

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Siplin, Vice Chair

MEETING DATE: Wednesday, February 22, 2012

TIME: 12:30 —3:00 p.m.

PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Ring, Chair; Senator Siplin, Vice Chair; Senators Benacquisto, Bogdanoff, Dean, Flores, Garcia, Latvala, Margolis, Montford, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 266 Lynn (Identical H 745)	State Symbols/Automobile Racing; Designating the sport of automobile racing as the official state sport, etc. CM 02/16/2012 Favorable GO 02/22/2012	
2	CS/SB 594 Health Regulation / Storms (Similar CS/H 1143)	Health Care Practitioner/Suspension or Restriction of License; Authorizing that the Department of Health issue an emergency order restricting the license of a health care practitioner from prescribing controlled substances if the practitioner is arrested for, is criminally prosecuted for, or commits certain criminal acts involving homicide or controlled substances; requiring that the department initiate administrative proceedings for the issuance of the emergency order; requiring that the court, in determining whether to release a defendant on bail or other conditions, consider whether the suspension of a license or restriction on the ability to practice a licensed health care profession is necessary to protect the community against unreasonable danger, etc. HR 01/25/2012 Fav/CS GO 02/22/2012 BC	
3	SB 722 Garcia (Similar H 339)	Autism; Creating the Autism Spectrum Disorder Study Committee to study autism spectrum disorder in families in which English is the second language; providing for membership, meetings, and duties; prohibiting committee members from receiving compensation for their services; authorizing certain funding for publications, subject to approval of the State Surgeon General; requiring a report to the Governor and Legislature; providing for expiration of the committee, etc. CF 01/12/2012 Favorable GO 02/22/2012 BC	

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Governmental Oversight and Accountability

Wednesday, February 22, 2012, 12:30 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 860 Judiciary / Wise (Similar CS/CS/CS/H 481, Compare CS/CS/H 937, CS/CS/S 292)	Clerks of Court; Providing requirements for storage of electronic filings; requiring papers and electronic filings to be electronically time stamped; revising provisions concerning an exemption from charges for services provided to specified officials and their staffs; providing for access to clerks' files by state agencies and an exemption from copying fees and charges; limiting to official use only the application of an exemption from payment of fees and charges assessed by clerks of circuit courts; authorizing the use of electronic proof of publication affidavits; authorizing the clerk to issue a refund to the depositor for redeemed property subject to a tax sale, etc.	JU 01/19/2012 Fav/CS GO 02/22/2012 BC
5	CS/SB 1096 Criminal Justice / Hays (Similar H 1477)	Public Records/Registration Information/Sexual Predators and Sexual Offenders; Creating a public records exemption for the electronic mail address and physical address information provided to the Department of Law Enforcement by a person requesting access to the automatic notification system of registration information regarding sexual predators and sexual offenders; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.	CJ 02/16/2012 Fav/CS GO 02/22/2012 BC
6	SB 1144 Garcia	Scrutinized Companies; Requiring the State Board of Administration to identify all companies in which public moneys are invested and which are doing certain types of business in or with Cuba or Syria; requiring the board to periodically contact all scrutinized companies and encourage them to refrain from engaging in certain types of business in or with Cuba or Syria; requiring the board to divest all publicly traded securities of a scrutinized company under certain conditions; prohibiting a state agency or local governmental entity from contracting for goods and services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Cuba List or the Scrutinized Companies with Activities in Syria List; requiring a contract provision that allows for termination of the contract if the company is found to have been placed on such list, etc.	GO 02/01/2012 Temporarily Postponed GO 02/22/2012 BC

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, February 22, 2012, 12:30 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1208 Banking and Insurance (Identical H 7111)	OGSR/Unclaimed Property/Department of Financial Services; Revising the public records exemption for information held by the Department of Financial Services relating to unclaimed property to permanently exempt social security numbers from the public records law; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. BI 01/19/2012 Not Considered BI 01/26/2012 Favorable GO 02/07/2012 Temporarily Postponed GO 02/16/2012 GO 02/17/2012 GO 02/22/2012	
8	SB 1334 Oelrich (Identical S 1280, Compare CS/CS/H 525, CS/S 2024)	Florida Retirement System; Revising definitions of the terms "normal retirement date" and "vested" or "vesting"; requiring new employees to, by default, be enrolled in the investment plan; extending the period during which employees may elect to participate in the pension plan; prohibiting certain employees from choosing to move to the pension plan after a certain period, etc. GO 02/16/2012 Temporarily Postponed GO 02/17/2012 GO 02/22/2012 BC RC	
9	CS/SB 1458 Judiciary / Diaz de la Portilla (Similar H 963)	Dispute Resolution; Revising the short title of the "Florida Arbitration Code" to the "Revised Florida Arbitration Code"; providing that an agreement may waive or vary the effect of statutory arbitration provisions; providing for petitions for judicial relief; providing for service of notice of an initial petition for such relief; requiring a court to decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate; providing for consolidation of separate arbitration proceedings as to all or some of the claims in certain circumstances; providing immunity from civil liability for an arbitrator or an arbitration organization acting in the capacity of an arbitrator, etc. JU 01/25/2012 Fav/CS GO 02/22/2012 BC	

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, February 22, 2012, 12:30 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 1460 Simmons (Compare CS/CS/H 673)	Preference in Award of State Contracts; Expanding provisions that authorize an agency, county, municipality, school district, or other political subdivision of the state to provide preferential consideration to a Florida business in awarding competitively bid contracts to purchase personal property to include the purchase of construction services; providing that for specified competitive solicitations the authority to grant preference supersedes any local ordinance or regulation which grants preference to specified vendors; requiring a county, municipality, school district, or other political subdivision to make specified disclosures in competitive solicitation documents, etc.	CA 01/30/2012 Favorable GO 02/22/2012 BC
11	SB 1584 Thrasher (Similar H 1279, Compare CS/H 1277, Link CS/S 1586)	Public Records/Money Services Businesses/Office of Financial Regulation; Providing an exemption from public records requirements for information contained in the database of payment instrument transactions within the Office of Financial Regulation into which payment instrument transaction information submitted by money services business licensees is maintained; providing for specified access to such information; providing for future review and repeal of the exemption; providing a statement of public necessity, etc.	BI 02/07/2012 Favorable GO 02/22/2012 BC
12	CS/SB 1824 Health Regulation / Garcia (Compare H 79, H 115, CS/CS/H 999, H 1075, CS/H 1263, CS/H 4005, H 4037, CS/H 7043, H 7053, H 7073, S 114, S 178, CS/S 478, S 526, S 558, CS/CS/S 704, CS/CS/S 820, S 884, S 2086) (If Received)	Department of Health; Eliminating the Florida Drug, Device, and Cosmetic Trust Fund and the Nursing Student Loan Forgiveness Trust Fund as trust funds under the department; requiring the Department of Health to be responsible for the state public health system; permitting the department to apply for and become a National Environmental Laboratory Accreditation Program accreditation body; providing for any permit issued and approved by the Department of Health for the installation, modification, or repair of an onsite sewage treatment and disposal system to transfer with the title of the property; requiring the department, rather than the Agency for Health Care Administration, to publish a summary of the Florida Patient's Bill of Rights and Responsibilities on its Internet website; deleting legislative findings relating to the "Reducing Racial and Ethnic Health Disparities: Closing the Gap Act", etc.	HR 02/16/2012 Fav/CS GO 02/22/2012 If received BC

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 2076 Military Affairs, Space, and Domestic Security (Compare CS/H 977, CS/H 7041, H 7075, CS/CS/S 842, CS/S 1204)	Florida Defense Support Task Force; Transferring the functions of the Florida Council on Military Base and Mission Support to the Florida Defense Support Task Force; repealing provisions relating to the Florida Council on Military Base and Mission Support; revising references to the Department of Economic Opportunity rather than the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor, etc.	
		MS 02/01/2012 Favorable GO 02/22/2012	

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.			
Investment Advisory Council			
14	Price, Michael F. (New York)	12/12/2014	
Secretary of State			
15	Detzner, Kenneth W. (Tallahassee)	Pleasure of Governor	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	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 Governmental Oversight and Accountability Committee

BILL: SB 266
 INTRODUCER: Senator Lynn
 SUBJECT: State Symbols/Automobile Racing
 DATE: February 17, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tell	Hrdlicka	CM	Favorable
2.	Jenkins	Roberts	GO	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 266 provides for the designation of the sport of automobile racing as the official state sport.

This bill creates s. 15.0527, F.S.

II. Present Situation:

Automobile racing in Florida has a long and storied history stretching back more than 100 years. In April 1902, the first “tests of speed” began on the 12-mile stretch of beach between Ormond and Daytona. News quickly spread, and by March 1903, hundreds of guests, reporters, and race drivers filled the Ormond Hotel for the first official races. These races were sponsored by the American Automobile Association. Interestingly, due to the scarcity of roads in Florida, automobiles from the north were shipped down by Henry Flagler’s railroad line.¹

The 1903-1910 period of racing not only served to boost local spirits, but also provided the Ormond-Daytona area the opportunity to grow its tourism sector. This economic growth from tourism came primarily from racing enthusiast northerners who had come to vacation and view the racing events. During this era, Ormond-Daytona gained a national reputation as “a mecca for motor enthusiasts” because five world speed records were broken within a short 7-year span.²

After 1910, automobile racing reached wide-spread appeal and automobile racing tracks were constructed in other prominent southern cities such as Savannah, Atlanta, New Orleans,

¹ Randall L. Hall, *Automobile Racing in the South*, The Journal of Southern History, (August 2002).

² Alice Strickland, *Florida’s Golden Age of Racing*, Florida Historical Quarterly, Vol 45, No. 3 (January 1967).

Louisville, and Montgomery. However, the Ormond-Daytona strip maintained its established place in the racing world.³

In late 1947, under the leadership of Bill France and Bill Tuthill, a group of racing promoters gathered to meet in Daytona Beach. They sought to create an organization which would unify automobile racers and build back interest in the sport following World War II. This meeting was the impetus for the incorporation of the National Association of Stock Car Auto Racing (NASCAR) in 1948.⁴

Today, NASCAR is automobile racing's largest sanctioning body for stock cars. Currently, NASCAR has 28 sanctioned tracks. Additionally, Florida is one of only three states that have two NASCAR-sanctioned tracks. These tracks are the Daytona International Speedway and the Homestead-Miami Speedway.⁵

Aside from the two NASCAR-sanctioned tracks, Florida is home to an additional 50 automobile racing tracks. These tracks are located throughout the state, and provide local amateur racers and enthusiasts the opportunity to be involved with the sport.⁶

III. Effect of Proposed Changes:

SB 266 designates the sport of automobile racing as the official state sport.

Section 1 creates s. 15.0527, F.S., to designate the sport of automobile racing as the official state sport.

Section 2 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.

³ Hall, *supra* note 1.

⁴ Id.

⁵ Nascar Tracks. available at www.nascar.com/races/tracks/ (Last visited February 16, 2012).

⁶ Florida Race Track Directory of Asphalt & Dirt Tracks & Drag Strips available at <http://www.racingin.com/track/florida.aspx> (Last visited February 16, 2012).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By Senator Lynn

7-00210-12

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1 A bill to be entitled
2 An act relating to state symbols; creating s. 15.0527,
3 F.S.; designating the sport of automobile racing as
4 the official state sport; providing an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Section 15.0527, Florida Statutes, is created to
9 read:

10 15.0527 Official state sport.—The sport of automobile
11 racing is designated as the official state sport.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 594

INTRODUCER: Health Regulation Committee and Senator Storms

SUBJECT: Suspension or Restriction of License/Health Care Practitioners

DATE: February 19, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Fav/CS
2.	Seay	Roberts	GO	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill authorizes the Department of Health (DOH) to issue an emergency order restricting the license of certain health care practitioners who have:

- Committed, been arrested for, or criminally prosecuted for, homicide;
- Been arrested or criminally prosecuted for acts related to the importation, manufacture, distribution, possession, transfer, sale, or prescribing of controlled substances; or
- Violated a provision under 21 U.S.C. ss. 801-971, relating to the possession, transfer, sale, or prescribing of controlled substances.

The bill requires DOH to initiate administrative proceedings pursuant to ch. 120, F.S., for an emergency order issued to restrict the license of certain health care practitioners who commit the above-listed acts. The bill also requires a judge, when determining whether to release a defendant on bail or other conditions, and what the bail or conditions of release may be, to consider whether the suspension of a license or the restriction on the ability to practice a profession licensed by DOH's Division of Medical Quality Assurance (MQA) is necessary to protect the community against unreasonable danger from the criminal defendant.

This bill substantially amends sections 456.074 and 903.046 of the Florida Statutes.

II. Present Situation:

The Department of Health (DOH), Division of Medical Quality Assurance (MQA), regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils. Boards are responsible for approving or denying applications for licensure and are involved in disciplinary hearings. The range of disciplinary actions taken by boards includes citations, suspensions, reprimands, probations, and revocations.

Boards

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.¹ Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

License Disciplinary Actions

Sections 456.072, 456.073 and 456.074 F.S., provide authority for a board to take disciplinary action against a licensee. These actions include:

- Refusal to certify, or to certify with restrictions, an application for a license;
- Suspension or permanent revocation of a license;
- Restriction of a practice or a license;
- Administration of a fine not to exceed \$10,000 per occurrence;
- Issuance of a reprimand or letter of concern;
- Imposition of probationary conditions on the licensee;
- Corrective action.
- Imposition of an administrative fines for violations of patient rights;
- Refund of fees billed and collect from the patient or a third party on behalf of the patient; and
- Remedial education.²

The Board can take action for any legally sufficient, written and signed complaint that is filed before it. S 456.073(1), F.S., provides that a complaint is legally sufficient if it contains the ultimate facts that show a violation of ch. 456, F.S., the relevant practice act or any rule adopted by DOH or the relevant board. DOH has the authority to investigate a complaint, even if the original complainant withdraws or the complainant is anonymous.³ Further, DOH may initiate an investigation if it has reasonable cause to believe that a licensee has violated a Florida statute, or a rule of either the board or the department.

¹ Section 456.001, F.S.

² Section 456.072(2)

³ Section 456.074(1), F.S.

The subject of an investigation has 20 days to respond in writing to the complaint or document after service.⁴ Whatever is submitted is considered by the probable cause panel of the respective board.⁵ The right to respond does not preclude the State Surgeon General from issuing a summary emergency order, if it is necessary to protect the public.⁶

DOH has 6 months to complete an investigation and submit it to the appropriate probable cause panel.⁷ A determination as to probable cause is made by a majority vote of the panel.⁸ The panel may request additional investigative information from DOH, and this must be done within 15 days of receiving the investigative report from the department or agency.⁹ The panel has 30 days from receiving the final investigative report to make a determination of probable cause.¹⁰ The Surgeon General may grant extensions of these time limits.¹¹ If the panel does not make a determination within the statutory timeframe, DOH is directed to do so within 10 days of the expiration of the time limit.¹²

DOH is directed to follow the determination of the probable cause panel, and if probable cause exists is directed to file a formal complaint against the subject, and prosecute pursuant to ch. 120, F.S.¹³ DOH may decide not to prosecute if probable cause has been found improvidently, and refer the issue back to the appropriate Board, which may then choose to file a formal complaint and prosecute pursuant to ch. 120, F.S.¹⁴ Referrals to the Division of Administrative Hearings (DOAH), must occur within 1 year of filing the complaint.¹⁵ Chapter 120, F.S., provides the practitioner with the right to appeal the action.

DOH is further directed to notify the person who filed the complaint, and if probable cause is not found, provide them with an opportunity 60 days from the determination, to bring additional information to the department.¹⁶

Emergency Orders

Section 120.60(6), F.S., provides DOH with broad authority to take disciplinary action in the case of immediate serious danger to the public health, safety or welfare. A license may be suspended, restricted, or limited on an emergency basis if:

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Section 456.074(2), F.S.

⁸ Section 456.074(4), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 456.073(9)(c), F.S.

