cell phone bill. In this way, agencies would be able to reduce the amount of time and staff it takes to validate each cell phone's usage month by month and not violate IRS tax regulations. The state of Florida has already made slight inroads in this area of cost-cutting. In September 2009, the Department of Financial Services cracked down on the issuance of BlackBerries and cell phones, saving more than \$200,000. Earlier in a 2003 OPPAGA report, it was shown that state agencies have spent at least \$17 million annually on more than 41,000 cell phones, air cards and BlackBerries. Clearly, there are more areas to explore for additional cutbacks.

Recommendation: *The Legislature should direct each state agency to conduct a review of its issuance and usage of personal communication devices and set a percentage target by which to reduce the amount issued and financed by the state.*



Government Cost Savings Task Force

Revenue Enhancement

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Introduction

The State of Florida is expected to collect nearly \$40 billion in taxes and fees during FY 2011-12, with almost half--\$19.8 billion--coming from the state sales and use tax. After falling for three straight years, state tax collections are on again rising and are expected to surpass \$46 billion by FY 2014-15. Although many agencies have a role in levying and collecting various revenues, the Florida Department of Revenue (DOR) is the primary agency responsible for administering and collecting state taxes.

DOR is an effective and well-run state revenue agency; however, there is always a difference between what is owed and what is actually collected, known as the “tax gap.” A tax gap is inevitable – the Federal Government and every state, as well as every other discernable taxing entity in history, suffers some lost percentage due to a variety of factors. The key is to work toward shrinking the gap.

Additionally, prior to recent stimulus spending, the Federal Government provided approximately \$20 billion in revenue to the state annually, which grew to \$27 billion in FY2009-10 and FY2010-11 when the Federal Government increases payments to states. In those years, almost 40 percent of the state’s total direct revenue came from the Federal Government, up from 34 percent the prior year. The current budget contains \$23 billion in federal aid, as most of the stimulus funding has expired. While this is a large sum of money, Florida has never fared well in terms of receiving a fair share of federal funds in comparison with other states. This is another place where Florida is leaving millions, if not billions, of dollars “on the table.”

As with Florida’s families and businesses, the state’s budget has been hard hit by the recession, and falling revenues have significantly contributed to the continuing series of budget shortfalls. Some have called for tax and fee increases to help balance the budget, but Florida cannot tax its way out of a recession.

Raising taxes will make economic recovery even harder, not to mention further burdening already struggling citizens and businesses. Enhancing state revenues by improving revenue collection and ensuring compliance with the rule of law is a fair way to help the state address the budget shortfall without adding undue tax burdens. The state should ensure everyone is paying what they legally owe before taxpayers are asked to pay more.

The tax gap can be minimized by providing DOR with the tools and legislative changes necessary to both increase voluntary compliance, and to pick up where voluntary compliance ends: auditing and enforcement. Modernizing the state’s tax laws can also be of tremendous help. Technological changes, especially the internet, were not contemplated when the state’s tax laws were developed.

Revenue Enhancement Recommendations

Along with the other budget efficiencies and cost savings in this report, the state must make every effort to collect as much of the revenue that is already legally owed to the state under the current tax and fee structure. Similarly, the state should make every effort to receive its fair share of federal funding – especially funding Florida has already earned.

The following recommendations are offered to help the state ensure the collection of all entitled funds from both the current state revenue laws and federal grant programs, before taxpayers who are already fulfilling their obligations are asked to contribute more.

Section I: Maximize State Revenue Collections

83. Improve collection of sales tax on remote sales – Streamlined Sales Tax

By far, the most significant tax compliance and collection issue facing Florida and other states is the application of sales and use taxes to sales by remote vendors. Remote vendors are those without a physical presence — or nexus — in the state. These transactions can be performed by telephone, mail, or internet.

The U.S. Supreme Court has ruled (in *Bellas Hess v. Illinois* and *Quill Corp. v. North Dakota*) that a retailer must have a physical presence in a state for that state to require the out-of-state retailer to collect sales and use taxes from in-state purchasers. This is because differing local taxing schemes are too complicated, and forcing collection would place an undue burden on interstate commerce. The Court ruled that only Congress has the authority to require collection, but only after states have simplified their sales tax laws.

When a Floridian purchases from a seller located outside of Florida, the remote seller does not have to collect the sales and use tax at the time of the transaction, although the tax is still legally owed to the state by the Floridian. However, few Florida residents know that they are required to pay the sales tax owed on remotely conducted transactions directly to the Florida Department of Revenue, and even fewer actually make such payments. This situation is costing the state and local governments hundreds of millions, if not billions, of dollars in lost tax revenue.

Due to a lack of state specific e-commerce data, estimates of the sales tax revenue on remote sales that are not collected by the states vary. However, to quote Florida legislative staff: "The cumulative evidence strongly suggests that several hundred million dollars in Florida state and local sales and use tax collections are not being remitted annually."

The most widely cited estimates are those done by Drs. Donald Bruce and William Fox of the Center for Business and Economic Research at the University of Tennessee. This group has conducted four studies on state revenue losses since 2000, each time using more available data and refining their findings. The most recent study, done in 2009, estimates Florida's sales tax losses from uncollected remote sales at \$1.48 billion for FY2011-12.

Data from the US Census Bureau shows that the Bruce and Fox estimates may be in the ballpark. Census reports put the value of all U.S. sales from "electronic shopping and mail order houses" in 2008 at \$227 billion. The Census also shows that retail e-commerce has increased by 3.3 percent in 2008. Assuming this annual rate of growth, these sales should total \$250 billion in 2011. Lynn Holt and Babak Lotfina at the University of Florida estimated that 8 percent of all 2008 retail sales in the United States that are online can be attributed to Florida. Assuming 8 percent of the \$250 billion puts Florida's sales at \$20 billion, which translates to \$1.2 billion in state sales taxes alone. Local taxes would add another \$100 million to \$200 million. These calculations are simply illustrative, as not all of the sales would be taxable or result in new collections, but it does show that we are surely talking of at least "several hundred million dollars."

Not requiring internet sellers to collect sales tax not only erodes Florida's tax base, but also creates an unfair advantage over "brick-and-mortar" retailers and "clicks and bricks" retailers with both online and traditional stores. A 6 to 7.5 percent price break is hard to overcome for Florida's retailers. These businesses have invested in stores and employees, and collect taxes, as well as contribute property and other taxes, but compete against vendors who do not.

While federal action is needed to mandate that all remote sellers collect and remit state sales taxes, the Streamlined Sales and Use Tax Agreement (SSUTA) provides an opportunity for Florida to begin collecting money from a compact of sellers that voluntarily collect the tax and remit to SSUTA states. The SSUTA is the result of the cooperative effort of 44 states, the District of Columbia, local governments, and the business community to simplify sales and use tax laws and minimize costs and administrative burdens on retailers that collect sales tax. It levels the playing field so that local "brick-and-mortar" stores and remote sellers operate under the same rules.

At the federal level, the Main Street Fairness Act (MSFA) has been introduced to Congress. The MSFA encourages more states to adopt the SSUTA by providing that any state that has simplified its tax laws through SSUTA would be authorized by Congress to require collection of sales and use taxes by remote retailers. Florida full-membership in SSUTA can surely spur federal action on the MSFA.

Former Governor Jeb Bush, in correspondence with then Governor-elect Rick Scott, endorsed the collection of taxes on remote sales as sound policy, claiming the additional revenue could be used to cut other taxes. South Carolina Governor Nikki Haley also supports taxing online transactions.

Florida joined the coalition in 2002, but despite broad support, legislation to bring Florida fully into the SSUTA has not been enacted. Twenty-four other states (representing more than a third of the nation's population) have passed such a law, with Georgia being the most recent addition. Legislation is pending in at least seven other states, including Texas and California. Several pieces of SSUTA-compliance legislation have been introduced over the years in Florida, but none have been passed – although the Senate approved one such bill in 2004. Last session, two

bills (SB 1548 and HB 455) were filed and the Senate bill received its first committee hearing in several years. Along with the mistaken perception by some that it is a tax increase or an attack on state sovereignty, the main resistance to SSUTA legislation in Florida has been the negative fiscal impact to the state – a roadblock of serious consequence in the current fiscal climate. While states joining the compact retain general autonomy over what is taxed and what is exempt, they are required to change state laws to adopt such provisions as uniform definitions. The latest available estimates (2005) place the cost of adopting the changes at \$41.5 million to the state; however, the changes would have a positive fiscal impact on local governments of \$41.1 million.

A 2009 Florida TaxWatch report shows that adjusting the formula for sharing sales tax revenues with local governments would make the SSUTA legislation revenue-positive for both state and local governments. Then, any money remitted to Florida from the voluntary compact would be additional revenue for Florida and its local governments (and this additional revenue has not been included in state fiscal impact estimates of the legislation).

To accomplish this revenue-neutrality, Chapter 212.20(6), *Florida Statutes*, would have to be amended. The following language could be added to paragraph (d) 3: “Beginning July 1, 2012, the amount to be transferred pursuant to this subparagraph to the Local Government Half-cent Sales Tax Clearing Trust Fund shall be reduced by \$41.1 million for each fiscal year and that amount shall remain with the General Revenue Fund.”

The Revenue Estimating Conference would have to complete a new “scoring” of the bill for the more current numbers, but the following is based on the 2005 estimate. Since the first-year cash impact was estimated at only -\$17.4 million for the state (+\$17.2 million for locals), the revenue share reduction could be phased-in as follows: \$17.2 million in FY2012-13 and \$41.1 million in subsequent years.¹

Other Approaches:

The collection of sales and use taxes is a big issue for many states and some of these states have become bolder in challenging the presumption of *Quill*. These approaches are:

Reporting and Notice Requirements – Some states are looking at requiring vendors to notify customers of their tax obligations or even requiring vendors to submit transaction data to states. Colorado has passed legislation requiring both and Oklahoma has passed notification-only legislation.

Affiliate Nexus Provisions – Oklahoma recently joined other states such as Georgia and New York in passing legislation to assert nexus over remote retailers that are related to in-state companies, such as an out-of-state retailer that holds a substantial interest in an in-state retailer.

“Click-Through” Nexus Provisions – New York, Illinois, Rhode Island, and North Carolina have taken the affiliate idea even further, saying nexus exists if an out-of-state internet retailer

¹ Note: These amounts are based on the state’s 2005 estimate. A new analysis by the state’s Impact Conference must be completed to bring the estimated fiscal impact up to date.

pays an in-state agent for advertising or referring customers from their website. This approach is gaining more traction in Florida. A coalition of businesses has formed the Florida Alliance for Main Street Fairness with the goal of promoting such a law. Late in the 2011 session, the Alliance made a presentation to the Senate Finance and Tax Committee. While there was considerable support for the idea, the general consensus was there was not enough time left in the session, but that the idea should be revisited next year. It should be noted that Amazon has terminated in affiliate relationships in the states that have passed this law.

Refute *Quill* – Oklahoma is the first state to simply deny *Quill's* “physical presence” nexus-standard by asserting its revenue laws no longer pose an undue burden on out-of-state retailers.

SSUTA is Still the Best Approach, but Other Options Should be Explored

All these approaches have at least some basis for constitutional challenges and several lawsuits have been filed. These approaches warrant close monitoring by Florida, but the cost of legal challenges should give the state pause. If one of these approaches is upheld by the court, then Florida should consider similar action. In the meantime, Florida TaxWatch agrees with a *State Tax Notes* article² that examined these approaches and concluded that the Main Street Fairness Act – along with the SSUTA – “is the only vehicle that provides a comprehensive approach to addressing the states’ concerns with the physical presence nexus standard.” It is the “most appropriate avenue to simplify sales and use tax burdens and to simultaneously gain congressional authorization to impose the collection burden on out-of-state vendors.”

There are already more than 1,500 retailers voluntarily collecting and remitting sales tax revenue to SSUTA member states. These retailers have remitted more than \$700 million in sales and use tax revenues to member states, an amount that is rising fast. As detailed information on voluntary vendors is confidential, a reliable estimate of Florida’s collections is difficult; however, Florida would be the largest full-member state of the SSUTA and would comprise almost one-sixth of the 24 member states’ total population, so it is likely a significant amount of revenue would be remitted to Florida through voluntary compliance. It is not unreasonable to expect collections to grow to at least \$200 or \$300 million by FY2012-13, especially if Florida joins the compact.

If Florida collects one-sixth of the total (based on its population), it could bring in \$35 to \$50 million in additional sales taxes in FY2012-13. Given the rate of growth in internet sales, it is not unreasonable to assume a 10 percent growth per year in collections thereafter. Moreover, state and local governments could collect significantly more revenue if the Federal Government requires remote retailers to collect and remit the sales and use tax.

Recommendation: *Florida should adopt legislation to become fully compliant with the Streamlined Sales and Use Tax Agreement (SSUTA) in a revenue-neutral manner as recommended by Florida TaxWatch in its April 2009 report How to Make Streamlined Sales*

² Stephen P. Kranz, Lisbeth A. Freeman, and Mark W. Yopp, “Is *Quill* Dead? At Least One State Has Written the Obituary,” *State Tax Notes*, August 10, 2010.

Tax Legislation Revenue Neutral. The sales tax revenue sharing formula would have to be adjusted to make the necessary changes revenue-neutral to state and local governments. Florida officials should then encourage Congress to pass the Main Street Fairness Act, proposed federal legislation that would grant states that are in compliance with SSUTA the authority to require out-of-state retailers to collect the use tax on sales made to Florida residents.

Further, the Legislature should also consider “affiliate” or “click through” legislation as a means to begin leveling the playing field for Florida business and begin collecting some of the revenue legally due to Florida.

84. Add Department of Revenue tax auditors to increase tax compliance

The Florida Department of Revenue (DOR) currently audits only 0.54 percent of its taxpayer accounts. The Federal Government’s audit coverage is approximately 1.5 percent – a number it considers low.

The Government Cost Savings Task Force has recommended the Legislature provide an additional 50 auditors. The 2010 Legislature provided 25 new positions, the second year in a row that it added 25 auditors. However, the number of auditor positions is still much below its historical average.

The state cut a total of 146 DOR tax auditor positions (a 22 percent decrease) between FY2001-02 and FY2009-10. While the average number of auditor positions for the last 20 years was 600 Full Time Equivalents (FTEs), as of January 2009, the staffing level was at the all-time low of 482.5 FTEs. During the same period, at least eleven other states have increased the number of auditors available to enhance collection.³ Additional auditors can help ensure compliance and generate more revenue. As seen in the table below, the average number of auditor positions was 673 FTEs for the years FY1991-92 through FY2000-01, and 524 FTEs for the FY2001-02 through FY2009-10. With the additional recent hiring of 25 auditors, the current number of FTE auditor positions is 478 FTEs, while the average number for the years FY1991-92 through FY2009-10 was 606.7 FTEs. In other words, the current number of auditor positions is 195 FTEs below its average level for the years FY1991-92 through FY2009-10, and 129 FTEs below its average for the years FY1991-92 through FY2009-10.

Figure 21: Average FTE auditor positions by time period and difference compared to the number of FTE positions in 2009,⁴

	Number of FTE Auditor Positions		
	1991/92 - 2000/01	2001/02 – 2009/10	1991/92 – 2009/10
Average	672.9	523.75	606.6
Difference from 2009 FTE (478)	-194.9	-45.75	-128.6

³ “Iowa Efficiency Review Report to Governor Chet Culver and Lieutenant Governor Patty Judge”, Public Works LLC, 2009.

⁴ Florida Department of Revenue

Based on data from DOR, the table below shows the estimated costs and revenues for hiring additional number of auditors. After the cost of hiring new auditors, every 50 new auditors would increase revenue collections by an estimated \$871,000 in FY2011-12, and nearly \$7.5 million annually in subsequent years.

Figure 22: Estimated cost, annual collections, and net revenues for new auditor positions, FY2010-11

New Positions	Annual Cost	Annual Collections		Net Revenues	
		First Year*	Second Year and After	First Year*	Second Year and After
50	\$3,082,146	\$3,953,269	\$10,542,050	\$871,123	\$7,459,904
100	\$6,164,292	\$7,906,538	\$21,084,100	\$1,742,246	\$14,919,808
150	\$9,246,438	\$11,859,806	\$31,626,150	\$2,613,368	\$22,379,712
200	\$12,328,584	\$15,813,075	\$42,168,200	\$3,484,491	\$29,839,616

*Based on the information from DOR, it is assumed that half of new positions will be productive within 6 months and the other half within 9 months due to hiring process and training.

The state currently has 0.54 percent audit coverage rate, which means that less than 1 percent of sales tax accounts are audited. The table below shows the estimated cost and revenue of increasing the coverage rate to up to 3 percent.

Figure 23: Actual and estimated cost and net revenues at given audit rate percentages, FY 2010-11

Coverage Rate	Auditors	New Hiring	Cost	Average collection*	Total Collection	Net Revenues
0.54%**	453	0	-	\$210,841	-	-
1%	839	386	\$28,544,781	\$168,673	\$65,088,959	\$36,544,178
2%	1678	1225	\$75,498,879	\$158,131	\$193,675,029	\$118,176,150
3%	2517	2064	\$127,210,439	\$147,589	\$304,573,881	\$177,363,441

*Due to the diminishing marginal return, the average tax collection per auditor is assumed to drop by 20% for the 1% coverage rate, 25% for the 2% coverage rate, and 30% for the 3% coverage rate compared to the current average collection. ^{QWOP}

**This row presents the actual current situation; all estimates are based on these collections and costs

The savings for the first year might be up to 50 percent less than estimated amounts for each scenario above due to the cost of the hiring process and training. **The Revenue Estimating Conference estimated the 25 new auditors added last year would bring in \$6 million annually in additional state and local taxes.**

Recommendation: The Legislature should direct the DOR to increase its audit coverage by adding at least 50 new auditors. Once fully operational, these auditors could increase state and local revenues by \$12 million annually.

85. Expand the Certified Audit Program

The Certified Audit Program is a cooperative venture of the Florida Institute of Certified Public Accountants (FICPA) and DOR designed to enhance the state's ability to conduct sales and use tax audits. The audits are performed, at no cost to the state, by Florida CPAs specially certified by DOR. The certified audit, which is an extension of the Department's voluntary self-disclosure program, allows a taxpayer to use a private auditor by hiring a DOR certified CPA audit firm to conduct the audit in lieu of the DOR. This voluntary compliance by the taxpayer is incentivized to encourage a business to participate by:

- Waving all penalties
- Abatement of the first \$25,000 in interest, and 25 percent of any interest over \$25,000
- An approved certified audit report closes the taxpayer from any further sales and use tax audits by the DOR for the period that the sales and use tax audit was conducted.
- A tax deductible expense for hiring the DOR certified CPA as a business expense
- Allowing the taxpayer to have more control of the audit process, such as the ability to schedule it at the least disruptive time

Since the Certified Audit program's implementation, participating CPAs have provided more than \$42.5 million in recovered taxes in addition to the taxes that DOR collects from business selected for mandatory sales and use tax audits. However, current rules prohibit the taxpayer from participating in the Certified Audit Program if that taxpayer has already received notification that it has been selected for audit by the DOR

Allowing businesses to have the option of taking advantage of the Certified Audit Program, after a reasonable time of being selected for a departmental audit and issued a Notice of Intent to Audit (DR-840) would be beneficial to both the state and businesses, as the department would have the ability to increase the amount of audits conducted each year. More audits could increase the amount of taxes collected and add additional revenue for the state. The benefit to the businesses is the extension of the same waiver and incentives given to those firms that participate voluntarily.

This could be a particularly attractive option for an expanding business that is unsure if they have some unknown liabilities or any potential transferee liabilities. Taxpayer participation in the Certified Audit Program can increase voluntary compliance, education, and the state's ability to collect additional revenue.

Recommendation: The Legislature should expand the Certified Audit Program to allow recipients of Notices of Intent to Audit to use a special DOR certified private auditor in lieu of an audit by the DOR.

86. Lower the required threshold to file tax returns electronically

Florida allows taxpayers to file tax returns and remit payments electronically, which can be done over the internet, with commercial software, or through a telephone payment system. DOR requires certain taxpayers to file and pay electronically, including businesses that paid more than \$20,000 in taxes in the previous year and companies that file consolidated returns, although taxpayers that meet those criteria can request a waiver.

Instead of charging a fee to those who do not file electronically, the sales tax collection allowance could be eliminated for paper filers. **Eliminating the collection allowance would add \$2.2 million in revenue for local governments in the first year.**

Recommendation: The Department of Revenue should lower the established monetary threshold so more tax returns are required to be filed and paid electronically with the Department of Revenue. The Department of Revenue should also implement a fee for filing a paper tax return.

87. Implement a cigarette and tobacco audit and compliance system

Another area with the potential to increase tax compliance is tobacco taxes, which are administered by the Department of Business and Professional Regulation.

The excise tax on cigarettes and tobacco, along with the recently enacted \$1 surcharge, brings in \$1.3 billion in revenue annually. However, the enforcement of that tax still depends on a largely manual audit capability that may not adequately protect this critical revenue stream. Tax evasion is always a concern with tobacco taxes and black market and grey market cigarettes are an increasing problem. The Federation of Tax Administrators conservatively set an estimate of 3 percent in tax revenues being lost to evasion. With the recent state and federal tax increases, the state can expect an increase in the amount of fraud and abuse that will be attempted. From 2009 to 2010, when the tax increase took effect, the number of taxable cigarettes sold in Florida fell from 1.25 billion to 960 million packs, or 23 percent. While some of this is due to reduced consumption, the Revenue Estimating Conference forecasts that tax avoidance would decrease the number of packs by 7 percent.

The private sector can provide a working inventory management system that tracks the inventory of tax stamps when sold to a distributor or stamper, and matches these inventories to their tax returns. Even more importantly, by electronically capturing the information returns filed by the manufacturers upstream from the distributors and the information returns downstream from the distributor, such as the retailers or jobbers, the system can detect imbalances that identify potential fraud. The system brackets the numbers reported by the distributor or stamper on its tax return with the information provided by the manufacturers, retailers, and jobbers as a check and balance on the accuracy of the tax return volumes. Improving reporting and management of cigarette and tobacco product taxes will benefit Florida by increasing tax revenues as well as

enhancing the accuracy of statistical reports produced by the State for its own use and other agencies.

The State of Michigan implemented a tobacco tax stamp inventory tracking system and identified \$3 million in revenue not previously reported during the first 30 days of operation. According to estimates from industry experts, by moving to an automated inventory control system, the state can expect a 2 to 5 percent increase in revenues by reducing reporting errors by distributors and fraud. **This translates into added revenue of between \$27 million and \$67 million in FY2012-13 and annually thereafter.**

**Figure 24: Potential Tobacco Tax Revenue Increase for the State of Florida (in millions)
FY2012-13 – FY2013-14**

	Tax Revenue	2% Increase	5 % Increase
FY 2012-13	\$1,332	\$26.6	\$66.7
FY 2013-14	\$1,329	\$26.6	\$66.4

According to estimates from industry experts, by moving to an automated inventory control system, **the state can expect a 2 to 5 percent increase in revenues by reducing reporting errors by the distributors and fraud. This translates into added revenue of between \$27 million and \$69 million in FY 2012-13 and annually thereafter.**

Recommendation: The Legislature should explore competitively procuring a cigarette and tobacco tax audit and compliance system. This should be done on a contingency basis, where payment to the vendor is contingent on a certain minimum level.

88. Implement the Treasury Offset Program (TOP) to collect owed unemployment compensation and other state taxes

The Treasury Offset Program (TOP) is a federal-state debt collection partnership that is administered by the Financial Management Service (FMS), a bureau of the U.S. Department of Treasury. States submit their list of delinquent taxpayers to the FMS. Through TOP, FMS is able to compare taxpayers due federal refunds to a database of delinquent state taxpayers. If a match is found, FMS is able to withhold part or all of the payment to offset the debt, and then transmit that amount to the state to which the debt is owed.

Since 1997, states have been using the program to collect owed debt, including income tax and child support payments. Use of TOP has now been expanded to include the collection of delinquent unemployment compensation regardless of where the debtor is now located or how long the debt has been outstanding.

Florida could benefit immensely from participation in the TOP program. Though the state does not have a personal income tax, the state could benefit from the collection of owed unemployment compensation taxes and child support payments.

Recommendation: *Florida should adopt legislation allowing participation in the Treasury Offset Program in order to collect owed debts and taxes.*

Section II: Maximize Federal Revenues

89. Reestablish and enhance the Grants Clearinghouse Office within the Governor's Office

Florida TaxWatch has long reported on Florida's low ranking among the states in terms of per capita grant receipts and receipts as a percentage of federal taxes paid. For several years, Florida ranked last in per capita federal grants received – even the U.S. Territories fared better. Effectively, a portion of Floridian's tax dollars paid to the Federal Government subsidizes projects and services in other states.

There was some improvement in the state's grant ranking during the beginning of this decade, but it is on the way back down. A January 2011 Florida TaxWatch report finds that Florida ranks 48th in the nation in per capita federal grants funding. If Florida received the national average in per capita grants for 2009, the Sunshine State would have received an additional \$10.6 billion in federal grants. If Florida had received a share of federal grants equal to its share of federal taxes paid, it would have received \$3.2 billion more than it actually received.

Federal grants can be classified as either formula or project grants. Formula grants are allocations of money to states or their subdivisions in accordance with distribution formulas prescribed by law or administrative regulation for activities of a continuing nature not confined to a specific project. There are approximately 185 formula grant programs. Project grants fund specific projects for fixed or known periods of time and can include fellowships, scholarships, research grants, training grants, traineeships, experimental and demonstration grants, evaluation grants, planning grants, technical assistance grants, survey grants, and construction grants. There are approximately 1,000 federal project grant programs.

While Florida fares poorly in most federal grant schemes, transportation funding is a glaring and costly example. States collect federal gas tax money, which is sent to the federal highway trust fund – the main source of federal money for highway and mass transit projects. The U.S. DOT then returns most of the money to state transportation departments, based on formulas that have always disadvantaged Florida. The most recent data for Florida's proportion of federal fuel taxes paid to the highway trust fund is from FY 2008 and reveals that Florida made 5.4% of the total payments into the account but received only 4.3% of apportionment and allocations from the fund. This ranks Florida last in the ratio of apportionments and allocations to payments. Florida received approximately \$1.8 billion in federal funding in FY 2008, but if the state received a share of federal transportation funding that was equal to the share of federal fuel taxes contributed, Florida would have received \$471 million more.

It used to be the case, last noted in 1989, that Florida kept a transportation advocate permanently located in Washington, D.C., working "one end of the pipeline" while another coordinator was based in Tallahassee to work "the other end of the pipeline." Under this structure, some

improvement in the state's funding was achieved. Having a professional and seasoned lobbyist based in Washington, D.C., to secure additional funds for Florida may be a prudent tactic, given the historically low return on investment.

There are many reasons why Florida fares so poorly in federal grants, including historical funding decisions made in Florida as well as factors beyond the state's direct control – such as outdated formulas used in some programs and the politics in Washington. With more focus and concentrated effort, the state could successfully attain more federal grant money. Beyond the state's inability to effectively get a “fair share” in some arenas, it also remains that there are additional dollars that the state has already earned, but which are not collected.

The amount of money involved is substantial. **If the \$20 billion in federal assistance the state was receiving before the federal stimulus package was increased by just 1 percent, Florida would receive an additional \$200 million. A 5 percent increase would provide \$1 billion.**

In 1995, Florida established a Grants Clearinghouse within the Department of Community Affairs. The purpose of the Grants Clearinghouse was to maximize federal and private grant funding for the state and Florida's citizens. The Grants Clearinghouse was charged with actively seeking grant opportunities; assisting state agencies in applying for grants; and acting as a single point of contact for all grants management and reporting.

In 2002, the Clearinghouse was moved to the Department of Environmental Protection. A recent report by the Florida CFO found that this iteration of the office merely addresses the grant review processes and further, there no longer exists an office in Florida that “proactively keeps track of upcoming grants and federal funding opportunities and promoting these grants to the appropriate state agencies.” The Legislative Committee on Intergovernmental Relations (LCIR) reported that “Florida may not be aggressively pursuing all federal grant opportunities.”

One of the CFO's recommendations was to move the statutorily required State Clearinghouse for grant approval from the Department of Environmental Protection to the Governor's Office of Policy and Budget (OPB), and to expand membership to include the DFS and the LCIR.

Each year, Florida misses out on hundreds of millions of dollars in grant funding opportunities because of a lack of information about available grant resources. Furthermore, Florida's grant “capture” efforts are decentralized with very little or no coordination and collaboration between agencies and potential grant recipients. In Iowa, a pilot program to identify and secure federal grants was established and helped to secure \$32 million for the state. Iowa is increasing the number of Full Time Equivalent (FTE's) for this program as the cost of additional staff pays for itself and is expected to increase state revenue by \$100 million over five years.⁵ Florida could vastly improve its track record and receipt of federal and private grant funds by reestablishing a fully operational, stem-to-stern, Grants Clearinghouse to actively coordinate Florida's grant capture efforts.

⁵ “Iowa Efficiency Review Report to Governor Chet Culver and Lt. Governor Patty Judge”, Public Works LLC, 2009.

The role of the Clearinghouse could also be expanded to include the review and approval of state agencies' indirect cost allocation plans prior to submission to the appropriate federal agency for review and approval.

Eligibility for many federal formula grants is contingent upon submission of an indirect cost allocation plan by the lead state agency. Indirect cost allocation plans identify all expenses that contribute to achievement of the objective of the federal program to include indirect expenses that are not dedicated to the program. Indirect cost allocation plans are developed in accordance with federal requirements (OMB A87) and reviewed and approved by an assigned federal agency. The reviewing federal agency will identify expenses that are disallowed, but will not identify potential areas where states are not realizing all eligible expenses.

Requiring state agencies to submit proposed indirect cost allocation plans to the Clearinghouse will help ensure that all eligible expenses – including those expended by other state agencies and local governments – are identified, and identified expenses are appropriately allocated among indirect and direct costs. This review will include providing policy interpretations and assistance to ensure effective and efficient implementation. This review should help to ensure that indirect and direct costs identified for each federal program make certain that the state is maximizing its federal funding for each of its formula grants.

Recommendation: The Legislature should amend Section 216.212(1), F.S., to move the Grants Clearinghouse to the Governor's Office of Planning and Budgeting, and to expand membership to include the Department of Financial Services and the Legislative Committee on Intergovernmental Relations. The Clearinghouse should also be directed to provide assurances that the state is participating in all eligible grant programs. These assurances could, at least in part, be achieved by comparing participation in federal grant programs by other states with Florida, which would allow the Clearinghouse to ascertain whether Florida is taking full advantage of all available project grant opportunities.

90. Use a contingency contract to drawdown federal funds already earned by Florida

Currently, there are federal dollars that the state has already earned but are not collected. In 2003, Florida TaxWatch recommended that the state collect the federal revenues that the state has earned, but has not applied for. These monies do not require additional spending or commitment by the state. In 2003, the Chief Financial Officer of Florida issued a five-year (competitively selected) contract to find and help secure federal funds to which the state was legally entitled. Under this contract, the state collected approximately \$150 million with a minimal amount of effort and no out-of-pocket costs to secure the funds. There likely remains, however, hundreds of millions of dollars of federal money to which Florida is legally entitled and which could be collected without expending any additional state revenues if the agencies dedicate appropriate effort to achieve.

The state should either undertake a similar expanded contract or attempt to collect this money in-house. In order to encourage the agencies to focus appropriate attention and effort, the

Legislature could both require the agencies to collect this revenue and provide incentives for the agencies to maximize or capture revenue. This contract or in-house project would be a top priority of a re-established Grants Clearing House.

Prior to the 2003 contract, the vendor compiled a list of such funds that exceeded \$900 million. The contract resulted in \$150 million. **With a similar effort, the state should be able to collect at least \$150 million in FY2012-13, with most of the revenue being recurring.**

Recommendation: Every practical effort should be taken to collect all the federal funds that are due to the state. The state should either undertake an expanded contract similar to the successful one executed in 2003 or take steps to ensure the collection of this money in-house. If this effort is contracted again, the vendor should be obligated to meet a certain target (for example \$50 million) before the state makes payment, and then, the payments should come out of the successful recoveries. With the alternative, in-house method, in order to encourage the agencies to focus appropriate attention and effort, the Legislature should both require the agencies to collect this revenue and provide incentives for the agencies to maximize or capture such revenue. This contract or in-house project would be a top priority of a re-established Grants Clearing House.

91. Improve oversight of indirect cost allocation plans

Eligibility for many federal formula grants is contingent upon submission of an indirect cost allocation plan by the lead state agency. Indirect cost allocation plans identify all expenses that contribute to achievement of the objective of the federal program to include indirect expenses that are not dedicated to the program. Indirect cost allocation plans are developed in accordance with federal requirements (OMB A87) and are reviewed and approved by an assigned federal agency. The reviewing federal agency will identify expenses that are disallowed, but will not identify potential areas where states are not realizing all eligible expenses.

The role of the State Clearinghouse should also be expanded to include the review and approval of state agencies' indirect cost allocation plans prior to submission to the appropriate federal agency for review and approval. Requiring state agencies to submit proposed indirect cost allocation plans to the State Clearinghouse will help identify all eligible expenses, including those expended by other state agencies and local governments, and ensure that identified expenses are appropriately allocated among indirect and direct costs. This review will include providing policy interpretations and assistance to ensure effective and efficient implementation and will make certain that the state is maximizing its federal funding for each of its grants.

Recommendation: The role of the State Clearinghouse should be expanded to include the review and approval of state agencies' indirect cost allocation plans prior to submission to the appropriate federal agency for review and approval.

Section III: Generate New Revenues

92. Sell ads on DOT Dynamic Messaging Highway signs

States are looking for alternate sources of revenue to help fund needed transportation infrastructure improvements. Advertising is one approach. States, including Florida, have long used Logo Sign Programs to provide information to motorists about available services at interstate interchanges. These services include gas, food, lodging, camping and attractions, and are identified by the display of business logos. In Florida, this program is run by a private company that contracts with the Department of Transportation (DOT).

Georgia has also recently begun placing logos on its 511 signs, the blue highway signs that inform motorists that they can dial 511 to receive traffic information. Florida is also pursuing this idea, which needs approval from the Federal Highway Administration (FHWA).

Another new, and potentially very lucrative, idea in this area is that states allow advertising on their dynamic messaging signs, which are also called changeable message signs (CMS). These are the signs that stretch horizontally over the highway and show travel times, AMBER (America's Missing: Broadcast Emergency Response) Alert messages, or national security or emergency messages with a LED display. The private sector has shown an interest in advertising on these signs. Current FHWA regulations currently prohibit such advertising.

In April 2010, the California Department of Transportation, in partnership with the Florida and Pennsylvania DOTs, submitted an application to the FHWA for a waiver to implement a demonstration project installing 50 “next generation” dynamic messaging signs. These signs have graphic capabilities that can improve current uses of DMS and also allow for advertising.

Florida DOT has not produced a revenue estimate from advertising on DMS, but California has estimated \$150 million could be raised annually.

There are some concerns with next generation DMS, especially safety. The American Automobile Association has warned of driver distraction and Scenic America opposes DMS because of highway clutter. However, studies by the National Highway Traffic Safety Administration and the Virginia Technology Transportation Institute have shown that digital billboards outside of the right-of-way do not distract the driver. FHWA has also been conducting a study on digital billboards. More study on DMS signs is needed.

California estimates advertising on DMS could raise \$150 million annually. Since Florida is roughly half the size of California, revenue of \$75 million is possible.

Recommendation: Florida should continue moving forward with advertising on dynamic messaging highway signs. Florida DOT should work with FHWA and the California and Pennsylvania DOTs to get the waiver application approved. If approved, and safety concerns can be addressed, Florida should implement a DMS advertising program. Since Florida law

currently prohibits advertising on these signs, the legislature would have to pass legislation to allow them. Florida should also implement a logo program for 511 signs.

93. Allow placement of advertising and sponsorship on state publications, properties, and vehicles

The State of Florida owns numerous properties and vehicles which have the potential to raise revenue through appropriate advertising or sponsorship by private companies. Mass transit systems have long been partially funded through the use of advertisements in terminals, stations, and on both the inside and outside of vehicles. Similar methods could be used to generate revenue through other publicly held assets. Parks and other public plazas would be especially effective for displaying ads. Sarasota County authorized the use of advertisements on county parks and beaches, and could be selling the naming rights to some properties. The Borough of Brooklyn has looked into placing advertisements on the city's public wastebaskets. Allowing even modest advertising on the numerous state properties could yield significant revenue.

Additionally, the State has a fleet of over 25,000 motor vehicles and watercraft. Excluding the many law enforcement vehicles, the state operates numerous vehicles that could feature unobtrusive advertising or sponsorship with no impact on function or efficiency.

Some current state publications, such as the Florida Driver's Handbook, include advertisements to offset the costs of publishing such documents. Agencies should review whether including advertisements in publications in their purview could pay for some or all of the costs of producing and publishing.

During the 2011 session, in an attempt to raise additional revenue for transportation, legislation (SB 560 ad HB 313) was filed that would have authorized the sale of advertising on state-owned transportation property to private sector entities. The bill authorized OTTED to enter contracts for the sale or lease of naming rights to, or space for commercial displays on, any state-owned transportation facility or property, such as the Florida Turnpike, other roads and highways, highway lanes, on-ramps, off-ramps, road rights-of-way, toll facilities, buildings, barriers, parks, rest areas, railways, bridges and airports. Several conflicts between the legislation and existing state and federal law were identified, but the idea of ad revenue producing transportation property should be explored.

Recommendation: The Legislature should examine the possibility of allowing all agencies to raise revenues by displaying advertisements on or utilizing sponsorships of state owned properties, vehicles, and publications, where appropriate.

94. Charge a fee for automatic notice of government bid opportunities

The state of Florida offers vendors customizable, automatic, email notifications of potential government bid opportunities through MyFloridaMarketplace (MFMP). Georgia charges vendors \$199 annually for a similar subscription notification service through the Team Georgia Marketplace. If Florida were to implement a charge to cover the cost of the subscription service, it could help off-set the overall cost of the procurement system and increase revenues to the state.

Recommendation: The Legislature should examine the possibility of charging a subscription fee for automatic vendor notification of government bid opportunities.



Government Cost Savings Task Force

Medicaid Reform

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Foreword

The *Government Cost Savings Task Force for FY2011-2012* made fourteen specific recommendations to reform the Florida's Medicaid system. Of these recommendations, some form of nine recommendations were implemented by the 2010 Legislature and signed into law.

2011 Implemented Legislation:

1. Expand Medicaid managed care – MediPass
 - House Bills 7107 and 7109 expanded Managed Care to include the mandatory MediPass population (TANF-related and SSI) under its network.
Total Savings: between \$26 and \$43 million annually

2. Implement Medicaid statewide managed care
 - House Bills 7107 and 7109 implemented statewide managed care in order to provide fiscal savings and predictability to the state.

3. Medicaid patient centered medical home
 - House Bills 7107 and 7109 introduced a statewide patient centered medical home system.
Total Savings: \$100 million annually

4. Medicaid managed long term care
 - Senate Bill 2144 increased the use of managed long term care, increasing home and community based services, rather than institutionalized care.
Total Savings: \$11.5 million annually

5. Medicare Special Needs Plan (SNPs)
 - House Bills 7107 and 7109 require the state to manage care for dual eligibles by mandating enrollment into Medicare Advantage Special Needs Plans.
Total Savings: \$23 million annually

6. Reduce Medicaid fraud and abuse – Criminal and Administrative Sanctions
 - House Bill 7109 increases the disqualification period from five to ten years for those found to have committed fraud. The Task Force recommends continued action be taken by the 2012 Legislature to implement more sanctions against criminal and administrative violations.

7. Alternatives to Medicaid provider rate reductions – Medicaid co-payments
 - House Bill 7109 requires \$100 co-pay for non-emergency services provided in a hospital. The Task Force recommends further action be taken toward

increasing co-payments as permitted by law should the 2012 Legislature consider reducing Medicaid provider rates.

8. Mitigate effect of Medicaid provider rate reductions – Nursing Staffing Requirements
 - Senate Bill 1244 reduced the nursing staff ratio from 3.9 to 3.6 hours. The Task Force recommends that the 2012 Legislature continue to reduce the nursing staff requirement per member per day to 2.6 hours.
9. Implement a statewide managed incontinence supplies program
 - Senate Bill 2000 created a statewide program for purchasing disposable incontinence supplies.
Total Savings: \$5 million annually

Introduction

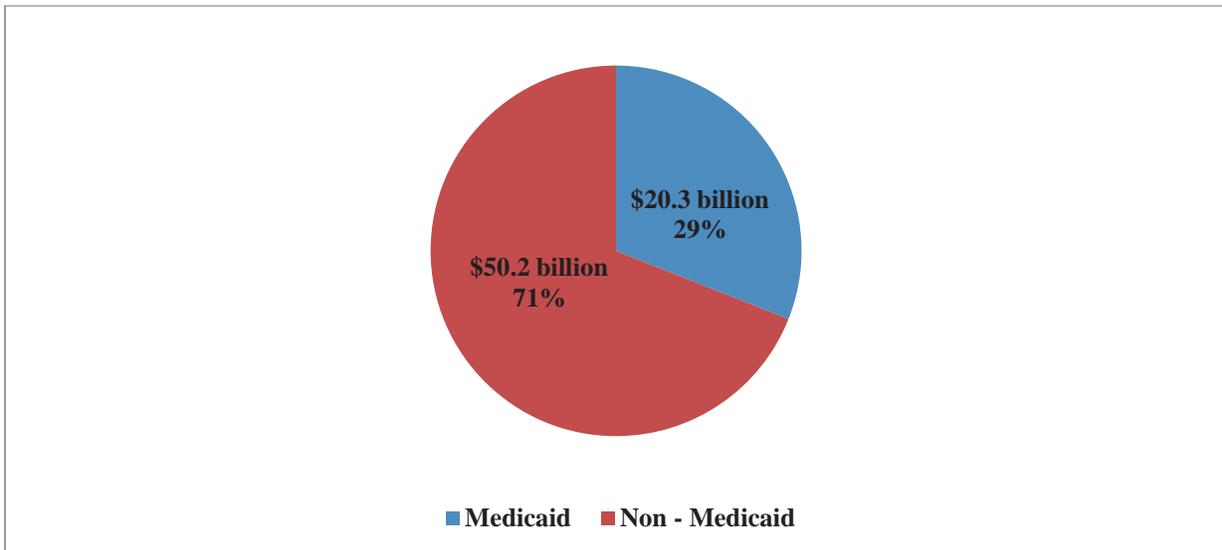
The magnitude of Florida’s multi-billion dollar Medicaid program is immense in terms of the number of people served, its critical importance, and certainly its cost. The program provides a medical safety net for nearly three million Floridians. Half of those in the program are children, but the elderly account for most of the spending. Florida Medicaid covers the state’s most vulnerable populations, including:

- 27% of Florida’s children
- 63% of nursing home days
- 51.2% of newborn deliveries
- 1,162,020 adults, aged, and disabled¹

Medicaid is a federal-state partnership through which states administer the program under federally approved plans. Federal law mandates certain benefits for select populations, although there are a number of optional services states can provide. Services must be available statewide in the same amount, duration, and scope.

Government expenditures at both the state and federal level for the program are massive. Florida is expected to spend \$20.3 billion in the current fiscal year (FY2011-12) on the program, with the Federal Government providing 55.94 percent towards the cost and Florida picking up the other 45.06 percent. The state’s share of contributed costs has been lower than usual over the last three years because of additional federal assistance through the economic stimulus plan.

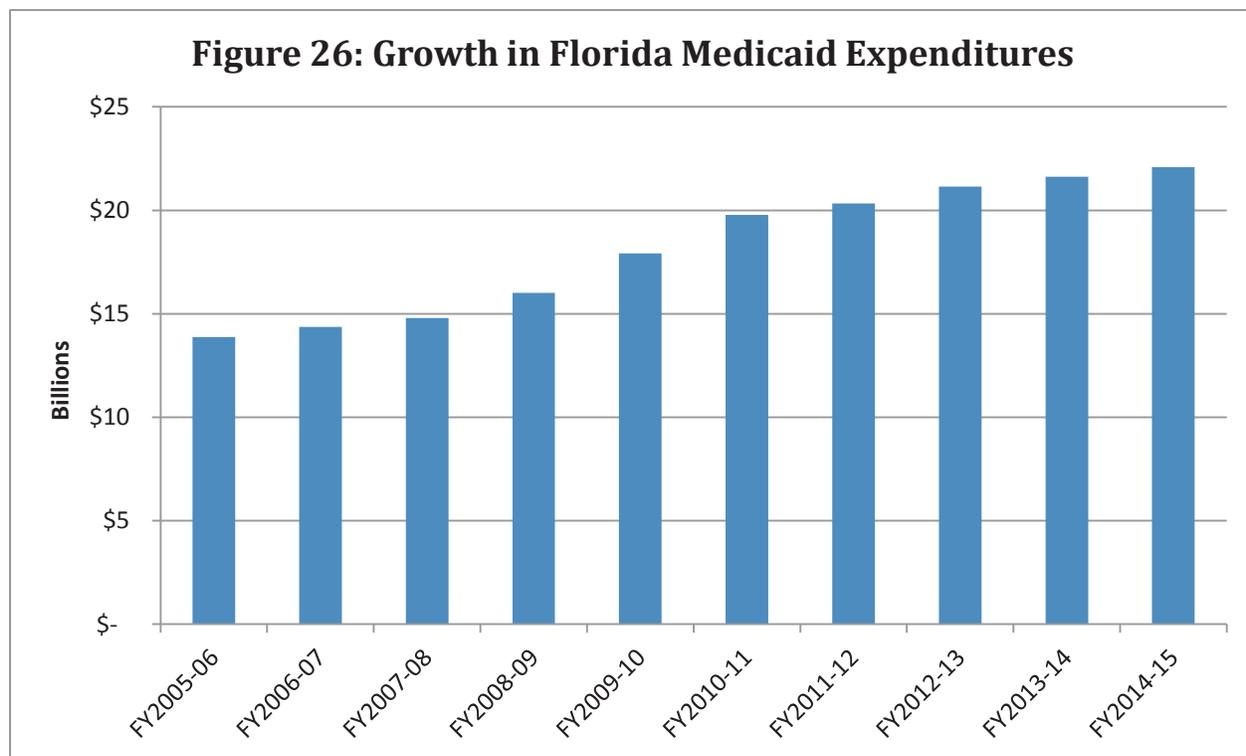
**Figure 25: Medicaid Spending as a Percent of the Total \$70.5 Billion State Budget
FY2011-12**



¹ AHCA, “AHCA Presentation to the House of Representatives”, January 2011.

Cost Are Rising Rapidly

Medicaid makes up 28.8 percent of the FY2011-12 state budget and spending on Medicaid in Florida has increased by 46.5 percent in just the last four years, rising from \$14.8 billion to \$21.6 billion. The cost is expected to continue to increase rapidly, exceeding the growth of the revenues to pay for it. The state's general revenue expenditures for Medicaid will increase significantly over the next three years, rising by some 27 percent to nearly \$5.5 billion.



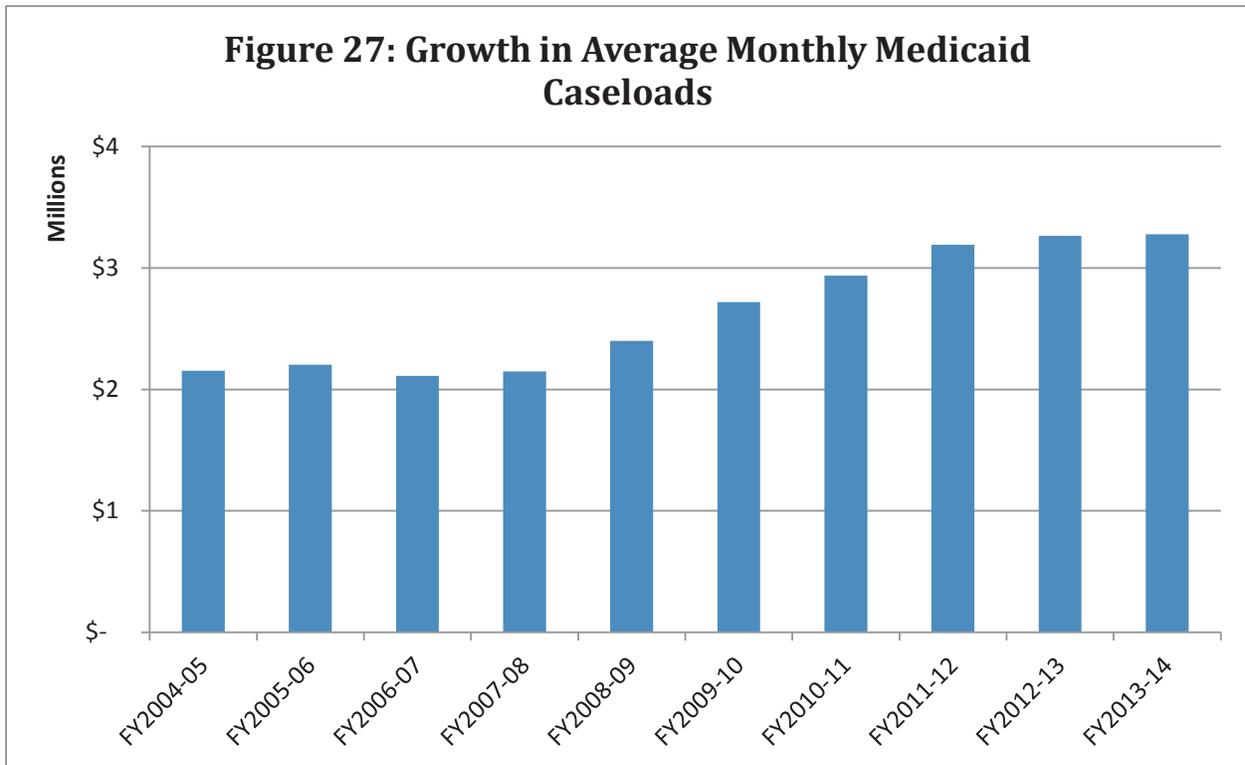
Source: Estimates based on January 2011 Social Services Estimating Conference

In addition to already increasing costs, the *Patient Protection and Affordable Care Act (PPACA)*, signed into law in 2010, will expand enrollments and increase provider payments beginning in 2014, further exacerbating rising costs. This expansion is projected to cost \$49 billion over the first six years through 2019. While most of this will be paid by the Federal Government, it will also increase state costs by an average of almost \$1 billion annually over those six years.

There are three main factors that drive Medicaid growth, and thus costs, which are 1) increasing caseloads; 2) the rising cost of health care; and, 3) the increasing utilization of services.

The counter cyclical nature of Medicaid further complicates its funding. When the economy is down, government revenues decrease. At the same time, employment and income also fall, consequently leading to higher Medicaid enrollment. This has been the experience for Florida over the last few years, which has seen average monthly caseloads increase by more than

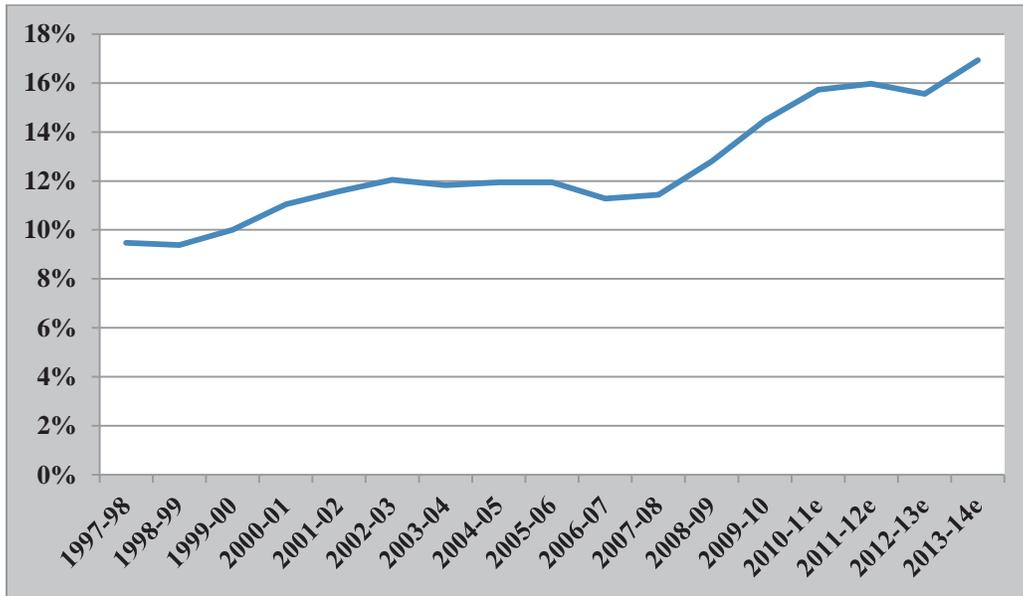
800,000 Floridians, reaching close to 3.23 million. Federal health care expansion is projected to add 1.9 million cases to Florida's system by FY2016-17.



Source: Estimates based on January 2011 Social Services Estimating Conference

The number of caseloads is also increasing faster than Florida's population, meaning a larger and larger percentage of Floridians are on the Medicaid rolls. From a recent low of 9.4 percent of the population in FY1998-99, average monthly caseloads now comprise nearly 16 percent of Florida's population. In FY2013-14, the first year of the federal healthcare reform impact, that percentage is projected to reach 16.9 percent.

**Figure 28: Average Monthly Medicaid Caseloads
(as a Percentage of Florida’s Population)**



Medicaid Fraud Must Be Addressed

Fraud is a huge problem throughout the healthcare system, and Medicaid fraud in Florida is costing taxpayers billions of dollars. Though there is no generally accepted estimate of Medicaid fraud, the National Health Care Anti-Fraud Association estimates that at least 3 percent of all health care spending, approximately \$68 billion, is lost to health care fraud each year. The FBI estimate is even higher – 10 percent of all healthcare spending.

In Florida, Medicaid fraud is considered to be an epidemic that costs Florida and the Federal Government billions of dollars annually. A 2008 OPPAGA report states that estimates of waste, fraud, and abuse in Florida range from 5 to 20 percent of total Medicaid funds.² The report gives examples of fraud, including providers overbilling Medicaid for health care services that are not medically necessary; performing expensive procedures when less costly alternatives are available; or billing for services that were never delivered. More sophisticated fraud schemes can involve kickbacks to other providers for client referrals, or “hit and run” schemes where fake providers are paid for a large volume of false claims and then close their business before they are identified by fraud detection methods. OPPAGA also states that fraud or abuse can occur at the corporate level of a managed care organization. “For example, managed care plans may withhold or delay payments to providers, pay excessive salaries or administrative fees, engage in practices to exclude enrolling sicker beneficiaries, deny medically necessary treatment, or falsify provider networks.”

² OPPAGA. AHCA Making Progress But Stronger Detection, Sanctions, and Managed Care Oversight Needed. February 2008.

A 2010 follow up report from OPPAGA states that the Agency for Health Care Administration (AHCA), while taking some steps in the right direction, has not expanded its use of fraud detection technology nor does the agency typically sanction providers it has identified as overbilling. The OPPAGA report again recommends these changes, including that AHCA develop a risk-based fraud and abuse strategic plan to guide the work of a Fraud Steering Committee.³

Auditor General Finds Internal Controls Lacking

Florida's Auditor General (AG) has recently completed several audits of Florida's Medicaid system dealing with internal controls and legal compliance issues. These audits raise a number of concerns that the state may be paying more in claims than it should.

Some of the major findings include that AHCA paid \$792 million in emergency payments to hospitals, doctors, and other health care providers that was not clearly authorized by law or supported by valid claims. In one-quarter of the cases reviewed by the AG, the Department of Children & Families (DCF) failed to fully document Medicaid eligibility for patients. Nineteen nursing homes were paid \$40.6 million during FY2008-09 without the facilities submitting actual cost data.

The AG also found that AHCA did not timely review and score the performance of the Medicaid fiscal agent or fully assess damages for its underperformance. The fiscal agent is the private company whose primary responsibility is to process medical claims submitted for payment.

³ OPPAGA, Enhanced Detection, Stronger Sanctions, Managed Care Fiscal Safeguards, and a Fraud and Abuse Strategic Plan Are Needed to Further Protect Medicaid Funds, March 2010

Medicaid Reform Recommendations

95. Reduce Medicaid fraud and abuse

Health care fraud is a serious and costly problem that affects all taxpayers. Estimates ranging from 1 to 10 percent of health care expenditures are lost due to fraud, abuse, and waste. This is likely to increase as the cost of health care is projected to swell. Federal law requires each state to have a Medicaid program integrity unit within the Medicaid state agency to detect and investigate Medicaid fraud and abuse. Federal law also requires states to establish and operate a Medicaid Fraud Control Unit (MFCU) to conduct a statewide program for the investigation and prosecution of health care providers that defraud the Medicaid program. Combating Medicaid fraud, abuse, and waste is a significant effort that requires the partnership of states, beneficiaries, providers, and contractors to ensure that taxpayer dollars are spent appropriately.

Florida needs to develop an annual Fraud and Abuse Prevention plan to identify and prevent fraudulent and abusive activities in the Medicaid program and to prevent improper payments as a result of fraud and abuse. Additional efforts are needed in the following areas:

A. Managed Care Fraud Controls

There needs to be greater fraud and abuse reporting requirements for managed care plans and increased monitoring by the agency, especially now that Florida has shifted to a statewide managed care model.

B. Site Visit Verification

There needs to be broadened statutory authority to conduct site visits as a requirement for provider enrollment in the Medicaid program for moderate and high risk providers. These in-depth due diligence clinic investigations could be outsourced to private investigation firms. For example, these site visits or in-depth investigations could verify a clinic's physical location and inspect the facility; verify all medical licenses of healthcare workers and medical directors; conduct surveillance to determine number of individuals entering and exiting the clinic; interview claimants and medical staff on the premises; conduct background checks on the owners; and determine if treatment is actually being conducted.

C. Criminal and Administrative Sanctions

There needs to be increased criminal and administrative sanctions for providers and Medicaid recipients that have committed Medicaid fraud or abuse. Passed in the 2011 session, House Bill 7109 increased the disqualification period from five to ten years for those found to have committed Medicaid fraud.

D. Pre-payment Review and Correct Coding Initiative (CCI)

There needs to be a required and enhanced prepayment review, including the implementation of a comprehensive correct coding initiative to prevent the payment of inappropriate claims.

E. Recovery Audit Contractors (RAC)

Florida needs to implement a post adjudication process that identifies areas for further investigation, as well as the use of recovery audit contractors to investigate and assist the agency in recovering inappropriate payments. To reduce costs, recovery audit contractors should be paid on a contingency basis such that they are not paid by the state until payment recovery has been made and then receive payment as a percentage of the recovery.

F. Evaluation and Management Codes

There should be a requirement for additional review and edits prior to, and after, payment of claims for extended and comprehensive coding levels.

G. Additional Surety Bonds

There needs to be further increases in the types of providers that are required to post a surety bond (or a similar alternative, such as letters of credit or reserve accounts for selected providers) prior to enrollment in the Medicaid program based upon risk analysis.

H. Establish a reward for identifying and/or reporting fraud

The state should establish a program to incentivize individuals to report Medicaid fraud, waste, and abuse where a certain percentage of the savings could be rewarded to the whistle-blower. Alternatively, a certain portion of the recovery should be shared with the government entity identifying the fraud, waste, or abuse as an incentive.

I. Implement a moratorium on new home health and durable medical equipment providers

Medicaid fraud is often concentrated in certain service areas. Health and durable medical equipment are areas where fraud remains high. Implementing a temporary moratorium on new providers will help reduce fraud in these areas.

J. Increase use of predictive modeling to identify fraud

Predictive modeling is the process by which a model is created or chosen to try to best predict the probability of an outcome. Extensive use of the most modern predictive evaluation engine would help identify potential aberrant Medicaid claims prior to any field investigation, which could reduce or eliminate unnecessary investigative work.

If Florida implemented a Fraud and Abuse Prevention plan including, but not limited to these additional efforts, it is estimated that a 1 percent savings of general revenue funds could be achieved, providing savings of \$223.8 million in general revenue funds for FY2012-13.

Recommendation: The Legislature should direct AHCA to develop a Fraud and Abuse Prevention plan that targets savings in the Medicaid program of at least 1 percent and details specific areas to focus on in terms of the types of services targeted, any specific geographic

areas, specific methodologies that will be used to combat fraud and abuse, savings targets, and measurement of results. The efforts and recommendations of the ongoing “Medicaid Strikeforce” should also be explored and implemented throughout the system as well.

96. Alternatives to Medicaid provider rate reductions

Before considering provider rate reductions, Florida should first explore enacting alternatives that can achieve similar savings at a lower cost to the providers, thereby lessening concerns over negatively affecting Medicaid recipients’ access to care.

A. Increase Medicaid provider assessments

The Federal Government allows states to impose provider assessments to fund the state share of Medicaid expenditures. Most states use the assessments as a mechanism to generate new state funds and match them with federal funds. The assessment is currently limited to 5.5 percent of revenues, but increases to 6 percent effective October 2011.

There are 19 separate classes of health care services and providers that are eligible to be taxed. In 1984, Florida became one of the first states in the nation to impose a provider assessment on hospitals. Currently, 46 states and the District of Columbia impose provider assessments on at least one category of health care services and providers. The four states that do not have provider assessments are Alaska, Delaware, Hawaii, and Wyoming.⁴

The most frequently taxed are hospitals, nursing facilities, and intermediate care facility services for the mentally retarded and the developmentally disabled (ICF/MR-DD). States generally use provider assessments in times of fiscal crisis because it allows the Legislature to free up general revenue and replace it with revenue collected through the assessment, thus maintaining the level of services provided.