- The procedure provides at least the same procedural protection as is given by other statutes, the state Constitution or the U.S. Constitution;
- The action is necessary to protect the public interest under the emergency procedure;
- There are specific facts that outline the finding of an immediate danger to public health, safety, or welfare and reasons for concluding the process was fair under the circumstances.

Section 456.074, F.S., provides DOH with separate authority from s. 120.60(6), F.S., to issue an emergency order suspending the license of certain health care practitioners under very specific circumstances. This **must** occur when:

- A medical doctor, doctor of osteopathy, chiropractor, podiatrist, naturopath, optometrist, nurse, pharmacist, dentist or hypnotist pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication to:
 - A felony under:
 - ch. 409, F.S., social and economic assistance;
 - ch. 817, F.S., fraudulent practices;
 - ch. 893, F.S., drug abuse prevention or control;
 - 21 U.S.C. ss 801-970, controlled substances; or
 - 42 U.S.C. ss. 1395-1396, Medicaid and Medicare.
 - A misdemeanor or felony under:
 - 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, crimes; or
 - 42 U.S.C. ss 1320a-7b, Medicaid.

DOH has discretionary authority pursuant s. 456.074, F.S. to issue an emergency order suspending or restricting the license of certain health care practitioners when:

- The board has found a physician or osteopathic physician in violation of s. 458.331(1)(t), F.S., or s 459.015(1)(x), F.S., relating to medical malpractice, in regard to three or more patients and there is probable cause to find additional violations of these sections.
- A healthcare practitioner, as defined in s. 456.001(4), F.S., tests positive for a pre-employment or employer ordered drug test, when the practitioner does not have a lawful prescription and legitimate medical reason for using such a drug.
- A healthcare practitioner has defaulted on state or federally guaranteed student loans.¹⁷

While Florida law does not specify the interaction between these two sections, courts have interpreted s. 456.074, F.S, to operate independently of s. 120.60(6), F.S. Courts appear to interpret s. 456.074(1), F.S., in a way that is analogous to strict liability, such that the due process requirements of s. 120.60(6), F.S., including proof of immediate danger to public safety, do not apply. Courts that have interpreted s. 456.074, F.S., have applied subsection (1), which mandates the emergency suspension, leaving DOH with no discretion.¹⁸ Subsection (3) of

¹⁷ S. 456.074, F.S.

¹⁸ See *Mendelsohn v. Department of Health*, 68 So.3d 965 (Fla 1st DCA, 2011) (DOH could not issue emergency suspension because petitioner did not commit enumerated violation of s. 456.074(1), F.S.); *Bethencourt-Miranda v. Department of Health*, 910 So.2d 927, (Fla 1st DCA, 2005) (No findings were necessary for an emergency suspension for violation of 21 U.S.C. s. 846);

s. 456.074, F.S., for example, provides DOH with discretion as to an emergency suspension, and judicial interpretation of discretionary authority in this context is unclear.

Following the issuance of an emergency suspension, the person has an immediate right of appeal.¹⁹ An emergency suspension order is effective until it is overturned by an appellate court, vacated by the Surgeon General or superseded by a final order. The department is required to initiate non-emergency administrative proceedings within 20 days of the emergency suspension.²⁰ DOH issued 326 emergency suspensions in FY 2010-11.²¹

Bail

Pretrial release is an alternative to incarceration that allows an accused to be released from detention whilst they await disposition of the criminal charges. Article I, s. 24 of the Florida Constitution provides that unless a person is charged with a capital offense or one punishable by life and “the proof of guilt is evident or the presumption great,” every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. Further to this, the Legislature has determined that the presumption in favor of release on nonmonetary conditions for any accused who is granted pre-trial release unless they are charged with a dangerous crime.²²

Pretrial release is granted by a court in one of three ways; release on own recognizance, supervised pretrial release, or a bond.²³ Bail as a form pretrial release, requires an accused to pay a set sum of money to the court. If the accused released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

Section 903.046, F.S., provides that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the person. In the determination of whether to release a criminal defendant on bail or other conditions, the section directs the judge to consider:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- Family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant’s past and present conduct;
- The nature and probability of danger that the defendant poses to the community, including intimidation and danger to victims;

¹⁹ S. 120.569(n)(2), F.S.

²⁰ Rule 28-106.501, F.A.C.

²¹ DOH analysis for SB 594 (2012) (on file with the Senate Health Regulation Committee).

²² Dangerous crimes are described in s. 907.041(4)(a), F.S., including offenses such as arson, aggravated assault, aggravated battery, child abuse, elder abuse, abuse of a disabled adult, kidnapping, homicide, manslaughter, sexual battery or other sex offenses, robbery, carjacking, stalking, terrorism and domestic violence.

²³ Bail is the security, such as a bond posted by a defendant to a trial court to secure their release from detention to appear in court at a future date. Black’s Law Dictionary (9th Ed. 2009). S. 903.011(1), F.S., provides that bail and bond include any and all forms of pretrial release as used in ch. 903, F.S.

- The course of funds used for bail, or to secure the bond;
- Whether the defendant is on release for another pending matter;
- The street value of the drug or controlled substance, if applicable to the case;
- Whether there is probable cause to believe the defendant committed a new crime whilst on pretrial release;
- Whether the crime charged is a violation of ch. 874, F.S.; and
- Any other relevant factor.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 456.074, F.S., to authorize the DOH to issue an emergency order restricting the license of an allopathic or osteopathic physician, podiatrist, or dentist,²⁵ from prescribing controlled substances if the practitioner has:

- Committed, is arrested for, or is criminally prosecuted for, homicide;
- Been arrested or criminally prosecuted for any act directly related to the importation, manufacture, distribution, possession, transfer, sale, or prescribing of controlled substances; or
- Violated a provision of 21 U.S.C. ss. 801-971, relating to the possession, transfer, sale, or prescribing of controlled substances.

This section requires the DOH to initiate administrative proceedings pursuant to ch. 120, F.S., for an emergency order issued to restrict the license of certain health care practitioners who commit the above-listed acts.

Section 2 amends s. 903.046, F.S., to require a judge, when determining whether to release a defendant on bail or other conditions and what the bail or conditions of release may be, to consider whether the suspension of a license or the restriction on the ability to practice a profession licensed by the DOH, MQA is necessary to protect the community against unreasonable danger from the criminal defendant.

Section 3 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁴ S. 903.046, F.S.

²⁵ The bill refers to health care practitioners licensed under ch. 458, ch. 459, ch. 461, or ch. 466, F.S. Currently, only the physicians licensed under these chapters are authorized under Florida law to prescribe controlled substances.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

DOH may incur costs associated with issuing additional emergency orders restricting certain health care practitioners' licenses and costs associated with the attendant administrative proceedings.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Lines 97-100 of the CS appear to give a judge authority to suspend or restrict a health care practitioner license in order to allow the release of a criminal defendant on bail or on other pretrial release conditions. According to s. 456.074, F.S., DOH is the only entity that has the authority to issue an emergency order suspending a health care practitioner's license.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS by Health Regulation – January 25, 2012:

The CS is different from the bill in that it:

- Narrows the scope of practitioners to whom, and the grounds for which, emergency orders may be issued by DOH.
- Requires DOH to initiate administrative proceedings under ch. 120, F.S., if such an emergency order is issued.
- Requires a judge in a criminal case to determine whether the suspension or restriction of a license is necessary to protect the community when determining whether the practitioner defendant should be released on bail or pretrial release.
- Deletes the provisions in the bill related to access to patients' records.

B. Amendments:

None.

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



553508

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability
(Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 90 and 91
insert:

Section 2. Subsection (3) of section 766.103, Florida
Statutes, is republished, subsection (4) of that section is
amended, and subsection (5) is added to that section to read:

766.103 Florida Medical Consent Law.—

(3) No recovery shall be allowed in any court in this state
against any physician licensed under chapter 458, osteopathic
physician licensed under chapter 459, chiropractic physician
licensed under chapter 460, podiatric physician licensed under



13 chapter 461, dentist licensed under chapter 466, advanced
14 registered nurse practitioner certified under s. 464.012, or
15 physician assistant licensed under s. 458.347 or s. 459.022 in
16 an action brought for treating, examining, or operating on a
17 patient without his or her informed consent when:

18 (a)1. The action of the physician, osteopathic physician,
19 chiropractic physician, podiatric physician, dentist, advanced
20 registered nurse practitioner, or physician assistant in
21 obtaining the consent of the patient or another person
22 authorized to give consent for the patient was in accordance
23 with an accepted standard of medical practice among members of
24 the medical profession with similar training and experience in
25 the same or similar medical community as that of the person
26 treating, examining, or operating on the patient for whom the
27 consent is obtained; and

28 2. A reasonable individual, from the information provided
29 by the physician, osteopathic physician, chiropractic physician,
30 podiatric physician, dentist, advanced registered nurse
31 practitioner, or physician assistant, under the circumstances,
32 would have a general understanding of the procedure, the
33 medically acceptable alternative procedures or treatments, and
34 the substantial risks and hazards inherent in the proposed
35 treatment or procedures, which are recognized among other
36 physicians, osteopathic physicians, chiropractic physicians,
37 podiatric physicians, or dentists in the same or similar
38 community who perform similar treatments or procedures; or

39 (b) The patient would reasonably, under all the surrounding
40 circumstances, have undergone such treatment or procedure had he
41 or she been advised by the physician, osteopathic physician,



553508

42 chiropractic physician, podiatric physician, dentist, advanced
43 registered nurse practitioner, or physician assistant in
44 accordance with the provisions of paragraph (a).

45 (4) (a) Except as provided in subsection (5), a consent that
46 ~~which~~ is evidenced in writing and meets the requirements of
47 subsection (3) shall, if validly signed by the patient or
48 another authorized person, raise a rebuttable presumption of a
49 valid consent.

50 (b) A valid signature is one which is given by a person who
51 under all the surrounding circumstances is mentally and
52 physically competent to give consent.

53 (5) (a) A consent, signed by a patient or other person
54 authorized to give consent for a patient who will be undergoing
55 a Level II or Level III office surgery involving an elective
56 cosmetic surgical procedure or treatment is not valid unless the
57 physician, osteopathic physician, chiropractic physician,
58 podiatric physician, dentist, advanced registered nurse
59 practitioner, or physician assistant advised the patient or
60 other authorized person of the proposed treatment's or
61 procedure's substantial risks and inherent hazards, as provided
62 in subsection (3), and the written consent is signed by the
63 patient or other person authorized to give consent for the
64 patient at least 1 hour before such treatment or procedure is
65 performed.

66 (b) A consent signed by a patient or other person
67 authorized to give consent for the patient who will be
68 undergoing a Level II or Level III office surgery involving an
69 elective cosmetic surgical procedure or treatment is not valid
70 if the consent requires the patient or other authorized person



553508

71 to waive the assistance of personnel who, under the applicable
72 standard of medical practice and care and applicable law or
73 department rule, must assist in such treatment or procedure
74 because of the specific nature of treatment or procedure or
75 because of the patient's circumstances.

76 (c) This subsection does not apply to a surgical procedure
77 performed at a licensed hospital or an outpatient surgical
78 center owned or operated by a licensed hospital.

79 Section 3. Section 2 of this act may be cited as the "Rony
80 Stifelman Wendrow Comestic Patient Protection Act."

81
82 ===== T I T L E A M E N D M E N T =====

83 And the title is amended as follows:

84 Delete lines 2 - 3

85 and insert:

86 An act relating to health care practitioners; amending
87 s.

88
89 Delete line 12

90 and insert:

91 emergency order; amending s. 766.103, F.S.; providing
92 that consent to certain medical treatments and
93 procedures is not valid unless certain requirements
94 are met; providing a short title; amending s. 903.046,
95 F.S.; requiring

By the Committee on Health Regulation; and Senator Storms

588-02366A-12

2012594c1

1 A bill to be entitled
 2 An act relating to suspension or restriction of the
 3 license of a health care practitioner; amending s.
 4 456.074, F.S.; authorizing that the Department of
 5 Health issue an emergency order restricting the
 6 license of a health care practitioner from prescribing
 7 controlled substances if the practitioner is arrested
 8 for, is criminally prosecuted for, or commits certain
 9 criminal acts involving homicide or controlled
 10 substances; requiring that the department initiate
 11 administrative proceedings for the issuance of the
 12 emergency order; amending s. 903.046, F.S.; requiring
 13 that the court, in determining whether to release a
 14 defendant on bail or other conditions, consider
 15 whether the suspension of a license or restriction on
 16 the ability to practice a licensed health care
 17 profession is necessary to protect the community
 18 against unreasonable danger; providing an effective
 19 date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 456.074, Florida Statutes, is amended to
 24 read:

25 456.074 Certain health care practitioners; immediate
 26 suspension or restriction of license.-

27 (1) The department shall issue an emergency order
 28 suspending the license of any person licensed under chapter 458,
 29 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,

588-02366A-12

2012594c1

30 chapter 464, chapter 465, chapter 466, or chapter 484 who pleads
 31 guilty to, is convicted or found guilty of, or who enters a plea
 32 of nolo contendere to, regardless of adjudication, to:

33 (a) A felony under chapter 409, chapter 817, or chapter 893
 34 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396;
 35 or

36 (b) A misdemeanor or felony under 18 U.S.C. s. 669, ss.
 37 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s.
 38 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the
 39 Medicaid program.

40 (2) If the board has previously found any physician or
 41 osteopathic physician in violation of the provisions of s.
 42 458.331(1)(t) or s. 459.015(1)(x), in regard to her or his
 43 treatment of three or more patients, and the probable cause
 44 panel of the board finds probable cause of an additional
 45 violation of that section, then the State Surgeon General shall
 46 review the matter to determine if an emergency suspension or
 47 restriction order is warranted. Nothing in this section shall be
 48 construed so as to limit the authority of the State Surgeon
 49 General to issue an emergency order.

50 (3) The department may issue an emergency order suspending
 51 or restricting the license of any health care practitioner as
 52 defined in s. 456.001(4) who tests positive for any drug on any
 53 government or private sector preemployment or employer-ordered
 54 confirmed drug test, as defined in s. 112.0455, when the
 55 practitioner does not have a lawful prescription and legitimate
 56 medical reason for using such drug. The practitioner shall be
 57 given 48 hours from the time of notification to the practitioner
 58 of the confirmed test result to produce a lawful prescription

588-02366A-12 2012594c1

59 for the drug before an emergency order is issued.

60 (4) Upon receipt of information that a Florida-licensed
61 health care practitioner has defaulted on a student loan issued
62 or guaranteed by the state or the Federal Government, the
63 department shall notify the licensee by certified mail that he
64 or she shall be subject to immediate suspension of license
65 unless, within 45 days after the date of mailing, the licensee
66 provides proof that new payment terms have been agreed upon by
67 all parties to the loan. The department shall issue an emergency
68 order suspending the license of any licensee who, after 45 days
69 following the date of mailing from the department, has failed to
70 provide such proof. Production of such proof does shall not
71 prohibit the department from proceeding with disciplinary action
72 against the licensee pursuant to s. 456.073.

73 (5) The department may issue an emergency order restricting
74 the license of any health care practitioner licensed under
75 chapter 458, chapter 459, chapter 461, or chapter 466 from
76 prescribing controlled substances, as defined in chapter 893, if
77 the licensee:

78 (a) Is arrested for, is criminally prosecuted for, or
79 commits, any act that is a violation of chapter 782;

80 (b) Is arrested for, or is criminally prosecuted for, any
81 act that directly relates to the importation, manufacture,
82 distribution, possession, transfer, sale, or prescribing of
83 controlled substances as defined in chapter 893; or

84 (c) Violates a provision of 21 U.S.C. ss. 801-971, relating
85 to the possession, transfer, sale, or prescribing of controlled
86 substances.

87

588-02366A-12 2012594c1

88 The department shall initiate administrative proceedings
89 pursuant to chapter 120 for any emergency order issued under
90 this paragraph.