Nursing home and ICF/DD Assessment: In response to the economic recession, the 2009 Legislature enacted an industry supported quality assessment on nursing homes and ICF/MR-DDs. The nursing home and ICF/MR-DD assessment is currently assessed at 5.5 percent, which means the Legislature can only consider increasing the assessment to the 6 percent maximum.

Hospital Provider Assessment: Florida imposes a 1.5 percent assessment of hospital inpatient services net operating revenues and a 1.0 percent assessment of hospital outpatient services net operating revenues. This revenue is deposited into the Public Medical Assessment Trust Fund and is used as the state share of the Medicaid program.

In FY2010-11, 34 states imposed provider assessments on hospitals. This past year, eight states increased or adopted new hospital assessments. Florida could increase hospital assessments incrementally up to the maximum allowable amount.

⁴ According to analysis conducted by the National Conference of State Legislatures, 2011.

If the hospital assessment was increased by 1 percent, an estimated annual savings of \$111.9 million in general revenue for hospital inpatient services and \$61 million in general revenue for hospital outpatient services could be generated in FY2012-13 and replaced with revenue collected through the increased assessment.

HMO Provider Assessment: Currently, 11 states impose a provider assessment on managed care organizations (Arizona, Maryland, Minnesota, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, and Texas). Federal law originally defined the managed care organization class to be Medicaid only, but the definition was changed to include all managed care organizations. Florida has not implemented a provider assessment on managed care organizations and could implement an HMO assessment incrementally up to the maximum allowable amount.

If a 1 percent assessment was established, an estimated annual savings of \$14 million, of which \$9.1 million is general revenue, could be generated from the prepaid health plan services category in FY2012-13 and replaced with revenues collected through the assessment.

Recommendation: *If Florida is considering reductions in Medicaid provider rates, it should first explore opportunities to increase provider assessments up to the maximum allowable cap, and establish a managed care provider assessment to generate revenues to support the state share of the Medicaid program. Increasing or establishing assessments could be used as an alternative to provider rate reductions and allow providers to maintain the level of services while achieving cost savings for the state.*

B. Medicaid co-payments

Increased cost-sharing, or requiring Medicaid beneficiaries to pay more for medical care, has been implemented by most states as a way to reduce Medicaid costs and promote “personal responsibility.” A total of 45 states have copayment requirements in their Medicaid program. Nominal copayments may be charged to Medicaid beneficiaries that range between 50 cents and \$3 per service for most services, but may not be charged to children, pregnant women, or institutionalized individuals. The amount of the copayment is deducted from reimbursement to the provider.

As shown in **Figure 28**, the Medicaid program, in accordance with s. 409.9081, *F.S.*, requires Medicaid recipients to pay a nominal copayment for various services:

Figure 28: Florida Medicaid Required Copayments

Service	Co-Payment
Birth Centers	\$2.00 per day, per provider, per recipient for gynecological services
Chiropractor	\$1.00 per day, per provider, per recipient
Community Behavioral Health	\$2.00 per day, per provider, per recipient
Federally Qualified Health Center	\$3.00 per day, per provider, per recipient
Home Health Agency	\$2.00 per day, per provider, per recipient
Hospital Emergency Room	5% coinsurance up to the first \$300 of Medicaid payment for each visit in the Emergency Room for non-emergency services, not to exceed \$15.00
Hospital Inpatient	\$3.00 per admission fee
Hospital Outpatient	\$3.00 per visit
Independent Laboratory	\$1.00 per day, per provider, per recipient
Non-Emergency Transportation	\$1.00 per trip each way
Nurse Practitioner	\$2.00 per day, per provider, per recipient
Optometrist	\$2.00 per day, per provider, per recipient
Physician	\$2.00 per day, per provider, per recipient
Physician Assistant	\$2.00 per day, per provider, per recipient
Podiatrist	\$2.00 per day, per provider, per recipient
Portable X-Ray Company	\$1.00 per day, per provider, per recipient
Prescription Drugs	2.5% of Medicaid cost of drugs with a cap of \$7.50 co-payment per drug
Rural Health Clinic	\$3.00 per day, per provider, per recipient
Registered Nurse First Assistant	\$2.00 per day, per provider, per recipient

In 2010, Arizona implemented a new \$2.30 co-payment for prescription drugs and Massachusetts increased their generic and over-the-counter drugs co-payment from \$2.00 to \$3.00 (with some exceptions). In 2011, the Florida Legislature passed House Bill 7109, which requires a copayment of \$100 for non-emergency services provided in a hospital. **If Florida implemented a \$2.00 co-payment on prescribed drugs, an estimated \$8.9 million in total savings and \$3.9 million in general revenue funds could be saved in FY2012-13.**

Recommendation: *If Florida is considering reductions in Medicaid provider rates, the Legislature should first explore the option of implementing higher co-payments on prescribed services to encourage personal responsibility similar to other co-payments established on other services in the Medicaid program.*

C. Eliminate select Medicaid optional services

The Medicaid program is a federal-state partnership in which states design and administer their own programs within broad federal guidelines. Medicaid covers a wide range of benefits and states may elect to offer many “optional” services, such as prescription drugs, dental care, durable medical equipment, and personal care services. All Medicaid services, including those considered optional for adults, must be covered for children. Several states have recently eliminated optional services. Examples include:

- Michigan - eliminated dental, hearing aids, chiropractic care, podiatry and eyeglasses for adults (2009).
- Nevada - eliminated coverage of non-medical vision services for adults (2009).
- Utah - eliminated dental coverage (2010); eliminated audiology and hearing services, physical, occupational and speech therapies, and eyeglasses and chiropractic services for adults (2009).
- California - eliminated acupuncture, dental, audiology and speech services, optometry and optician services, podiatry, psychology services, and chiropractic services (2010).

If Florida eliminated dental, visual, hearing, podiatry, and chiropractic services for adults, estimated annual savings of \$55.3 million in total funds and \$23.9 million in general revenue funds could be saved in FY2012-13.

Recommendation: *If the Legislature should contemplate provider rate reductions, it should also consider eliminating certain optional Medicaid services.*

D. Mitigate effect of Medicaid provider rate reductions to nursing homes

If provider rate reimbursement reductions are going to be considered, the Legislature should also explore implementing changes reducing providers’ costs, thereby mitigating the negative effects of a rate cut. Florida had been a recognized national leader in nursing home quality and has one of the highest nursing homes staffing ratios in the nation. Over the past several years, the required nursing staffing ratios have increased from 1.7 hours to 2.3 hours per resident per day in January 2002, to 2.6 hours in January 2003, and to 2.9 hours in January 2007. The 2010 Legislature modified the nursing home staffing requirements to allow for a combined direct care staffing requirement of 3.9 hours, effective July 1, 2010. The 2011 Legislature lowered the nursing staff ratio to 3.6 hours via Senate Bill 2144. Over this same time period, there has also been a commitment from the Legislature to improve nursing home quality through increased Medicaid funding in the direct care cost component of Medicaid reimbursement to pay for new staffing, rigorous enforcement of standards, increased fines when facilities do not comply with standards, and public reporting requirements. **If the nursing staffing ratio was reduced to 2.6 hours, an estimated \$27.6 million in total funds and \$11.05 million in general revenue funds could be saved in FY2012-13.**

Recommendation: *If the Legislature should contemplate provider rate reductions to nursing homes, it should consider reducing the required nursing staff ratio from 3.6 hours to 2.6 hours per resident per day.*

97. Limit civil malpractice liability for Medicaid providers

The litigation crisis is affecting patients, physicians, hospitals, and nursing homes and impacts health care quality. The patients' ability to get care is affected not only because many physicians find the increased premiums unaffordable but also because liability insurance is increasingly difficult to obtain at any price. Estimates place the direct and indirect costs of malpractice at about 5 to 10 percent of total medical costs. This includes defensive medicine, which is diagnostic or therapeutic actions taken not to ensure patient health, but to guard against malpractice liability, wasting health care resources and doctor's time. **If tort reform or other malpractice liability limiting legislation could be adopted, cutting the five percent of total medical costs due to malpractice by just 10 percent, the state could save \$101.5 million in Medicaid expenditures per year, and far more across the entire Florida healthcare system.**

Recommendation: *The Legislature should explore meaningful litigation reform to help ensure access to health care by reducing litigation costs, which will reduce costs throughout the entire Medicaid system.*

98. Enhance eligibility screening for Medicaid applicants

Improving eligibility screening for Medicaid can reduce fraud by identifying ineligible applicants at enrollment before benefits have been assigned and payments have been made. Implementing an electronic matching process (tied to a national database information) for Medicaid eligibility determination is one option that would generate significant savings opportunities for the state by reducing payments for healthcare services provided to individuals who are not eligible for Medicaid.

Data resources such as identity and address information, household composition, and financial status are gathered utilizing browser-based tools to validate the self-reported information submitted by applicants. A comprehensive screening system would provide state officials with the information they need to approve or refuse eligibility with confidence and justification.

Denial of ineligible claims represents significant savings to Florida, as just 74 indictments issued in 2007 in Miami alone uncovered over \$400 million in fraudulent billings to Medicare. Although Medicare is entirely funded by federal tax dollars, this case provides insight into the vast amount that Florida could be losing from Medicaid payouts to ineligible recipients.

Assuming that 2 percent of the program's total beneficiaries are actually ineligible (a very conservative estimate given that experts estimate that the typical state averages between 3.5 and 5 percent), then an estimated 59,400 individuals within Florida Medicaid's population of

approximately 2.97 million beneficiaries⁵ could therefore be determined ineligible and claims made on their behalf would be appropriately denied. The average cost of Medicaid per member per month (PMPM) was \$530.28 in July 2011, although distribution of usage is not linear. This equates to an average annual cost per member of \$6,363.36. If only 10 percent of average service usage spent on the 2 percent of beneficiaries estimated to be ineligible were appropriately denied benefits through eligibility screening, the Medicaid program would save more than \$37.8 million⁶ **which would result in a savings to Florida of approximately \$16.62 million annually beginning in FY2012-13** (not including implementation costs or cost sharing if provided through outsourcing)⁷.

Recommendation: *The Legislature should direct the Department of Children and Families to enhance the applicant eligibility screening and benefit determination program, either internally or by contract with a private provider.*

99. Conduct durable medical equipment audits

Estimated expenditures show that the Florida Medicaid program will spend nearly \$92 million on “durable medical equipment” (DME), which include medical supplies such as wheelchairs.⁸ As with other aspects of Medicaid, the annual DME billings likely include some “aberrant claims” (i.e., fraud, waste, and abuse), such as billings for services that were never administered or billings that violate the provider agreement. Implementing a DME audit process would help identify such claims and could significantly reduce the cost of the Medicaid program.

According to a leading service provider, the distinguishing factor of a successful audit process is that a qualified medical professional conducts chart reviews at the actual provider site. This on-site approach is less burdensome on the provider than typical off-site or “desk” audit reviews, which require the provider to photocopy reams of documentation for the auditors. In contrast, on-site reviews require access to the files and a small workspace to conduct the review.

The on-site approach also allows for a full review of each page of the patient chart. The auditor can easily compare doctors’ orders, nurses’ notes, compounding records, and dispensing records to the amount billed to the plan.

Specific examples of the success of DME audits in other states provide useful insight into the potential value of this process for Florida. DME audits have uncovered such practices as a

⁵ Although exact number of beneficiaries is difficult to pin down, there are approximately 2.97 million beneficiaries. According to AHCA website, (<http://ahca.myflorida.com/Medicaid/about/about2.shtml>, accessed on January 21, 2011) “Florida’s average monthly eligibles is currently approximately 2.4 million Medicaid recipients.” According to the “Number of Medicaid eligibles by program-group by county as of 12/31/2009,” there were 2,679,941 eligibles in December 2009 and 2,727,362 eligibles in November 2009 – therefore, the 2.5 million is likely an underestimate.

⁶ Assuming 2 percent of 2.94 million beneficiaries (59,400 individuals) multiplied by the average annual per member cost (\$6,363.36) equals \$377.983 million, 10 percent of which is \$35 million.

⁷ This figure is based on the FY2012-13 Federal Medical Assistance Percentages (FMAP) that will take effect on October 1, 2011 and last through September, 30, 2013. State share = 43.96% and federal share = 56.04%. Sharing agreement information provided by AHCA, July 2011.

⁸ Florida Agency for Health Care Administration, “Florida Medicaid” presentation by Roberta K. Bradford to the Florida House, January 2011.

provider that frequently included the leasing of durable medical equipment in perpetuity. Whether it was a set of \$50 crutches, or a \$1,500 infusion pump, the company could lease the equipment for a monthly rate, but would bill well beyond the point when the insurer had met the purchase price (or agreed “cap”). In one instance, an infusion pump valued at \$2,500 was leased at the monthly rate of \$720, and payments of over \$10,000 were identified for the infusion pump at the time of the audit. Upon discovery through the audit, the provider repaid the overcharges.

DME audits are especially important in Florida. National media reports have explicitly shown that DME billings have become excessive in some parts the state, as noted in a *60 Minutes* investigative report on Medicare fraud perpetrated by DME providers in South Florida.⁹ Specifically reported was a tiny medical supply company that billed Medicare almost \$2 million in July and, in August, while *60 Minutes* was there, billed \$500,000; but there was never anybody inside the company and phone calls were never returned. One interviewed DME ‘provider’ indicated that he never provided any service; he simply purchased readily available recipient billing IDs and billed for unfilled services on their behalf.

Also, the state can take a proactive approach to ensuring that the most blatant violators are removed as providers of medical services under the program. Since Medicare shares many of the same issues that Florida Medicaid is facing with this service category, these audit efforts could be coordinated with the Medicare program and the other program should target referrals from either party.

Given the annual DME spending of more than \$90 million, every 1 percent fraud reduction would yield more than \$900,000. A leading audit service provider uses 8 percent in estimating savings based on DME spending: for the Florida Medicaid program in FY2009-10, that would produce a savings of \$7,307,076. **Assuming a 20 percent revenue sharing arrangement with the outsourced provider (to avoid any upfront cost to the state), the state could achieve a savings of \$5.8 million in the first year.**

Whatever the percentage of aberrant claims identified or the revenue-sharing ratio, the savings for Florida are likely to be significant given the increasing utilization of DME services in medical care and the recent revelations of the prevalence of unscrupulous billing practices.

Recommendation: The Legislature should direct AHCA to implement an on-site durable medical equipment audit program, either internally administered or outsourced through a revenue sharing arrangement (to avoid upfront costs).

100. Consolidate administrative support services for the Medicaid Home and Community-based Long-term Care Services (HCBS) Waiver Programs

Implementing an electronic system to provide administrative support of the Medicaid Home and Community-Based Long-term Care Services (HCBS) Waiver Programs can produce significant savings through a reduction in claim loss in three categories: 1) reduction in losses attributable to

⁹ Aired October 23, 2009.

eligibility-related reporting errors and inaccuracy; 2) misrepresentation of service units provided; and 3) through a reduction in waiver administration costs (e.g., reduction in paper processes, process improvements in case management and point of care authorization functions, reporting accuracy and efficiencies, and enhancements in electronic billing and claim control).

Florida's HCBS Waivers serve nearly 70,000 participants, expending more than \$1.14 billion in health and social services, through 14 different waivers, in three different departments. Additionally, there are waiting lists with more than 30,000 potential eligible clients of which many are receiving some services while on waiting lists. However, all of the individual waiver programs are managed through various systems, disparate applications, and paper processes. There is very little coordination between waivers and no enterprise management of the waivers. This includes both those in the waiver programs and those on waiting lists.

Because of the nature of the current, primarily manual, administration of the HCBS programs in Florida, there are un-quantified losses and additional unnecessary costs related to both the claim process and the administrative support. Implementing the administrative support components for the HCBS Waiver programs could control these losses and unnecessary costs.

South Dakota has implemented a similar program. Other states are contemplating this type of administrative support, including Texas, New Hampshire, and Hawaii.

Assuming a 1 percent loss due to duplicate payments, unauthorized services, and overpayments (i.e., aberrant claims), the state loses approximately \$11 million annually due to lack of coordination in administration of waivers. Outsourced systems are available that could reduce these losses. Assuming a 20 percent revenue share with the vendor on 1 percent losses avoided, **the state would save \$9.1 million in FY2012-13 and annually thereafter** (assuming no additional upfront or implementation costs).

Recommendation: The Legislature should consider the implementation of an enterprise-wide Medicaid Home- and Community-Based Long-term Care Services (HCBS) Waiver programs administrative support system.



Government Cost Savings Task Force

Pension Reform

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Foreword

The *Government Cost Savings Task Force for FY2011-2012*, made ten specific recommendations to reform the Florida Retirement System (FRS). Of these recommendations, six were successfully implemented by the Florida Legislature through Senate Bill 2100 and Senate Bill 1128 (SB 2100, SB1128).¹

2010 Implemented Legislation:

1. Reduce annual guaranteed rate of return for Deferred Retirement Option Program (DROP) participants from 6.5 to 3 percent.

- Senate Bill 2100 reduced the interest accrual rate for DROP participants from 6.5 to 1.3 percent for employees hired after July 1, 2011. Current DROP participants will maintain the 6.5 percent accrual rate.²

Total Savings: \$80.9 million

2. Require FRS members to contribute 5 percent to their retirement plans.

- Senate Bill 2100 requires FRS members contribute 3 percent towards retirement. DROP participants are not required to pay employee contributions.³

Total Savings: \$456.5 million

3. Increase vesting period for FRS Pension Plan from six to ten years.

- Senate Bill 2100 increases vesting from six to eight years for employees hired after July 1, 2011. Vesting for existing employees will remain at six years of creditable service.⁴

Total Savings: \$26.2 million

4. Reform the methodology used in calculating average final compensation (AFC).

- Senate Bill 2100 increased AFC from five years to the average eight highest fiscal years of compensation for creditable service for employees hired after July 1, 2011. Existing employees AFC will remain at five years.⁵ SB 1128 removed unused annual/sick leave from the AFC formula and capped overtime at 300 hours for those hired on or after July 1, 2011.⁶ These changes also apply to general employees of local pension plans.⁷

Total Savings: \$68.1 million

¹ 2011 Session Summary. *Florida House of Representatives*. May 31, 2011. Pg. 313-314
<http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?DocumentType=Press%20Release&FileName=398>.
Accessed: 6-6-11.

² Senate Bill 2100: Retirement. Summary of Conference Committee Action. *Florida Senate*. May 5, 2011.
<http://www.flsenate.gov/Session/Bill/2011/2100/Analyses/VOuskO0TtfDTnw=PL=kf8cNN2b2gYc=%7C7/Public/Bills/2100-2199/2100/Analysis/S2100%20Conference%20Report.PDF>

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Florida Statutes chapter 2011-216 section 2, 112-66(11)

⁷ CS/SB 1128: Public Retirement Plans. Bill Analysis and Fiscal Impact Statement. *Florida Senate*. April 15, 2011.
<http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=2011s1128.bc.DOCX&DocumentType=Analysis&BillNumber=1128&Session=2011>

5. Increase the normal retirement age (and minimum required years of service accordingly) for “regular” and “special risk administrative support” employee classes from 62 to 65 and 55 to 58 respectively.

- Senate Bill 2100 increased normal retirement age to 65 for regular employees and 60 for special risk for employees hired on or after July 1, 2011⁸.

Total Savings: \$145.3 million

6. Tie automatic Cost of Living Adjustment (COLA) for public pension recipients to inflation with a 3 percent ceiling.

- Senate Bill 2100 suspended COLA for five years for employees hired on or after July 1, 2011⁹.

Total Savings: \$404.8 million

Introduced Pension Reform Bills:

Senate Bill 1130

- Closes the defined benefit plan to specified members enrolled on or after July 1, 2011. Members of the Elected Officers Class, the Senior Management Service Class, or any member of any class for which position the starting salary is more than \$75,000, except those who are eligible to and elect to enroll in an optional retirement program, will be enrolled in the FRS defined contribution plan.
- Changes vesting for members enrolled in the defined contribution plan on or after July 1, 2011. Such members vest in graded increments over a five-year period. Extends the vesting period for members enrolled in the defined benefit plan from 6 to 8 years.
- Changes the FRS from a non-contributory system to a contributory system and requires each active member of the FRS to contribute a percentage of pre-tax gross salary to fund retirement benefits, effective July 1, 2011. The maximum employee contribution is 2 percent for any member of the Regular Class or Special Risk Class and 4 percent for any member of the Senior Management Service Class or Elected Officers' Class. Employee contributions are no longer required if the FRS reaches or exceeds 100 percent of actuarial funding. For fiscal year 2011-2012, the contribution rates for all members are set at zero percent for gross compensation up to and including \$40,000, plus no more than 2 percent for gross compensation in excess of \$40,000 and up to and including \$75,000, plus no more than 4 percent for gross compensation that is greater than \$75,000.

⁸ Ibid.

⁹ Ibid.

- Amends the definitions of “compensation” and “average final compensation.” Accumulated annual leave payments and overtime payments in excess of 300 hours are not included for service earned on or after July 1, 2011. Creates an additional death benefit for members of the defined contribution plan who are killed in the line of duty.¹⁰

Senate Bill 7094

- Eliminates accumulated annual leave payments and overtime from “compensation” and “average final compensation” on or after July 1, 2011.
- Raises the normal retirement age for Special Risk Class members enrolled on or after July 1, 2011 to that of other classes if they choose to enroll in the defined benefit plan. Effective July 1, 2011, closes the defined benefit plan to new enrollees and requires compulsory enrollment in the defined contribution plan, except that those who qualify for Special Risk Class membership may still enroll in the defined benefit plan. Specifies that employees eligible to enroll in one of the three optional retirement programs may elect to do so in lieu of compulsory enrollment in the investment plan.
- Closes the Deferred Retirement Option Program (DROP) to new participants, effective July 1, 2011. Allows reenrollment after retirement in the investment plan.
- Changes the FRS from a noncontributory system to a contributory system and requires each active member of the FRS to contribute 3 percent of pre-tax gross salary to fund retirement benefits, effective July 1, 2011.
- Eliminates the cost-of-living adjustment (COLA) for service earned on or after July 1, 2011.¹¹

¹⁰ Senate Bill 1130: Retirement. Bill Analysis and Fiscal Impact Statement. *Florida Senate*. March 10, 2011.

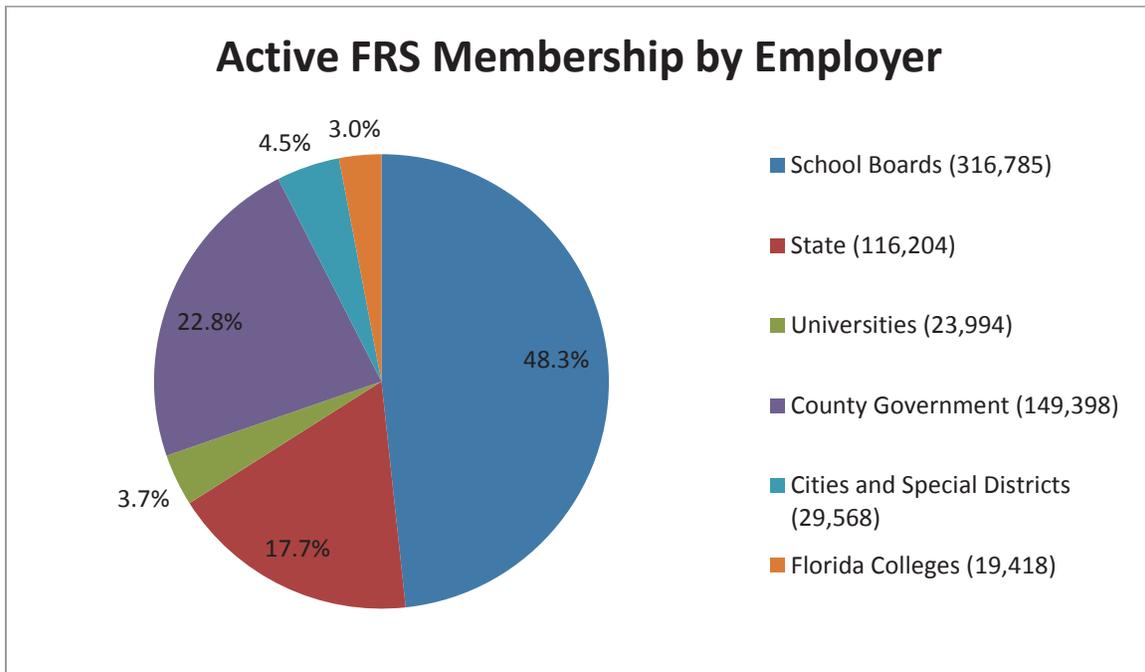
<http://www.flsenate.gov/Session/Bill/2011/1130>

¹¹ Senate Proposed Bill 7094: Retirement. Bill Analysis and Fiscal Impact Statement. *Florida Senate*. March 28, 2011.

<http://www.flsenate.gov/Session/Bill/2011/1130>

Introduction

As of June 2010, the Florida Retirement System (FRS) consists of 665,367 active participants and 304,337 annuitants.¹² The total market value of all assets is \$109.5 billion with a projected annual contribution from state employees of \$667.9 million.¹³ Participants in FRS include employees of the state, school boards, county governments, universities, and colleges. Local municipalities and special districts also have the option to participate. The percent of active membership is broken down by employer in the chart below.



State and local government employees in FRS have the option to participate in either of two retirement programs: the defined benefit (DB) plan or the defined contribution (DC) plan.¹⁴ Of the 665,367 participants in the FRS, 557,585 (85 percent) are enrolled in the Defined Benefit plan (DB), and the remaining 97,782 (15 percent) employees participate in the Defined Contribution plan (DC).¹⁵ The DB plan is a formula-based payment plan funded by guaranteed employer contributions in which the employer bears market risk for investments. Should its investments not reach projected rates of return, employees are not required to contribute, but the

¹² The Florida Retirement System. Annual Report. 2009-10 *Department of Management Services, Division of Retirement*. June 30, 2010. [https://www.rol.frs.state.fl.us/forms/2009-10 Annual Report.pdf](https://www.rol.frs.state.fl.us/forms/2009-10%20Annual%20Report.pdf)

¹³ Ibid

¹⁴ The DB plan is officially referred to as the Pension Plan and the DC plan is officially called the Public Employee Optional Retirement Plan (PEORP) by the FRS. Additionally, FRS employees have the ability to do a one-time shift from DB to DC or vice versa.

¹⁵ The Florida Retirement System. Annual Report. 2009-10 *Department of Management Services, Division of Retirement*. June 30, 2010. [https://www.rol.frs.state.fl.us/forms/2009-10 Annual Report.pdf](https://www.rol.frs.state.fl.us/forms/2009-10%20Annual%20Report.pdf)

state remains liable for the shortfall. The DC plan guarantees a specified level of contributions from employers, but shifts the risk to employees who make their own investment decisions.

Over the past decade, Florida has spent more than \$5 billion maintaining the existing retirement system. During this uniquely challenging fiscal time, the need to make further improvements to the FRS is important to the future health of the system. The difficulties surrounding the passage of recent reforms to the FRS are well known. Nevertheless, further measures are necessary to ensure the state remains efficient, the FRS remains sustainable in the long term, retirement accounts maintain solvent, and state positions remain attractive to tomorrow's workforce.

While the provision of retirement, disability, or death benefits is important to maintain competitiveness as an employer, benefits offered by the FRS are more generous than those offered by non-public sector employers (i.e., the private and non-profit sectors). Compared to the private sector, state and local government employees are generally able to retire at both an earlier age and with little required contribution towards their benefits. These benefits are provided in addition to Social Security retirement payments, which state government employees are eligible to collect because of contributions made by the public employer on their behalf in the form of federal payroll taxes. Many public employers in other states do not participate in Social Security and therefore the employees are ineligible; however, Florida participates. Furthermore, these benchmarks are being offered at a time when national trends in both public and private sectors reveal increases in the average retirement age.¹⁶ This section examines the FRS, analyzes areas in need of modernization, discusses successful reform efforts around the country, and recommends cost-saving reform options to create a more efficient and competitive retirement system for state and local government in Florida.

Defined Benefits Drive the Cost of Public Retirement in Florida

The majority of FRS members participate in the defined benefit plan - roughly 85 percent of the 665,367 FRS members are in the DB plan (with just 15 percent in the DC).¹⁷ The manner in which benefits accrue in each plan differs substantially. The receivable benefits earned through DC plans (e.g. 401(k) or 403(b) plans) are based on the annual contributions placed into each participant's personalized investment portfolio and its associated investment returns.¹⁸ DB plans, however, statutorily obligate employers to pay specified benefits based on annually revised employer contributions.

The high cost of public employee retirement in Florida is driven by the DB plan, which places the responsibility of paying set pensions on state and local government employers, regardless of

¹⁶Purcell, Patrick, "Older Workers: employment and Retirement Trends", Congressional Research Service, September 16, 2009. Available at: <http://aging.senate.gov/crs/pension34.pdf>

¹⁷The Florida Retirement System. Annual Report. 2009-10 *Department of Management Services, Division of Retirement*. June 30, 2010. https://www.rol.frs.state.fl.us/forms/2009-10_Annual_Report.pdf

¹⁸ 26 U.S.C. 414(i) defines DC plans as the following: "...plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account."

investment performance. In order to meet their long-term benefit obligations, state and local governments must make significant contributions on behalf of each DB plan member. *For detailed information and statistical data regarding defined benefits, please refer to the Report and Recommendations at the Government Cost Savings Task Force for FY 2011-12. Previous research can be found on our website at www.floridatwatch.org.