91 Section 2. Paragraph (m) is added to subsection (2) of
92 section 903.046, Florida Statutes, to read:

93 903.046 Purpose of and criteria for bail determination.—

94 (2) When determining whether to release a defendant on bail
95 or other conditions, and what that bail or those conditions may
96 be, the court shall consider:

97 (m) Whether the suspension of a license or the restriction
98 on the ability to practice a licensed profession as defined in
99 s. 456.001 is necessary to protect the community against
100 unreasonable danger from the criminal defendant.

101 Section 3. This act shall take effect July 1, 2012.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 722

INTRODUCER: Senator Garcia

SUBJECT: Autism

DATE: February 17, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Favorable
2.	Jenkins	Roberts	GO	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the Autism Spectrum Disorder Study Committee (committee) to examine the effects of autism spectrum disorder (ASD) on families in which English is the second language. The committee, composed of 10 members, is to advise the Agency for Persons with Disabilities (APD) on matters relating to the occurrence of ASD in those families. The committee must prepare a report for the Governor, the President of the Senate, and the Speaker of the House of Representatives by September 1, 2013, which is also when the committee expires.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

What is Autism?

Autism is a term used to describe a group of complex developmental disabilities that many researchers believe are the result of a neurological disorder that affects the functioning of the brain. More people are being diagnosed with autism than ever before, and the Centers for Disease Control and Prevention (CDC) considers it a public health crisis.¹

¹ See, e.g., Catherine Rice, *Prevalence of Autism Spectrum Disorders --- Autism and Developmental Disabilities Monitoring Network, United States, 2006* (2006), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5810a1.htm> (last visited Jan. 13, 2012).

Individuals with autism often have problems communicating with others through spoken language and nonverbal communication. The early signs of autism usually appear in the form of developmental delays before a child turns 3 years old.²

Section 393.063(3), F.S., defines autism as “a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.”

The various forms of autism are referred to as the autism spectrum disorders (ASD), meaning that autism can be manifested in a wide variety of combinations, from mild to severe. Thus, many different behaviors can indicate that a person should be diagnosed as autistic. According to the National Institute of Mental Health (NIMH), the pervasive developmental disorders, or ASDs, range from a severe form, called autistic disorder, to a milder form, Asperger’s syndrome.³ A child can also be diagnosed with pervasive developmental disorder not otherwise specified (PDD NOS) if the child has symptoms of both disorders, but does not meet the specific criteria for either. Other disorders that are included in the autism spectrum are Rett syndrome⁴ and childhood disintegrative disorder.⁵ The NIMH states that all children with an ASD demonstrate deficits in:

- *Social Interaction* – Most children with ASD have difficulty learning to engage in everyday human interaction. Children with ASD are also slower in understanding subtle social cues (nonverbal communication) and thus struggle to interpret what others are thinking and feeling. This causes them to often find social interaction confusing and frustrating. It is also common for people with ASD to have difficulty controlling their emotions. Examples include episodes of disruptive behavior such as crying or verbal outbursts at inappropriate

² Centers for Disease Control and Prevention, *Autism Spectrum Disorders (ASDs), Signs and Symptoms*, <http://www.cdc.gov/ncbddd/autism/signs.html> (last visited Jan. 13, 2012).

³ Nat’l Institute of Health, Dep’t of Health and Human Servs., *Autism Spectrum Disorders, Pervasive Developmental Disorders*, NIH Publication No. 08-5511, at 2 (2008), available at <http://www.nimh.nih.gov/health/publications/autism/nimhautismspectrum.pdf> (last visited Dec. 16, 2011). Asperger’s syndrome is “a developmental disorder that affects a person’s ability to socialize and communicate effectively with others. Children with Asperger’s syndrome typically exhibit social awkwardness and an all-absorbing interest in specific topics.” The Mayo Clinic, *Asperger’s Syndrome, Definition*, <http://www.mayoclinic.com/health/aspergers-syndrome/DS00551> (last visited Jan. 13, 2012); see also Dr. Tony Attwood, *What is Asperger’s Syndrome?*, OASIS @ MAAP, <http://aspergersyndrome.org/Articles/What-is-Asperger-Syndrome-.aspx> (last visited Jan. 13, 2012).

⁴ Rett syndrome is a relatively rare disorder, affecting almost exclusively females. According to NIMH, “After a period of normal development, sometime between 6 and 18 months, autism-like symptoms begin to appear. The little girl’s mental and social development regresses – she no longer responds to her parents and pulls away from any social contact. If she has been talking, she stops; she cannot control her feet; she wrings her hands. Some of the problems associated with Rett syndrome can be treated. Physical, occupational, and speech therapy can help with problems of coordination, movement, and speech.” Nat’l Institute of Health, *supra* note 3, at 4.

⁵ Childhood disintegrative disorder (CDD) is a very rare form of ASD, usually found in males. Symptoms may start to appear as early as age 2, but the average age of onset is between 3 and 4 years. Until this time, the child has age-appropriate skills in communication and social relationships. The long period of normal development before regression helps differentiate CDD from Rett syndrome. The loss of such skills as vocabulary is more dramatic in CDD than they are in classical autism. The diagnosis requires extensive and pronounced losses involving motor, language, and social skills. CDD is also accompanied by loss of bowel and bladder control and oftentimes seizures and a very low IQ. *Id.*

times or physical aggression. They often can lose self-control when exposed to a strange or overwhelming environment or when angry or frustrated.⁶

- *Verbal and nonverbal communication* – Persons with ASD often have difficulty developing standard communication skills. Some children with ASD remain mute, while others do not develop language until ages 5 to 9. Others use language in unusual ways or utilize sign language or pictures to communicate. The body language of a person with ASD can be difficult to understand because it is not always consistent with the words he or she is saying. As they grow older, persons with ASD often become more aware of their difficulties in communication, which can lead to anxiety or depression.⁷
- *Repetitive behaviors or interests* – Persons with ASD often perform repetitive motions that set them apart from their peers. For example, some children and adults repeatedly flap their arms or walk on their toes while others freeze in position. Children with ASD exhibit the need for consistency in their environment. Changes in daily routines – such as mealtimes, dressing, bathing, going to school at a certain time and by the same route – can cause autistics to become extremely disturbed. As children, they might spend hours lining up their toys in a certain way and if the toys are moved they may become upset. Additionally, autistics often form intense, obsessive preoccupations with certain objects or topics on which they focus much of their energy.⁸

Another common difficulty is that children with ASD often have unusual responses to sensory experiences, such as certain sounds or the way objects look.

Florida law defines the term “autism spectrum disorder” as any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM):⁹

- Autistic disorder.
- Asperger’s syndrome.
- Pervasive developmental disorder not otherwise specified.¹⁰

Diagnosis of Autism Spectrum Disorders

There is no medical test for ASDs. Instead, doctors look at behavioral symptoms to make a diagnosis. Research shows that the diagnosis of autism at age 2 can be reliable, valid, and stable.

⁶ *Id.* at 7-8.

⁷ *Id.* at 8-9.

⁸ *Id.* at 9-10.

⁹ The DSM, published by the American Psychiatric Association, is the primary system used to classify and diagnose mental disorders. The 4th edition of the DSM was released in 1994. On February 10, 2010, the American Psychiatric Association released its draft criteria for the fifth edition of the DSM on its website. The draft DSM-5 includes collapsing all autism related diagnoses into one single category, “autism spectrum disorder,” that would incorporate autistic disorder, Asperger’s syndrome, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified. The final DSM-5 is scheduled for release in May 2013. See Am. Psychiatric Ass’n, DSM-5 Development, *Proposed Draft Revisions to DSM Disorders and Criteria*, <http://www.dsm5.org/Pages/Default.aspx> (last visited Jan. 13, 2012).

¹⁰ Sections 627.6686(2)(b) and 641.31098(2)(b), F.S.

However, many children do not receive final diagnosis until they are much older.¹¹ This delay in diagnosis may result in lost opportunities for specialized early intervention.

The diagnosis of ASD is a two-stage process. The first stage involves developmental screening during “well child” check-ups. These screening tests are used solely for identifying children with developmental disabilities. Additional screening may be needed if a child’s symptoms warrant it or if he or she is at high risk for ASD.¹²

The second stage of diagnosis is a comprehensive evaluation. If the initial screening tests indicate the possibility of ASD, then further comprehensive testing is performed. Comprehensive testing is done by health care practitioners from multiple disciplines (psychologists, psychiatrists, neurologists, speech therapists, and other professions with experience in diagnosing children with ASD) who evaluate the child in depth. This may include:

- Clinical observations;
- Parent interviews;
- Developmental histories;
- Psychological testing;
- Speech and language assessments;
- The possibility of the use of one or more autism diagnostic scales; and
- The possibility of physical, neurological, and genetic testing.¹³

Treatment Approaches for Autism Spectrum Disorders

Much of the scientific and clinical evidence indicates that early treatment of autism during preschool years (ages 3 to 5) often yields very positive results in mitigating the effects of ASDs. According to the National Institute of Neurological Disorders and Stroke (NINDS), therapies for autism are designed to remedy specific symptoms.¹⁴ Educational and behavioral interventions are highly structured and usually aimed at the development of skills such as language and social skills. Medication may be prescribed to reduce self-injurious behavior or other behavioral symptoms of autism. Early intervention is important for children because children learn most rapidly when they are very young. If begun early enough, such intervention has a chance of favorably influencing brain development.

In a 2001 report, the Commission on Behavioral and Social Sciences and Education recommended that treatment “services begin as soon as a child is suspected of having an autistic spectrum disorder. Those services should include a minimum of 25 hours a week, 12 months a year, in which the child is engaged in systematically planned, and developmentally appropriate educational activity toward identified objectives.”¹⁵

¹¹ Centers for Disease Control and Prevention, *Autism Spectrum Disorders (ASDs), Screening and Diagnosis*, <http://www.cdc.gov/ncbddd/autism/screening.html> (last visited on Jan. 13, 2012).

¹² The CDC considers a child with a sibling or parent with an ASD to be at high risk. *Id.*

¹³ *Id.*

¹⁴ Nat’l Institute of Neurological Disorders and Stroke, Nat’l Institutes of Health, *NINDS Autism Information Page*, http://www.ninds.nih.gov/disorders/autism/autism.htm#Is_there_any_treatment (last visited Jan. 13, 2012).

¹⁵ Comm’n on Behavioral and Social Sciences and Education, *Educating Children with Autism*, at 6 (2001), available at http://www.nap.edu/openbook.php?record_id=10017&page=6 (last visited Jan. 13, 2012).

Florida's Centers for Autism and Related Disabilities (CARD) are established in s. 1004.55, F.S., to provide nonresidential resource and training services for persons who have autism, a pervasive developmental disorder that is not otherwise specified, an autistic-like disability, a dual sensory impairment, or a sensory impairment with other handicapping conditions. There are seven CARD centers throughout the state, serving clients in their geographic areas.¹⁶

Each of the centers is involved in academic research, and each provides information and resources to families to enable them to assist their loved ones dealing with ASD. In particular, early application of speech-language therapy, occupational therapy, and physical therapy are encouraged for individuals with autism.

Autism Spectrum Disorder in the Hispanic Community

In 2009, the Hispanic population in Florida was nearly 4 million, and 86 percent of Hispanics lived in a household where a language other than English was spoken.¹⁷ The incidence of ASD does not differ across racial or ethnic groups.¹⁸ Dr. Bobbie Vaughn with the University of South Florida's CARD Center notes:

The rise in autism spectrum disorders and concomitant rise in the Latino population as the fastest growing minority along with linguistic differences potentially creates the widening of an already established disparity. . . . The parents of many of these children also have limited English proficiency. . . . This presents another challenge for children who might also have communication and social problems related to ASD.

These adult language barriers alone might prevent an immigrant Latino parent from taking their child to a clinic. In addition to language, [it] is documented that racial bias, patient preferences, and poor communication (i.e., relaying of information) present health care access barriers for Latino and other minority families.¹⁹

These cultural and linguistic issues can lead to late or inaccurate diagnoses, which can be devastating in a disorder like ASD, where early intervention is critical. Further, there exists a

¹⁶ The seven centers are located at the College of Medicine at Florida State University; the College of Medicine at the University of Florida; the University of Florida Health Science Center at Jacksonville; the Louis de la Parte Florida Mental Health Institute at the University of South Florida; the Mailman Center for Child Development and the Department of Psychology at the University of Miami; the College of Health and Public Affairs at the University of Central Florida; and the Department of Exceptional Student Education at Florida Atlantic University. Section 1004.55(1), F.S.

¹⁷ PEW Hispanic Ctr., PEW Research Ctr., *Demographic Profile of Hispanics in Florida, 2009*, <http://pewhispanic.org/states/?stateid=FL> (last visited Jan. 13, 2012).

¹⁸ Catherine Rice, *supra* note 1.

¹⁹ Bobbie J. Vaughn, Ph.D., Associate Professor, University of South Florida, *Project Conectar: Building Capacity in a Community Learn the Signs Act Early* (on file with the Committee on Children, Families, and Elder Affairs). This ongoing research project is investigating the use of natural helpers, or promotoras, in Little Havana, Miami, to overcome the cultural and linguistic disparities that prevent families from seeking early help for their children and preventing early and accurate diagnosis of ASD and other developmental disabilities.

general lack of Spanish-speaking health care professionals trained to diagnose individuals with ASD, exacerbating the problems faced by these families.²⁰

III. Effect of Proposed Changes:

This bill creates the Autism Spectrum Disorder Study Committee (committee) to examine the effects of autism spectrum disorder (ASD) on families in which English is the second language. The committee is to advise the Agency for Persons with Disabilities (APD) on legislative, programmatic, and administrative matters relating to the occurrence of ASD in those families.

The committee shall consist of 10 members, four of whom are appointed by the Governor, three are appointed by the President of the Senate, and three by the Speaker of the House of Representatives. The membership must include:

- At least one physician licensed under chs. 458 or 459, F.S.;
- At least one psychiatrist licensed under chs. 458 or 459, F.S.;
- At least one psychologist licensed under ch. 490, F.S.;
- At least one certified behavior analyst specializing in treatment of autism through speech, occupational, or physical therapy or through applied behavior analysis, or a provider licensed under ch. 491, F.S. (*i.e.*, a clinical social worker, marriage and family therapist, or mental health counselor);²¹
- The State Surgeon General or an employee of the Department of Health appointed by the State Surgeon General;
- At least one parent of a child with autism;
- At least one educator certified in special education;
- At least one doctor from UM-NSU CARD, Center for Autism & Related Disabilities; and
- At least one person who has autism.

Initial appointments must be made by July 1, 2012, and subsequent vacancies are to be filled by the original appointing authority for the duration of the term.

The committee must appoint a chair by majority vote at its first meeting. The committee must meet at least six times bimonthly beginning in August 2012. The last meeting may be no later than August 30, 2013.

The members do not receive compensation for their service, and state funds may not be expended for the management and operation of the committee; however, the State Surgeon General may expend money to publish the recommendations and public announcements.

A final report must be completed by September 1, 2013, and presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The committee expires on September 1, 2013.

²⁰ Conversation with Mary Kay Bunton-Pierce, USF CARD Center (Mar. 10, 2011).

²¹ Pursuant to s. 491.003(13), F.S., a licensed clinical social worker, marriage and family therapist, or mental health counselor may also be referred to as a "psychotherapist".

The bill is effective upon becoming law.

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:

The bill requires specified physicians and members of the public to participate in the bimonthly meetings of the committee. The bill does not provide compensation to these people for participating on the committee. Therefore, there may be a slight fiscal impact to these committee members.

C. Government Sector Impact:

The bill requires the State Surgeon General or a Department of Health designee to participate in the bimonthly meetings of the committee. Additionally, the bill authorizes the State Surgeon General to spend state funds on publishing the committee's recommendations as well as any public announcements. However, the exact fiscal impact of the bill cannot be determined at this time.²²

VI. Technical Deficiencies:

The bill does not specify which agency is to provide administrative support to the committee.²³ The bill does provide that the State Surgeon General (within the Department of Health) is authorized to publish the committee's recommendations and public announcements; however, it is not specifically clear if the Department of Health is to provide other administrative support, if needed, to the committee.