Reforms in Other States

The recent economic downturn has exposed the vulnerability of state and local government defined benefit pension plans across America. The mounting strain on state budgets, exacerbated by the recession, has prompted many states to enact cost-savings legislation to reform their pension plans. During the previous three years, a successive number of states have implemented reforms of their retirement systems. As of June 2011, 45 of 50 states have implemented significant changes to their pension and retirement plans. Of the remaining five states, Massachusetts, Ohio, and Oregon, have proposed new legislative initiatives for pension reform. South Carolina and Idaho are the only states without current or pending pension reform legislation.¹⁹

Georgia: In 2009, Georgia implemented a hybrid pension system by offering a defined contribution plan for the first time. Under this plan, new employees (hired after January 1, 2009) in the Georgia Employee Retirement System are automatically enrolled in defined benefit plans that reduce retirement benefits by half. The employees also have the option to simultaneously enroll in a defined contribution plan. For those individuals who choose to participate in the defined contribution plan, the state provides a 100 percent match for the first 1 percent of an employee's contribution. The state provides an additional 50 percent match for each additional match that an employee decides to place into the defined contribution plan. The total state match is 3 percent of salary, based on an employee contribution of 5 percent. Concurrently, this new pension plan reduces the defined benefit accrual rate from 1 percent to 2 percent. Additionally, Georgia eliminated post-retirement benefit increases for new employees participating in the defined benefit plan.²⁰

Massachusetts: The state is proposing extensive changes to Massachusetts public defined benefit pension plans. The proposals are embodied in House Bill 35 (HB 35). HB 35 increases the retirement age for nearly all state workers, reflecting the fact that people are living and working longer. HB 35 also eliminates early retirement subsidies, the right to receive a pension while receiving compensation for service as an elected official, and "Double Dipping" through participation in DROP and a second pension plan.²¹

¹⁹ Snell, Ron. "Pension and Retirement Plan Enactments in 2011 State Legislatures." June 30, 2011. *National Conference of State Legislatures*. <http://www.ncsl.org/?tabid=22763>

²⁰ "Georgia State Employees' Pension and Savings Plan." *Employees' Retirement System of Georgia*. Retrieved from www.ers.ga.gov/plans/ers/gseps/gsepsmain.aspx

²¹ Snell, Ron. "Selected 2011 State Pension Reform Proposals." March 15, 2011. *National Conference of State Legislatures*. Retrieved from <http://www.ncsl.org/?tabid=22272>

New Jersey: The 2011 New Jersey Legislature recently adopted pension reform bill Senate 2937. The bill requires teachers, state, and local government workers to pay an additional 1 percent into their retirement for a total contribution rate of 7.5 percent. Furthermore, police and firefighter contributions have been increased by 1.5 percent for a total of 10 percent. The bill also eliminates COLA for retired police, firefighters, teachers, and all other state and local workers in the state's six pension systems. Savings estimates for the bill total in the billions.²²

Oregon: In 2011, Governor John Kitzhaber proposed an end to the states 6 percent contribution to the Public Employee Retirement System. The proposal also ended the non-contributory system for health insurance. The proposal would cap the employer payment for health insurance at the current amount of about \$1,144 per employee per month, requiring employees to cover any future increases in the cost. The union has requested a salary increase to cover the cost of the pension contribution. Eliminating the 6 percent pickup would save \$375 million annually.²³

Utah: The state will close the Defined Benefit plan to Utah State Retirement System (SRS) members hired after July 1, 2011. New employees entering the SRS will choose whether to participate in a defined contribution plan or a hybrid retirement plan. The hybrid plan will consist of both defined benefit and defined contribution elements. Employers will contribute up to 10 percent of a member's compensation into the defined benefit portion. The current defined benefit plan is non-contributory with an employer contribution rate of 14.22 percent in 2010.²⁴ The new hybrid plan will require employees to contribute the remaining portion of the actuarially required amount.²⁵

Conclusion

The escalating cost of the Florida Retirement System necessitates consideration of additional reforms. Momentum for reform of public retirement systems is taking hold in an increasing number of states and cities across the country, all of which serve as a blueprint for potential initiatives and measures that could be implemented to improve and modernize Florida's retirement system. Providing an overly generous public employee benefits funded by taxpayers is a practice that Florida can no longer afford. Based on research and analysis of these state and local reforms, Florida TaxWatch offers the following cost-savings recommendations based on practices that have been successfully implemented to achieve cost savings in other states and would be well suited for Florida.

²² James, Davy. "Pension and Health Care Reform Bill Heads to Assembly." June, 23, 2011. *Rumson-FairHaven Patch*. Retrieved from <http://rumson.patch.com/articles/pension-and-health-care-reform-bill-heads-to-assembly-6>

²³ "State Wants Insurance Cap, End to PERS Help," *Salem, Oregon, Statesman-Journal*, February 23, 2011.

²⁴ Snell, Ron. "Pensions and Retirement Plan Enactments in 2010 State Legislatures." November 23, 2010. *National Conference of State Legislatures*. Retrieved from <http://www.ncsl.org/?tabid=22272>

²⁵ Snell, Ron. "Selected 2011 State Pension Reform Proposals." March 15, 2011. *National Conference of State Legislatures*. Retrieved from <http://www.ncsl.org/?tabid=22272>

Pension Reform Recommendations

101. Close the Defined Benefit (DB) pension plan to all new employees and study the effects of switching selected current FRS members to the Defined Contribution (DC) plan

While the bulk of private sector companies offer only DC retirement plans to employees, a supermajority of new FRS employees go into the DB plan. Only about 25 percent of new FRS-participant employees go into the DC plan.²⁶ Two states, Alaska and Michigan, have closed their DB plans and provide only DC plans for new public employees.²⁷

Requiring all new state employees to participate in the DC plan would benefit the state's pension system by better aligning it with the private sector, reducing the state's financial liability associated with the DB plan, and generating significant savings in the long run.

Another benefit of requiring all new employees to participate in the DC plan is that employer contributions have less variation from year-to-year. Employer contributions to a DB plan are based on actuarial calculations of the long-term liability of the plan, which partially rely on assumptions of capital return on investments to fund the long-term liability, so they vary from year-to-year and are generally countercyclical – i.e., actuarially determined employer contribution rates to a DB fund may be lower during periods of economic growth because the fund is generating high capital investment returns and higher during recessionary periods when the fund is generating lower capital investment returns, which is a time when governments can least afford higher costs.

Closing the DB plan only for new employees would present an upfront cost to the state; however, the savings over the long-term would be significant. Shifting existing employees into the DC plan could accelerate the realization of the savings (and possibly increase upfront costs), however, the costs and potential savings from shifting existing FRS members into the DC plan and freezing or closing more of the DB plan are unknown at this time. If these costs and savings were better understood, additional options could be explored to accelerate the realization of the benefits from modernizing the state pension system by shifting to the DC plan faster.

Recommendation: The Legislature should close the DB plan for all new employees and offer only the DC plan for those employees starting on or after July 1, 2012. Additionally, the Legislature should order that the state conduct, or contract for, an analysis, and report the finding to the Legislature and the Governor by October 2012, to determine the cost and

²⁶ Division of Retirement, "Florida Retirement System Pension Plan Survey, Department of Financial Services, 2010.

²⁷ Alaska closed its defined benefit plans for public employees and teachers to new enrollment and replaced the defined benefit plans with defined contribution plans, effective July 1, 2006. Non-vested employees of the defined benefit plans for public employees and for teachers were permitted to transfer to the new defined contribution plans. (See Senate Bill 1, First Special Session of 2005, available at www.state.ak.us/dr/sb141/sb0141z.pdf or Alaska Statutes, chapter 14.25.) In Michigan, a defined contribution plan has been mandatory for new state employees since March 31, 1997. (See Public Act 487 of 1996 (House Bill 6229) and Michigan Compiled Laws, Chapter 38, sections 1 – 69. See also: www.michigan.gov/orsstatedc/0,1607,7-209-34551---,00.html.)

potential savings of switching active employees to the DC plan under multiple scenarios, such as keeping the DB plan open only for those members with 20 or more years of service.

102. Eliminate the Health Insurance Subsidy (HIS) for FRS members

The largest post-employment benefit provided to all FRS members is the Health Insurance Subsidy (HIS). HIS is a monthly supplemental payment that employees may be eligible to receive if they have state health insurance coverage. This monthly payment, which must be applied for, is calculated by multiplying the total years of service at retirement (up to a maximum of 30 years) by \$5. HIS is only available after six years of service (if enrolled in the FRS prior to July 1, 2011) or eight years (if enrolled in the FRS on or after July 1, 2011). HIS comprises a part of early or normal retirement benefits. Retirees receive \$5 per month for each year of service with a cap of \$150 per month in total health benefits.²⁸ State retirees are already given the option to buy into the state's health insurance plan at a rate set by the state - a figure that is significantly lower than these individuals would find in the private market.

In FY2009-10, Florida aggregately charged \$67 million less in health premiums to FRS retirees than the cost of services provided. It is important to note that retirees above the age of 65 are eligible to receive Medicare. Tacking on HIS contributions to this generous implicit subsidy constitute even greater costs to the state. Furthermore, most private sector employers (approximately 85 percent) do not offer post-retirement health benefits beyond what is statutorily mandated by COBRA, let alone similar subsidies.²⁹

The FRS provides an annual contribution of 1.11 percent of each active employee's salary to cover HIS for future benefits. The HIS benefit is not guaranteed, unlike other FRS benefits, and may only continue so long as it is funded. Therefore, the state can legally end all HIS payments to participants in the FRS system at any time.

In some cases, HIS is provided to retirees who re-enter the system as full-time employees and receive health care coverage. Since state retiree health insurance, Medicare, and various private options are already available to cover health costs for FRS beneficiaries, the Legislature should eliminate HIS payments to future FRS retirees, keeping the payment in place for those currently receiving benefits.

Recommendation: The Legislature should immediately sunset the Health Insurance Subsidy provided to future FRS retirees, but continue payment for those already receiving HIS benefits.

²⁸ Florida Retirement System Pension Plan.. *My Florida Retirement System.*

http://myfrs.com/portal/server.pt/community/pension_plan/233#his

²⁹ National Compensation Survey of health-related benefits. *Department of Labor Bureau of Labor Statistics.*

<http://www.bls.gov/news.release/pdf/ecec.pdf>

<http://www.bls.gov/ncs/ebs/benefits/2010/ownership/private/table39a.htm>

103. Reform the Deferred Retirement Option Program (DROP)

Originally intended as an early retirement incentive to bring employment costs down, the Deferred Retirement Option Program (DROP) resulted in millions of additional costs to the taxpayer. As of June 2010, DROP had 33,577 participants with an accrued liability of nearly \$2 billion.³⁰ The program allows FRS members to officially “retire,” but continue to work as an active employee while accumulating pension benefits in an escrow account for up to an additional five years.³¹ DROP participants receive a brazen 6.5 percent guaranteed annual interest rate return on their deferred pension payments in addition to the COLAs that all DB annuitants are provided. The passage of Senate Bill 2100 reduced the guaranteed annual rate of return to 1.3 percent for new DROP participants only.³² However, if the FRS Trust Fund experiences a decline in investment earnings as it has during the recent recession, the FRS is statutorily obligated to pay this rate of return. Furthermore, the FRS provides additional retirement contributions on behalf of DROP participants during their enrollment in the program. Retirement contributions made on a member’s behalf once he or she enters DROP are reset at a new standard rate regardless of previous employee classification. In 2010, the contribution rate for DROP participants was set at 12.25 percent of an employee’s salary.³³

Many individuals return to the system as active employees after completing the DROP. This entitles them to directly receive regular pension benefits, access to the deferred benefits accrued while enrolled in DROP, and additional retirement contributions as a percentage of their salaries. The phenomenon of state retirees receiving pension benefit payouts while actively working is called “double-dipping”. These individuals may also collect HIS payments in conjunction with regular employee health benefits. As of June 2010, there were 9,669 double-dippers in Florida of which a notable portion were previously enrolled in DROP.³⁴ The practice of double-dipping makes the cost of maintaining DROP even higher. In 2007, the cost of double-dippers to the FRS reached over \$300 million.³⁵ While retaining a talented and experienced workforce is important to ensure the transfer of knowledge needed to perform fundamental functions of government, the cost of DROP is too high for the state to afford.

Following the legislative changes to the FRS and DROP, the number of DROP applications doubled from 2010 to 2011. A total of 7,132 employees submitted applications for DROP in June alone.³⁶ These employees rushed to apply for DROP to benefit from the previous return rate of 6.5 percent. The changes to DROP reduced interest return rates to 1.3 percent, but the law did

³⁰ Florida Retirement System Pension Plan. *My Florida Retirement System*. 2010. http://myfrs.com/portal/server.pt/community/pension_plan/233#his.

³¹ Ibid.

³² Senate Bill 2100. *Florida Legislature*. <http://www.flsenate.gov/Session/Bill/2011/2100>

³³ Benefits for DROP members are calculated using the same formula as other vested members and use the assigned accrual rate of their last class designation as an active member.

³⁴ Hafenbrack, Josh. “Florida slams brakes on ‘double dipping’.” *Sun Sentinel*. June 15, 2010. Retrieved from http://articles.sun-sentinel.com/2010-06-15/news/fl-drop-double-dippers-20100614_1_government-workers-government-employees-retirement/2.

³⁵ Albers, Katherine. “Hundreds of school, state workers draw pension on top of salaries.” *Naples News.com*. March, 29, 2008. Retrieved from <http://www.naplesnews.com/news/2008/mar/29/hundreds-school-state-workers-draw-pension-top-sal/>.

³⁶ “DROP Numbers Double.” August 4, 2011. *News Service Florida. State Capitol Brief*.

not go into effect until July 1, 2011. DROP is an expensive program to maintain with no tangible evidence of added value. Most states do not have an equivalent program and some states that previously adopted one have eliminated it. The Arizona Legislature eradicated a DROP program in 2006³⁷ after an impact study revealed it significantly increases the contributions needed to maintain it,³⁸ although the state still maintains a DROP for its Public Safety Personnel Retirement System. The following recommendations should be implemented to achieve cost savings in the administration of DROP.

A. Eliminate HIS for DROP participants and retirees who resume active employment with an FRS employer-

Currently, retirees and former DROP participants who return to the FRS as active employees receive both HIS payouts and active employee healthcare coverage. Eliminating redundant HIS payouts for these individuals who are already covered by state health insurance through their respective employers would save the state considerably. **For every 1 percent reduction in HIS contributions the state could save \$500,000 annually.**

Recommendation: The Legislature should eliminate HIS for DROP participants and retirees who resume active employment with an FRS employer.

B. Eliminate DROP

In FY2008-09, state and local government employers contributed approximately \$97 million to fund DROP retirement plans, of which approximately \$10 million was spent by the state. If the program was completely eliminated and current DROP participants were provided contributions at the rates of their respective employee classes, these extra costs would be removed. **Eliminating DROP would have saved the state \$10 million in FY2008-09.**

Recommendation: The Legislature should eliminate DROP.

104. Consolidate employee retirement classes into two classes

Regular and Special Risk Administrative Support class members have accrual rates of 1.6 percent, which are incrementally increased by .03 percent for each additional year of service over the respective minimum retirement age or minimum years of service.³⁹ The accrual rate, however, cannot exceed 1.7 percent. Senior Management Service (SMS) class members receive a flat accrual rate of 2 percent. Judges currently have a higher accrual rate than other members of the Elected Officers class. The accrual rate for judges is 3.3 percent, while other elected officials have accrual rates of 3 percent. The accrual rate for “Special Risk” class members is currently 3 percent and 2 percent for service prior to September 30, 1974.

³⁷ “Comprehensive Annual Financial Report.” *Arizona State Retirement System*. June 30, 2009. Retrieved from www.azasrs.gov/content/pdf/financials/2009_CAFR.pdf

³⁸ Pew Center for the States, “The Trillion Dollar Gap,” *The Pew Charitable Trust*. February 18, 2010. Retrieved from http://downloads.pewcenteronthestates.org/The_Trillion_Dollar_Gap_final.pdf.

³⁹ Age 62 or 30 years of service for “Regular” class members; Age 55 or 25 years of service for “Special Risk Admin. Support” class members.

A cost-savings recommendation made in a January 2010 report, proposes a consolidation of state employees into two categories. Employees who are currently members of the Regular, Elected Officers, and SMS classes would compose the first category. Employees who are currently in the Special Risk class and certain members of Special Risk support services classes would be in the second category. This recommendation would return to the employee class structure that was present during the formation of the FRS. The accrual rates could be standardized at 1.6 percent and 2 percent for Class 1 and Class 2, respectively. **It is estimated that implementing a similar measure could save the state and local governments a combined \$359 million annually.**⁴⁰ **Considering that one-third of the FRS system is comprised of state employees, the state could save up to \$107.7 million annually.**

Recommendation: *The Legislature should consolidate employee classes into two classes based on the model that was present during the creation of the FRS.*

105. Limit Special Risk class membership within law enforcement, firefighters, and corrections officers

In the *Report and Final Recommendations of the Florida TaxWatch Government Cost Savings Task Force to Save More Than \$3 Billion*, one of the key recommendations was to re-evaluate the “Special Risk” classification for pension benefits. OPPAGA made its own cost-savings recommendation in January 2010 to limit participation in the special risk class to only law enforcement, firefighters, and corrections officers.⁴¹ Current Florida Statute (s.151.051; F.S.) allows for other individuals who may not be exposed to the same level of risk to be included in this classification (e.g., crime lab technicians and public health nutrition consultants). **A 10 percent re-classification of Special Risk class members to Regular class could save more than \$40 million, of which approximately \$8 million would be realized by the state.**

Recommendation: *The Legislature should amend 151.051; F. S. to redefine positions that are considered “Special Risk” to be only law enforcement, firefighters, and corrections officers.*

⁴⁰ Madden, Ed and Vaughn, Linda. "Several Options Are Available for Modifying the Florida Retirement System's Class Structure to Reduce System Costs." *The Florida Legislature's Office of Program Policy Analysis and Government Accountability*. Report 10-15. January 2010. Retrieved from www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1029rpt.pdf.

⁴¹ Ibid

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Government Cost Savings Task Force

Education Reform

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Foreword

The Government Cost Savings Task Force for FY2009-10 made eight specific recommendations to increase the effectiveness and efficiency of Florida's education system. Of these recommendations, four were successfully implemented by the 2011 Florida Legislature through House Bill 965, House Bill 1255, Senate Bill 2120, and Senate Bill 1620.

2010 Implemented Legislation:

1. Expand the Florida Tax Credit Scholarship Program

- Previous Florida TaxWatch research has shown that this program saved significant state funds and expanding the program by raising the total cap would save millions.¹ For every \$1 million that the cap is expanded, the state could enlarge the program by 253 additional students and save an extra \$266,000. Effective July 1, 2011, House Bill 965 eliminates the 75 percent tax credit cap entirely.²

2. Amend the Class Size Reduction (CSR) amendment

- Florida has long recognized that CSR implementation illustrates one of those unenviable situations where scientific research does not match public perception. Studies do not support that across-the-board student assignment limits will raise academic achievement. It has been a long-time recommendation of Florida TaxWatch to minimally adjust the inflexibility of the amendment and its ability to tie the hands of funding in Florida's school districts. Effective July 1, 2011, House Bill 1255 allows class sizes to temporarily exceed the maximum if the school board determines adherence to be "impractical, educationally unsound, or disruptive to student learning." An additional 3 students may be added to Pre-K to third grade classes, and 5 students may be added to fourth through twelfth grade classes.³

Total Savings: \$300 million

3. Reduce the Cost of K-12 Textbooks

- School textbook prices have risen considerably in recent years, and a single elementary textbook can range in price from \$30 to \$120. According to the Florida Association of District Instructional Materials Administrators (FADIMA), the cost of instructional materials for K-12 public school students will exceed \$275 million in the 2011-12 school year. The cost of textbooks has tripled since the 1995-96 school year. Choosing digital, rather than hardcopy, textbooks can cut costs significantly over the long term. Senate Bill 2120 requires all public schools to adopt digital textbooks by the 2015-16 school year. The bill also requires schools to spend 50 percent of their textbook budget on digital

¹ Fisher, Michael. "Increase the Current Limits on the Corporate Income Tax Credit for Scholarships Program to Help Alleviate Fiscal Burden of Amendment 9 Class-Size Reduction Requirements." Florida TaxWatch Research Report. February 2003. Retrieved from <http://www.floridataxwatch.org/resources/pdf/CITCreditforScholarshipsProgramkbBG2mfkbf0310.pdf>

² Florida Law, Chapter 2011-123. Retrieved from http://laws.flrules.org/files/Ch_2011-123.pdf

³ Florida Law, Chapter 2011-55. FS 1003.03(2b). Retrieved from http://laws.flrules.org/files/Ch_2011-055.pdf

material.⁴ The bill also permits schools to conduct pilot programs to test different digital textbook delivery methods. The results of the pilot programs are scheduled for submission and review to the Governor, Legislature, and Department of Education in September 2012. Specific cost savings will be available after this date.⁵

Total Savings: \$80 million

4. Expand K-12 virtual education

- Education delivered virtually, rather than via a traditional classroom model, can provide savings in several areas, including transportation, utilities, and construction and maintenance of schools. The expanded use of virtual education is also a viable, cost-effective way to address the challenges of meeting class size requirements and can serve to reduce or eliminate the need for construction of additional schools. Effective July 1, 2011, House Bill 7197 creates the “Digital Learning Now Act”, which greatly expands the scope of the Florida Virtual School (FLVS) through a variety of means such as: authorizing virtual charter schools; authorizing blended instruction at charter schools; requiring school districts to provide at least three part-time and full-time virtual instruction; and requiring high school students to take at least one on-line course in order to graduate.⁶

Introduction

Education is a key component to Florida’s vitality, competitiveness, and long-term economic stability. The mission of the Florida Department of Education is to increase the proficiency of all students within one seamless, efficient system by providing them with the opportunity to expand their knowledge and skills through learning opportunities and research.⁷ As technology advances, the need for science, technology, engineering, and math (STEM) skills are increasing. The Legislature must support the STEM academic initiatives at all levels of education to provide the workforce supply needed in a changing global economy.

Florida’s education system consumes \$18.1 billion (26 percent) of the states \$69.7 billion budget.⁸ Of this, \$12.1 billion is appropriated to K-12 schools, and \$4.5 billion appropriated to the state’s community colleges and universities. However, numerous empirical studies indicate that increases in education spending do not always enhance productivity.⁹ A study by the Center

⁴ Sager, Michele. “Schools weigh benefits of digital textbooks.” June 2011. *TampaBayOnline.com*.
<http://www2.tbo.com/news/news/2011/jun/14/schools-weigh-benefits-of-digital-textbooks-ar-237064/>

⁵ “K-12 Publishers Lead the Transition to Digital Instructional Materials.” May 2011. *Association of American Publishers*.
http://publishers.org/_attachments/docs/library/2011-05-17%20%20sch%20pr%20publishers%20lead%20the%20digital%20transfer%20in%20schools.pdf

⁶ Florida Senate. (2011). CS/SB Digital Learning. Retrieved from <http://www.flsenate.gov/Session/Bill/2011/1620>; SB 1602, Bill Analysis. (April 27, 2011). Retrieved from <http://www.flsenate.gov/Session/Bill/2011/1620/Analyses/77kQVrd6sLc/z1ptep6EiWi3FzA=%7C7/Public/Bills/1600-1699/1620/Analysis/2011s1620.rc.PDF>.

⁷ Florida Department of Education. Mission Statement. <http://www.fldoe.org/board/>

⁸ Florida Senate. SB 2000: Appropriations. 2011. <http://www.flsenate.gov/Session/Bill/2011/2000/BillText/er/PDF>

⁹ Florida TaxWatch Center for Educational Performance & Accountability. (February 2005). Florida’s Financial Commitment to K-12 Education: How Much Money is Enough? Retrieved from <http://www.floridataxwatch.org/resources/pdf/FLFinancialCommitmentCOMPLETE.pdf>

for American Progress found that 41 states have exhibited significant increases in student achievement without large increases in funding. The study further revealed that spending increases in Florida actually decreased student achievement.¹⁰ Without proper oversight and efficiency improvements of contracting, spending, scholarships, and student achievement, additional education spending will fail to facilitate positive results.

Education Reform Recommendations

106. Explore a mandatory statewide Shared Services Program for K-12 school districts throughout the state

The shared services program may be a more efficient way to consolidate core administrative functions among Florida's K-12 school system. A successful shared services program eliminates redundant processes and systems while allowing districts to redirect resources to the students.¹¹ The shared services program increases transparency, improves management, and enhances overall education quality and delivery for Florida's students.

Given the importance of local relationships among school districts and business, a shared services model strives to maintain these local relationships allowing each school district's administrator or procurement officer the authority to decide which services become shared and where the services should be acquired. As a result, the buying power and potential savings for each district is increased without sacrificing long-term local relationships.

However, the success of the shared services program is dependent on the participation and collaboration of both school districts and vendors. Collaboration among school districts is paramount primarily due to the necessity of information sharing with contracts, procurement, and most importantly cost savings. Mandatory participation enables vendors to estimate volume and therefore set accurate prices for school districts. Without mandatory participation and consistent high-volume demand, vendor pricing will fluctuate; as a result, cost savings will diminish.

One way to begin to explore the program and best practices would involve creating an industry-wide vendor roundtable. The roundtable would provide a forum for vendors to share their best practices with education leaders to increase efficiency and effectiveness within the program. To motivate vendors into sharing what some might consider trade secrets, vendors who choose to participate in the roundtable would be given priority on state contracts over other vendors.

Key areas where shared services will generate cost savings are human resources, purchasing and contract administration, payroll, insurance, and lease and facility management. **Figure 29** below

¹⁰ Boser, Ulrich. *Return on Educational Investment*. January, 2011. Center for American Progress.

¹¹ Dugan, Thomas and Lincoln Heinemen. Policy Brief. "Shared Services." 2010. *Executive Office for Administration and Finance*. <http://www.mass.gov/bb/h1/fy10h1/exec10/hbudbrief13.htm>

illustrates the benefits and drawbacks of four common service delivery models.¹² The delivery system of Florida’s K-12 school system is decentralized.

Figure 29: Comparison of Delivery Models

	Decentralized	Centralized	Shared Services	Hybrid Matrixed Services
Center of Service Activities	Processes and procurements handled autonomously by agencies	Consolidation of functions within a single agency	Stand alone organization	Consolidation of control with distributed resources
Processes and Procedures	Unique agency processes	Processes standardized to meet goals of central organization	Processes standardized to support common IT system, efficiency and customer service	Processes standardized to support common IT system, efficiency and customer service
Enabling Technology	Different systems per agency	One IT system/platform	Based on a shared access to a common IT system/platform	Based on a shared access to a common IT system/platform
Customer Service	Focus on responsiveness	Focus on enterprise control, not the user	Focus on customer service	Focus on alignment of user services with enterprise goals
	Work originates in agency	Work originates from the center	Work originates from the customer	Strategy is centralized and execution is distributed with customers
Management/Coordination Mechanisms	No service level agreements (SLA)	Direct control; no SLA needed	Managed service delivery through clear SLA	Central coordination and controls with focus on meeting SLA agreements
Achieving Enterprise Goals	Non-performance based; requires significant oversight to achieve enterprise goals	Tightly controlled target-driven operations to meet enterprise goals	Performance-driven culture to achieve shared goals; answering to a single central authority	Performance-driven culture to achieve shared goals; assessment/management of stakeholder performance in meeting goals

The shared services model is a long-term investment; therefore costs savings will be initially slow. Nevertheless, successful shared service models have been used in several states. New

¹² Ibid

Jersey, for example, began its shared services program in the early 1980s. In 2001, the program consisted of over 677 shared service arrangements.¹³

During the development of the shared services model it is important to establish benchmarking and performance measurements. Comparing current and new services against the best-in-class using key performance indicators will drive future improvements and enhance efficiency. The success of the program also requires participation remain mandatory. The fundamental mission of the shared services program should increase cost savings while addressing the individual needs of each school district.

Recommendation: *The Legislature should direct the Department of Education to explore a shared services program and provide its findings and recommendations to the Legislature.*

107. Require in-state post-secondary students to pay out-of-state tuition rates for excess credit hours earned

The number of Florida university students graduating with credit hours in excess of what is necessary to graduate has increased since 2005. As of FY2009-10, 51 percent of students graduated with excess credit hours.¹⁴ Causes for excess hours vary from changes in major to premature course withdrawals. Although the 2009 Legislature implemented an excess hour surcharge and required students to pay back Bright Futures rewards for withdrawn courses, further action is needed to reduce costly excess hours. Consistent with a past Florida TaxWatch recommendation, the 2011 Florida Legislature expanded the current excess credit hour surcharge mandating that if a student exceeds 115 percent of the number of credit hours required to earn a baccalaureate degree, then the student would be required to pay 100 percent higher tuition for each excess credit hour earned above the percentage threshold.¹⁵ This change applies to students entering a state university for the first time in the 2011-2012 academic year and thereafter. Nevertheless, for in-state students, this 100 percent increase in tuition fees for excess credit hours will only cover 50.2 percent of what is charged for out-of-state-tuition this year.¹⁶

The state could produce even more savings if the fee for these excess credits is increased to the fee for out-of-state tuition levels. In-state students pay 74.9 percent less tuition fee per credit hour on average when compared with out-of-state students.¹⁷ In 2005, the Legislature passed Senate Bill 2236 requiring students to pay 75 percent of the actual cost of excess credit hours beyond 120 percent; however, the bill was vetoed by the Governor. Texas authorizes public

¹³ Bilik, Marie. "Shared Services in School Districts." *New Jersey School Board Association*. <http://www.njsba.org/sharedservices/index.html>

¹⁴ "2009-10 Annual Report." State University System of Florida. *Board of Governors*.

¹⁵ Amending Florida Statute 1009.286; Senate Bill 2150, "Postsecondary Education Funding", Florida Senate. Effective 07/1/2011. Original legislation passed in 2009 mandated that all excess hours that exceed 120% of baccalaureate degree requirements would incur a surcharge of 50% of additional tuition.

¹⁶ The 50.2% recovery figure is based on an in-state student being responsible for 25.1% of the cost when compared to out-of-state tuition on average plus an additional 100% of that in-state tuition cost for excess credit hours [(1.0 * 25.1% of out-of-state tuition) + (25.1% of out-of-state tuition)] = 50.2% of cost of out-of-state tuition).

¹⁷ The average tuition rate for non-residents is approximately 4 times greater than that for residents based on average tuition in Fall 2010 (as published by the Florida Board of Governors). As of Fall 2010, the average cost per credit hour for in-state students was \$165 and \$657 for out-of-state students.

universities to charge the out-of-state tuition rate for any credit hours exceeding 150 percent required to earn a baccalaureate degree.¹⁸

A study on excess credit hours in the State University System (SUS) for the 2006-07 school year reported that graduates earned 861,000 credits in excess of graduation requirements, costing the state \$76 million, a 23 percent increase since 2002-03.¹⁹ **Figure 30** shows that it is estimated that if students were required to pay out-of-state tuition for excess credit hours, **the state would save between \$66.08 million and \$140.77 million per year, depending on the excess credit hours threshold.**²⁰

Figure 30: Estimated Savings with Varying Thresholds for Excess Credit Fees
(Based on FY2010-11 Data)

Percentage threshold above credit requirements for baccalaureate degree	115%	110%	100%
Number of credit hours qualifying as excessive ^a	202,094	262,217	430,500
Estimated savings with the proposed change^b	\$66,084,688	\$85,744,959	\$140,773,500

^a The derived figure for 100% of the graduation requirement is from the OPPAGA presentation to the House of Representatives' State Universities & Private Colleges Policy Committee on March 18, 2009; the other two figures are derived from comparable ratios from a 2004 OPPAGA study ("Stronger Financial Incentives Could Encourage Students to Graduate With Fewer Excess Hours," Report No. 04-44, June 2004) in which the number of excess credit hours was 438,344 for over 110% of degree requirements; 337,837 for over 115% of degree requirements; and 719,660 for over 100% of degree requirements.

^b Estimated savings calculated based on average tuition per credit hour as of Fall 2010 [in-state - \$165 and out-of-state - \$657]. Savings estimate calculated as the difference between the amount of excess credit surcharge of 100% of in-state tuition and the average out-of-state tuition per credit hour then multiplied by number of excess hours associated with each excess credit threshold: [(657 – average out-of-state tuition per credit hour) - (165*2 – average cost of in-state excess credit 100% surcharge)] = \$327 – difference. For example: 115% threshold - (\$327 difference) * (404,188 excess credit hours) = \$132,169,376 cost-savings to state.

Recommendation: *The Legislature should mandate that state universities and colleges charge out-of-state tuition rates for credit hours earned in excess of a specific threshold percentage (between 100 and 115 percent) of graduation requirements for a baccalaureate degree for all students, regardless of residency status.*

108.Reform the Bright Futures Scholarship Program

The Bright Futures Scholarship Program (BFS) is Florida's academic merit program providing postsecondary funding to high school students based on academic achievement. The program

¹⁸ "An institution of higher education may charge a resident undergraduate student tuition at a higher rate than the rate charged to other resident undergraduate students, not to exceed the rate charged to nonresident undergraduate students, if before the semester or other academic session begins the student has previously attempted a number of semester credit hours ... that exceeds by at least 30 hours the number of semester credit hours required for completion of the degree program in which the student is enrolled." (Texas Education Code Section 54.068)

¹⁹ An OPPAGA presentation before the Florida House of Representatives' State Universities & Private Colleges Policy Committee on March 18, 2009.

²⁰ The estimated savings assume the policy change would take effect immediately (i.e., would apply to existing students) and apply to all SUS students. They are based only on excess credit hours for SUS students; including the savings from undergraduate programs in the State College System would increase the potential savings.

consists of four types of awards: the Florida Academic Scholars (FAS), Academic Top Scholars (ATS), Florida Medallion Scholars (FMS), and the Gold Seal Vocational Scholars (GSV). Each scholarship requires specific levels of academic achievements in high school and scholastic rewards are given in a fixed per-semester amount based on these merit levels. Currently, students enrolled in a 4-year institution are awarded \$101 per semester credit hour for FAS; \$43 per hour for ATS; and \$76 per hour for both FMS and GSV. Students enrolled in a 2-year institution are awarded \$62 per semester credit hour for FAS; \$43 per hour for ATS; and \$47 per hour for both FMS and GSV.²¹ To be considered for an award under the BFS program, a student must be accepted by and enrolled in an eligible Florida 4-year or 2-year institution, public college, or career/technical center for at least 12 credit hours per semester.²²

The primary purpose of the BFS program is to incentivize top high school graduates to remain in Florida for their postsecondary education. The program also motivates high school students to take Advance Placement courses, honors courses, and improve their SAT scores. However, the cost of the program has skyrocketed since its inception in 1997, rising from \$70 million to nearly \$424 million annually.²³ This is mainly due to a 321 percent increase in total student disbursements from 1997 to 2010.²⁴

The second largest factor contributing to cost increases is the perpetual rise in tuition – state tuition has risen 130 percent since 2002.²⁵ Currently, the Legislature has authorized public higher education institutions to steadily increase tuition by a maximum of 15 percent per year in an effort to eventually align tuition with the national average of \$7,605.²⁶ Florida TaxWatch has developed two recommendations to reduce the cost of the BFS program while maintaining its core mission of retaining stellar students and talent in Florida. These recommendations include capping the eligibility of BFS scholarships to students in the 70th percentile and above, and requiring graduates to repay tuition if they choose to work outside of Florida.

A. Further increase eligibility requirements for Bright Futures scholarships

Increasing the eligibility requirements to obtain a BFS scholarship would achieve much needed cost-savings without distorting the merit of the scholarship. In the 2009-2010 academic year, the total number of Florida public and private high school graduates reached 169,393.²⁷ Of these graduates, 38 percent (64,004) were eligible for BFS and 32 percent (52,520) of these students were awarded scholarships.²⁸ While eligibility requirements for standardized test scores have

²¹ Office of Student Financial Assistance, “2011-12 Award Amounts per Credit Hour Florida Bright Futures Scholarships”, Florida Department of Education. Available at: <http://www.floridastudentfinancialaid.org/ssfad/bf/awardamt.htm>.

²² Florida Bright Futures Scholarship Program. 2011-12 Award Amounts per Credit Hour. <http://www.floridastudentfinancialaid.org/SSFAD/bf/awardamt.htm>

²³ Florida Bright Futures Scholarship Program. *Breakout of Students Counts and Total Costs*. September, 2010. <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFstats/BFReportsA.pdf>

²⁴ Ibid.

²⁵ Rockwell, Lilly. “Tuition Increases Another 15% at Florida Universities, Up 130% in 10 years; Aid Drops. June, 2011. FlaglerLive.com. <http://flaglerlive.com/23868/florida-university-tuition>

²⁶ Ibid.

²⁷ Florida Bright Futures Scholarship Program. *Florida High School Graduates Eligible for Bright Futures*. September, 2010. <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFstats/BFReportsB.pdf>

²⁸ Ibid

been raised for students enrolling in the 2012-13 academic year, more can be done to increase the eligibility requirements for significant cost savings. **Figure 3** shows that if only the top 30 percent of students in each high school were made eligible for a BFS scholarship, the state would save millions of dollars annually. Estimated savings from establishing a cutoff between 70th – 90th percentiles is shown in the table below.

Figure 31: Estimated Savings with Varying Eligibility Requirements

<i>Fiscal Year 2009-10</i>	70th Percentile	75th Percentile	80th Percentile	85th Percentile	90th Percentile
Estimated High School Graduates ²⁹	169,393	169,393	169,393	169,393	169,393
Currently Eligible Students ³⁰	64,004	64,004	64,004	64,004	64,004
Eligible Students Under Increased Requirements	50,818	42,348	33,879	25,409	16,939
Total Savings*	\$31,448,610	\$51,649,560	\$71,848,125	\$92,049,075	\$112,250,025

*Based on \$2,385 average cost per reward.³¹ Savings estimates assume all eligible high school students accept a Bright Futures scholarship.

Source: Florida Department of Education, Office of Evaluation and Reporting (most recent data available)

If Florida were to increase the eligibility for BFS scholarships, the state could save between \$31.5 million and \$112.3 million in FY2012-13, depending on the percentile selected. Restricting the number of new graduates eligible for the scholarships would not only save significant amounts of money to be redirected within the educational system, but will also help return the program to its intended high-merit reward status.

Recommendation: The Legislature should cap the eligibility requirements for all Bright Future scholarships to uphold the program’s purpose as a merit scholarship program for the best and brightest.

B. Require Bright Future recipients to work in Florida

As previously stated, the primary purpose of the Bright Futures Scholarship (BFS) program is to incentivize top high school graduates to remain in Florida for their postsecondary education. Florida taxpayers invest in the education of students with the anticipation they will remain in Florida and contribute to the state economy. The 2009 Legislature modified the BFS program requiring students to refund the institution for payments received for courses which were

²⁹ Florida Bright Futures Scholarship Program. *Florida High School Graduates Eligible for Bright Futures*. September, 2010. <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFstats/BFReportsB.pdf>

³⁰ The Bright Future Scholarship Program. FBS Disbursement History. September, 2010. <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFstats/BFReportsD.pdf>

³¹ The Bright Future Scholarship Program. FBS Disbursement History. September, 2010. <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFstats/BFReportsD.pdf>

dropped after the ‘add/drop’ period. This type of accountability should be taken one step further and applied to graduates who benefited from the BFS during their collegiate career.

During the 2009-10 academic year, 52,520 students received Bright Futures scholarships.³² Over 53,000 students earned their baccalaureate degrees that same year.³³ Many of these students accepted employment opportunities outside of the state. TaxWatch proposes each student sign a promissory note both during the BFS application process and after graduation. To realize a maximum return on investment, students should be required to remain employed in Florida for a minimum duration following graduation. If a recent graduate obtains employment outside the state, the student should be liable for tuition paid by BFS. Repayment for scholarship dollars should be structured in monthly installments with payments determined by income.

This repayment program should be modeled after similar programs offered in both the private and public sectors. For example, rural hospitals and governments have begun funding medical school for physicians who agree to practice in their community for contractually obligated number of years. If the physician fails to fulfill their obligation, they are liable for tuition expenses paid by the sponsor. The Federal Government also offers loan forgiveness programs for a variety of positions. Students who enter AmeriCorps, Peace Corps, Low-income Teaching, Military, or Legal and Medical fields in public interest or non-profit sectors, are eligible for loan repayment stipends from \$5,000 to \$60,000.³⁴ In addition, many law firms offer loan repayment or tuition reimbursement in exchange for contractually obligated years of service.

Recommendation: The Legislature should consider developing a repayment program for graduating recipients of Bright Futures scholarships who choose to leave the state for employment before a certain amount of time.

109. Expand Science, Technology, Engineering, and Math (STEM) programs

Those employed in the fields of science, technology, engineering, and math drive the state’s innovation and competitiveness by generating new ideas, companies, and industries. According to Florida Trend magazine, “high-skilled, high-paid jobs are available in Florida, but recruiters and employers often are unable to find qualified candidates locally.” Over the past ten years, STEM fields grew three times faster than non-STEM fields. As a result, STEM graduates are also less likely to experience joblessness than other graduates. According to an issue brief by the U.S. Department of Commerce, Economics and Statistics Administration, STEM occupations are projected to rise 17 percent from 2008 to 2018. The brief also found that STEM workers earned significantly higher wages, with an average of 26 percent more than non-STEM professionals.

³² Florida Bright Futures Scholarship Program. *Florida High School Graduates Eligible for Bright Futures*. September, 2010. <http://www.floridastudentfinancialaid.org/SSFAD/PDF/BFstats/BFReportsB.pdf>

³³ “2009-10 Annual Report.” State University System of Florida. *Board of Governors*.

³⁴ FinAid. 2011. <http://www.finaid.org/loans/forgiveness.phtml>

It should be noted that even the states that were ranked “best in the US”, still ranked 16th in the world for reading, math, and science. The 2009 Program for International Student Assessment ranked the U.S. behind China, Korea, Finland, and Singapore.³⁷ It is clear that in a growing global economy, competition for jobs has expanded across state and national borders. By incentivizing students to complete higher education in these growing fields is an important goal.

B. Create specific scholarships for students in STEM programs

Creating a scholarship that incentivizes and encourages students to enroll and complete STEM-related coursework would help Florida build up a high-wage, high-skill workforce that would improve the entire state. It would also increase retention in STEM fields following graduation from college with graduates subsequently enrolling in graduate school or working in innovative industries in Florida.

A distinct scholarship for students who enrolled in major coursework in the science, technology, engineering, or mathematics fields would incentivize more students to major in these fields. Furthermore, enhancing the incentives to complete coursework in subject areas required by high-technology, high-demand industries aligns with the fundamental mission of the BFS program and the Department of Education. As explained in a recent academic journal on Florida’s higher education system:

“Florida’s educational system has a responsibility to clearly show its students the educational and career paths with the greatest economic potential. By providing incentives for students to graduate from high school ‘STEM-ready,’ the state’s public schools and universities will be best serving the interests of Florida’s most valuable resource, our next generation.”³⁸

In FY2009-10, the State University System awarded more than 53,000 baccalaureate and 20,000 graduate degrees. Nearly 20,000 (37 percent) of the baccalaureate and 9,000 (46 percent) of the graduate degrees were in STEM and Health related fields.³⁹ Although graduation rates in STEM fields are high in graduate degree programs, further improvement is needed at both levels to supply current and future demands.

Recommendation: The Legislature should direct the Department of Education to develop a STEM-Ready track for high school students, and direct the Board of Governors to develop a STEM-Track for undergraduate degree programs for the state’s colleges and universities. The Legislature should require DOE to create a specific scholarship track for higher education students enrolled in major coursework in the STEM-fields to encourage higher enrollment in STEM-fields. Once completed, the Department of Education and Board of Governors should formulate a permanent committee to implement and maintain the program. Partial funding

³⁷ Organization for Economic Cooperation and Development. *Program for International Student Assessment Rankings*. 2009. <http://www.pisa.oecd.org/dataoecd/54/12/46643496.pdf>

³⁸ Cottle, Paul. *Raise Graduation Standards to Boost Florida’s Economy*. Journal of the James Madison Institute. 2011. http://www.jamesmadison.org/wp-content/uploads/pdf/materials/Journal_WinterSpring2011.pdf

³⁹ “2009-10 Annual Report.” State University System of Florida. *Board of Governors*.

for the program could be derived from Florida businesses who desire specifically skilled workers.

110. Implement Voluntary Pre-Kindergarten (VPK) pre- and post-assessments

Through a 2002 Constitutional amendment, Florida voters voiced their desire for universal pre-kindergarten education. The statute reads, “that every four-year old child in Florida shall be provided by the State a *high quality* pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, *high quality*, free, and delivered according to professionally accepted standards” (*emphasis added*).⁴⁰ Since then, Florida has served a substantial number of children, 68 percent of the eligible child population in 2010.⁴¹ As a result, Florida ranks second in the nation in the number of children served.⁴² This has been accomplished with relatively few dollars (\$2,514 per student) considering the national

Figure 33: Florida Budget for VPK

Fiscal Year	Total Funding	% change
2005-2006	\$ 387,137,762	
2006-2007	\$ 390,100,000	0.77%
2007-2008	\$ 376,033,624	-3.61%
2008-2009	\$ 356,053,710	-5.31%
2009-2010*	\$ 367,189,114	3.13%
2010-2011*	\$ 404,756,806	10.23%
2011-2012	\$ 384,788,382	-4.93%
<i>*funding included federal dollars</i>		

average in per student funding is \$4,028 in 2010.⁴³ Funding per student (in 2010 dollars) has changed relatively little, from \$2,477 in 2006 to \$2,514 in 2010 whereas the percentage children served has increased, from 47 percent in 2006 to 68 percent in 2010.⁴⁴ However, according to the National Institute for Early Education Research 2010 report, Florida only meets 3 out of 10 national benchmarks in terms of quality.⁴⁵

Parental choice is a priority of VPK, and thus a variety of public and private entities may participate as providers.⁴⁶ Providers are given quite a bit of latitude regarding their days and hours of operation as well as their curriculum.⁴⁷

While the state sets various performance standards, such as curriculum and credentialing standards, the one uniform measure of quality that be evaluated is the kindergarten readiness rate. Florida requires VPK children to be tested at

⁴⁰ Florida Constitution. (n.d.) Article IX (Education), subsection 1b. Retrieved from <http://www.flsenate.gov/Laws/Constitution#A9>

⁴¹ National Institute for Early Education Research. (2010). The State of Preschool 2010. Retrieved from <http://nieer.org/yearbook/pdf/yearbook.pdf>

⁴² Ibid

⁴³ Ibid

⁴⁴ Florida Fiscal Portal for budgets referenced above. Retrieved from <http://floridafiscalportal.state.fl.us/>

⁴⁵ National Institute for Early Education Research. (2010). The State of Preschool 2010. Retrieved from <http://nieer.org/yearbook/pdf/yearbook.pdf>

⁴⁶ Agency for Workforce Innovation, Florida. (n.d.) Early Learning, Voluntary Prekindergarten. Retrieved from http://www.floridajobs.org/earlylearning/OEL_CCRV_VPKProgram.html

⁴⁷ Ibid; Florida Statute 1002.67 (n.d) Performance Standards; curricula and accountability. Retrieved from http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=1000-1099/1002/Sections/1002.67.html

the beginning of Kindergarten to assess how well the VPK prepared the child for school.⁴⁸ Yet, this does not provide any information regarding the quality of the VPK program the child was enrolled in because there is no pre-test to determine any sort of baseline of academic performance. Therefore, one cannot accurately measure the progress of the child within that program, hindering the ability to effectively and accurately measure any particular VPK provider. Given this situation, it is difficult for a parent to make an informed decision when selecting a high quality program, providers cannot determine their own effectiveness, and the state cannot identify high performers and best practices from programs operating within the state.

Currently, there are optional pre-test assessments available to VPK providers. The state is proposing to require pre- and post-test assessments of low performing providers, which will be public information. However, the state should also be targeting high performers as well as the low performers to identify best practices in the state. In addition, parents should be informed about the range in quality of the VPK programs before they make a decision.

Recommendation: The Legislature should require uniform pre-test and post-test assessments of school readiness of all VPK students to identify best practices and ensure the accuracy of performance labels. The Department of Education should use these assessment results when considering re-approval of VPK program providers and implement best practices to increase VPK quality and enhancing the effectiveness of dollars spent on the program.

111. Implement a web-based volunteer management system for K-12 through higher education

Presently, high school students must track and report volunteer hours worked as part of the Bright Futures Scholarship (BFS) requirements. In addition, college students must track internship hours and hours worked to meet certain degree work-experience requirements. Overall, the tracking of ‘student hours’ is a laborious, paper and time-intensive task involving the processing of tens of thousands of paper timesheets and redundant data entry. Some educational institutions have implemented a web-based application to account for such hours, but there is no mandate that K-12 or Higher Education institutions need to maintain a web-based volunteer management system that can be utilized statewide.

Currently, school districts in Florida are not required to report the number of volunteer hours to the Department of Education. This information is valuable for an array of grant opportunities, among other things. The K-12 and Higher Education System could greatly increase efficiency and reduce costs by implementing a statewide web-based volunteer management system. These cost savings could be achieved through decreased staff time, and it is estimated that staff could reduce time spent on volunteer management by 3 to 5 hours a week. Furthermore, increased data on volunteer hours and activity could help schools and institutions better qualify for grants and

⁴⁸ Florida Department of Education (n.d.) Early Learning, Florida Kindergarten Readiness Screener. Retrieved from <http://www.fldoe.org/earlylearning/FLKRS2009.asp>

other awards based on certified and uniform documentation of the volume of its volunteer activity on campus and in the community.

Recommendation: *To reduce costs and improve operating efficiencies, the Legislature should pass legislation requiring all Florida school districts and the Florida Board of Governors to implement a statewide web-based application to account for volunteer hours completed.*

112. Review academic program audits in higher education to identify ways to expedite program consolidation or elimination

Higher education strives to provide comprehensive curriculum in a broad array of academic fields. As a result, Florida's 11 state universities and 28 colleges have begun to overlap specific programs. Although access to education is of fundamental importance, duplicate programs competing for students, funding, and grants are counterproductive. In conjunction with the Board of Governors Academic and Student Affairs Committee, members of the Council of Academic Vice Presidents are improving organization and coordination in academic program delivery across the state. The team reviewed State University System (SUS) and institutional data on academic program delivery, participation, and productivity at various levels.

Since 2007, the SUS has closed or placed on inactive status more than 100 institutes and centers, closed numerous full degree programs, and merged departments. However, more than 34 institutes and centers still remain on inactive status. Florida TaxWatch recommends the Board of Governors work with state institutions to study and explore the program evaluation and elimination process. Specifically, criteria for elimination or consolidation once a program, institute, or center is placed on inactive status.

When a program is eliminated, the cost savings is derived predominately from a reduction in faculty. Following the closure of a program, the appropriate academic department is responsible for personnel adjustments. Successful identification and elimination of low-output programs will save the taxpayers millions annually. A study conducted by the Texas Higher Education Coordinating Board revealed that program elimination in their university system saved \$29.3 million in the first year.⁴⁹ By studying the process currently in place for the consolidation and elimination of identified programs, the state could see similar savings.

Recommendation: *The State University System should review the process of executing the consolidation or elimination of programs and provide its findings and recommendations to the Board of Governors for action to further expedite this process.*

⁴⁹ Texas Higher Education Coordinating Board. *Higher Education Cost Efficiencies*. November, 2010.

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Government Cost Savings Task Force

Workforce Optimization and Productivity Enhancement

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Introduction

The state could achieve significant savings through increasing productivity and optimizing the state workforce. The first step to improving productivity is to establish a “culture of innovation” within state government.

Establish a “Culture of Innovation” within state government

A culture of innovation in government provides the bedrock for organically grown efficiencies, which are critical to providing world class public services while containing unit costs. A culture of innovation emphasizes continuous quality improvement, including benchmarks for performance, incentives, and recognition. Productivity is a desired outcome of, but not a proxy for, innovation.

The late management guru Peter Drucker cited seven sources of innovation in work environments: The unexpected, incongruities, process needs, changes in organizational structure, demographics, changes in public mood or perception, and new knowledge.

Innovation, according to Drucker, involves six steps:

- identify an opportunity;
- create a new possibility to address it;
- create a business plan that includes costs, benefits, risks, responses to risk, and key milestones;
- listen to fellow employees and customers;
- fine tune and execute the business plan; and
- focus attention on a simple idea behind a change to minimize distractions.

In an Innovation Culture...

Innovation is embedded in the social and physical environment, language, day-to-day operating procedures, and routines. Innovation is a value that is accepted by employees for guiding and motivating behavior. Basic underlying assumptions and patterns of belief are taken for granted to the point that they are not questioned.

Ingredients of a Culture of Innovation

Over time, with consistency and persistence, Florida can build an organizational culture that makes innovation the norm.

- Remove constraints from people by sharing knowledge and decision making.
- Foster expanding horizons, not internal needs.
- Create an environment of creativity and intellectual satisfaction – identify those who fit and those who do not.

- Set up benchmarks for performance, action, and continuous improvement.
- Use measurement to change behavior.
- Share ideas as a team.
- Hold annual innovation education boot camps.
- Make front-line supervisors better coaches of their teams.

Stages of Creating an Innovation Culture

Foundation Level – A hierarchical and risk-focused organization typically concentrates on transactions, providing more services, and keeping costs in check.

Advanced Level – Organizational silos are integrated so that departments work with each other for productivity improvements and increased flexibility of response. Operating decisions are pushed down to the front line.

Breakthrough Level – Strategy alignment is extended to goal alignment. There is an increased emphasis on customer behavioral factors.

Obstacles to overcome in creating a culture of innovation:

- Lack of a shared vision, purpose, and/or strategy
- Constantly shifting priorities
- Rewarding crisis management rather than crisis prevention
- Absence of idea management processes
- Lack of innovation in the performance review process
- Lack of incentives for innovation and cost-saving
- Penalizing organizations that create savings by cutting their budget the following year
- Lack of reward and recognition programs

Innovation incentive programs

Incentive programs increase efficiency and effectiveness in the workplace. Employee incentive programs (EIP) have become extremely popular in the private sector due to increased cost-savings, and are now increasing in popularity in governments. EIPs incorporate employee influence and involvement in decision-making to improve efficiency. Employees and employers alike reap the benefits of EIPs.

Now, more than ever, agencies need to find ways to provide more service with fewer resources. For this to occur, agencies must do more than just work harder, they must develop innovative means of delivering services at a lower cost. Some of the best ideas come from the people who intimately know the processes that could be improved. Employees and employers alike enjoy the benefits of EIPs.

“One method of achieving a more efficient and effective state government is to encourage the involvement of state employees in the development of innovative ideas

that will increase the productivity and service of state government while decreasing the costs of state government.”¹

EIPs that reward state employees for innovation by allowing the employees to share the cost savings will help encourage employee involvement in making state government more efficient and effective.

Today, most employees are looking for active participation in the workplace and want fulfilling responsibilities. Innovations such as a suggestion program offer employees a chance to make a difference in their workplace. Employee suggestions tend to be high quality, insightful, and allow organizations to tap into their best resource – employees.² Suggestion programs capitalize on employee knowledge and expertise by providing not only a vehicle to express those innovative ideas, but an incentive. While compensation, eligibility, and procedures differ among programs, eligible suggestions usually include those ideas that improve:

- Cost savings,
- Safety,
- Efficiency,
- Productivity,
- Conditions,
- Services,
- Energy resources, and
- Employee morale.

Other States

The procedure for submitting an application includes the submission of a specific form, and often, a committee review. A common feature of the incentive program rewards the employee with a percentage of the savings. In **North Carolina**, monetary awards are calculated as 20 percent of annual savings for the first year of implementation, up to \$20,000 per person or \$100,000 per group.³

The state of **Washington** has developed an incentive program that is considered highly successful in which agency savings are redistributed to the agency and public schools. Agencies are rewarded by retaining, “[...] half of their unspent general revenue funds, except funds related to caseloads in entitlement programs or enrollment in higher education institutions.”⁴ The savings that are returned to agencies can be used for any one-time expenditure that will improve efficiency and effectiveness within the agency.

¹ House Bill 04-1020 Chapter 19, State of Colorado, http://www.state.co.us/gov_dir/leg_dir/olls/sl2004a/sl_91.htm.

² Freda Turner, “Employee Suggestion Programs Save Money,” Chart Your Course International, Accelerating Workplace Performance, <http://www.eianet.org/about>.

³ “State Employee Incentive Bonus Program,” Human Resources, UNC Chapel Hill, <http://hr.unc.edu/Data/benefits/recognition/seibp>

⁴ “Create Budget Incentives for State Agencies,” Limited Government, Unlimited Opportunity, E-Texas GG 17, <http://www.window.state.tx.us/etexas2003/gg17.html>

Some examples of improvements are staff, customer service, child welfare training, upgraded fire protection, and an informational pamphlet for voters on state primary candidates. These savings can be rolled over into the following year. Public schools benefit through the other half of the general revenue savings by redirecting the money toward building new schools, improving technology in schools, and higher education.

In **Colorado**, lawmakers in 2010 passed a bill that provides financial incentives to state agency employees who recommend cost-saving improvements. For each idea that is implemented, the employee who made the suggestion receives 5 percent of the cost savings, up to \$5,000. The agency receives 25 percent of the savings and rest is used by the state.⁵

Under the **North Dakota** State Employee Suggestion Incentive Program, a state employee may submit a recommendation or proposal to reduce expenditures within the employee's agency. If approved, the employee is entitled to receive 20 percent of the first year's savings realized, up to a maximum of \$2,000. All state employees are eligible to participate in the program, except state agency heads, administrators, or any supervisors at management level.⁶

Florida

For more than 20 years, Florida TaxWatch has administered the **Prudential-Davis Productivity Awards** program to recognize and reward innovation and cost savings by Florida government employees. The program has saved taxpayers more than \$7 billion. Incentivizing cost savings by allowing agencies to keep a portion of the appropriated but unspent funds would produce significant savings for the taxpayers.

Incentive programs established in other states have proven that given the correct incentives and support throughout the organization, these programs do work. Continuing to incorporate EIPs into Florida's public sector will be instrumental in becoming the employer of choice. The current budget crunch and the economic outlook both call for creative ways to maximize the use of our limited resource pool. The Prudential-Davis Awards program provides the opportunity to do so and implement these ideas immediately without participation in the time intensive legislative process.

Workforce Optimization

The Legislature needs to take a closer look at reducing the size of the bureaucratic workforce by ensuring that manager-to-employee ratios fall within accepted best practices. While this may be a politically sensitive issue, continued employment can no longer be viewed as an entitlement by those holding state jobs. Between 2007 and 2010, private sector employers in Florida have reduced their payrolls by 10 percent, while public sector employers in Florida have cut their payrolls by only 1 percent in comparison.

⁵ "Giving Employees Incentives for Innovation," Colorado Commentary, March 28, 2010, <http://coloradocommentary.com/2010/03/18/giving-employees-incentives-for-innovation/>

⁶ Office of Management and Budget, "Employee Suggestion Incentive Program", State of North Dakota. Available at: <http://www.nd.gov/hrms/managers/lawguide/suggestion.html>.

By restructuring the number of employees a manager directly oversees, state government can see positive results, including increased work efficiency, information flow, and cost savings due to reduced payments of salaries and benefits.

Governor Rick Scott and numerous legislative leaders have committed to reducing the size of the workforce and the number of managerial/supervisory positions.

Yet, caution should be exercised when reducing the size of the state government workforce. The traditional approach is to implement across-the-board cuts, where each agency must reduce its workforce by a designated percentage. Agencies traditionally respond by eliminating as many lower pay grade positions as possible, thereby affording greater protection to mid and upper level managers. As long as the target reduction is reached, little attention is given to the remaining agency structure.

The better approach to workforce optimization is to focus on reducing employee-manager ratios with the goal of streamlining the bureaucracy, and identifying and eliminating duplicate or unnecessary functions to improve productivity.

Case study of workforce optimization: The Florida Department of Financial Services

According to a past Chief Financial Officer, the state could save millions if all state agencies in Florida streamlined their middle management. In the Florida Department of Financial Services (DFS), positions are eliminated as agency managers retire or resign. Furthermore, the structure of the agency has been reengineered using existing staff to cut unnecessary layers in government. By achieving a 1:7 manager to employee ratio, DFS will be in line with best business practices and save an estimated \$8 to 10 million annually.

In 2009, DFS's overall ratio of managers to employees was 1:5.2, including OPS employees, and 1:4.7, excluding OPS employees. Current CFO Jeff Atwater is currently working to achieve the goal of a 1:7 ratio.

This streamlining will be accomplished through attrition so that DFS can restructure itself to achieve greater efficiency and cost-savings through its remaining employees. Since DFS has hired 110-120 managers annually since January 2007 on average, the achievement of a 1:7 ratio through attrition is expected to be completed by FY2012-13. A 1:7 ratio of managers-to-employees across all state agencies could achieve a savings to Florida taxpayers of nearly \$300 million.⁷ In order to measure the level of compliance, report cards could be issued to each agency annually.

⁷ See "CFO Sink Reforms Government by Streamlining Middle Management," CFO Press Release, Florida Department of Financial Services, 2/16/10.

Workforce Optimization and Productivity Enhancement Recommendations

113. Implement “organically grown efficiencies” program

State agencies, their employees, and contractors are under stress from budget cuts, pay freezes, and layoffs. In this environment, agencies need to think strategically about how to carry out their mission in the most cost-effective and efficient manner. The Legislature and the Governor should require each agency to plan, budget, and report quarterly to the Legislative Budget Commission on its progress of achieving costs savings and efficiencies of one percent in year one incrementally increasing to five percent in year five, and at least one percent annually thereafter. Ideas for cost savings could originate from individual employees and teams, suggestions from legislators, legislative analysts and auditors, or research institutes such as Florida TaxWatch and the Prudential-Davis Productivity Awards Program. This is an essential way for agencies to be responsive and productive, and to create a culture of cost-effectiveness and increasingly better public stewardship.

Recommendation: *Florida TaxWatch recommends that each quarter, agencies should be required to explain, for better or worse, how well they achieved or missed their target cost reduction and provide incentives, bonuses, and raises connected to such accomplishments, together with increased flexibility and management discretion. This is an essential way to keep our public institutions more responsive and productive and create a culture of efficiency and increasingly better public stewardship.*

To ensure that this process is accountable, state agency Inspectors General should include an attestation with each quarterly report relating to the accuracy of the information. In addition, OPPAGA should be tasked with performing an annual compilation of agency savings results. Finally, as part of its regularly scheduled operational audit of each agency, the Auditor General should be required to validate each agency’s reported cost reductions.