²² Fla. Dep't of Health, *Bill Analysis, Economic Statement and Fiscal Note, SB 722* (Nov. 21, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

²³ *Id.*

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.

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

By Senator Garcia

40-00715-12

2012722__

A bill to be entitled

An act relating to autism; creating the Autism Spectrum Disorder Study Committee to study autism spectrum disorder in families in which English is the second language; providing for membership, meetings, and duties; prohibiting committee members from receiving compensation for their services; authorizing certain funding for publications, subject to approval of the State Surgeon General; requiring a report to the Governor and Legislature; providing for expiration of the committee; providing an effective date.

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

Section 1. Autism Spectrum Disorder Study Committee.—

(1) There is created an Autism Spectrum Disorder Study Committee to study the effects of autism spectrum disorder on families in which English is the second language.

(2) The committee shall advise the Agency for Persons with Disabilities regarding legislative, programmatic, and administrative matters that relate to occurrences of autism spectrum disorder in families in which English is the second language.

(3) The committee shall be composed of 10 members, of whom four shall be appointed by the Governor, three shall be appointed by the President of the Senate, and three shall be appointed by the Speaker of the House of Representatives. Of the members appointed to the committee:

(a) At least one member must be a physician licensed under

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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chapter 458 or chapter 459, Florida Statutes.

(b) At least one member must be a psychiatrist licensed under chapter 458 or chapter 459, Florida Statutes.

(c) At least one member must be a psychologist licensed under chapter 490, Florida Statutes.

(d) At least one member must be a behavior analyst certified under s. 393.17, Florida Statutes, who specializes in the treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy, or applied behavior analysis, or a provider licensed under chapter 491, Florida Statutes.

(e) At least one member must be the State Surgeon General or an employee of the Department of Health appointed by the State Surgeon General.

(f) At least one member must be the parent of a child with autism spectrum disorder.

(g) At least one member must be an educator certified in special education.

(h) At least one member must be a doctor from UM-NSU CARD, Center for Autism & Related Disabilities.

(j) At least one member must have autism spectrum disorder.

(4) Initial appointments shall be made by July 1, 2012. A vacancy shall be filled by appointment by the original appointing authority for the unexpired portion of the term.

(5) The committee shall elect a chair at the first meeting by a majority vote of the members present. A majority of the membership constitutes a quorum.

(6) The committee shall meet at least six times bimonthly, or more frequently upon call of the chair, beginning in August

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

40-00715-12 2012722

59 2012. The final meeting shall be held no later than August 30,
60 2013.

61 (7) Committee members are not entitled to compensation for
62 their services, and state funds may not be expended for the
63 management and operation of the committee except, at the
64 discretion of the State Surgeon General, funds may be expended
65 for the cost of publishing recommendations and any public
66 announcements.

67 (8) The committee shall issue a report containing its
68 findings and recommendations for community awareness campaigns
69 relating to autism spectrum disorder in families in which
70 English is the second language to the Governor, the President of
71 the Senate, and the Speaker of the House of Representatives by
72 September 1, 2013.

73 (9) The committee shall expire September 1, 2013.

74 Section 2. This act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 860

INTRODUCER: Judiciary Committee and Senator Wise

SUBJECT: Clerks of Court

DATE: February 17, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Cibula	JU	Fav/CS
2.	Seay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill makes numerous changes relating to clerks of circuit courts. Specifically, the bill:

- Provides guidelines for electronic filing of documents;
- Requires clerks to seal or expunge certain court documents upon court order;
- Requires persons filing a written request to have their personal information protected under the general agency personnel information public record exemption to specify the document type, name, identification number, and page number of the court record or official record;
- Increases the minimum amount the clerks are required to refund without a written request in the event of an overpayment from \$5 to \$10;
- Limits the state agency exemption from payment of court-related fees to the state agency and the party it is representing;
- Authorizes the filing of electronic affidavits regarding publication of a legal advertisement; and
- Provides that following the sale of a tax certificate, if a property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit.

This bill substantially amends sections 28.13, 28.222, 28.24, 28.244, 28.345, 50.041, 119.0714, and 197.542 of the Florida Statutes.

II. Present Situation:

Electronic Filings

The clerk of the circuit court is required to keep all papers with the utmost care and security, arranged in appropriate files.¹ The clerk is also required to ensure that the papers do not leave the office without permission from the court.²

Clerk as County Recorder

Pursuant to statute, the clerk of the circuit court generally acts as the county recorder.³ Current law does not require a clerk to remove recorded court documents from the Official Records pursuant to a sealing or expunction order as part of his or her duties.

Refunds

If a clerk of court determines that an overpayment was made, the clerk is required to make a refund if the overpayment exceeds \$5.⁴ If the amount of the overpayment is \$5 or less, the clerk need only refund the amount if the person who made the overpayment submits a written request.⁵

Fee Exemption

Certain individuals and groups, such as judges, state attorneys, and public defenders, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts, when acting in their official capacity.⁶ State agencies are also exempt from all court-related fees and charges assessed by the clerks.⁷

Public Records

A clerk of court is a custodian of public records and is thus required to provide access and copies of public records, if the requesting party is entitled by law to view a given record. Certain records are exempt from disclosure under public records laws, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and others as specified by statute.⁸ An individual whose information is exempt must submit a written request for exemption with any agency that holds an exempt record.⁹

¹ Section 28.13, F.S.

² *Id.*

³ Section 28.222(1), F.S.

⁴ Section 24.244, F.S.

⁵ *Id.*

⁶ Section 28.345, F.S.

⁷ *Id.*

⁸ Section 119.071(4)(d), F.S.

⁹ Section 119.071(4)(d)2., F.S.

Proof of Publication

Numerous statutes require the publication of legal notice for various actions.¹⁰ Generally, proof of such publication is made with a printed affidavit.¹¹

Sale at Public Auction

Tax lien certificates are issued by counties against a specific parcel of real property for unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges.¹² A tax certificate is a lien against the real property that can lead to public sale of the property.

When a tax certificate is redeemed (paid by the property owner), the certificate holder will receive the amount of their investment (the tax certificate face amount) plus the interest accrued up to the date of redemption. A tax certificate can be redeemed anytime before a tax deed is issued or the property is placed on the list of lands available for sale either by redeeming a tax certificate from the investor or by purchasing a county-held tax certificate. The person redeeming or purchasing the tax certificate is required to pay the face amount of the certificate, plus costs and charges and all interest due, which is either the interest rate due on the certificate or a 5 percent mandatory minimum interest, whichever is greater.¹³ The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.¹⁴

When property is sold by the clerk of court at a public auction, the certificate holder has the right to bid. The high bidder must post a nonrefundable deposit of 5 percent of the bid or \$200, whichever is greater, to be applied to the sale price at the time of full payment.¹⁵ If full payment of the final bid is not made within 24 hours, the clerk cancels all bids, advertises the sale, and pays all costs of the sale from the deposit.¹⁶ Any remaining funds must be applied toward the opening bid.¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 28.13, F.S., requiring clerks to affix a stamp on papers and electronic filings submitted to the clerk's office indicating the date and time of filing; providing that the clerk shall not permit any attorney or other person to remove filed documents from the control or custody of the clerk except as otherwise provided by law.

Section 2 amends s. 28.222, F.S., requiring the clerk, when acting in his or her capacity as county recorder, to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

¹⁰See, e.g., s. 50.011, F.S.

¹¹ Sections 50.031 and 50.041(1), F.S.

¹² Section 197.102(1)(f), F.S.

¹³ Section 197.472, F.S.

¹⁴ *Id.*

¹⁵ Section 197.542(2), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

Section 3 amends s. 28.24, F.S., transferring the service charge exemption for specified government entities to s. 28.345, F.S.

Section 4 amends s. 28.244, F.S., increasing the threshold from \$5 to \$10 to which clerks are not required to make a refund of an overpayment without a written request.

Section 5 amends s. 28.345, F.S., providing that clerks of court shall provide records to specified government entities without a service charge; specifying that the term “copy of a public record” for the purposes of this section means any facsimile, replica, photograph, or other reproduction of a record; providing that the exemptions in this section apply only to state agencies, state entities, and the party that an agency or entity is representing.

Section 6 amends s. 50.041, F.S., authorizing an alternative, electronic affidavit to prove publication of legal notices provided the notarization of the affidavit complies with the requirements of the electronic notarization statute in s. 117.021, F.S.

Section 7 amends s. 119.0714, F.S., requiring that a person who submits a written request to make information exempt from public disclosure must specify the document type, name, identification number, and page number of the record that contains the exempt information.

Section 8 amends s. 197.542, F.S., providing that if a property is redeemed prior to the clerk receiving full payment from the sale at a public action, the high bidder must submit a written request in order to receive a refund of the deposit.

Section 9 provides that this act shall take effect upon becoming a law.

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary – January 19, 2012:**

The Committee Substitute:

- Deleted an unnecessary cross-reference;
- Corrected a typographical error;
- Clarified that an existing fee exemption will continue to apply to state agencies as well as other state entities;
- Removed the word “confidential” where it is inaccurate; and
- Corrected an erroneous cross-reference.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Wise) recommended the following:

Senate Amendment (with title amendment)

Between lines 293 and 294
insert:

Section 6. Section 28.37, Florida Statutes, is amended to
read:

28.37 Fines, fees, service charges, and costs remitted to
the state.—

(1) Pursuant to s. 14(b), Art. V of the State Constitution,
selected salaries, costs, and expenses of the state courts
system and court-related functions shall be funded from a
portion of the revenues derived from statutory fines, fees,



198326

13 service charges, and costs collected by the clerks of the court.

14 (2) Except as otherwise provided in ss. 28.241 and 34.041,
15 all court-related fines, fees, service charges, and costs are
16 considered state funds and shall be remitted by the clerk to the
17 Department of Revenue for deposit into the Clerks of the Court
18 Trust Fund within the Justice Administrative Commission.
19 However, 10 percent of all court-related fines collected by the
20 clerk, except for penalties or fines distributed under s.
21 316.0083(1)(b)3. or s. 318.18(15)(a) to counties or
22 municipalities, shall be deposited into the clerk's Public
23 Records Modernization Trust Fund to be used exclusively for
24 additional clerk court-related operational needs and program
25 enhancements.

26
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29
30 Delete line 17

31 and insert:

32
33 assessed by clerks of circuit courts; amending s.
34 28.37, F.S.; providing an exception for certain
35 specified penalties or fines that would otherwise be
36 deposited into the clerk's Public Records
37 Modernization Trust Fund; amending s.

By the Committee on Judiciary; and Senator Wise

590-02030-12

2012860c1

1 A bill to be entitled
 2 An act relating to clerks of court; amending s. 28.13,
 3 F.S.; providing requirements for storage of electronic
 4 filings; requiring papers and electronic filings to be
 5 electronically time stamped; amending s. 28.222, F.S.;
 6 authorizing the clerk to remove sealed or expunged
 7 court records from the Official Records; amending s.
 8 28.24, F.S.; revising provisions concerning an
 9 exemption from charges for services provided to
 10 specified officials and their staffs; amending s.
 11 28.244, F.S.; increasing the threshold amount for
 12 automatic repayment of overpayments; amending s.
 13 28.345, F.S.; providing for access to clerks' files by
 14 state agencies and an exemption from copying fees and
 15 charges; limiting to official use only the application
 16 of an exemption from payment of fees and charges
 17 assessed by clerks of circuit courts; amending s.
 18 50.041, F.S.; authorizing the use of electronic proof
 19 of publication affidavits; amending s. 119.0714, F.S.;
 20 requiring certain persons to provide specific
 21 information to the clerk to maintain the public
 22 records exemption status of certain information under
 23 specified provisions; amending s. 197.542, F.S.;
 24 authorizing the clerk to issue a refund to the
 25 depositor for redeemed property subject to a tax sale;
 26 providing an effective date.

27
 28 Be It Enacted by the Legislature of the State of Florida:
 29

Page 1 of 16

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590-02030-12

2012860c1

30 Section 1. Section 28.13, Florida Statutes, is amended to
 31 read:
 32 28.13 ~~To keep Papers and electronic filings.~~The clerk of
 33 the circuit court shall keep all papers and electronic filings
 34 ~~filed~~ in the clerk's office with the utmost care and security,
 35 storing them in association with related case arranged in
 36 appropriate files and affixing a stamp to the submission
 37 indicating ~~(endorsing upon each~~ the date and time when the
 38 submission ~~same~~ was filed. The clerk ~~), and~~ shall not permit any
 39 attorney or other person to remove documents, take papers once
 40 filed, from the control or custody out of the office of the
 41 clerk without leave of the court, except as otherwise ~~is~~
 42 hereinafter provided by law.
 43 Section 2. Subsections (4) through (6) of section 28.222,
 44 Florida Statutes, are renumbered as subsections (5) through (7),
 45 respectively, and a new subsection (4) is added to that section
 46 to read:
 47 28.222 Clerk to be county recorder.-
 48 (4) The county recorder shall remove recorded court
 49 documents from the Official Records pursuant to a sealing or
 50 expunction order.
 51 Section 3. Section 28.24, Florida Statutes, is amended to
 52 read:
 53 28.24 Service charges ~~by clerk of the circuit court.~~The
 54 clerk of the circuit court shall charge for services rendered by
 55 the clerk's office in recording documents and instruments and in
 56 performing the duties enumerated in amounts not to exceed those
 57 specified in this section, except as provided in s. 28.345.
 58 Notwithstanding any other provision of this section, the clerk

Page 2 of 16

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590-02030-12 2012860c1

59 of the circuit court shall provide without charge to the state
60 attorney, public defender, guardian ad litem, public guardian,
61 attorney ad litem, criminal conflict and civil regional counsel,
62 and private court-appointed counsel paid by the state, and to
63 the authorized staff acting on behalf of each, access to and a
64 copy of any public record, if the requesting party is entitled
65 by law to view the exempt or confidential record, as maintained
66 by and in the custody of the clerk of the circuit court as
67 provided in general law and the Florida Rules of Judicial
68 Administration. The clerk of the circuit court may provide the
69 requested public record in an electronic format in lieu of a
70 paper format when capable of being accessed by the requesting
71 entity.

Charges

- (1) For examining, comparing, correcting, verifying, and
certifying transcripts of record in appellate proceedings,
prepared by attorney for appellant or someone else other than
clerk, per page.....5.00
(2) For preparing, numbering, and indexing an original
record of appellate proceedings, per instrument.....3.50
(3) For certifying copies of any instrument in the public
records.....2.00
(4) For verifying any instrument presented for
certification prepared by someone other than clerk, per page.3.50
(5) (a) For making copies by photographic process of any
instrument in the public records consisting of pages of not more
than 14 inches by 8 1/2 inches, per page.....1.00

590-02030-12 2012860c1

- (b) For making copies by photographic process of any
instrument in the public records of more than 14 inches by 8 1/2
inches, per page.....5.00
(6) For making microfilm copies of any public records:
(a) 16 mm 100' microfilm roll.....42.00
(b) 35 mm 100' microfilm roll.....60.00
(c) Microfiche, per fiche.....3.50
(7) For copying any instrument in the public records by
other than photographic process, per page.....6.00
(8) For writing any paper other than herein specifically
mentioned, same as for copying, including signing and sealing7.00
(9) For indexing each entry not recorded.....1.00
(10) For receiving money into the registry of court:
(a)1. First \$500, percent.....3
2. Each subsequent \$100, percent.....1.5
(b) Eminent domain actions, per deposit.....170.00
(11) For examining, certifying, and recording plats and for
recording condominium exhibits larger than 14 inches by 8 1/2
inches:
(a) First page.....30.00
(b) Each additional page.....15.00
(12) For recording, indexing, and filing any instrument not
more than 14 inches by 8 1/2 inches, including required notice
to property appraiser where applicable:
(a) First page or fraction thereof.....5.00
(b) Each additional page or fraction thereof.....4.00
(c) For indexing instruments recorded in the official
records which contain more than four names, per additional
name.....1.00

590-02030-12 2012860c1

117 (d) An additional service charge shall be paid to the clerk
118 of the circuit court to be deposited in the Public Records
119 Modernization Trust Fund for each instrument listed in s.
120 28.222, except judgments received from the courts and notices of
121 lis pendens, recorded in the official records:

- 122 1. First page.....1.00
- 123 2. Each additional page.....0.50

124

125 Said fund shall be held in trust by the clerk and used
126 exclusively for equipment and maintenance of equipment,
127 personnel training, and technical assistance in modernizing the
128 public records system of the office. In a county where the duty
129 of maintaining official records exists in an office other than
130 the office of the clerk of the circuit court, the clerk of the
131 circuit court is entitled to 25 percent of the moneys deposited
132 into the trust fund for equipment, maintenance of equipment,
133 training, and technical assistance in modernizing the system for
134 storing records in the office of the clerk of the circuit court.
135 The fund may not be used for the payment of travel expenses,
136 membership dues, bank charges, staff-recruitment costs, salaries
137 or benefits of employees, construction costs, general operating
138 expenses, or other costs not directly related to obtaining and
139 maintaining equipment for public records systems or for the
140 purchase of furniture or office supplies and equipment not
141 related to the storage of records. On or before December 1,
142 1995, and on or before December 1 of each year immediately
143 preceding each year during which the trust fund is scheduled for
144 legislative review under s. 19(f)(2), Art. III of the State
145 Constitution, each clerk of the circuit court shall file a

590-02030-12 2012860c1

146 report on the Public Records Modernization Trust Fund with the
147 President of the Senate and the Speaker of the House of
148 Representatives. The report must itemize each expenditure made
149 from the trust fund since the last report was filed; each
150 obligation payable from the trust fund on that date; and the
151 percentage of funds expended for each of the following:
152 equipment, maintenance of equipment, personnel training, and
153 technical assistance. The report must indicate the nature of the
154 system each clerk uses to store, maintain, and retrieve public
155 records and the degree to which the system has been upgraded
156 since the creation of the trust fund.

157 (e) An additional service charge of \$4 per page shall be
158 paid to the clerk of the circuit court for each instrument
159 listed in s. 28.222, except judgments received from the courts
160 and notices of lis pendens, recorded in the official records.
161 From the additional \$4 service charge collected:

- 162 1. If the counties maintain legal responsibility for the
163 costs of the court-related technology needs as defined in s.
164 29.008(1)(f)2. and (h), 10 cents shall be distributed to the
165 Florida Association of Court Clerks and Comptroller, Inc., for
166 the cost of development, implementation, operation, and
167 maintenance of the clerks' Comprehensive Case Information
168 System, in which system all clerks shall participate on or
169 before January 1, 2006; \$1.90 shall be retained by the clerk to
170 be deposited in the Public Records Modernization Trust Fund and
171 used exclusively for funding court-related technology needs of
172 the clerk as defined in s. 29.008(1)(f)2. and (h); and \$2 shall
173 be distributed to the board of county commissioners to be used
174 exclusively to fund court-related technology, and court

590-02030-12 2012860c1

175 technology needs as defined in s. 29.008(1)(f)2. and (h) for the
176 state trial courts, state attorney, public defender, and
177 criminal conflict and civil regional counsel in that county. If
178 the counties maintain legal responsibility for the costs of the
179 court-related technology needs as defined in s. 29.008(1)(f)2.
180 and (h), notwithstanding any other provision of law, the county
181 is not required to provide additional funding beyond that
182 provided herein for the court-related technology needs of the
183 clerk as defined in s. 29.008(1)(f)2. and (h). All court records
184 and official records are the property of the State of Florida,
185 including any records generated as part of the Comprehensive
186 Case Information System funded pursuant to this paragraph and
187 the clerk of court is designated as the custodian of such
188 records, except in a county where the duty of maintaining
189 official records exists in a county office other than the clerk
190 of court or comptroller, such county office is designated the
191 custodian of all official records, and the clerk of court is
192 designated the custodian of all court records. The clerk of
193 court or any entity acting on behalf of the clerk of court,
194 including an association, shall not charge a fee to any agency
195 as defined in s. 119.011, the Legislature, or the State Court
196 System for copies of records generated by the Comprehensive Case
197 Information System or held by the clerk of court or any entity
198 acting on behalf of the clerk of court, including an
199 association.

200 2. If the state becomes legally responsible for the costs
201 of court-related technology needs as defined in s.
202 29.008(1)(f)2. and (h), whether by operation of general law or
203 by court order, \$4 shall be remitted to the Department of

590-02030-12 2012860c1

204 Revenue for deposit into the General Revenue Fund.
205 (13) Oath, administering, attesting, and sealing, not
206 otherwise provided for herein.....3.50
207 (14) For validating certificates, any authorized bonds,
208 each.....3.50
209 (15) For preparing affidavit of domicile.....5.00
210 (16) For exemplified certificates, including signing and
211 sealing.....7.00
212 (17) For authenticated certificates, including signing and
213 sealing.....7.00
214 (18) (a) For issuing and filing a subpoena for a witness,
215 not otherwise provided for herein (includes writing, preparing,
216 signing, and sealing).....7.00
217 (b) For signing and sealing only.....2.00
218 (19) For approving bond.....8.50
219 (20) For searching of records, for each year's search...2.00
220 (21) For processing an application for a tax deed sale
221 (includes application, sale, issuance, and preparation of tax
222 deed, and disbursement of proceeds of sale), other than excess
223 proceeds.....60.00
224 (22) For disbursement of excess proceeds of tax deed sale,
225 first \$100 or fraction thereof.....10.00
226 (23) Upon receipt of an application for a marriage license,
227 for preparing and administering of oath; issuing, sealing, and
228 recording of the marriage license; and providing a certified
229 copy.....30.00
230 (24) For solemnizing matrimony.....30.00
231 (25) For sealing any court file or expungement of any
232 record.....42.00

590-02030-12 2012860c1

233 (26) (a) For receiving and disbursing all restitution
 234 payments, per payment.....3.50

235 (b) For receiving and disbursing all partial payments,
 236 other than restitution payments, for which an administrative
 237 processing service charge is not imposed pursuant to s. 28.246,
 238 per month.....5.00

239 (c) For setting up a payment plan, a one-time
 240 administrative processing charge in lieu of a per month charge
 241 under paragraph (b).....25.00

242 (27) Postal charges incurred by the clerk of the circuit
 243 court in any mailing by certified or registered mail shall be
 244 paid by the party at whose instance the mailing is made.

245 (28) For furnishing an electronic copy of information
 246 contained in a computer database: a fee as provided for in
 247 chapter 119.

248 Section 4. Section 28.244, Florida Statutes, is amended to
 249 read:

250 28.244 Refunds.—A clerk of the circuit court or a filing
 251 officer of another office where records are filed who receives
 252 payment for services provided and thereafter determines that an
 253 overpayment has occurred shall refund to the person who made the
 254 payment the amount of any overpayment that exceeds \$10 ~~\$5~~. If
 255 the amount of the overpayment is \$10 ~~\$5~~ or less, the clerk of
 256 the circuit court or a filing officer of another office where
 257 records are filed is not required to refund the amount of the
 258 overpayment unless the person who made the overpayment makes a
 259 written request.

260 Section 5. Section 28.345, Florida Statutes, is amended to
 261 read:

590-02030-12 2012860c1

262 28.345 State access to records; exemption from court-
 263 related fees and charges.—

264 (1) Notwithstanding any other provision of law to the
 265 contrary, the clerk of the circuit court shall provide without
 266 charge to the state attorney, public defender, guardian ad
 267 litem, public guardian, attorney ad litem, criminal conflict and
 268 civil regional counsel, and private court-appointed counsel paid
 269 by the state, and to the authorized staff acting on behalf of
 270 each, access to and a copy of any public record. If the public
 271 record is exempt or confidential, the requesting party is only
 272 entitled by law to view or copy the exempt or confidential
 273 record if authority is provided in general law or the Florida
 274 Rules of Judicial Administration. The clerk of the circuit court
 275 may provide the requested public record in an electronic format
 276 in lieu of a paper format when the requesting entity is capable
 277 of accessing it in an electronic format. For purposes of this
 278 subsection, the term “copy of a public record” means any
 279 facsimile, replica, photograph, or other reproduction of a
 280 record.

281 ~~(2) Notwithstanding any other provision of this chapter or~~
 282 ~~law to the contrary, judges and those court staff acting on~~
 283 ~~behalf of judges, state attorneys, guardians ad litem, public~~
 284 ~~guardians, attorneys ad litem, court-appointed private counsel,~~
 285 ~~criminal conflict and civil regional counsel, and public~~
 286 ~~defenders, and state agencies, while acting in their official~~
 287 ~~capacity, and state agencies, are exempt from all court-related~~
 288 ~~fees and charges assessed by the clerks of the circuit courts.~~

289 (3) The exemptions provided in subsections (1) and (2)
 290 apply only to state agencies and state entities and the party

590-02030-12 2012860c1

291 that an agency or entity is representing. The clerk of court
 292 shall collect the filing fees and services charges as required
 293 in this chapter from all other parties.

294 Section 6. Subsection (2) of section 50.041, Florida
 295 Statutes, is amended to read:

296 50.041 Proof of publication; uniform affidavits required.—

297 (2) Each such affidavit shall be printed upon white bond
 298 paper containing at least 25 percent rag material and shall be 8
 299 1/2 inches in width and of convenient length, not less than 5
 300 1/2 inches. A white margin of not less than 2 1/2 inches shall
 301 be left at the right side of each affidavit form and upon or in
 302 this space shall be substantially pasted a clipping which shall
 303 be a true copy of the public notice or legal advertisement for
 304 which proof is executed. Alternatively, each such affidavit may
 305 be provided in electronic rather than paper form, provided the
 306 notarization of the affidavit complies with the requirements of
 307 s. 117.021.

308 Section 7. Subsections (2) and (3) of section 119.0714,
 309 Florida Statutes, are amended to read:

310 119.0714 Court files; court records; official records.—

311 (2) COURT RECORDS.—

312 (a)1. Until January 1, 2012, if a social security number or
 313 a bank account, debit, charge, or credit card number is included
 314 in a court file, such number may be included as part of the
 315 court record available for public inspection and copying unless
 316 redaction is requested by the holder of such number or by the
 317 holder's attorney or legal guardian.

318 ~~2.(b)~~ A request for redaction must be a signed, legibly
 319 written request specifying the case name, case number, document

590-02030-12 2012860c1

320 heading, and page number. The request must be delivered by mail,
 321 facsimile, electronic transmission, or in person to the clerk of
 322 the court. The clerk of the court does not have a duty to
 323 inquire beyond the written request to verify the identity of a
 324 person requesting redaction.

325 ~~3.(e)~~ A fee may not be charged for the redaction of a
 326 social security number or a bank account, debit, charge, or
 327 credit card number pursuant to such request.

328 ~~4.(d)~~ The clerk of the court has no liability for the
 329 inadvertent release of social security numbers, or bank account,
 330 debit, charge, or credit card numbers, unknown to the clerk of
 331 the court in court records filed on or before January 1, 2012.

332 ~~5.a.(e)1-~~ On January 1, 2012, and thereafter, the clerk of
 333 the court must keep social security numbers confidential and
 334 exempt as provided for in s. 119.071(5)(a), and bank account,
 335 debit, charge, and credit card numbers exempt as provided for in
 336 s. 119.071(5)(b), without any person having to request
 337 redaction.

338 ~~b.2-~~ Section 119.071(5)(a)7. and 8. does not apply to the
 339 clerks of the court with respect to court records.

340 (b) A request for maintenance of a public record exemption
 341 in s. 119.071(4)(d)1. made pursuant to s. 119.071(4)(d)2. must
 342 specify the document type, name, identification number, and page
 343 number of the court record that contains the exempt information.

344 (3) OFFICIAL RECORDS.—

345 (a)1. Any person who prepares or files a record for
 346 recording in the official records as provided in chapter 28 may
 347 not include in that record a social security number or a bank
 348 account, debit, charge, or credit card number unless otherwise

590-02030-12 2012860c1

349 expressly required by law.

350 2.a.~~(b)1.~~ If a social security number or a bank account,
351 debit, charge, or credit card number is included in an official
352 record, such number may be made available as part of the
353 official records available for public inspection and copying
354 unless redaction is requested by the holder of such number or by
355 the holder's attorney or legal guardian.

356 b.2. If such record is in electronic format, on January 1,
357 2011, and thereafter, the county recorder must use his or her
358 best effort, as provided in subparagraph 8. paragraph (h), to
359 keep social security numbers confidential and exempt as provided
360 for in s. 119.071(5) (a), and to keep complete bank account,
361 debit, charge, and credit card numbers exempt as provided for in
362 s. 119.071(5) (b), without any person having to request
363 redaction.

364 c.3. Section 119.071(5) (a)7. and 8. does not apply to the
365 county recorder with respect to official records.

366 3.~~(e)~~ The holder of a social security number or a bank
367 account, debit, charge, or credit card number, or the holder's
368 attorney or legal guardian, may request that a county recorder
369 redact from an image or copy of an official record placed on a
370 county recorder's publicly available Internet website or on a
371 publicly available Internet website used by a county recorder to
372 display public records, or otherwise made electronically
373 available to the public, his or her social security number or
374 bank account, debit, charge, or credit card number contained in
375 that official record.

376 4.~~(d)~~ A request for redaction must be a signed, legibly
377 written request and must be delivered by mail, facsimile,

590-02030-12 2012860c1

378 electronic transmission, or in person to the county recorder.
379 The request must specify the identification page number of the
380 record that contains the number to be redacted.

381 5.~~(e)~~ The county recorder does not have a duty to inquire
382 beyond the written request to verify the identity of a person
383 requesting redaction.

384 6.~~(f)~~ A fee may not be charged for redacting a social
385 security number or a bank account, debit, charge, or credit card
386 number.

387 7.~~(g)~~ A county recorder shall immediately and conspicuously
388 post signs throughout his or her offices for public viewing, and
389 shall immediately and conspicuously post on any Internet website
390 or remote electronic site made available by the county recorder
391 and used for the ordering or display of official records or
392 images or copies of official records, a notice stating, in
393 substantially similar form, the following:

394 a.1. On or after October 1, 2002, any person preparing or
395 filing a record for recordation in the official records may not
396 include a social security number or a bank account, debit,
397 charge, or credit card number in such document unless required
398 by law.

399 b.2. Any person has a right to request a county recorder to
400 remove from an image or copy of an official record placed on a
401 county recorder's publicly available Internet website or on a
402 publicly available Internet website used by a county recorder to
403 display public records, or otherwise made electronically
404 available to the general public, any social security number
405 contained in an official record. Such request must be made in
406 writing and delivered by mail, facsimile, or electronic

590-02030-12

2012860c1

407 transmission, or delivered in person, to the county recorder.
 408 The request must specify the identification page number that
 409 contains the social security number to be redacted. A fee may
 410 not be charged for the redaction of a social security number
 411 pursuant to such a request.

412 ~~8.(h)~~ If the county recorder accepts or stores official
 413 records in an electronic format, the county recorder must use
 414 his or her best efforts to redact all social security numbers
 415 and bank account, debit, charge, or credit card numbers from
 416 electronic copies of the official record. The use of an
 417 automated program for redaction shall be deemed to be the best
 418 effort in performing the redaction and shall be deemed in
 419 compliance with the requirements of this subsection.

420 ~~9.(i)~~ The county recorder is not liable for the inadvertent
 421 release of social security numbers, or bank account, debit,
 422 charge, or credit card numbers, filed with the county recorder.

423 (b) A request for maintenance of a public record exemption
 424 in s. 119.071(4)(d)1. made pursuant to s. 119.071(4)(d)2. must
 425 specify the document type, name, identification number, and page
 426 number of the official record that contains the exempt
 427 information.