To help ensure that mandated cost savings are established in a fair and equitable manner among each organizational unit within an agency, each agency should establish efficiency benchmarks based on the inflation adjusted cost incurred in FY2001-02 for each of its budget entities. Specified reductions in expenditures for each budget entity would vary and be based on the difference between the actual expenditure in the previous year and the FY2001-02 inflation-adjusted amount. This methodology would not punish those budget entities that had produced efficiencies in recent years, but would demand greater reductions for those budget entities that have experienced cost increases that substantially exceed the inflation-adjusted amount. Any agency that exceeds their benchmarks should be entitled to a percentage of the above-targeted savings achieved to be dispersed as merit pay for excellence in performance.

114. Increase implementation of adaptable Prudential – Davis Productivity Awards program achievements throughout state government

It's not enough for employees of a state agency to try to develop new ways of saving taxpayer dollars or finding means of adding value. **More than a thousand Prudential-Davis Productivity award winning achievements are categorized as "Adaptable Achievements" and can be immediately replicable in other state agencies.** Those agencies that successfully replicate an achievement are eligible to apply for a Prudential-Davis Productivity award of their own. Consider some recent award winners that are immediately adaptable to many state agencies:

Reduced Costs of Labor Relations Settlements

The Department of Children and Families staff re-engineered the South Florida region's labor relations process, saving \$873,000. A new database enables staff to analyze data to discover trends and the causes of problems. This system should be expanded to all regions overseen by DCF for enhanced cost savings.

Developed Tag Listing for License Plate Reader Software

The Department of Highway Safety and Motor Vehicles staff in Leon County developed a first-in-Florida system for Highway Patrol vehicles that uses specialized cameras to read license plates and automatically report violations from a listing of suspended and revoked driver licenses and expired auto tags. This project saved \$25,000 in development costs and doubled the number of drivers cited, raising considerably more revenue in fines. Use of these cameras should be expanded to all other counties.

Reduced Food Costs through Hydroponics

The Department of Corrections staff at Charlotte Correctional Institution developed a hydroponics garden using recycled items from the correctional institution, annually saving approximately \$3,400 in vegetable costs. Implementation at correctional facilities statewide would save a projected \$285,600 each year.

Implemented Electronic Purchasing Card Receipt Reconciliation

The Department of Environmental Protection staff in Tallahassee implemented processes to convert from paper to electronic submission of monthly purchasing card receipt reconciliation, saving \$37,812 annually. The new system is compatible with MyFloridaMarketPlace, the state's online exchange for buyers and vendors and should be expanded to all state agencies.

Answered Customer Case-Specific Questions

Department of Children and Families clerical staff in Gainesville improved client services after receiving training that enables them to answer questions concerning adult services and benefits while clients are in the lobby, rather than being referred to case managers or supervisors. This improvement has reduced customer complaints and created nearly \$50,000 worth of added value. State agencies that deal directly with the public should train clerical staff in a similar manner.

Created Training Video on Mobile Computers

The Department of Financial Services staff in Ocala developed a training video that explains how to operate features of the Florida Highway Patrol's (FHP) new mobile computer vehicle docking station and stand. The DVD initially saved more than \$4,000, with additional savings each time it is used over a five-year period. This achievement should be replicated by FHP offices throughout Florida.

Paperless Work Flow and Document Management to Improve Efficiency and Save Administrative Costs

Through the implementation of electronic document management and a centralized intake process for health care licensure applications and mail, the Division of Health Quality Assurance has been able to implement an electronic workflow process which eliminates paper applications and manual handling. Annual savings of \$125,000 in reduced paper, copier, and postage expenses have produced recurring cost savings. Program efficiencies enable the Division to manage a 30 percent increase in licensure caseload over the past 5 years, without increased resources. State agencies with a heavy volume of paperwork should implement a similar procedure.

Implemented Satellite-Based Disaster Recovery Phone System

The Department of Health staff in Leon County determined that their disaster recovery telephone system would not support a county health department in the event of a phone system failure. After evaluating commercial solutions, a system was assembled in-house, saving more than \$55,000. This system subsequently was used to restore phone service to county health departments within hours of failing, thereby reducing delays in providing public services. Department of Health staff throughout other regions of Florida should investigate the viability of implementing a similar system to support facilities in emergencies.

Merged Driver License Email Unit into Customer Service Center

Department of Highway Safety and Motor Vehicles (DHSMV) staff in Leon County developed a process that enables customers and personnel to annually exchange more than 60,000 internet-based inquiries regarding their driver licenses and identification cards, 98 percent of which are answered within two days. Military personnel serving out of state or country, as well as civilians who are out of the country, now receive and submit renewal and extension applications by email, reducing delivery times and providing considerable savings to taxpayers. DHSMV offices across the state should replicate this process that has already proven effective in Leon County.

Developed Contract Method to Expedite Project Delivery

The Department of Transportation staff in Tampa achieved a first-in-the-nation contracting concept which resulted in a reduction of the time to complete traffic safety projects, from approximately thirty-six months to three months, thereby providing an estimated \$6.6 million worth of savings from seven safety improvements in FY2009-10. Other state branches of the DOT should utilize this contracting concept to realize similar savings. The U.S. Department of

Transportation has requested the Florida DOT team share its innovative contracting method with other state DOTs.

Developed and Implemented a System for Nursing Home Transition

The Department of Elder Affairs Division of Statewide Community-Based Services transitioned a total of 1,209 individuals from nursing homes back into the community. The total actual cost to serve these individuals in the community through Medicaid programs (Aged and Disabled Adult Waiver, Assisted Living for the Elderly Waiver, and Nursing Home Diversion Waiver) for the period August 2009 through August 2010 was \$9 million. Had those individuals remained in the nursing homes under Medicaid for that time period, the cost for services would have totaled an estimated \$33 million. The nursing home transition activities were possible as a result of a legislative appropriation (from the nursing home budget) in the amount of \$6 million. The appropriation saved Florida an estimated total of \$23 million had these individuals remained in nursing homes instead of transitioning to Medicaid Waiver programs. The Department of Elder Affairs should ensure that similar cost-saving action is taken statewide.

Recommendation: *The Legislature and the Governor should direct each state agency to implement all previously recognized award-winning cost-savings and productivity improvements applicable to their agencies, generated by the annual Florida TaxWatch Prudential-Davis Productivity Awards. Each agency should be required to report on its progress in implementing adaptable cost savings ideas. More than 1,000 achievements are posted on the Florida TaxWatch website. As the above examples show, this is a practical, common sense suggestion that could save countless millions of dollars by helping states avoid the costly practice of “reinventing the wheel.” Agencies that implement these adaptables should benchmark the performance of these innovations and the savings they achieve over time and provide an annual report to the Governor, Legislature, and the Legislative Budget Commission. Those agencies who have successfully implemented adaptables on wide scale should be recognized by the Governor for their work.*

115. Expand use of agency savings-sharing program

In 2001, the Florida Legislature passed Chapter 110.1245, *Florida Statutes*, granting the Department of Management Services rule-making authority (60L-37) over a savings-sharing program. These statutes reward individuals or groups of employees who propose procedures or ideas that are adopted and that result in eliminating or reducing state expenditures. Each agency head recommends employees individually or by group to be awarded an amount of money directly related to the cost savings realized. Newly-hired employees should be informed of this statute and it should be prominently listed on each agency’s internal website. Awareness of this law would incentivize employees in that they themselves would have a very tangible stake in saving taxpayer dollars.

Alternatively, a portion of the savings found by agencies could, instead of being re-appropriated, be put in a capital projects trust fund for use solely by that agency for office improvement expenditures. These funds would incentivize employees to seek out savings, as a portion could be used to improve their own office environment.

Recommendation: *The Legislature and the Governor should fund the agency savings-sharing program in order to provide rewards and require agency participation in this program and ensure that identified savings are shared with the agency.*

116. Require each agency to review size and structure of workforce

An exact employee-to-manager ratio for all state personnel is not currently available; however, a reasonable estimation of this ratio can be calculated using information from the *State Personnel System Annual Workforce Report 2008-09*. The report breaks state personnel into three categories: Career Service, Selected Exempt Service (SES), and Senior Management Service (SMS). Career Service personnel are the “employee” component of the employee-to-manager ratio. SES personnel are managers, supervisors, confidential employees, and certain professional positions (such as attorneys and doctors). SMS is comprised of policy making positions in upper management.

In FY2009-10, Florida had 85,588 Career Service employees, 18,872 SES employees, and 571 SMS employees. By combining SMS and SES personnel into one category, an approximate employee-to-manager ratio of 1:4.4 is calculated, a slight improvement from the previous year (1:4.33), but still a long way from the 1:7 ratio recommended by a past CFO.

Case study of workforce optimization: The Florida Lottery

Consider the approach taken by the Florida Lottery in early 2000. In 1998, the Florida Lottery was the largest of all North American lotteries, with 715 full-time equivalent employees (FTEs). With total revenues of \$2.1 billion and profits of \$807 million, the Lottery was widely viewed as a fat, bloated bureaucracy. The perception was that the Lottery could perform better with far fewer employees based upon the performance of comparable state lotteries (e.g., Ohio, Texas, Pennsylvania, and Massachusetts) that were generating \$3 to 4 billion in annual revenues with only 300 to 400 FTEs.

At the direction of Governor Jeb Bush, and under the leadership of Secretary David Griffin, the Florida Lottery began a systematic evaluation of its structure and staffing. The challenge facing Lottery leadership was trimming away so much fat without trimming away any muscle (or worse, hitting an artery).

The Lottery used the following process:

First, all vacant non-critical positions were identified. Detailed organizational charts showing every position and every reporting relationship were reviewed. Every direct supervisor was given an opportunity to defend the need to fill each vacant position. Any vacant position deemed non-critical was targeted for elimination.

Second, the reporting relationships of managers and supervisors were reviewed. The Lottery saw a number of “silos”, where one manager might supervise 3 to 4 employees, each of whom might supervise 3 to 4 employees. These extra supervisory positions were identified and targeted for

elimination. This targeted reduction expanded the span of control for the remaining supervisors so they would supervise more employees.

Third, the Lottery looked at eliminating duplication and anything that did not add value. Program units with similar duties and responsibilities were combined and any extra mid-manager positions were eliminated. Unnecessary program units (e.g., travel office, Lottery store, redemption centers, etc.) were eliminated. Performance measures and standards (300+) were reviewed. Most were eliminated and most of those that remained were revised to be more realistic.

Fourth, the Lottery looked at anything that didn't make sense and fixed it. All of the revised and updated organizational charts were combined into one composite Lottery organizational chart. The Lottery then looked for things that just didn't look right (e.g., too many mid-managers, etc.) and did what was necessary to make it look right and function properly.

The "first pass" through this process identified 220 FTEs that could be eliminated. Lottery officials were concerned that cutting 30 percent of the workforce might be too deep an initial cut. Recognizing that the Lottery could always eliminate more positions if needed and that it is very difficult to get positions back once they have been eliminated, the Lottery's executive leadership met one last time to review the workforce reduction plan.

In an abundance of caution, the Lottery workforce was reduced from 715 FTEs to 525 FTEs (a reduction of 190 FTEs). This represented 26 percent of the Lottery workforce. Of these 190 FTEs:

- 65 were supervisors or managers and 125 were non-supervisory positions.
- 76 positions were vacant and 114 positions were filled.
- The ratio of managers-to-staff increased from 1 manager for every 4 to 5 employees to 1 manager for every 7 employees.

The process used by the Lottery was both systematic and rational. Managers at all levels were involved and the executive leadership "owned" the workforce reduction plan. Roughly one-third of the positions eliminated were managers or supervisors, thereby increasing the span of control for the remaining managers.

Applying this workforce optimization process, or one that is substantially similar, may not yield similar results in every agency throughout Florida government. Recent budget shortfalls have thinned out many agencies, and most agencies have never been quite as "out of shape" as the Lottery was prior to 1998. However, using this process, or one that is substantially similar, will give insight into where additional efficiencies can be realized and validate whether the agency is sized and organized properly.

Under the leadership of Secretaries David Griffin, Rebecca Mattingly, and Leo Dibenigno, the Lottery has continued to reduce the size of its workforce and improve its performance. As of June 30, 2010, an additional 93 FTEs had been eliminated, reducing the size of the Lottery's workforce to 432 FTEs. Of these 432 FTEs, only 31 are managerial/supervisory positions. This

represents a ratio of managers-to-staff of 1 manager for every 14 employees. (Source: State Personnel System Annual Workforce Report 2009-2010).

Recommendation: *The Legislature should require each agency to delegate the authority of auditing and determining the proper management to employee ratio, and strictly adhere to it. Agencies should follow the process used by the Florida Lottery, or one that is substantially similar, to determine the most appropriate size and structure for its workforce, and the most appropriate ratio of managers to staff. Additionally, each agency should be required to publish an accurate, up to date organizational chart each year, and should report its findings and recommendations for management structures to the Governor, President of the Senate, Speaker of the House of Representatives, and the Executive Director of the Office of Program Policy Analysis and Government Accountability no later than December 31, 2012.*

117. Create and compare benchmarks for administrative costs and overhead across agencies

Public sector programs usually have higher administrative costs than comparable private sector programs because of the lack of accountability. However, due to budget restraints, the public sector should be expected to be as efficient as the private sector. Establishing a benchmark, adjusted for inflation and population growth, for every state agency by which expenditures can be compared over a set period will show where discretionary operating expenses have grown more than expected. Such information will make it easier to monitor spending and make the necessary adjustments to rein in excessive expenditures.

Recommendation: *The Legislature should require all state agencies to measure and benchmark the ratio of administrative cost to general cost by program. The ratio and benchmarks should be created with standardized specifications so that performance can be more easily compared across agencies and government. Agency performance should be reportedly annually to the Governor, Cabinet, and Legislative Budget Commission.*



Government Cost Savings Task Force

On behalf of the Government Cost Savings Task Force for FY2012-13 Chair **John R. Alexander**, Florida TaxWatch President and CEO **Dominic M. Calabro**, and the **Florida TaxWatch Board of Trustees**, many thanks to the following Florida TaxWatch staff that devoted their professional skills and experience to the success of the *Government Cost Savings Task Force for FY2012-13*:

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Vice President for Research & General Counsel

Kurt Wenner
Vice President for Tax Research

Deborrah Brodsky
Director of the Center for Smart Justice and
the Center for Educational Performance and Accountability

Katie Hayden
Task Force Staff Director
Economist and Research Analyst

Blaine Cherry
Research Analyst

Dustin Fusillo
Research Analyst

Mike Brand
Research Analyst

Peter Murray
Research Analyst

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About Florida TaxWatch

Florida TaxWatch is a statewide, non-profit, non-partisan taxpayer research institute and government watchdog that over its 32-year history has become widely recognized as the watchdog of citizens' hard-earned tax dollars. Its mission is to provide the citizens of Florida and public officials with high quality, independent research and education on government revenues, expenditures, taxation, public policies, and programs, and to increase the productivity and accountability of Florida Government.

Florida TaxWatch's research recommends productivity enhancements and explains the statewide impact of economic and tax and spend policies and practices on citizens and businesses. Florida TaxWatch has worked diligently and effectively to help state government shape responsible fiscal and public policy that adds value and benefit to taxpayers.

This diligence has yielded impressive results: in its first two decades alone, policymakers and government employees implemented three-fourths of Florida TaxWatch's cost-saving recommendations, saving the taxpayers of Florida more than \$6.2 billion -- approximately \$1,067 in added value for every Florida family, according to an independent assessment by Florida State University.

Florida TaxWatch has a historical understanding of state government, public policy issues, and the battles fought in the past necessary to structure effective solutions for today and the future. It is the only statewide organization devoted entirely to Florida taxing and spending issues. Its research and recommendations are reported on regularly by the statewide news media.

Supported by voluntary, tax-deductible memberships and grants, Florida TaxWatch is open to any organization or individual interested in helping to make Florida competitive, healthy and economically prosperous by supporting a credible research effort that promotes constructive taxpayer improvements. Members, through their loyal support, help Florida TaxWatch bring about a more effective, responsive government that is accountable to the citizens it serves.

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“Improving Taxpayer Value, Citizen Understanding, and Government Accountability”



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106 N. Bronough Street ° Tallahassee, FL 32301 ° www.FloridaTaxWatch.org °
Phone: (850) 222-5052 ° Fax: (850) 222-7476

Senate Criminal Justice Committee

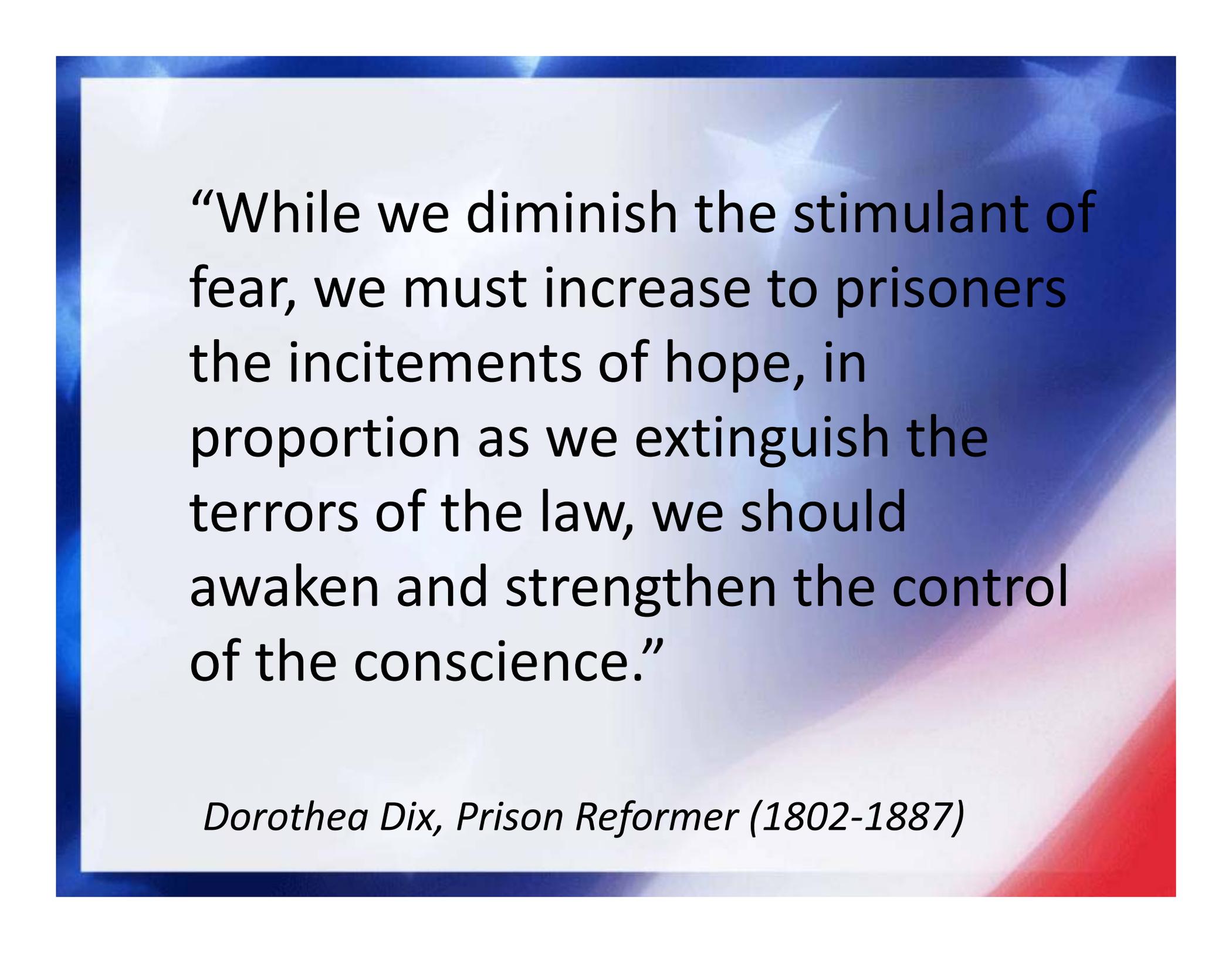
The seal of the Department of Corrections, State of Florida, is a circular emblem. It features a central compass rose with eight points. The words "DEPARTMENT OF CORRECTIONS" are written in a circular path around the top half of the seal, and "STATE OF FLORIDA" is written around the bottom half. Two five-pointed stars are positioned on the left and right sides of the seal, separating the top and bottom text. The seal is rendered in a light blue color against a dark blue background.

Re-Entry Programs: Reducing Recidivism and Promoting Successful Community Re-Entry

William Carr

October 4, 2011

Assistant Secretary of Re-Entry

The background of the slide is a stylized American flag, featuring a blue field with white stars in the upper left and red and white stripes in the lower right. The text is centered on a white rectangular area that has a blue border.

“While we diminish the stimulant of fear, we must increase to prisoners the incitements of hope, in proportion as we extinguish the terrors of the law, we should awaken and strengthen the control of the conscience.”

Dorothea Dix, Prison Reformer (1802-1887)



Recidivism and Successful Community Re-entry

Agenda

- Re-Entry Facilities
- Vocational Training
- Identification Cards
- Work Release Beds
- Prescription Drugs Upon Release
- Financial Assistance
- Mental Health Services in the Community



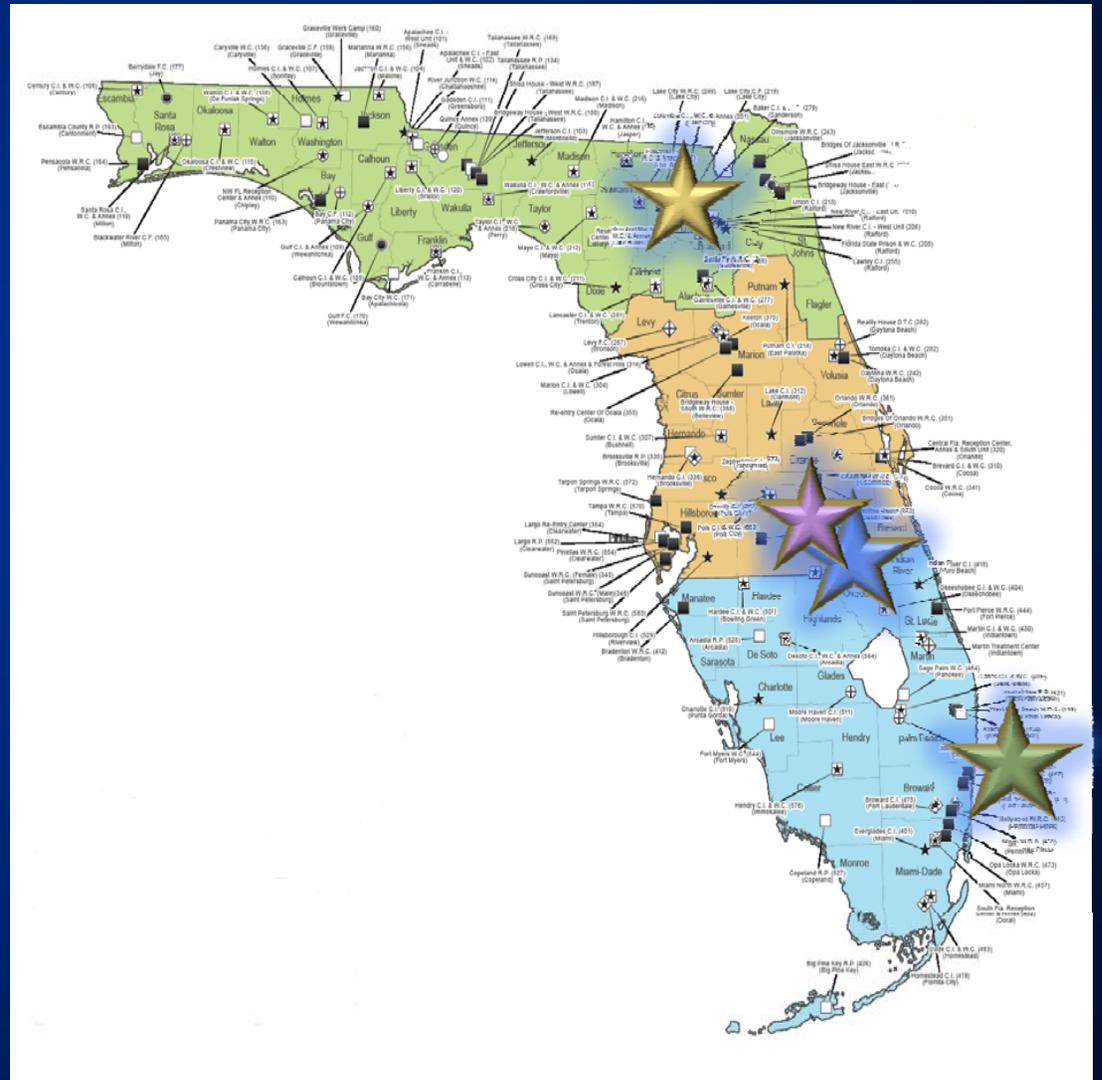
Re-Entry Facilities

Northern Region:

- Baker

Southern Region:

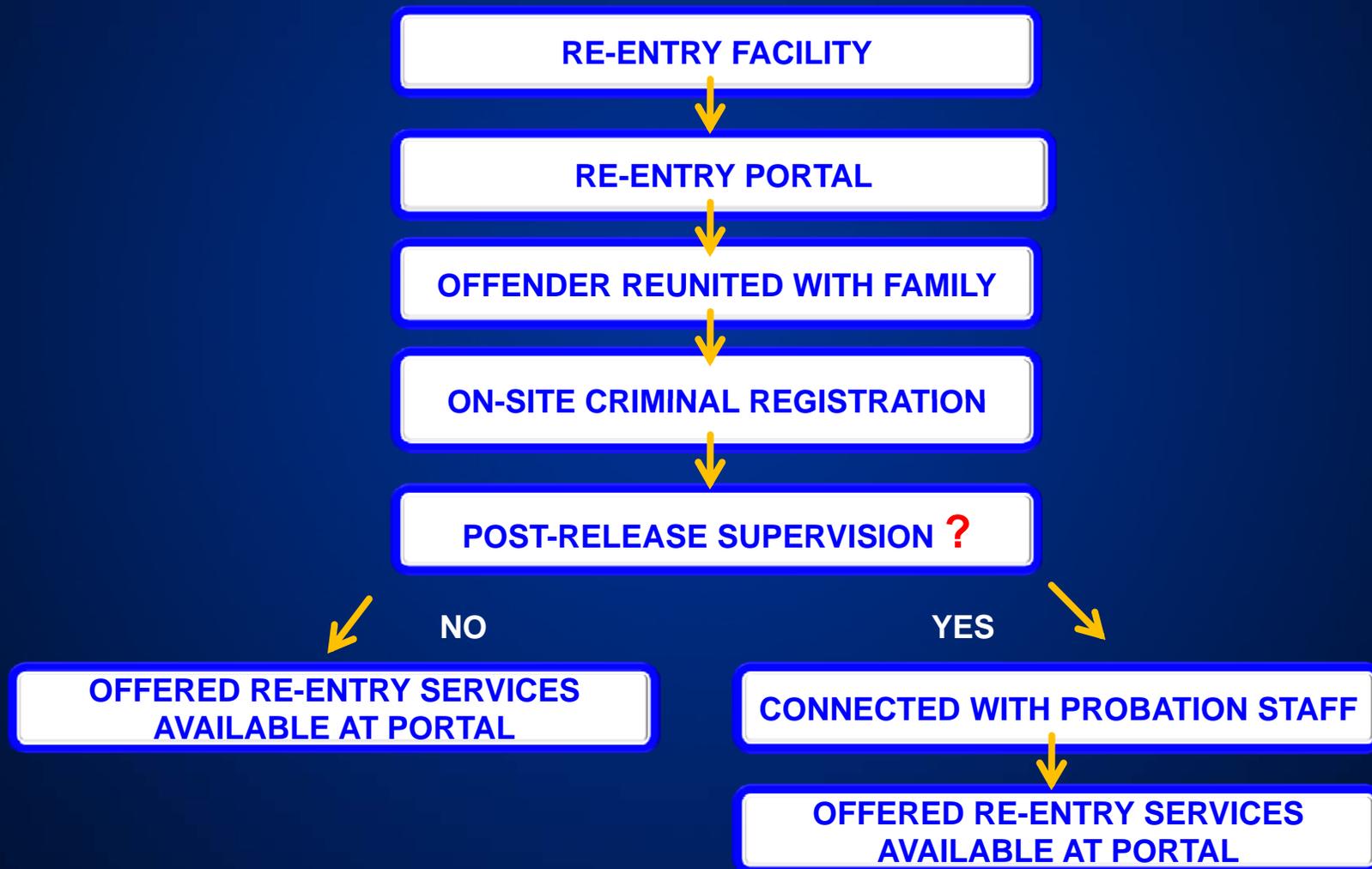
- Demilly
- Polk
- Sago Palm





Re-Entry Facilities

Portals: A Single Point of Entry





Re-Entry Facilities: Portals

- Designated release site for offenders returning to a specific county upon release
- Locations
 - Jacksonville Reentry Center (JREC)
 - Hillsborough County Portal
 - Pinellas Safe Harbor
 - Palm Beach County Portal

“The moment of release represents a critical point in time that can make or break an inmate’s successful reintegration into society.”

(Release Plan for Successful Reentry, Urban Institute Justice Policy Center)



Vocational Training

Occupational trades based on Agency for Workforce Innovation and U.S. Department of Labor

- **FY 2010-2011**
 - Vocational courses offered to 4,981 inmates
 - Certificates awarded 2,190 inmates

- **Primary recipients**
 - Inmates identified with the greatest need
 - Youthful Offenders with no marketable occupational skills
 - Adults with no marketable skills within 3.5 years of release

“Without education, job skills, and other basic services, offenders are likely to repeat the same steps that brought them to jail in the first place...”

Louisiana Gov. Bobby Jindal



Vocational Training

33 occupational trades offered within the Department include:

- Commercial Class “B” Driving
- Building Construction Technology
- AC, Refrigeration and Heating (HVAC)
- Applied Welding Technologies
- Automotive Collision Repair and Refinishing
- Commercial Foods and Culinary Arts
- Electrical
- Environmental Sciences
- Gasoline Engine Service Technology
- Masonry Brick and Block
- Plumbing Technology
- Waste Water Treatment Technologies





Vocational Training Specter Program

- A federally funded grant for Post-secondary vocational training
- Inmates 35 years of age and under who have a high school diploma or GED
- Programs operated at 7 institutions





Vocational Training

U.S. Department of Labor

In collaboration with U.S. Department of Labor and the Florida Department of Education

- **Will provide the opportunity for inmates to earn an industry certificate from the Florida Department of Education and U.S. Department of Labor**

- **Available for long-term and short-term inmates**

- **Program offering includes...**
 - **Auto-body repair**
 - **Cosmetology**
 - **Welding**
 - **Landscaping**
 - **Housekeeping**



Issuing Identification Cards

- **Collaboration with Social Security Administration and DHSMV to meet the requirements of the Real ID Act**
 - **Currently 13 participating sites**
 - **Social Security cards issued to inmates at all Institutions**
- **Since January**
 - **530 birth certificates issued**
 - **384 ID cards issued**

“Proper identification generally is required to find employment, obtain housing, or apply for public benefits that may be necessary to obtain medication or other treatment services that can help reduce inmates’ risk of reoffending.”