428 Section 8. Subsection (2) of section 197.542, Florida
 429 Statutes, is amended to read:

430 197.542 Sale at public auction.—

431 (2) The certificateholder has the right to bid as others
 432 present may bid, and the property shall be struck off and sold
 433 to the highest bidder. The high bidder shall post with the clerk
 434 a nonrefundable deposit of 5 percent of the bid or \$200,
 435 whichever is greater, at the time of the sale, to be applied to

Page 15 of 16

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590-02030-12

2012860c1

436 the sale price at the time of full payment. Notice of the
 437 deposit requirement must be posted at the auction site, and the
 438 clerk may require bidders to show their willingness and ability
 439 to post the deposit. If full payment of the final bid and of
 440 documentary stamp tax and recording fees is not made within 24
 441 hours, excluding weekends and legal holidays, the clerk shall
 442 cancel all bids, readvertise the sale as provided in this
 443 section, and pay all costs of the sale from the deposit. Any
 444 remaining funds must be applied toward the opening bid. If the
 445 property is redeemed prior to the clerk receiving full payment
 446 for the issuance of a tax deed, in order to receive a refund of
 447 the deposit described in this subsection, the high bidder must
 448 submit a request for such refund in writing to the clerk. Upon
 449 receipt of the refund request, the clerk shall refund the cash
 450 deposit. The clerk may refuse to recognize the bid of any person
 451 who has previously bid and refused, for any reason, to honor
 452 such bid.

453 Section 9. This act shall take effect upon becoming a law.

Page 16 of 16

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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 Governmental Oversight and Accountability Committee

BILL: CS/SB 1096

INTRODUCER: Criminal Justice Committee and Senator Hays

SUBJECT: Public Records/Registration Information/Sexual Predators and Offenders

DATE: February 17, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Seay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates a public records exemption for any electronic mail address or physical address provided to the Florida Department of Law Enforcement (FDLE) by a person who requests access to FDLE's automatic notification system, unless otherwise required by law. As this bill creates a new public records exemption, it contains a public necessity statement as required by the State Constitution. This bill is subject to future review and repeal pursuant to the Open Government Sunset Review Act.

This bill substantially amends section 943.44353 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One-hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory

¹ Section 1390, 1391 F.S. (Rev. 1892).

right of access to public records to a constitutional level.² Article I, s. 24, of the State Constitution, provides that:

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

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

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

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

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

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

² FLA. CONST. art. I, s. 24.

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.

⁵ Section 119.011(12), F.S.

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

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

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Only the Legislature is authorized to create exemptions to open government requirements.¹⁰ Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption¹² may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁵ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

The Act also requires the Legislature to consider the following:

⁸ Florida Attorney General Opinion 85-62.

⁹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

¹⁰ *Supra* fn. 1.

¹¹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

¹² Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹³ *Supra* fn. 1.

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

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

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁷ The Legislature is only limited in its review process by constitutional requirements.

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

notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Sexual Offender and Sexual Predator Registry, Automatic Notification and Access to Information

The Florida Department of Law Enforcement (FDLE) maintains the statewide registry of all sexual predators and sexual offenders. It also maintains a searchable website containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Section 943.44353, F.S., requires FDLE to maintain a system to provide automatic notification of registration information regarding sexual predators and sexual offenders to the public. The system is known as the Offender Alert System (OAS).

Schools, public housing agencies, agencies responsible for conducting employment-related background checks, social service entities responsible for protecting minors in the child welfare system, and certain other organizations have access to this system. Additionally, individuals have access to the notification system.

The OAS is an email subscription service which allows citizens to receive an email if a sexual predator/offender moves within a prescribed radius of a selected address. It also allows subscribers to track a predator/offender's movements.

¹⁷ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

To sign up for the OAS, persons provide their email address. To track registrant activity related to a specific location (i.e., home, school, day care center), they must also provide a physical address(es) so their interests can be tailored accordingly.

Exemption Created by Chapter 2011-85, Laws of Florida

During the 2011 Legislative Session, the Legislature enacted s. 119.071(5)(j)1., F.S., effective July 1, 2011, which provides in pertinent part:

“Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person’s name, address, telephone number, e-mail address, or other electronic communication address, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by an agency, before, on, or after the effective date of this exemption.”

In setting forth the public necessity for passage of the above exemption, section 2 of Chapter 2011-85, Laws of Florida, provides:

“The Legislature finds that it is a public necessity to exempt from public records requirements any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. Through the use of current technology, agencies may contact members of the public by a variety of electronic means, including cellular telephones and electronic mail, to alert them of imminent natural and manmade disasters, medical emergencies, criminal emergencies, and other dangerous conditions. Public safety is significantly enhanced through the use of such emergency notification programs, and expansion of such programs further increases public safety. A public records exemption for information furnished to an agency for this purpose will encourage greater participation in emergency notification programs by alleviating concerns about disclosure of information that could be used for criminal purposes. For these reasons, the public records exemption provided in this act is necessary for the effective implementation of and broad participation in emergency notification programs conducted by agencies.”¹⁸

Opinion of the Attorney General

FDLE raised privacy and public safety concerns related to the information provided by subscribers to the OAS in a request for the opinion of the Attorney General on the following question: Are the email addresses and corresponding home, school, and other “watched addresses of concern” with the FDLE Offender Alert System exempt from disclosure under s. 119.071(5)(j), F.S. (Chapter 2011-85)?

The Attorney General’s response stated, in part:

¹⁸ Chapter 2011-85, L.O.F.

The Legislature has characterized the presence of a sexual predator in a community as an extreme threat to public safety requiring notification and the release of information relating to a sexual offender's presence in the community to be in furtherance of the governmental interests in public safety.¹⁹ Moreover, as clearly reflected in the statement of necessity for section 119.071(5)(j), Florida Statutes, the Legislature was concerned with encouraging public participation in emergency notification programs by ensuring that the information submitted by the public to participate in such programs was protected.

The Florida Offender Alert System clearly addresses the Legislature's concern with the public safety threat posed by the presence of sexual predators and sexual offenders in the community by alerting persons who have requested notification of the immediate danger posed by such individuals moving into their neighborhoods. In the statement of necessity for Chapter 2011-85, Laws of Florida, the Legislature repeatedly expressed its intent that the bill is directed toward public safety and seeks to encourage public participation in such notification alert systems. Thus, the inclusion of the Florida Offender Alert System would appear to be consistent with the expressed legislative intent for the adoption of the exemption.²⁰

III. Effect of Proposed Changes:

Section 1 amends 943.44353, F.S., providing that any information regarding an e-mail address or physical address provided to FDLE by a person in order to use or access the automatic Florida Offender Alert notification system is confidential and exempt from public records requirements; providing an exception to the exemption if the protected information is specifically made public or is specifically required to be disclosed by other provisions of law; providing for retroactive application of the public records exemption; providing future review and repeal pursuant to the Open Government Sunset Review Act.

Section 2 contains a public necessity statement as required by the State Constitution.

Section 3 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

¹⁹ See s. 775.21(3)(a) and s. 943.0435(12), F.S., respectively.

²⁰ Attorney General Opinion 2011-16.

Section 24(c), art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on February 16, 2012:

Provides that other specific provisions of law may override the exemption. This provision in the bill is intended to eliminate unintended impediments to law enforcement investigations.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Hays

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 943.44353, F.S.; creating a public records exemption
 4 for the electronic mail address and physical address
 5 information provided to the Department of Law
 6 Enforcement by a person requesting access to the
 7 automatic notification system of registration
 8 information regarding sexual predators and sexual
 9 offenders; providing for future legislative review and
 10 repeal of the exemption under the Open Government
 11 Sunset Review Act; providing a statement of public
 12 necessity; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Subsection (3) is added to section 943.44353,
 17 Florida Statutes, to read:

18 943.44353 Automatic notification of registration
 19 information regarding sexual predators and offenders.—

20 (3) (a) Any information regarding an electronic mail address
 21 or physical address provided to the department by a person in
 22 order for that person to use or access the automatic Florida
 23 Offender Alert notification system is confidential and exempt
 24 from s. 119.07(1) and s. 24 (a), Art. I of the State
 25 Constitution unless such information is specifically made public
 26 or is specifically required to be disclosed by other provisions
 27 of law. This confidential and exempt status applies
 28 retroactively to all such information retained by the department
 29 before July 1, 2012.

Page 1 of 2

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591-03542-12

20121096c1

30 (b) This subsection is subject to the Open Government
 31 Sunset Review Act in accordance with s. 119.15, and shall stand
 32 repealed on October 2, 2017, unless reviewed and saved from
 33 repeal through reenactment by the Legislature.

34 Section 2. The Legislature finds that it is a public
 35 necessity to exempt from public records requirements the
 36 electronic mail address and physical address information
 37 furnished to the Department of Law Enforcement by persons
 38 requesting access to the automatic notification system of
 39 registration information regarding sexual predators and sexual
 40 offenders. A public records exemption for such information
 41 furnished to the department will encourage greater access to the
 42 notification system by alleviating concerns about disclosure of
 43 electronic mail and physical location information that could be
 44 used for criminal purposes. Public safety is significantly
 45 enhanced through the use of the department's notification
 46 system. For these reasons, the public records exemption provided
 47 by this act is necessary for effective and broad participation
 48 in the notification system by those seeking notification.

49 Section 3. This act shall take effect July 1, 2012.

Page 2 of 2

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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 Governmental Oversight and Accountability Committee

BILL: SB 1144

INTRODUCER: Senator Garcia

SUBJECT: Scrutinized Companies

DATE: January 27, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill would prohibit the State Board of Administration from investing in companies that have specified business relationships with Cuba and Syria.

This bill amends sections 215.473 and 287.135 of the Florida Statutes.

II. Present Situation:

The State Board of Administration

The State Board of Administration (SBA) is created in Art. IV, s. 4 (e) of the State Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan and the FRS Investment Plan, which represent approximately \$128 billion, or 86 percent, of the \$149 billion in assets managed by the SBA, as of October 31, 2011. The Pension Plan is a defined benefit plan and the Investment Plan is a defined contribution plan that employees choose in lieu of the Pension Plan. The SBA also manages 33 other investment portfolios, with combined assets of \$21 billion, including the Florida Hurricane Catastrophe Fund (CAT Fund), the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.¹

¹ State Board of Administration "Monthly Performance Report to the Trustees" as of October 31, 2011, issued November 30, 2011.

Divestiture from Cuba

Section 215.471, F.S., enacted in 1993, prohibits the SBA from investing in stocks, securities, or other obligations of:

- Any institution or company domiciled in the United States that does business of any kind with Cuba, in violation of federal law.
- Any institution or company domiciled outside of the United States if the President of the United States has applied sanctions against the foreign country in which the institution or company is domiciled, pursuant to s. 4 of the Cuban Democracy Act of 1992.

Section 215.472, F.S., prohibits each state agency from investing in:

- Any financial institution or company domiciled in the United States, or foreign subsidiary of a company domiciled in the United States, which directly or through a United States or foreign subsidiary, makes any loan, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with Cuba, the government of Cuba, or any company doing business in or with Cuba in violation of federal law.
- Any financial institution or company domiciled outside of the United States if the President of the United States has applied sanctions against the foreign country in which the institution or company is domiciled pursuant to s. 4 of the Cuban Democracy Act of 1992.

According to information provided by staff of the SBA, in order to comply with this legislation, the Cuban Affairs Section at the U.S. State Department or the Treasury Department's Office of Foreign Assets Control (OFAC) are contacted periodically to confirm that no sanctions have been implemented. Since the Act's inception, sanctions have never been issued against any country.

The Protecting Florida's Investments Act

In 2007, the Legislature enacted² the Protecting Florida's Investments Act (PFIA). The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities and are required to divest those securities if the companies do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

According to staff of the SBA, the PFIA imposes the following reporting, engagement, and investment requirements on the SBA, including:

² Chapter 2007-88, L.O.F.; Senate Bill 2142.

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a “Scrutinized Companies” list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA’s website, along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients’ assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.
- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations. Such correspondence continues semiannually.
- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment. The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company’s initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.
- Quarterly reporting of the following to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to Sudan, and the United States Presidential Special Envoy to Iran.³ The report must include the following:
 - A summary of correspondence with engaged companies;
 - A listing of all investments sold, redeemed, divested, or withdrawn;
 - A listing of all prohibited investments;

³ Section 215.473(4)(b), F.S.

- A description of any progress related to external managers offering PFIA compliant funds; and
- A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.
- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
 - Darfur genocide has been halted for at least 12 months;
 - Sanctions imposed against the Government of Sudan are revoked;
 - Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;
 - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;
 - Sanctions imposed against the government of Iran are revoked; or
 - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.
- Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment. If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment. Such condition is required to be updated semiannually.

Section 121.4501(7), F.S., enacted in 2009, requires the SBA to identify and offer, by March 1, 2010, at least one terror-free investment product for the FRS Investment Plan.⁴ The product must allocate its funds among securities not subject to divestiture, as provided in the PFIA.

Fiduciary Standards

The fiduciary standards for the SBA are specified out as follows in s. 215.47(10), F.S.:

Investments made by the State Board of Administration shall be designed to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve an appropriate diversification of the portfolio. The board shall discharge its duties with respect to a plan solely in the interest of its participants and beneficiaries. The board in performing the above investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C.

⁴ Section 1 of Ch. 2009-97, L.O.F.; Senate Bill 538.

s. 1104(a)(1)(A) through (C). In case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this subsection shall prevail.

The ERISA standard at 29 U.S.C. s. 1104(a)(1)(A) - (C) provides for the “prudent man standard of care,” requiring a fiduciary to:

discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

- (i) providing benefits to participants and their beneficiaries; and
- (ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

III. Effect of Proposed Changes:

The bill adds Syria and Cuba as nations subject to the Protecting Florida’s Investments Act in s. 215.473, F.S., requiring investing prohibitions and potential divestiture by the SBA.

The bill expands the definition of “scrutinized countries” to include the following:

- The company has business operations that involve contracts with or provision of supplies or services to the government of Cuba, companies in which the government of Cuba has any direct or indirect equity share, consortiums or projects commissioned by the government of Cuba, or companies involved in consortiums or projects commissioned by the government of Cuba and:
 - More than 10 percent of the company’s total revenues or assets are linked to Cuba, and the company has failed to take substantial action; or
 - The company has, with actual knowledge, on or after January 1, 1959, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period.
- The company supplies military equipment within Cuba, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Cuba or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Cuba, or sale of such equipment solely to any internationally recognized peacekeeping force or humanitarian organization.

- The company has business operations that involve contracts with or provision of supplies or services to the government of Syria, companies in which the government of Syria has any direct or indirect equity share, consortiums or projects commissioned by the government of Syria, or companies involved in consortiums or projects commissioned by the government of Syria and:
 - More than 10 percent of the company's total revenues or assets are linked to Syria and involve oil-related activities, and the company has failed to take substantial action; or
 - The company has, with actual knowledge, on or after March 8, 1963, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Syria's ability to develop the petroleum resources of Syria.
- The company supplies military equipment within Syria, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Syria or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Syria, or sale of such equipment solely to any internationally recognized peacekeeping force or humanitarian organization.

The bill requires the SBA to create a "Scrutinized Companies with Activities in Cuba List" and a "Scrutinized Companies with Activities in Syria List," and use those lists consistent with the duties in the PFIA.

The bill provides that if any of the following occur, the SBA may no longer scrutinize the affected companies, no longer produce the Scrutinized Companies list, and cease divestment and investment prohibitions:

- The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Cuba or Syria has ceased to acquire weapons of mass destruction and support international terrorism;
- The United States revokes all sanctions imposed against the government of Cuba or Syria; or
- The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

The bill amends s. 287.135, F.S., to provide that a contract with an agency or local government, after July 1, 2012, must include a provision allowing for termination if the company is found to have submitted a false certification or been placed on a Scrutinized Companies list.

The bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The SBA would be prohibited from investing in those companies placed on a Scrutinized Companies list. Staff of the SBA advises that as proposed, the bill could potentially affect up to 13 foreign companies with business operations in Syria, 194 foreign companies with business operations in Cuba, and 33 U.S. companies with business operations in Cuba.

C. Government Sector Impact:

Staff of the SBA advises that as proposed, the bill could require the SBA to sell securities valued at approximately \$10.2 billion, with direct and indirect costs of \$20 million to \$40 million. Roughly 8 percent of U.S stocks, and 21 percent of international stocks, would be prohibited for investment by the SBA.

VI. Technical Deficiencies:

On line 831, the word “Cuba” should be changed to “Syria.”

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.

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

By Senator Garcia

40-01080-12

20121144__

1 A bill to be entitled
 2 An act relating to scrutinized companies; amending s.
 3 215.473, F.S.; providing legislative findings;
 4 revising and providing definitions; requiring the
 5 State Board of Administration to identify all
 6 companies in which public moneys are invested and
 7 which are doing certain types of business in or with
 8 Cuba or Syria; requiring the board to create and
 9 maintain certain scrutinized companies lists that name
 10 all such companies; requiring the board to
 11 periodically contact all scrutinized companies and
 12 encourage them to refrain from engaging in certain
 13 types of business in or with Cuba or Syria; requiring
 14 the board to inform scrutinized companies of their
 15 status as a scrutinized company and to provide notice
 16 of the opportunity to clarify the nature of the
 17 company's business activities; providing for removal
 18 of a company from the list under certain conditions;
 19 requiring the board to divest all publicly traded
 20 securities of a scrutinized company under certain
 21 conditions; providing for reintroduction of a company
 22 onto the list; providing exceptions to the divestment
 23 requirement; prohibiting the board from acquiring
 24 securities of scrutinized companies that have active
 25 business operations; providing an exemption to the
 26 divestment requirement and investment prohibition;
 27 providing an additional exception from the divestment
 28 requirement and the investment prohibition for certain
 29 indirect holdings in actively managed investment

Page 1 of 36

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40-01080-12

20121144__

30 funds; providing procedures of the board with respect
 31 to requesting removal of scrutinized companies from
 32 actively managed investment funds and defined
 33 contribution plans or the creation of a similar fund
 34 that excludes such companies; providing reporting
 35 requirements of the board; providing for cessation of
 36 assembly of the Scrutinized Companies with Activities
 37 in Cuba List and the Scrutinized Companies with
 38 Activities in Syria List, cessation of engagement and
 39 divestment of such companies, and restoration of
 40 authority to reinvest in such companies under
 41 specified conditions; authorizing the board to cease
 42 divesting or reinvesting in certain companies having
 43 scrutinized active business operations under specified
 44 conditions; amending s. 287.135, F.S.; prohibiting a
 45 state agency or local governmental entity from
 46 contracting for goods and services of more than a
 47 certain amount with a company that is on the
 48 Scrutinized Companies with Activities in Cuba List or
 49 the Scrutinized Companies with Activities in Syria
 50 List; requiring a contract provision that allows for
 51 termination of the contract if the company is found to
 52 have been placed on such list; providing exceptions;
 53 requiring certification upon submission of a bid or
 54 proposal for a contract, or before a company enters
 55 into or renews a contract, with an agency or
 56 governmental entity that the company is not on the
 57 Scrutinized Companies with Activities in Cuba List or
 58 the Scrutinized Companies with Activities in Syria

Page 2 of 36

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40-01080-12

20121144

59 List; providing procedures upon determination that a
60 company has submitted a false certification; providing
61 for civil action; providing penalties; providing for
62 attorney fees and costs; providing a statute of
63 repose; prohibiting a private right of action;
64 requiring the Department of Management Services to
65 notify the Attorney General after the act becomes law;
66 providing an effective date.

67
68 WHEREAS, with a population of approximately 11 million,
69 Cuba is a totalitarian communist state that does not tolerate
70 opposition to official policy, and

71 WHEREAS, the current government of Cuba assumed power on
72 January 1, 1959, and

73 WHEREAS, although the Cuban constitution recognizes the
74 unicameral National Assembly as the supreme authority in Cuba,
75 the Communist Party is recognized in the constitution as the
76 only legal party and "the superior leading force of society and
77 of the state," and

78 WHEREAS, elections in January 2008 for the Cuban National
79 Assembly were neither free nor fair, and all of the candidates
80 had to be preapproved by a Communist Party candidacy commission,
81 with the result that the Communist Party candidates and their
82 allies won 98.7 percent of the vote and 607 of 614 seats in the
83 National Assembly, and

84 WHEREAS, the Cuban government continues to deny its
85 citizens their basic human rights, including the right to change
86 their government, and has committed numerous and serious abuses
87 against the citizens of Cuba, and

40-01080-12

20121144

88 WHEREAS, among the human rights problems reported within
89 Cuba are beatings and abuse of prisoners and detainees, harsh
90 and life-threatening prison conditions, including denial of
91 medical care, harassment, and beatings, and threats against
92 political opponents by government-recruited mobs, police, and
93 state security officials who acted with impunity, and

94 WHEREAS, arbitrary arrest and detention of human rights
95 advocates and members of independent professional organizations,
96 and denial of fair trial for at least 194 political prisoners
97 and as many as 5,000 persons who have been convicted of
98 potential "dangerousness" without being charged with any
99 specific crime are also reported, and

100 WHEREAS, there have also been severe limitations on freedom
101 of speech and the press, denial of peaceful assembly and
102 association, restrictions on freedom of movement, including
103 selective denial of exit permits to citizens and the forcible
104 removal of persons from Havana to their hometowns, restrictions
105 on freedom of religion and refusal to recognize domestic human
106 rights groups or permit them to function legally, discrimination
107 against persons of African descent, and severe restrictions on
108 workers' rights, including the right to form independent unions,
109 and

110 WHEREAS, other problems that are prevalent in Cuba include
111 increasing incidences of domestic violence, underage
112 prostitution, and trafficking in human beings, and

113 WHEREAS, Cuba is on the United States Department of State's
114 list of State Sponsors of Terrorism, and for nearly half a
115 century the United States has unilaterally imposed an economic,
116 commercial, and financial embargo against Cuba, and

40-01080-12 20121144__

117 WHEREAS, the embargo, partially imposed on Cuba in October
118 1960, was enacted after Cuba nationalized the properties of
119 United States citizens and corporations and it was strengthened
120 to a near-total embargo on February 7, 1962, and

121 WHEREAS, though the severity and the scope of the sanctions
122 have varied, depending upon political developments in Cuba, the
123 United States, and the rest of the world, the United States
124 Government Accountability Office has stated that "the embargo on
125 Cuba is the most comprehensive set of United States sanctions on
126 any country, including other countries designated by the United
127 States Government to be state sponsors of terrorism," and

128 WHEREAS, also on the Department of State's list of State
129 Sponsors of Terrorism is the nation of Syria, and

130 WHEREAS, on March 8, 1963, the Baath Party in Syria enacted
131 an emergency law that suspended basic constitutional rights such
132 as freedom of speech and assembly and instituted martial law,
133 and

134 WHEREAS, in February 1982, the Syrian army, under the
135 orders of Syrian President Hafez al-Assad, effectively ended a
136 campaign begun in 1976 by Sunni Islamic groups against the Assad
137 regime with what is now known as "the Hama massacre," the
138 quelling of a revolt by the Sunni Muslim community against the
139 Assad regime which resulted in Syrian deaths, the estimates of
140 which range from 10,000 to possibly as many as 40,000 Syrian
141 citizens according to the Syrian Human Rights Committee, and

142 WHEREAS, the Hama massacre has been described as being
143 among "the single deadliest acts by any Arab government against
144 its own people in the Middle East," and

145 WHEREAS, in 2011 the "Syrian uprising" began in that

40-01080-12 20121144__

146 country, and

147 WHEREAS, the Syrian uprising is an ongoing internal
148 conflict occurring in Syria which began with protests that
149 started on January 26, 2011, and then escalated to an uprising
150 by March 15, 2011, and

151 WHEREAS, the demands of protesters in this sustained
152 campaign of civil resistance include the allowance by the ruling
153 Baath Party of other political parties, the end of President
154 Bashar al-Assad's presidency, equal rights for Kurds, and broad
155 political freedoms such as freedom of the press, free speech,
156 and freedom to assemble, and

157 WHEREAS, as protests continued, the Syrian government used
158 tanks and snipers to force Syrian citizens off the streets,
159 water and electricity were shut off, and security forces began
160 confiscating flour and food in various areas of the country, and

161 WHEREAS, violence escalated as the crisis wore on and as a
162 result more than 3,000 people were killed, many more were
163 injured, and thousands of protesters have been detained, with
164 dozens of detainees reportedly having been tortured and killed,
165 and

166 WHEREAS, since the beginning of the uprising, the Syrian
167 government has made several concessions, including the repeal on
168 April 21, 2011, of the 1963 emergency law that allowed the
169 government sweeping authority to suspend constitutional rights,
170 though the concessions are widely considered trivial and
171 superficial by protesters demanding more meaningful reform,
172 especially in light of the fact that government crackdowns on
173 protesters have continued to heighten, and

174 WHEREAS, the oppressive Assad regime blatantly murders

40-01080-12 20121144__

175 protesters of the regime in mass, regularly detains political
 176 and human rights activists and journalists, engages in
 177 widespread media censorship, and is associated with the
 178 disappearance of citizens opposed to the Assad regime, and

179 WHEREAS, the United States Government and other nations
 180 throughout the world have openly called for President Assad to
 181 step down from office, and

182 WHEREAS, effective August 18, 2011, President Barack Obama
 183 issued a new Executive Order imposing significant new economic
 184 sanctions on Syria, and

185 WHEREAS, the action greatly expanded United States
 186 international trade restrictions against Syria and its
 187 government in certain important respects, representing a more
 188 comprehensive unilateral economic embargo, and

189 WHEREAS, most notably, the sanctions now include a freeze
 190 on the property and interests of property of the Government of
 191 Syria in the United States or held by United States persons,
 192 defined to include entities in the United States and their
 193 foreign branch offices, United States citizens or lawful
 194 permanent residents, and anyone of any nationality acting or
 195 located within the United States, and

196 WHEREAS, the sanctions include prohibitions on United
 197 States persons engaging in any transactions with the Syrian
 198 Government, making new investments in Syria, providing any
 199 services to Syria, or conducting business dealings in or related
 200 to petroleum or petroleum products of Syrian origin, and

201 WHEREAS, the sanctions also include a ban on the
 202 importation of Syrian-origin petroleum products into the United
 203 States and a prohibition against United States persons

40-01080-12 20121144__

204 facilitating, approving, financing, or guaranteeing a
 205 transaction or dealing with a foreign person related to any of
 206 the prohibitions in place against Syria, and

207 WHEREAS, both the Government of Cuba and the Government of
 208 Syria have repeatedly committed human rights violations through
 209 intimidation by military and security forces, through
 210 bureaucratic and administrative obstruction, through acts of
 211 terrorism and atrocities directed against civilians, and through
 212 the displacement of citizens from their homes, and

213 WHEREAS, the Federal Government has imposed sanctions
 214 against the Government of Cuba and the Government of Syria, and
 215 such sanctions are monitored through the United States Treasury
 216 Department's Office of Foreign Assets Control (OFAC), and

217 WHEREAS, according to a former chair of the United States
 218 Securities and Exchange Commission, the fact that a foreign
 219 company is doing material business with a country, government,
 220 or entity on OFAC's sanctions list is, in the SEC staff's view,
 221 substantially likely to be significant to a reasonable
 222 investor's decision about whether to invest in that company, and

223 WHEREAS, because the United States Secretary of State has
 224 determined that both Cuba and Syria are countries whose
 225 governments have provided support for acts of international
 226 terrorism, as a result, the United States has restricted
 227 assistance, defense exports, defense sales, financial
 228 transactions, and various other transactions with the Government
 229 of Cuba and the Government of Syria, and

230 WHEREAS, a 2006 report by the United States House of
 231 Representatives states that "a company's association with
 232 sponsors of terrorism and human rights abuses, no matter how

40-01080-12

20121144

233 large or small, can have a materially adverse result on a public
 234 company's operations, financial condition, earnings, and stock
 235 prices, all of which can negatively affect the value of an
 236 investment," and

237 WHEREAS, in response to the financial risk posed by
 238 investments in companies doing business with a state that
 239 sponsors terrorists, the Securities and Exchange Commission
 240 established its Office of Global Security Risk to provide for
 241 enhanced disclosure of material information regarding such
 242 companies, and

243 WHEREAS, divestment actions precipitated by such
 244 sponsorship of terrorism and human rights violations encompass
 245 universities, municipalities, states, and private pension plans,
 246 and

247 WHEREAS, companies facing such widespread divestment
 248 present further material risk to remaining investors, and

249 WHEREAS, it is a fundamental responsibility of the State of
 250 Florida to decide where, how, and by whom financial resources in
 251 its control should be invested, taking into account numerous
 252 pertinent factors, and

253 WHEREAS, it is the prerogative and desire of the State of
 254 Florida, with respect to investment resources in its control and
 255 to the extent reasonable, with due consideration for return on
 256 investment on behalf of the state and its investment
 257 beneficiaries, not to participate in an ownership or capital-
 258 providing capacity with entities that provide significant
 259 practical support for terrorism and human rights violations,
 260 including certain non-United States companies presently doing
 261 business in such countries, and

40-01080-12

20121144

262 WHEREAS, while divestiture should be considered with the
 263 intent to improve investment performance and by the rules of
 264 prudence, fiduciaries must take into account all relevant
 265 substantive factors in arriving at an investment decision, and

266 WHEREAS, the State of Florida is deeply concerned about
 267 investments in publicly traded companies that have business
 268 activities in and ties to Cuba and Syria as a financial risk to
 269 the shareholders, and

270 WHEREAS, by investing in publicly traded companies having
 271 ties to Cuba and Syria, the Florida State Board of
 272 Administration is putting the funds it oversees at substantial
 273 financial risk, and

274 WHEREAS, divestiture from markets that are vulnerable to
 275 embargo, loan restrictions, and sanctions from the United States
 276 and the international community, including the United Nations
 277 Security Council, is in accordance with the rules of prudence,
 278 and

279 WHEREAS, the Legislature finds that this act should remain
 280 in effect only insofar as it continues to be consistent with and
 281 does not unduly interfere with the foreign policy of the United
 282 States as determined by the Federal Government, and

283 WHEREAS, to protect Florida's assets, it is in the best
 284 interest of the state to enact a statutory prohibition regarding
 285 the investments managed by the State Board of Administration
 286 doing business in Cuba and Syria, NOW, THEREFORE,

287

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

289

290 Section 1. Section 215.473, Florida Statutes, is amended to

40-01080-12

20121144__

291 read:

292 215.473 Divestiture by the State Board of Administration;
 293 Sudan; Iran; Cuba; Syria.-

294 (1) DEFINITIONS.—As used in this act, the term:

295 (a) "Active business operations" means all business
 296 operations that are not inactive business operations.

297 (b) "Business operations" means engaging in commerce in any
 298 form in Sudan, ~~or~~ Iran, Cuba, or Syria, including, but not
 299 limited to, acquiring, developing, maintaining, owning, selling,
 300 possessing, leasing, or operating equipment, facilities,
 301 personnel, products, services, personal property, real property,
 302 or any other apparatus of business or commerce.

303 (c) "Company" means any sole proprietorship, organization,
 304 association, corporation, partnership, joint venture, limited
 305 partnership, limited liability partnership, limited liability
 306 company, or other entity or business association, including all
 307 wholly owned subsidiaries, majority-owned subsidiaries, parent
 308 companies, or affiliates of such entities or business
 309 associations, that exists for the purpose of making profit.

310 (d) "Complicit" means taking actions during any preceding
 311 20-month period which have directly supported or promoted:

312 1. The genocidal campaign in Darfur, including, but not
 313 limited to, preventing Darfur's victimized population from
 314 communicating with each other;

315 2. Encouraging Sudanese citizens to speak out against an
 316 internationally approved security force for Darfur;

317 3. Actively working to deny, cover up, or alter the record
 318 on human rights abuses in Darfur; or

319 4. Other similar actions.