(OPPAGA, Report No. 09-44)



Work Release

- **Work Release is a community transition program authorized by Florida Statute, which was introduced in the Department of Corrections more than 35 years ago.**
- **Participating inmates must be within 14 months of their release date.**
- **Work release allows inmates to be gainfully employed while still being in a controlled environment.**



Work Release Beds

- **Statewide Community Release Program**
3,992 – Total Beds
 - **Department Operated Facilities -20**
2,133 (53%) – Total Beds
 - **Vendor Operated Facilities - 13**
1,859 (47%) – Total Beds



Paid Employment

- **Subsistence in FY 10-11**
 - \$6,748,739 General Revenue**
 - **20 Department Operated Facilities:**
 - \$6,748,739**
 - **13 Vendor operated (vendor retains all subsistence collected) \$0**



Paid Employment

- Restitution, fines, court costs collected FY 10-11
\$1,853,840
 - 20 – Department Operated Facilities:
\$1,011,471 (55%)
 - 13- Vendor Operated Facilities:
\$842,368 (45%)



Financial Assistance in the Community

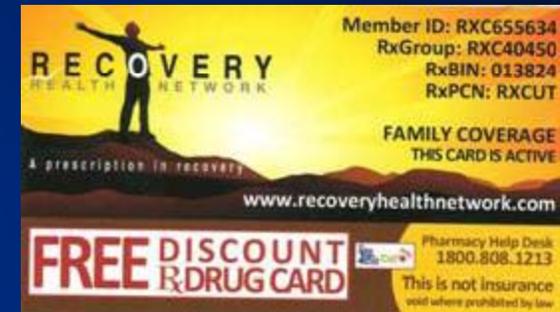
FDOC and DCF entered into an Interagency Agreement

- DCF will provide a dedicated staff member to assist inmates transitioning back into the community with the following:
 - Determine eligibility for all ACCESS assistance programs
 - Process applications for Office of Disability determinations
 - Food Assistance
 - Medicaid
 - Temporary Cash Assistance



Prescription Drug Cards

- Provide offenders with access to discounted prescription drug benefits to aide in the reentry process
- Saved FDOC ex-inmates and probationers \$28,000 since June
 - 1,874 have used the card since May
 - Save an average of 38% on prescriptions
 - Individual saved 93% on a single prescription



“While access to in-prison health care services may be readily available, continued adherence to treatment regimens following release is a critical public health issue...”

(From Prison To Home, Urban Institute Justice Policy Center)



Mental Health Aftercare

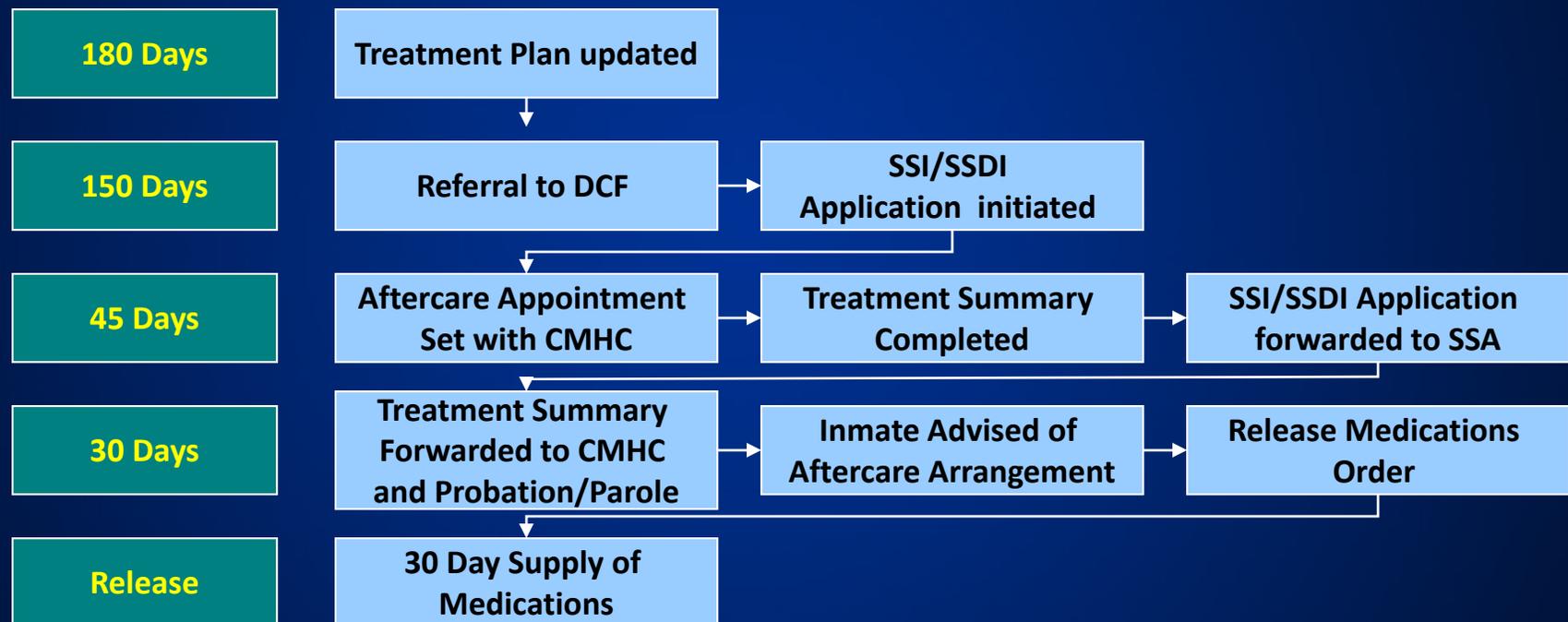


Post Release & Work Release Medications Policy

- Statute requires that an inmate be provided a 30-day supply of all HIV/AIDS-related medication at the time of release.
- FDOC policy requires that all inmates prescribed psychotropic medications will be provided with a 30-day supply of medications as part of their mental health re-entry plan at the time of release.
- FDOC policy allows for inmates to be provided with up to a 30-day supply of medications upon end of sentence (EOS) or transfer to a Work Release Center (WRC).
- If the Work Release inmate cannot afford continuing health care, including prescribed medications, the inmate is referred for evaluation by a health care provider at the inmate's assigned institution.



Process for Offenders Needing Post-Release Outpatient Mental Health Services





Electronic Web-Based Substance Abuse and Mental Health (SAMH) Referral System

Step 1:

FDOC staff enter referral information into DC Mainframe

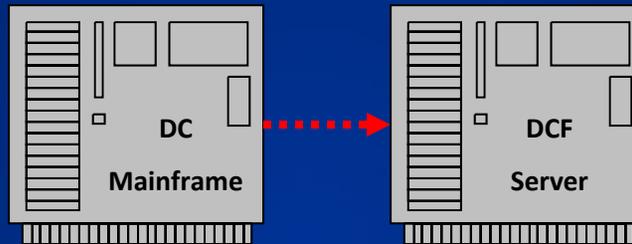


Step 5:

FDOC staff obtains aftercare arrangements from aftercare database / communicates information to inmate.

Step 2:

Encrypted file transfer



Step 3:

DCF staff receives referral and assigns community provider



Step 4:

Community provider receives referral and posts aftercare appointment in aftercare database.





Resources

William Carr, JD Asst Secretary , Reentry

Carr.William@mail.dc.state.fl.us

Latoya Lane, PhD Director of Reentry

Lane.Latoya@mail.dc.state.fl.us

Dean Aufderheide, PhD Director of Mental Health

Aufderheide.Dean@mail.dc.state.fl.us

Spoke T-54

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/4/11
Date

Bill Number

Barcode

Name William Carr
Address 501 S Calhoun St
Street Tallahassee FL
City FL *State* FL *Zip*

Phone 717-3540
E-mail _____
Job Title Asst Sec of
Re Entry
Appearing at request of Chair

Speaking: For Against Information

Subject _____

Representing Florida Department of Corrections

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

S-001 (04/14/10)

Spoke T-54

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/4/11
Date

Bill Number

Barcode

Name Dean Aufderheide
Address 501 S. Calhoun St.
Street Tallahassee FL 32399
City FL *State* FL *Zip*

Phone _____
E-mail _____
Job Title _____
Appearing at request of Chair

Speaking: For Against Information

Subject _____

Representing Florida DOC

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

S-001 (04/14/10)

2010

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/4/2011
Date

Tab 4, DOC Presentation
Bill Number

Barcode

Name BRIAN PITS

Phone 727/897-9291

Address 1119 Newton Ave S
Street

E-mail

St. Petersburg FL 33705
City State Zip

Job Title Trustee

Speaking: For Against Information Appearing at request of Chair

Subject reentry & community corrections

Representing Justice-2-Jesus

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.



The Florida Senate

Interim Report 2012-116

October 2012

Committee on Criminal Justice

REVIEW PENALTIES FOR DRUG-FREE ZONE VIOLATIONS

Issue Description

Florida law increases the gravity of certain drug offenses and the severity of the penalty when these offenses are committed within 1,000 feet of certain places and facilities, such as within 1,000 feet of the real property of a K-12 school.¹ These protected areas are sometimes referred to as “drug-free zones” or “DFZs.”² DFZ laws have been advocated to protect the users of these places and facilities and as valuable drug enforcement and prosecution tools, but also have been criticized as being unfair, indiscriminately punitive, and not accomplishing purposes for which they are typically intended.

This report provides information relevant to Florida’s DFZ provisions so that legislators can assess whether these provisions should be retained in their current form, modified, or repealed. Some options are provided for legislators to consider.

Background

Information for this report comes from staff’s review of Florida’s DFZ provisions and relevant case law, studies of DFZs in other states, sentencing and new commitment data prepared by the Legislature’s Office of Economic and Demographic Research (EDR), case data provided by the Office of the State Courts Administrator, and survey responses from the offices of some state attorneys,³ public defenders,⁴ sheriffs,⁵ and police agencies.⁶ Those responding to the survey did not always respond to every survey question. Consequently, unless otherwise indicated, information reported from this survey is represented as the majority response of those who responded to a survey question that provided relevant information for background information and findings of this report.

¹ *Thomas v. State*, 61 So. 3d 1157, 1159 (Fla. 1st DCA 2011).

² The DFZ provisions discussed in this report differ from similarly-named provisions enacted by local ordinance that punish with trespassing penalties those who engage in drug activity in designated zones.

³ Surveys were forward to all state attorneys through the Florida Prosecuting Attorneys Association. Fifteen state attorneys from the following judicial circuits responded to the survey: 2nd (Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla counties); 3rd (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor counties); 6th (Pasco and Pinellas counties); 7th (Flagler, Putnam, St. Johns, and Volusia counties); 8th (Alachua, Baker, Bradford, Gilchrist, Levy, and Union counties); 9th (Orange and Osceola counties); 11th (Dade County); 12th (DeSoto, Manatee, and Sarasota counties); 13th (Hillsborough County); 15th (Palm Beach County); 16th (Monroe County); 17th (Broward County); 18th (Brevard and Seminole counties); 19th (Indian River, Martin, Okeechobee, and St. Lucie counties); and 20th (Charlotte, Collier, Glades, Hendry, and Lee counties).

⁴ Surveys were forwarded to all public defenders through the Florida Public Defenders Association. Eight public defenders from the following judicial circuits responded to the survey: 5th (Citrus, Hernando, Lake, Marion, and Sumter counties); 7th (Flagler, Putnam, St. Johns, and Volusia counties); 8th (Alachua, Baker, Bradford, Gilchrist, Levy, and Union counties); 14th (Bay, Calhoun, Gulf, Holmes, Jackson, and Washington counties); 15th (Palm Beach County); 16th (Monroe County); 17th (Broward County); and 20th (Charlotte, Collier, Glades, Hendry, and Lee counties).

⁵ Surveys were forwarded to all sheriffs through the Florida Sheriffs Association. Twelve sheriffs from the following counties responded to the survey: Broward; Charlotte; Clay; Franklin; Hardee; Hillsborough; Manatee; Orange; Pasco; Pinellas; Sarasota; and Suwannee.

⁶ Twenty police agencies were chosen as a sampling of police agencies. Agencies were selected from different geographical regions and included agencies in large, mid-size, and small cities. Surveys were forwarded through the Florida Police Chiefs Association. Only four police agencies responded to the survey: the Ft. Myers Police Department; the St. Petersburg Police Department; the Tampa Police Department; and the Tallahassee Police Department.

Florida's Drug Free Zone Laws

Florida's DFZ provisions are found in s. 893.13(1)(c), (1)(d), (1)(e), (1)(f), and (1)(h), F.S. While not articulated in these provisions or in the chapter laws creating them, purposes that typically have been articulated for DFZs include, but are not limited to, enhancing public safety (e.g., reducing drug activity and drug-related crimes in the DFZs), reducing nuisance, and improving quality of life.

Florida's first DFZ provision was created in 1987⁷ and applied only to K-12 schools, but subsequent enactments created new types of DFZs. Florida created its K-12 school DFZ approximately three years after Congress enacted a school DFZ law, which the sponsor, former U.S. Senator Paula Hawkins, stated was intended to "deter drug distribution in and around schools" and help "eliminate outside negative influences" around schools.⁸

Section 893.13(1)(a), F.S., punishes the sale, manufacture, or delivery, or possession with intent to sell manufacture, or deliver, a controlled substance as a first degree misdemeanor, third degree felony, or second degree felony, depending upon the scheduling of the controlled substance relevant to the drug activity.⁹ Generally, this described drug activity (non-trafficking amounts) is punished under s. 893.13(1)(a), F.S.¹⁰ However, when this drug activity is committed in, on, or within 1,000 feet¹¹ of certain places and facilities, the degree of the offense is increased by one degree and the penalty is enhanced. For example, it is a first degree felony (punishable by up to 30 years in state prison) to sell cocaine within 1,000 feet of the real property of a K-12 school. In contrast, if this sale occurs outside of the K-12 school DFZ or another DFZ, the offense is a second degree felony (punishable by up to 15 years in state prison).

Florida's current DFZs are created in, on, or within 1,000 feet of:

- The real property comprising a child care facility, as defined in s. 402.302, F.S., between the hours of 6 a.m. and 12 midnight and where the owner or operator of the facility posts a sign according to the specifications set forth in the statute. [s. 893.13(1)(c), F.S.]
- The real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight. [s. 893.13(1)(c), F.S.]
- The real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility, at any time. [s. 893.13(1)(c), F.S.]
- The real property comprising a public housing facility at any time. [s. 893.13(1)(d), F.S.]
- A physical place of worship, church or religious organization, which regularly conducts religious services, at any time. [s. 893.13(1)(e), F.S.]
- A convenience business, as defined in s. 812.171, F.S., at any time. [s. 893.13(1)(e), F.S.]
- The real property comprising a public or private college at any time. [s. 893.13(1)(f), F.S.]
- The real property comprising an assisted living facility, as that term is used in ch. 429, F.S., at any time. [s. 893.13(1)(h), F.S.]

The DFZ provisions do not require either intent to commit a drug offense in a DFZ¹² or knowledge that the offense is being committed within a DFZ.¹³ Like the penalties for violations of s. 893.13(1)(a), F.S., the penalties

⁷ Section 4., ch. 87-243, L.O.F.

⁸ 130 Cong.Rec. S559 (daily ed. January 31, 1984).

⁹ Controlled substances appear in one of five schedules under s. 893.03, F.S. Penalties are generally greatest for drug activity (like drug sales) that involves Schedule 1 and 2 controlled substances. Scheduling is determined by specific criteria set forth in s. 893.03, F.S. For example, a Schedule 1 substance is a substance which has a high potential for abuse and has no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards.

¹⁰ However, s. 893.13(1)(b), F.S., provides that it is a first degree felony to unlawfully sell or deliver more than 10 grams of any Schedule (1)(a) or (1)(b) controlled substance.

¹¹ Distance is measured "as the crow flies, not as the car drives." *Howard v. State*, 591 So. 2d 1067, 1068 (Fla. 4th DCA 1991). For example, with the K-12 school DFZ, distance is measured in a straight line from the boundary of the school's real property.

¹² *Spry v. State*, 912 So. 2d 384, 386 (Fla. 2d DCA 2005).

¹³ *Dickerson v. State*, 783 So. 2d 1144, 1148 (Fla. 5th DCA 2001), *review denied*, 819 So. 2d 134 (Fla. 2002).

for DFZ violations depend on the scheduling of the controlled substance relevant to the drug activity, e.g., selling a Schedule (2)(a) controlled substance (e.g., cocaine) in a K-12 school DFZ is a first degree felony but selling a Schedule (1)(c) controlled substance (e.g., cannabis) in the same DFZ is a second degree felony.

Controlled substance acts committed in a DFZ are sometimes ranked higher in the offense severity ranking chart of the Criminal Punishment Code (Code)¹⁴ than these same acts when committed outside a DFZ. This impacts the scoring of the lowest permissible sentence under the Code.¹⁵ Further, with the exception of violations involving child care facilities, a first degree felony violation of s. 893.13(1)(c), F.S., requires the imposition of a three-year mandatory minimum term of imprisonment. Additionally, the increase in felony degree means that the maximum penalty under the law is greater.¹⁶ Repeat offender sanctions under other laws (e.g., habitual felony offender sanctions under s. 775.082, F.S.) are also escalated due to the higher felony degree of the drug offense which may qualify the offender for repeat offender sanctions if there are also qualifying prior offenses.

Drug-free Zone Laws and Studies of Drug-free Zones

There is no current and complete listing of states' DFZ laws. Uniform DFZ distance standards (i.e. a distance standard applied to all DFZs in a state's law) appear to range from 300 feet (e.g., Minnesota) to a 3-mile radius (Alabama).¹⁷ Because studies (*see supra*) indicate that the impact of DFZs is greatest in densely populated areas, staff reviewed the DFZ laws of the five states with the highest population density (2010 Census).¹⁸ Provided are the DFZs created by the laws of these states:

- New Jersey (within 1,000 feet of the property of a specified school, 1,000 feet of a school bus, and 500 feet of a public housing facility, public park, and public building).
- Rhode Island (within 300 yards of the property of a specified school and 300 yards of a public park and playground).
- Massachusetts (within 1,500 feet of the property of a specified school and 100 feet of a public park and playground).
- Connecticut (within 1,500 feet of the property of a specified school, public housing project, and licensed child day care center).
- Maryland (in a school vehicle and within 1,000 feet of the property of a specified school).¹⁹

Staff did not find any studies that mapped the number of DFZs in a Florida city or county. Few surveyed law enforcement agencies identified the number of DFZs (and the number of overlapping DFZs) in the largest city or the county in their area of primary jurisdiction,²⁰ and no reporting agency indicated how much of the city or

¹⁴ Sections 921.002-921.0027, F.S. With the exception of capital felonies, felony sentencing is determined by the felony degree of the applicable felony and the provisions of the Code, which, in combination with the maximum penalties established in s. 775.082, F.S., determines the permissible sentencing range.

¹⁵ The Legislature ranks many non-capital felony offenses in the Code offense severity ranking chart (s. 921.0022, F.S.). When not specifically ranked in the chart, felony offenses are ranked under s. 921.0023, F.S., based on their felony degree. Level 10 offenses are deemed the most serious offenses. Sentence points accrue based on ranking level; the higher the ranking level, the greater the number of points. These points, along with points for other factors, such as additional and prior offenses, are entered into a specified mathematical calculation to determine the lowest permissible sentence, which generally must be imposed absent a permissible ground for mitigation. However, for some lower scoring sentences for particular offenses, a non-prison sanction may be appropriate. *See* ss. 775.082(10) and 921.00241, F.S.

¹⁶ The maximum penalty for some DFZ violations (which may involve a small amount of a controlled substance) is the same as the maximum penalty for some drug trafficking offenses (which may involve a considerable amount of a controlled substance). For example, the maximum penalty for selling one gram of cocaine in a K-12 school DFZ or trafficking in 28 grams or more of cocaine is 30 years in state prison. However, mandatory minimum terms and sentence points accrued for drug trafficking may be greater. Courts have the discretion to apply a drug trafficking sentence point multiplier. *See* ss. 893.135 and 921.0024, F.S.

¹⁷ Minn. Stat. §§ 152.01, 152.021, 152.022, 152.023, and 152.024; and Ala. Code §§ 13A-12-250 and 13-12-270.

¹⁸ *Resident Population Data*, 2010 U.S. Census, U.S. Census Bureau, <http://2010.census.gov/2010census/data/apportionment-dens-text.php>. Florida is the eighth most densely populated state.

¹⁹ N.J. Rev. Stat. §§ 2C:35-7 and 2C:35-7.1; R.I. Gen. Laws § 21-28-4.07.1; Mass. Gen. Laws ch. 94C § 32J; Conn. Gen. Stat. §§ 21a-278a. and 21a-279; and Md. Criminal Law Code Ann. § 5-627.

²⁰ Agencies reporting DFZ information: Broward Sheriff (425 DFZs in Pompano Beach); Franklin Sheriff (number of DFZs

county was covered by DFZs. It is possible that in some areas identifying the number of DFZs would be a nearly impossible task. For example, in Miami-Dade-County, which has the fourth largest school district in the nation,²¹ there are 392 K-12 public schools reported.²² There are also 263 parks (more than 12,848 acres of land) in the Miami-Dade Parks system, the third largest county park system in the nation.²³ These are only two of the many types of DFZs. Other factors make identification of DFZs difficult. For example, to accurately identify the number of convenience business DFZs, an agency would have to contact every local business to ascertain if the business meets the statutory definition and continuously track information (if available) on new and closing businesses.

Studies of municipalities in other states suggest significant proliferation of DFZs in densely populated (primarily urban) areas. The Connecticut General Assembly found that, of twelve municipalities studied, a significant percentage of the total geographical areas of urban and “urban-like” suburban municipalities were in DFZs.²⁴ The Utah Sentencing Commission found that DFZs covered 75 to 85 percent of all livable space in the four cities it studied (Randolph, Richfield, Murray, and St. George).²⁵ The New Jersey Commission to Review Criminal Sentencing found that DFZs covered 51 percent of Newark (76 percent if the airport area was excluded), 54 percent of Jersey City, and 52 percent of Camden.²⁶ The New Jersey commission concluded from its findings that the density of school DFZs and, to a lesser extent, the density of other DFZs increased as population density increased. The percentage of urban areas falling in a DFZ was greater than in rural or suburban areas. The Pennsylvania Commission on Sentencing found that 29.5 percent of the major municipality in Philadelphia County and 22.8 percent of the major municipality in Allegheny County (Pennsylvania’s two most populous counties) were within 1,000 feet of a school. This estimate did not include actual property owned by schools, recreation centers, playgrounds, or school buses, which were also covered by the DFZ law.²⁷

Findings and/or Conclusions

Purpose of DFZs: Courts have found that DFZ laws appear to advance a rational purpose.²⁸ It is presumed that, if nothing else, Florida’s DFZs were intended to reduce drug activity in areas within the DFZs.²⁹ Whether Florida’s DFZs achieve that purpose cannot be confirmed based on available data. Offenders incarcerated as a result of the DFZ enhanced penalties will obviously not be committing DFZ violations during their period of incarceration, but it is unknown if the enhanced penalties deter these offenders from recidivating after release or if they deter others

for Apalachicola not provided but most DFZs would probably overlap due to the city’s small size); Orange Sheriff (estimated minimum of 200 DFZs in Orlando); Pinellas Sheriff (112 DFZs in Dunedin of which 110 overlap); Suwannee (approximately 56 DFZs in Live Oak of which approximately 18 overlap); and Ft. Myers Police Department (95 DFZs in Ft. Myers).

²¹ *Schools Assessment Area*, http://www.miamidade.gov/greenprint/planning/library/milestone_one/schools.pdf.

²² See <http://www.dadeschools.net/>.

²³ *About Parks*, Miami-Dade County Parks & Recreation Department, <http://www.miamidade.gov/parks/about-parks.asp>.

²⁴ *Mandatory Minimum Sentences*, December 2005, Legislative Program Review & Investigations Committee, Connecticut General Assembly. “Almost the total geographical areas of Bridgeport, Hartford, and New Haven are within ‘drug free’ zones.” *Id.* These municipalities were categorized by the committee as “urban.” *Id.*

²⁵ *Annual Report*, 2006, Utah Sentencing Commission (further cited as “Utah Comm. Report, 2006”).

²⁶ *Report on New Jersey’s Drug Free Zone Crimes & Proposal for Reform*, December 2005, New Jersey Commission to Review Criminal Sentencing (further cited as “N.J. Comm. Report, 2005”).

²⁷ Cynthia A. Kempinen, *A Multi-Method Study of Mandatory Minimum Sentences in Pennsylvania*, Research Bulletin, Volume 9, Issue 1, April 2010, Pennsylvania Commission on Sentencing (further cited as “Penn. Comm. Report, 2010”). Pennsylvania’s school DFZ is “within 1,000 feet of the real property on which is located a public, private or parochial school, or a college or university or within 250 feet of the real property on which is located a recreation center or playground or on a school bus.” 18 Pa. C.S. § 6317.

²⁸ See e.g., *State v. Burch*, 558 So. 2d 279, 284-85 (Fla. 4th DCA 1979) (finding that Florida’s K-12 school DFZ provision was not an unreasonable exercise of the state’s “police power” and adopting the reasoning of a New York federal district court that found the federal school DFZ statute to be a rational exercise of Congress’ authority), *approved*, 558 So. 2d 1 (Fla. 1990).

²⁹ In *Rice v. State*, 754 So. 2d 881, 883 (Fla. 5th DCA), *review denied*, 779 So. 2d 272 (Fla. 2000), the court reviewed the DFZ provision relevant to convenience businesses and places of worship and found that the “primary purpose and effect” of this provision was “deterrence of drug sales and drug use in proximity to places where people gather.”

from drug activity in DFZ-covered areas. The Pennsylvania Commission on Sentencing did not find that “length of sentence or imposition of a mandatory minimum term *per se* were predictors of recidivism.”³⁰

Size and proliferation of DFZs: It is unclear why 1,000 feet became the distance standard for Florida’s DFZs. In considering the federal school DFZ statute, the New Jersey Commission to Review Criminal Sentencing was unable to ascertain why 1,000 feet was selected as “the appropriate demarcation of the protective zone.”³¹ The commission noted that Congress did not cite to any empirical data and the commission did not find any “related evidence or research relied upon by Congress to inform its legislative determination.”³² Similarly, staff has not found anything that indicates an empirical basis for Florida’s 1,000-foot distance standard. This has not always been the distance standard for all of Florida’s DFZs; until 2003, the distance standard for DFZs pertaining to colleges, universities, postsecondary educational institutions, public parks, and public housing facilities was 200 feet.³³

The term “1,000-foot drug-free zone” fails to capture how large this zone really is. In testimony before the Sentencing Policy Study Committee, a committee created by the Indiana Legislature, one DePauw University DFZ researcher noted that the distance is “the equivalent of three football fields end-to-end, or three city blocks. You can barely see someone that far away. A circle with a radius of 1,000 feet around a single point encompasses 3,140,000 square feet –so large that you could fit the equivalent of 68 football fields inside of it.”³⁴ The researcher noted that even this description underestimated the size of most DFZs because of the considerable area covered by schools and parks. Citing the example of one high school, the researcher estimated that the zone would cover 14 million square feet³⁵ when the high school and playing fields were included.

Staff did not find any DFZ mapping studies of Florida’s densely populated areas that indicate the impact of DFZs on these areas but findings of the New Jersey Commission to Review Criminal Sentencing are noteworthy on the impact of DFZs on densely populated areas of New Jersey. The commission found that, due to the size of New Jersey’s school/park DFZs, DFZ overlapping, and DFZ proliferation in densely populated urban areas, these areas had “been literally transformed into massive, unsegmented ‘drug free’ zones.”³⁶ “Consequently, the protected areas demarcated by the statutes no longer exist, having merged with contiguous zones.”³⁷ While New Jersey’s population density was unequalled by other states, the Utah Sentencing Commission found it difficult to identify an urban area in Utah that was not covered by a 1,000-foot DFZ.³⁸ Utah is far less densely populated than New Jersey.

Florida’s 1,000-foot distance standard is not exceptional when compared with the DFZ distance standards of the five most densely populated states, though two of these states have different standards for different types of DFZs. Where Florida is exceptional is that it has significantly more types of DFZs than these states.

It is probable that DFZs proliferate in densely populated (primarily urban) areas of Florida due to the likelihood of there being more places and facilities covered by DFZs in these areas, the 1,000-foot distance standard, the number of types of DFZs, and DFZ overlapping. It is possible that in creating Florida’s DFZs legislators envisioned protected areas of limited size, not “superzones” created by DFZ proliferation and overlapping.

³⁰ Penn. Comm. Report, 2010.

³¹ N.J. Comm. Report, 2005.

³² *Id.*

³³ Section 1, ch. 2003-94, L.O.F.

³⁴ Testimony of Ryan Keeley before Indiana’s Sentencing Policy Study Committee, October 8, 2008, available at [http://dpuadweb.depauw.edu/\\$1~kkauffman/newdrugzoneprovisions/index.html](http://dpuadweb.depauw.edu/$1~kkauffman/newdrugzoneprovisions/index.html). This website details findings of *The Impact of Indiana’s Drug-Free Zones*, a DePauw University class project (based on 2007 mapping data).

³⁵ One square mile equals 27,878,400 square feet. Therefore, 14 million square feet is approximately 0.5 square miles.

³⁶ *Supplemental Report on New Jersey’s Drug Free Zone Crimes & Proposal for Reform*, April 2007, New Jersey Commission to Review Criminal Sentencing.

³⁷ *Id.*

³⁸ Utah Comm. Report, 2006. The DFZ statute reviewed by Utah’s sentencing commission was arguably more expansive than Florida’s DFZ provisions insofar as what was designated as a DFZ, but Florida’s DFZ provisions create a significant number of types of DFZs.

Superzones may dilute the special protection afforded places and facilities that are the subject of DFZs. The New Jersey Commission on Criminal Sentencing reached that conclusion regarding New Jersey's DFZs.³⁹

DFZ arrests: A full picture of the number of DFZ arrests cannot be obtained. Just short of half of law enforcement agencies⁴⁰ making drug arrests reported drug arrest information to the Florida Department of Law Enforcement that was detailed enough to indicate DFZ arrests. The number of DFZ arrests reported, though an incomplete accounting of DFZ arrests, was significant (e.g., 5,410 arrests in FY 2009-10). However, for FY 2007-08 through FY 2009-10, DFZ arrests declined.⁴¹

Sheriffs and police agencies provided the following responses or data (for FY 2007-08 through FY 2009-10 or calendar years 2007-10, unless otherwise noted):

- Most drug activity did not occur in a DFZ.
- The largest number of DFZ arrests were for violations of s. 893.13(1)(c), F.S. (K-12 schools, etc.) and s. 893.13(1)(e), F.S. (places of worship/convenience businesses).
- Most K-12 school DFZ violations did not occur on school property.
- Relative to arrests for other DFZ violations, arrests for DFZ violations involving an assisted living facility were negligible (two arrests).
- The majority of DFZ arrestees were black.⁴²
- Drug arrests were made in areas in which drug activity was most prevalent or best information was obtained, regardless of whether these areas were within a DFZ.
- For FY 2009-10 (or calendar years 2009 and 2010), DFZ arrests were five percent or less of arrests made for a violation of s. 893.13, F.S.

DFZ prosecutions: State attorneys provided the following responses or data (for FY 2007-08 through FY 2009-10, unless otherwise noted):

- A significant number of felony cases involved a plea of guilty or nolo contendere to a DFZ violation or, to a lesser extent, a plea to a non-DFZ violation in exchange for dropping the DFZ charge. There were few trials.⁴³
- Black defendants were the majority of defendants in felony cases in which a DFZ violation was charged.
- State attorneys looked at several factors in addition to meeting the burden of proof on the elements in determining whether to file a DFZ charge.
- State attorneys sometimes dropped a DFZ charge to a violation of s. 893.13(1)(c), F.S. (which may carry a mandatory minimum penalty), if the defendant agreed to a plea to another offense.

³⁹ N.J. Comm. Report, 2005.

⁴⁰ Forty-six to forty-eight percent or 212-222 agencies provided detailed DFZ arrest information. Florida Statistical Analysis Center, Florida Department of Law Enforcement (FDLE). "Florida Statute" is an optional field in the Florida Computerized Criminal History (CCH). Twenty percent of the arrest charges with a Drug Offense Code between FY 2007-08 and FY 2009-10 are missing. The CCH is fingerprint-based and, unless prints were taken at a later stage in the criminal process, does not include records involving a notice to appear, direct files, or sworn complaints where no physical arrest was made. The CCH data are current as of June 1, 2010, but the FDLE does not warrant that records provided are comprehensive or accurate as of the date provided.

⁴¹ *Id.* DFZ arrests: FY 2007-08: 6,167; FY 2008-09: 5,483; and FY 2009-10: 5,410.

⁴² Staff's survey questions pertinent to race include an "Other" category, not a "Hispanic" category (which reflects ethnicity, not race). Staff notes that racial data pertinent to arrests, cases, sentencing events, and new commitments likely will include some persons of Hispanic descent (as well as other descents, such as West Indian and Caribbean) under the "White" and "Black" racial categories.

⁴³ Data provided by the Office of the State Courts Administrator indicated that felony DFZ counts of cases disposed with a plea of guilty/nolo contendere overwhelming outnumbered felony DFZ counts of cases disposed of at trial. Data were not reported for the following counties: Duval; Nassau; Flagler; Putnam; Osceola; Desoto; Seminole; and St. Lucie.

DFZ sentencing events and new commitments: EDR reported information relevant to DFZ sentencing events and DFZ new commitments. The following data are pertinent to FY 2007-08 through FY 2009-10, unless otherwise noted:

- The number of DFZ sentencing events was significant (4,381 for the three fiscal years). Approximately 69 percent of these events (3,017) involved a prison sentence.⁴⁴ There was also a significant number of DFZ new commitments (3,003 for the three fiscal years).⁴⁵ However, DFZ prison sentencing events were a small percentage of all drug prison sentencing events (this includes possession, sale, and drug trafficking),⁴⁶ and DFZ new commitments were a small percentage of all drug new commitments.⁴⁷ Further, there was a declining number of DFZ sentencing events (prison or supervision) and DFZ new commitments.⁴⁸
- Most DFZ sentencing events and DFZ new commitments were for a violation of s. 893.13(1)(c), F.S., or s. 893.13(1)(e), F.S.,⁴⁹ and involved cocaine, heroin, and some other drugs (excluding GHB, methamphetamines, MDMA, and cannabis). In comparison to sentencing events and new commitments for other DFZ violations, sentencing events and new commitments for DFZ violations involving an assisted living facility were negligible.⁵⁰
- For offenders with a drug sentencing event or drug sales/manufacturing/delivery sentencing event (a subset of drug sentencing events), more offenders received supervision than a prison sentence and the percentage receiving supervision increased.⁵¹ In contrast, for offenders with a DFZ sentencing event, more received a prison sentence than supervision, though the percentage receiving supervision slightly increased.⁵²
- For FY 2009-10, 54.6 percent of all drug prison sentencing events involved black offenders, and black offenders were 55.9 percent of all drug new commitments. In contrast, 86.9 percent of DFZ prison

⁴⁴ FY 2007-08: 1,647 (prison: 1,159); FY 2008-09: 1,418 (prison: 971); and FY 2009-10: 1,316 (prison: 887). Sentencing event data were compiled by EDR. Criminal Code database was obtained from the Florida Department of Corrections on June 1, 2011. This database contains information on sentencing events. However, scoresheet compliance varies by circuit and by sanction. On a statewide basis, scoresheet compliance (state sanctions) has ranged between 69.4 % and 71.0 % in the last 3 fiscal years. Numbers obtained from the data file were adjusted by the statewide completion rates (separately for prison and state supervision) to obtain the numbers reported by EDR. DFZ sentencing event information reports data on sentencing events in which a DFZ violation is the primary offense.

⁴⁵ FY 2007-08: 1,130; FY 2008-09: 961; and FY 2009-10: 912. The three judicial circuits with the highest number of DFZ new commitments were: the 13th (Hillsborough County); the 15th (Palm Beach County); and the 5th (Citrus, Hernando, Lake, Marion, and Sumter counties). FY 2007-08 through FY 2009-10: 13th Circuit: 544; 15th Circuit: 265; and 5th Circuit: 230. New commitments include probation/community control technical violators and also include conditional and control release violators who have a new sentence. DFZ new commitment information reports data on new commitments whose primary offense was a DFZ violation. New commitment data were compiled by EDR from the monthly status file of prison population prepared by the Bureau of Research and Data Analysis, Florida Department of Corrections. This file contains between 97% and 98% of new commitments. Numbers obtained were adjusted to match new commitment totals for EDR's analysis.

⁴⁶ FY 2007-08: 8.7%; FY 2008-09: 8%; and FY 2009-10: 8%.

⁴⁷ FY 2007-08: 9.9 %; FY 2008-09: 9.3 %; and FY 2009-10: 9.6 %.

⁴⁸ Sentencing events (prison): FY 2007-08: 1,159; FY 2008-09: 971; and FY 2009-10: 887. Sentencing events (supervision): FY 2007-08: 488; FY 2008-09: 447; and FY 2009-10: 429. DFZ new commitment data is reported in footnote 45.

⁴⁹ For FY 2009-10, there were 887 DFZ prison sentencing events of which 318 involved a violation of s. 893.13(1)(c), F.S., and 513 involved a violation of s. 893.13(1)(e), F.S. There were 429 DFZ supervision sentencing events of which 158 involved a violation of s. 893.13(1)(c), F.S., and 219 involved a violation of s. 893.13(1)(e), F.S. There were 912 DFZ new commitments of which 354 involved a violation of s. 893.13(1)(c), F.S., and 486 involved a violation of s. 893.13(1)(e), F.S. Staff found a similar pattern for FYs 2007-08 and 2008-09.

⁵⁰ Four DFZ prison sentencing events and one DFZ new commitment for FY 2007-08 through FY 2009-10.

⁵¹ Drug Prison: FY 2007-08: 31.4%; FY 2008-09: 31.4%; and FY 2009-10: 30.1%. Drug Supervision: FY 2007-08: 68.6%; FY 2008-09: 68.6%; and FY 2009-10: 69.9%. Drug M/S/D Prison: FY 2007-08: 44.1%; FY 2008-09: 44.0%; and FY 2009-10: 41.4%. Drug M/S/D Supervision: FY 2007-08: 55.9%; FY 2008-09: 56.0%; and FY 2009-10: 58.6%.

⁵² DFZ Prison: FY 2007-08: 70.4%; FY 2008-09: 68.5%; and FY 2009-10: 67.4%. DFZ Supervision: FY 2007-08: 29.6%; FY 2008-09: 31.5%; and FY 2009-10: 32.6%.

sentencing events involved black offenders, and black offenders were 88.5 percent of all DFZ new commitments.⁵³ However, the percentage of black DFZ new commitments slightly decreased.⁵⁴

- The number of white offenders with a DFZ sentencing event who received a prison sentence was slightly less than the number who received supervision.⁵⁵ In contrast, the number of black offenders with a DFZ sentencing event who received a prison sentence was significantly greater than the number who received supervision.⁵⁶ Further, the average prison sentence for a DFZ violation (sentencing event and DFZ new commitment) was longer for black offenders than for white offenders.⁵⁷ However, for FY 2009-10, black offenders with a DFZ prison sentencing event had a higher average number of prior felonies and prior offense sentence points than white offenders.⁵⁸ White offenders had a higher average number of misdemeanors.⁵⁹
- For FY 2009-10, 147 DFZ new commitments with a violation of s. 893.13(1)(c), F.S. (three-year mandatory minimum term for some violations)⁶⁰ as their primary offense were matched with the Criminal Code database. Of the 147 new commitments, 52.4 percent had a sentence that exceeded 36 months (92 percent of this group scored a lowest permissible sentence greater than 36 months under the Code), 25.2 percent had a sentence shorter than to 36 months; and 22.4 percent had a sentence equal to 36 months.

Disproportionate impact of DFZs on black offenders: No conclusions are made as to why black offenders are so significantly impacted by Florida's DFZ provisions. The New Jersey Commission to Review Criminal Sentencing found that 96 percent of those convicted and incarcerated for a DFZ offense in New Jersey were either black or Hispanic, which it concluded was the "end result of the 'urban effect'" of DFZs.⁶¹ The commission found that DFZs proliferated in densely populated urban areas which were predominantly populated by minorities. In contrast, suburban and rural areas, predominantly populated by whites, had less densely concentrated DFZs.

⁵³ Overrepresentation of black DFZ new commitments can also be expressed as a ratio reflecting the percentage of DFZ new commitments of a particular race relative to the percentage of that race in the state population (2010 census count). If the ratio is above 1, the racial group (new commitments) is overrepresented; if the ratio is 1, the group is in proportion; and if the ratio is below 1, the group is underrepresented. According to EDR, for FY 2009-10, there were 95 white DFZ new commitments (10% of all DFZ new commitments). There were 14,109,162 persons identified as "White" in the 2010 census count (75% of the state population). For FY 2009-10, there were 807 black DFZ new commitments (88.5% of all DFZ new commitments). There were 2,999,862 persons identified as "Black" in the 2010 census count (16% of the state population). The ratio was 0.14 for white DFZ new commitments and 5.55 for black DFZ new commitments.

⁵⁴ FY 2007-08: 91.1%; FY 2008-09: 89.8%; and FY 2009-10: 88.5%.

⁵⁵ In FY 2009-10, 108 white offenders with a DFZ sentencing event received prison (12.1% of all DFZ prison sentencing events) and 126 received supervision (29.5% of all DFZ supervision sentencing events). Staff found a similar pattern for FYs 2007-08 and 2008-09.

⁵⁶ In FY 2009-10, 771 black offenders with a DFZ sentencing event received prison (86.9% of all DFZ prison sentencing events) and 294 received supervision (68.5% of all DFZ supervision sentencing events). Staff found a similar pattern for FYs 2007-08 and 2008-09.

⁵⁷ Average sentence length/DFZ sentencing events (FY 2009-10): Black: 4.3 years; White: 3.1 years; Other: 2.5 years. Average sentence length/DFZ new commitments (FY 2009-10): Black: 4.2 years; White: 3.4 years; Other: 2.2 years. Staff found a similar pattern for FYs 2007-08 and FY 2008-09. For new commitment data, some demographic details are missing. According to the Department of Corrections, offenders entering prison near the end of the month may not have this information available by the time the status file is run at the end of the month. It was assumed that missing data would not bias the race distribution. Therefore, the race distribution was adjusted by EDR to match the new commitment total.

⁵⁸ Prior felonies: Black: 2.50; White: 1.41. Prior offense points: Black: 20.46; White: 13.03.

⁵⁹ Prior misdemeanors: White: 1.92; Black: 1.66.

⁶⁰ As previously indicated, not all violations of s. 893.13(1)(c), F.S., are subject to the three-year mandatory minimum term; the term is only required for a first degree felony violation of this provision that does not involve a child care facility violation. Where the mandatory minimum term applies, courts are required to impose this term. *See e.g., State v. Mackey*, 964 So. 2d 772 (Fla. 2d DCA 2007) (error to impose three concurrent terms of three years probation for K-12 school DFZ violation). To staff's knowledge, in FY 2009-10, the only means provided by law to avoid the mandatory minimum term upon conviction was youthful offender sanctions. In 2010, the Legislature created s. 921.186, F.S., which authorizes the state attorney to move the sentencing court to reduce or suspend the sentence of any person who is convicted of violating any felony offense and who provides substantial assistance. *See ch. 2010-218, L.O.F.*

⁶¹ N.J. Comm. Report, 2005.

The Disproportionate Justice Impact Study Commission of the Illinois General Assembly noted that “[n]ational surveys consistently show that African Americans, whites, and Latinos are equally likely to use drugs relative to their representation in the general population, but the criminal justice consequences for drug involvement disproportionately affect minorities – particularly young, African-American men in poor, urban communities (The Sentencing Project, 1999).”⁶² The commission found that “race-based differences [in ‘legal processing of drug crimes’] are grounded partly in the way drugs are sold in urban neighborhoods, where drugs are more likely to be sold on the street and in other public places with high visibility, facilitating law enforcement’s ability to make arrests.”⁶³ Further, the commission found “the concentration of ... [DFZs] in [Illinois’] urban areas and particularly communities of color suggests that delivery crimes committed in urban areas are significantly more likely to be violations of ... [Illinois’ DFZ] provisions and subject to enhanced penalties[.]”⁶⁴

Opinions of law enforcement agencies, prosecutors, and public defenders regarding DFZs: Surveyed law enforcement agencies disfavored repeal of the DFZ provisions and the creation of new DFZs.⁶⁵ They supported the 1,000-foot distance standard. The most frequently cited reasons for retaining the DFZs were their use in obtaining information on drug activity and the increased likelihood of prison sentences. The Tallahassee Police Department had some concern that overlapping of DFZs was too prevalent due to the 1,000-foot distance standard but noted that not all cities are like Tallahassee.

Surveyed state attorneys’ offices similarly disfavored repeal of the DFZ provisions and creation of new DFZs.⁶⁶ They also supported the 1,000-foot distance standard, though one state attorney’s office indicated that perhaps the standard should be reviewed and another stated that there seldom appears to be a nexus between the drug activity and the users of the places and facilities that are the subject of the DFZs.⁶⁷ The most frequently cited reasons for retaining the DFZs were higher bonds and significant leverage in plea negotiations, which, in combination with enhanced penalties, help them obtain harsher sentences when they believe they are warranted. Several state attorneys’ offices cited their ability to provide stronger sanctions for repeat drug offenders, though one state attorney’s office stated that, even absent the DFZ laws, there are strong sanctions for repeat offenders.

Surveyed public defenders’ offices favored repeal of the DFZs and did not support the creation of new DFZs or the 1,000-foot distance standard.⁶⁸ In their opinion, the increased prosecutorial leverage often results in inequitable plea negotiations. When this leverage is combined with enhanced penalties, consideration of alternative sentencing, including drug treatment, is often foreclosed. They asserted that many of the drug offenders subject to the DFZ provisions are drug addicts who are dealing drugs to support their addictions. They also asserted that these drug offenders are generally not targeting the population using places and facilities that are the subject of the DFZ but rather are dealing in the neighborhoods in which they live, which happen to be covered by the long reach of the DFZs.

Insufficient indicators for creating new DFZs or increasing the 1,000-foot distance standard: There are insufficient indicators supporting the creation of new DFZs or an increase in the 1,000-foot distance standard. However, significant concerns that have been raised in some other states about the size and proliferation of DFZs

⁶² *Final Report*, December 2010, Disproportionate Justice Impact Study Commission, Illinois General Assembly.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ One sheriff’s office suggested repealing the DFZs but enhancing penalties under s. 893.13(1)(a), F.S. Another sheriff’s office suggested creating a DFZ for fast food establishments and another suggested expanding the convenience business DFZ to include all retail establishments.

⁶⁶ One state attorney’s office suggested the Legislature may want to cover the real property of places of worship and convenience businesses (facilities covered by a DFZ), reasoning that other DFZs include real property and making this change would resolve any ambiguity as to measurement of these DFZs. This suggested change appears to be consistent with other DFZ provisions and presumably would resolve ambiguity (if any) regarding measurement, but the change would mean that more areas would be covered by a DFZ.

⁶⁷ In reviewing New Jersey’s school DFZ, the New Jersey Commission to Review Criminal Sentencing found that “a defendant’s fortuitous or happenstance presence within a school zone” was a typical fact pattern. N.J. Comm. Report, 2005.

⁶⁸ Alternatives to repeal were suggested: one public defender’s office suggested retaining the 1,000-foot standard for K-12 schools but reducing the standard for other DFZs; another suggested retaining the DFZs but reducing the 1,000-foot standard for all DFZs.

may indicate the need to reassess whether the 1,000-foot distance standard remains appropriate for some or all of Florida's DFZs.

Assisted living facility DFZ: The miniscule number of arrests, sentencing events, and new commitments involving a violation of s. 893.13(1)(h), F.S. (assisted living facilities) may indicate the need to reassess whether this DFZ remains appropriate.

Probable impact of partial repeal of DFZs and/or reduction of the 1,000-foot distance standard: Assuming there is not a total repeal of DFZs, it is probable that the result of repealing some DFZs and/or reducing the 1,000-foot distance standard would be fewer DFZ arrests and prosecutions, less DFZ proliferation and overlapping, some reduction in the disproportionate impact of the DFZ provisions on black drug offenders, fewer drug offenders sentenced to prison, more alternative sentencing, and reduction in sentence length for some drug offenders. If partial repeal of DFZs and/or reduction in the 1,000-foot distance standard were to occur, there would be a cost savings (reduction of prison beds). It is unknown whether these changes would result in increases in drug activity in areas currently covered by a DFZ or would impact the number of trials.

Options and/or Recommendations

Provided is a non-exhaustive list of options for consideration (some options could be combined):

- Retain the current DFZ provisions (no changes).
- Provide that DFZs for places of worship and convenience businesses include their "real property."
- Repeal all or some of the DFZ provisions (see findings regarding the assisted living facility DFZ).
- Modify the 1,000-foot distance standard for some or all of the DFZs (i.e., reduce the size of DFZs).
- Exclude possession with intent to sell, etc., or include this offense only if committed in a park or in a relevant DFZ facility and its real property (could require adding real property to the DFZs involving places of worship and convenience businesses to be more consistent).
- Repeal the mandatory minimum term in s. 893.13(1)(c), F.S., or consider alternatives that limit its scope, e.g., provide that the penalty only applies to second or subsequent violations and any violation that involves sale or delivery to a minor; provide that the penalty only applies to sale or delivery to a minor; or exclude possession with intent to sell, etc., from the penalty.
- Retain the enhanced felony degrees in the DFZ provisions but eliminate any enhanced ranking for a DFZ violation.
- Retain the enhanced felony degrees in the DFZ provisions but reduce the ranking of violations of s. 893.13(1)(c)1. and (e)1., F.S. (the only DFZ violations currently ranked in Level 7), to Level 6. Alternatively, only reduce the ranking of s. 893.13(1)(e)1., F.S., to Level 6.

DID NOT Get to
Agenda
item

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/4/2010
Date

Tab 5, Interim project add⁻¹¹⁶
Bill Number

Barcode

Name BRIAN PITTS

Phone 727/897-9291

Address 1119 Newton Ave S

E-mail _____

Street

St Petersburg

FL

State

33705

Zip

Job Title Trustee

Speaking: For Against Information

Appearing at request of Chair

Subject Drug Zones

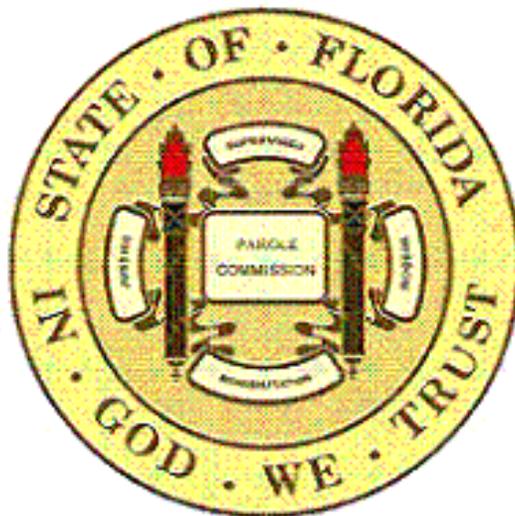
Representing Justice-2-Jesus

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

FLORIDA PAROLE COMMISSION

A Governor and Cabinet Agency Created in 1941



**70 YEARS
PRESERVING AUTONOMY IN
POST RELEASE DECISIONS AFFECTING VICTIMS,
INMATES, AND EX-OFFENDERS**

**PRESENTATION
TO THE
SENATE CRIMINAL JUSTICE COMMITTEE**

TUESDAY, OCTOBER 4, 2011

TENA M. PATE, CHAIR

FLORIDA PAROLE COMMISSION

- In 1868, overcrowding, high cost of housing, and public pressure for better treatment of prisoners led to the creation of the first pardon board.
- In 1941, the Florida Parole and Probation Commission was created as a constitutionally independent body, to take the place of the pardon board which became overburdened.
 - Key functions: acted as the release authority for sentenced inmates, provided recommendations to the Clemency Board, prepared sentencing recommendations to judges for probation, made releasing decisions for parole, and supervised all inmates placed on parole and probation.
- For 34 years, the Commission responsibly supervised all inmates on probation and parole.
- In 1975 supervision of offenders was transferred to the newly created Department of Offender Rehabilitation (now the Department of Corrections).
- In 1978, the Legislature enacted objective parole guidelines; rules were adopted and risk assessment instruments were developed which are still in use today.
- October 1, 1983, sentencing guidelines were adopted. Parole was abolished and retained only for certain crimes and for those offenses committed prior to the change.
- 1988 The Legislature enacted the victim's assistance law which brought many new responsibilities to the Commission.
- 1988 The Legislature also enacted the conditional release program that mandated post prison supervision for violent inmates posing the greatest threat to public safety.
- In 1989, the Legislature designated the commission as the Control Release Authority a tool utilized to manage the prison population. From 1990-1994, 75,000 inmates were released by the commission as the control release authority.

- In 1992, the Legislature enacted the Conditional Medical Release Program which required the commission to determine if terminally ill or incapacitated inmates could be released into the community.
- In 1995, the Legislature expanded parole for an additional category of inmates.
- In 2001, the Legislature enacted the Addiction Recovery Supervision Program which mandated post prison supervision for non-violent inmates with substance abuse issues.
- Currently, for Fiscal Year 2010-11:
 - There are currently 5,360 inmates eligible for parole.
 - 92% of offenders placed on parole supervision completed their supervision within the first 2 years.
 - The Commission made 18,547 victim assists.
 - 80% of offenders on mandatory conditional release successfully completed their supervision.
 - The Commission placed 5,074 offenders on mandatory conditional supervision.
 - 30 inmates were recommended for conditional medical release with the Commission granting 16, or 53%.
 - 95% of offenders on mandatory addiction recovery supervision successfully completed their supervision.
 - The Commission placed 1,642 offenders on addiction recovery supervision.



FLORIDA DEPARTMENT OF JUVENILE JUSTICE

PART OF THE COMMUNITY, PART OF THE SOLUTION

**Senate
Committee on Criminal
Justice
Chairman Greg Evers
October 4, 2011**

Governor Rick Scott



Secretary Wansley Walters

Juvenile Justice Education Statutes

- s.985.618 F.S., Educational and career-related programs (Rule 63B-1.001-1.007)
- §.1003.51 and 1003.52, F.S. Educational services in Department of Juvenile Justice Programs (Rule 6A-6.05281)

Vocational Programming Requirements

- Level 1: Pre-vocational includes counseling or instruction contributing to personal accountability skills that lead to good work habits.
- Level 2: Incorporates Level 1 competencies and provides an orientation to a broad scope of career choices, and the level of effort required to achieve them.
- Level 3: Incorporates the first and second levels and is able to provide recognized industry prerequisites for attaining recognized points of completion within particular trades or vocations.

Juvenile Justice Programs

9,146 Student outcomes reported in 2009-2010 DOE Annual Report

- 100% of 203 students took and passed GED test
- These students no longer earn education funding

Today:

- Approximately 3,078 in residential placement
- 4% receive DJJ-funded vocational training
- 95 juvenile justice students successfully completed a Florida Virtual High School course
- 206 additional students enrolled in other distance learning programs

Youth in Residential Commitment Programs

- 5 Residential Program sites have contracted Home Builder's Institute services
- 1 site receives a higher per diem rate to provide vocational services at the DOVE Academy for Girls
- 59 Residential Program sites Lack DJJ-funded Vocational Training Services

Efforts to Date

- Rule 63B 1.001-1.007 incorporated into state department quality assurance standards

Youth exiting the program with Employment as a Transition Goal must have:

- A sample employment application
- A Resume
- An appointment with a One Stop Center
- Any documents essential to employment

Efforts to Date

- Multiagency Vocational Plan and Annual Reporting Requirements
- DOE Perkins Funding for approximately 7 DJJ Programs annually
- State and Regional Workforce Board services
 - DOVE Academy, Bristol Youth Academy, Project Connect and community-based pilots
 - Okaloosa Florida High School/Tech funded by Able Trust Fund
 - Federal Bonding Program and Work Opportunity Tax Credits information

Efforts to Date

- \$628,000 youth technology training grant submitted in March 2011 to the Department of Justice.
- Of 52 responding residential programs serving 2,522 students, 64 of the 270 instructors funded by the responsible school district provide vocational education.
- Of these, 847 vocational certificates were earned while in a juvenile justice program.
- 446 youth earned Ready to Work Credentials (Bronze -174, Silver - 225, Gold - 47) from the Florida Agency for Workforce Innovation; a 29% increase over the previous year.
- Able Trust funded Florida High School/High Tech served 70 DJJ youth in the First Circuit with 68 youth earning high school diplomas and/or industry-recognized certificates.
- Inclusion of all juvenile justice students in the National School Breakfast And Lunch Program

Home Builders Institute

During 2010-11, DJJ contracted with Home Builders Institute to provide youth vocational training.

- 265 Participants earned Pre Apprentice Certificate Training (PACT) certificates
 - 186 participants were placed in a job, military or schools
 - 84% job placement rate
- 251 participants who earned a certificate did not reoffend during follow up
- \$8.21 average wage at placement

Certification

60 juvenile justice students earned Certifications in Microsoft Office Suites in Volusia County Schools as a result of a technology grant

72 Youth Earned Basic Occupational Safety and Health Administration (OSHA) certificates (10 hour course With Banner Center Funding) – Approximately \$90 per youth

10 of the 30 youth earned the OSHA Certificate and a Ready to Work Credential in Okeechobee Juvenile Correctional Facility (also known as Tantie School) are now attending college!

JC	Edison State College
ME	Tallahassee Community College
MG	Miami Dade College
DJ	St. Paul College, Virginia
CK	Tallahassee Community College
RP	University of Central Florida, Orlando
JS	Palm Beach State College
ZS	Miami Dade College
JV	Florida Community College, Jacksonville
JW	Everest University – North Orlando Campus

Education & Training

- Is essential to self-sufficiency.
- Mitigates the impact of a criminal record as a barrier to employment.
- Facilitates successful return to communities
- Provides youth the ability to make individual and community restitution.

DID NOT get to 7
TAB 7

TAB 7

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

Oct. 4, 2011
Date

Bill Number

Barcode

Name Terri Eggers

Phone 410-1097

Address 2737 Centerville Dr

E-mail terri.eggers@djj.state.fl.us

Street Tallahassee FL 32399
City State Zip

Job Title Director of Education

Speaking: For Against Information

Appearing at request of Chair

Subject DJJ Education & Vocational Programs

Representing DJJ

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

CourtSmart Tag Report

Room: LL 37

Case:

Type:

Caption: Senate Committee on Criminal Justice Judge:

Started: 10/4/2011 10:49:46 AM

Ends: 10/4/2011 12:42:05 PM

Length: 01:52:20

10:49:48 AM Call to Order
10:49:53 AM Roll Call
10:50:57 AM SB 138 by Bennett - Military Veterans Convicted of Criminal Offenses
10:51:53 AM Brian Pitts - Justice 2 Jesus
10:55:27 AM Question - Sen. Dean
10:56:19 AM Response - Sen. Bennett
10:57:56 AM Question - Sen. Dean
10:58:43 AM Response - Sen. Bennett
11:00:02 AM Question - Sen. Hays
11:00:20 AM Response - Sen. Bennett
11:00:59 AM Roll Call Vote
11:01:09 AM SB 138 reported favorable
11:01:45 AM SB 186 by Ring - Presented by Joel Ramos. Misdemeanor Pretrial Substance Abuse Programs
11:02:22 AM Amendment 821248 by Sen. Dean
11:03:03 AM Question - Sen. Bennett
11:04:05 AM Roll Call Vote
11:04:43 AM SB 186 reported favorable
11:05:15 AM Presentation by Robert Weissert, Florida TaxWatch
11:05:22 AM Government Cost Savings Task Force Report for FY 2012-13 on criminal and juvenile justice reform
11:11:44 AM Question - Sen. Dean
11:16:07 AM Question - Sen. Hays
11:31:34 AM Question - Sen. Dean
11:32:34 AM Question - Sen. Bennett
11:36:02 AM Question - Sen. Bennett
11:37:06 AM Question - Sen. Bennett
11:39:10 AM Question - Sen. Bennett
11:40:27 AM Question - Sen. Hays
11:42:31 AM Question - Sen. Dean
11:48:43 AM Question - Sen. Smith
11:51:45 AM Question - Sen. Margolis
11:55:11 AM Presentation by William Carr, Asst. Sec. of Re-Entry with the DOC
12:07:49 PM Question
12:09:26 PM Question - Sen. Hays
12:10:07 PM Question - Sen. Evers
12:10:58 PM Question - Sen. Dean
12:15:34 PM Comments - Sen. Evers
12:16:57 PM Continue DOC presentation, Dean Aufderhelde - DOC
12:26:18 PM Question - Sen. Margolis
12:28:40 PM Question - Sen. Dean
12:29:30 PM Question - Sen. Margolis
12:29:51 PM Question - Sen. Hays
12:31:52 PM Question - Sen. Hays
12:35:14 PM Brian Pitts - Justice 2 Jesus, Comments on Presentations
12:40:23 PM Comments - Sen. Evers
12:40:58 PM Comments - Sen. Margolis
12:41:55 PM Meeting Adjourned