40-01080-12

20121144__

320 (e) "Cuba" means the nation of Cuba.

321 (f)~~(e)~~ "Direct holdings" in a company means all securities
 322 of that company that are held directly by the public fund or in
 323 an account or fund in which the public fund owns all shares or
 324 interests.

325 (g) "Government of Cuba" means the government of Cuba,
 326 under the control of General Raul Castro and the Cuban Communist
 327 Party, its instrumentalities, and companies owned or controlled
 328 by the government of Cuba.

329 (h)~~(f)~~ "Government of Iran" means the government of Iran,
 330 its instrumentalities, and companies owned or controlled by the
 331 government of Iran.

332 (i)~~(g)~~ "Government of Sudan" means the government in
 333 Khartoum, Sudan, that is led by the National Congress Party,
 334 formerly known as the National Islamic Front, or any successor
 335 government formed on or after October 13, 2006, including the
 336 coalition National Unity Government agreed upon in the
 337 Comprehensive Peace Agreement for Sudan, and does not include
 338 the regional government of southern Sudan.

339 (j) "Government of Syria" means the government of Syria,
 340 under the control of President Bashar al-Assad and the Arab
 341 Socialist Baath Party, its instrumentalities, and companies
 342 owned or controlled by the government of Syria.

343 (k)~~(h)~~ "Inactive business operations" means the mere
 344 continued holding or renewal of rights to property previously
 345 operated for the purpose of generating revenues but not
 346 presently deployed for such purpose.

347 (l)~~(i)~~ "Indirect holdings" in a company means all
 348 securities of that company that are held in an account or fund,

40-01080-12

20121144

349 such as a mutual fund, managed by one or more persons not
 350 employed by the public fund, in which the public fund owns
 351 shares or interests together with other investors not subject to
 352 the provisions of this act.

353 ~~(m)-(j)~~ "Iran" means the Islamic Republic of Iran.

354 ~~(n)-(k)~~ "Marginalized populations of Sudan" include, but are
 355 not limited to, the portion of the population in the Darfur
 356 region that has been genocidally victimized; the portion of the
 357 population of southern Sudan victimized by Sudan's north-south
 358 civil war; the Beja, Rashidiya, and other similarly underserved
 359 groups of eastern Sudan; the Nubian and other similarly
 360 underserved groups in Sudan's Abyei, Southern Blue Nile, and
 361 Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other
 362 similarly underserved groups of northern Sudan.

363 ~~(o)-(l)~~ "Military equipment" means weapons, arms, military
 364 supplies, and equipment that may readily be used for military
 365 purposes, including, but not limited to, radar systems,
 366 military-grade transport vehicles, or supplies or services sold
 367 or provided directly or indirectly to any force actively
 368 participating in armed conflict in Sudan, Cuba, or Syria.

369 ~~(p)-(m)~~ "Mineral-extraction activities" include the
 370 exploring, extracting, processing, transporting, or wholesale
 371 selling or trading of elemental minerals or associated metal
 372 alloys or oxides (ore), including gold, copper, chromium,
 373 chromite, diamonds, iron, iron ore, silver, tungsten, uranium,
 374 and zinc, as well as facilitating such activities, including
 375 providing supplies or services in support of such activities.

376 ~~(q)-(n)~~ "Oil-related activities" include, but are not
 377 limited to, owning rights to oil blocks; exporting, extracting,

40-01080-12

20121144

378 producing, refining, processing, exploring for, transporting,
 379 selling, or trading of oil; constructing, maintaining, or
 380 operating a pipeline, refinery, or other oil-field
 381 infrastructure; and facilitating such activities, including
 382 providing supplies or services in support of such activities,
 383 except that the mere retail sale of gasoline and related
 384 consumer products is not considered an oil-related activity.

385 ~~(r)-(o)~~ "Petroleum resources" means petroleum, petroleum
 386 byproducts, or natural gas.

387 ~~(s)-(p)~~ "Power-production activities" means any business
 388 operation that involves a project commissioned by the National
 389 Electricity Corporation (NEC) of Sudan or other similar entity
 390 of the government of Sudan whose purpose is to facilitate power
 391 generation and delivery, including, but not limited to,
 392 establishing power-generating plants or hydroelectric dams,
 393 selling or installing components for the project, providing
 394 service contracts related to the installation or maintenance of
 395 the project, as well as facilitating such activities, including
 396 providing supplies or services in support of such activities.

397 ~~(t)-(q)~~ "Public fund" means all funds, assets, trustee, and
 398 other designates under the State Board of Administration
 399 pursuant to chapter 121.

400 ~~(u)-(r)~~ "Scrutinized active business operations" means
 401 active business operations that have resulted in a company
 402 becoming a scrutinized company.

403 ~~(v)-(s)~~ "Scrutinized business operations" means business
 404 operations that have resulted in a company becoming a
 405 scrutinized company.

406 ~~(w)-(t)~~ "Scrutinized company" means any company that meets

40-01080-12 20121144__

407 any of the following criteria:

408 1. The company has business operations that involve
 409 contracts with or provision of supplies or services to the
 410 government of Sudan, companies in which the government of Sudan
 411 has any direct or indirect equity share, consortiums or projects
 412 commissioned by the government of Sudan, or companies involved
 413 in consortiums or projects commissioned by the government of
 414 Sudan, and:

415 a. More than 10 percent of the company's revenues or assets
 416 linked to Sudan involve oil-related activities or mineral-
 417 extraction activities; less than 75 percent of the company's
 418 revenues or assets linked to Sudan involve contracts with or
 419 provision of oil-related or mineral-extracting products or
 420 services to the regional government of southern Sudan or a
 421 project or consortium created exclusively by that regional
 422 government; and the company has failed to take substantial
 423 action; or

424 b. More than 10 percent of the company's revenues or assets
 425 linked to Sudan involve power-production activities; less than
 426 75 percent of the company's power-production activities include
 427 projects whose intent is to provide power or electricity to the
 428 marginalized populations of Sudan; and the company has failed to
 429 take substantial action.

430 2. The company is complicit in the Darfur genocide.

431 3. The company supplies military equipment within Sudan,
 432 unless it clearly shows that the military equipment cannot be
 433 used to facilitate offensive military actions in Sudan or the
 434 company implements rigorous and verifiable safeguards to prevent
 435 use of that equipment by forces actively participating in armed

40-01080-12 20121144__

436 conflict. Examples of safeguards include post-sale tracking of
 437 such equipment by the company, certification from a reputable
 438 and objective third party that such equipment is not being used
 439 by a party participating in armed conflict in Sudan, or sale of
 440 such equipment solely to the regional government of southern
 441 Sudan or any internationally recognized peacekeeping force or
 442 humanitarian organization.

443 4. The company has business operations that involve
 444 contracts with or provision of supplies or services to the
 445 government of Iran, companies in which the government of Iran
 446 has any direct or indirect equity share, consortiums, or
 447 projects commissioned by the government of Iran, or companies
 448 involved in consortiums or projects commissioned by the
 449 government of Iran and:

450 a. More than 10 percent of the company's total revenues or
 451 assets are linked to Iran and involve oil-related activities or
 452 mineral-extraction activities; and the company has failed to
 453 take substantial action; or

454 b. The company has, with actual knowledge, on or after
 455 August 5, 1996, made an investment of \$20 million or more, or
 456 any combination of investments of at least \$10 million each,
 457 which in the aggregate equals or exceeds \$20 million in any 12-
 458 month period, and which directly or significantly contributes to
 459 the enhancement of Iran's ability to develop the petroleum
 460 resources of Iran.

461 5. The company has business operations that involve
 462 contracts with or provision of supplies or services to the
 463 government of Cuba, companies in which the government of Cuba
 464 has any direct or indirect equity share, consortiums or projects

40-01080-12 20121144

465 commissioned by the government of Cuba, or companies involved in
 466 consortiums or projects commissioned by the government of Cuba
 467 and:

468 a. More than 10 percent of the company's total revenues or
 469 assets are linked to Cuba, and the company has failed to take
 470 substantial action; or

471 b. The company has, with actual knowledge, on or after
 472 January 1, 1959, made an investment of \$20 million or more, or
 473 any combination of investments of at least \$10 million each,
 474 which in the aggregate equals or exceeds \$20 million in any 12-
 475 month period.

476 6. The company supplies military equipment within Cuba,
 477 unless it clearly shows that the military equipment cannot be
 478 used to facilitate offensive military actions in Cuba or the
 479 company implements rigorous and verifiable safeguards to prevent
 480 use of that equipment by forces actively participating in armed
 481 conflict. Examples of safeguards include post-sale tracking of
 482 such equipment by the company, certification from a reputable
 483 and objective third party that such equipment is not being used
 484 by a party participating in armed conflict in Cuba, or sale of
 485 such equipment solely to any internationally recognized
 486 peacekeeping force or humanitarian organization.

487 7. The company has business operations that involve
 488 contracts with or provision of supplies or services to the
 489 government of Syria, companies in which the government of Syria
 490 has any direct or indirect equity share, consortiums or projects
 491 commissioned by the government of Syria, or companies involved
 492 in consortiums or projects commissioned by the government of
 493 Syria and:

Page 17 of 36

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40-01080-12 20121144

494 a. More than 10 percent of the company's total revenues or
 495 assets are linked to Syria and involve oil-related activities,
 496 and the company has failed to take substantial action; or

497 b. The company has, with actual knowledge, on or after
 498 March 8, 1963, made an investment of \$20 million or more, or any
 499 combination of investments of at least \$10 million each, which
 500 in the aggregate equals or exceeds \$20 million in any 12-month
 501 period, and which directly or significantly contributes to the
 502 enhancement of Syria's ability to develop the petroleum
 503 resources of Syria.

504 8. The company supplies military equipment within Syria,
 505 unless it clearly shows that the military equipment cannot be
 506 used to facilitate offensive military actions in Syria or the
 507 company implements rigorous and verifiable safeguards to prevent
 508 use of that equipment by forces actively participating in armed
 509 conflict. Examples of safeguards include post-sale tracking of
 510 such equipment by the company, certification from a reputable
 511 and objective third party that such equipment is not being used
 512 by a party participating in armed conflict in Syria, or sale of
 513 such equipment solely to any internationally recognized
 514 peacekeeping force or humanitarian organization.

515 (x)(u) "Social-development company" means a company whose
 516 primary purpose in Sudan is to provide humanitarian goods or
 517 services, including medicine or medical equipment; agricultural
 518 supplies or infrastructure; educational opportunities;
 519 journalism-related activities; information or information
 520 materials; spiritual-related activities; services of a purely
 521 clerical or reporting nature; food, clothing, or general
 522 consumer goods that are unrelated to oil-related activities;

Page 18 of 36

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40-01080-12 20121144

523 mineral-extraction activities; or power-production activities.

524 (y) "Substantial action specific to Cuba" means adopting,
525 publicizing, and implementing a formal plan to cease scrutinized
526 business operations within 1 year and to refrain from any such
527 new business operations.

528 ~~(z)(v)~~ "Substantial action specific to Iran" means
529 adopting, publicizing, and implementing a formal plan to cease
530 scrutinized business operations within 1 year and to refrain
531 from any such new business operations.

532 (aa)(w) "Substantial action specific to Sudan" means
533 adopting, publicizing, and implementing a formal plan to cease
534 scrutinized business operations within 1 year and to refrain
535 from any such new business operations; undertaking humanitarian
536 efforts in conjunction with an international organization, the
537 government of Sudan, the regional government of southern Sudan,
538 or a nonprofit entity evaluated and certified by an independent
539 third party to be substantially in a relationship to the
540 company's Sudan business operations and of benefit to one or
541 more marginalized populations of Sudan; or, through engagement
542 with the government of Sudan, materially improving conditions
543 for the genocidally victimized population in Darfur.

544 (bb) "Substantial action specific to Syria" means adopting,
545 publicizing, and implementing a formal plan to cease scrutinized
546 business operations within 1 year and to refrain from any such
547 new business operations.

548 (cc) "Syria" means the nation of Syria.

549 (2) IDENTIFICATION OF COMPANIES.—

550 (a) Within 90 days after the effective date of this act,
551 the public fund shall make its best efforts to identify all

40-01080-12 20121144

552 scrutinized companies in which the public fund has direct or
553 indirect holdings or could possibly have such holdings in the
554 future. Such efforts include:

555 1. Reviewing and relying, as appropriate in the public
556 fund's judgment, on publicly available information regarding
557 companies having business operations in Sudan, including
558 information provided by nonprofit organizations, research firms,
559 international organizations, and government entities;

560 2. Contacting asset managers contracted by the public fund
561 that invest in companies having business operations in Sudan; or

562 3. Contacting other institutional investors that have
563 divested from or engaged with companies that have business
564 operations in Sudan.

565 4. Reviewing the laws of the United States regarding the
566 levels of business activity that would cause application of
567 sanctions for companies conducting business or investing in
568 countries that are designated state sponsors of terror.

569 (b) By the first meeting of the public fund following the
570 90-day period described in paragraph (a), the public fund shall
571 assemble all scrutinized companies that fit criteria specified
572 in subparagraphs (1)(w)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into
573 a "Scrutinized Companies with Activities in Sudan List," ~~and~~
574 shall assemble all scrutinized companies that fit criteria
575 specified in subparagraph (1)(w)4. ~~(1)(t)4.~~ into a "Scrutinized
576 Companies with Activities in the Iran Petroleum Energy Sector
577 List," ~~shall assemble all scrutinized companies that fit~~
578 criteria specified in subparagraphs (1)(w)5. and 6. into a
579 "Scrutinized Companies with Activities in Cuba List," and shall
580 assemble all scrutinized companies that fit criteria specified

40-01080-12 20121144

581 in subparagraphs (1)(w)7. and 8. into a "Scrutinized Companies
582 with Activities in Syria List."

583 (c) The public fund shall update and make publicly
584 available quarterly the Scrutinized Companies with Activities in
585 Sudan List, ~~and~~ the Scrutinized Companies with Activities in the
586 Iran Petroleum Energy Sector List, the Scrutinized Companies
587 with Activities in Cuba List, and the Scrutinized Companies with
588 Activities in Syria List based on evolving information from,
589 among other sources, those listed in paragraph (a).

590 (d) Notwithstanding the provisions of this act, a social-
591 development company that is not complicit in the Darfur genocide
592 is not considered a scrutinized company under subparagraph
593 (1)(w)1. ~~(1)(t)1-~~, subparagraph (1)(w)2. ~~(1)(t)2-~~, or
594 subparagraph (1)(w)3. ~~(1)(t)3-~~.

595 (3) REQUIRED ACTIONS.—The public fund shall adhere to the
596 following procedure for assembling companies on the Scrutinized
597 Companies with Activities in Sudan List, ~~and~~ the Scrutinized
598 Companies with Activities in the Iran Petroleum Energy Sector
599 List, the Scrutinized Companies with Activities in Cuba List,
600 and the Scrutinized Companies with Activities in Syria List:

601 (a) *Engagement.*—

602 1. The public fund shall immediately determine the
603 companies on the Scrutinized Companies with Activities in Sudan
604 List, ~~and~~ the Scrutinized Companies with Activities in the Iran
605 Petroleum Energy Sector List, the Scrutinized Companies with
606 Activities in Cuba List, and the Scrutinized Companies with
607 Activities in Syria List in which the public fund owns direct or
608 indirect holdings.

609 2. For each company identified in this paragraph that has

40-01080-12 20121144

610 only inactive business operations, the public fund shall send a
611 written notice informing the company of this act and encouraging
612 it to continue to refrain from initiating active business
613 operations in Sudan, ~~or~~ Iran, Cuba, or Syria until it is able to
614 avoid scrutinized business operations. The public fund shall
615 continue such correspondence semiannually.

616 3. For each company newly identified under this paragraph
617 that has active business operations, the public fund shall send
618 a written notice informing the company of its scrutinized
619 company status and that it may become subject to divestment by
620 the public fund. The notice must inform the company of the
621 opportunity to clarify its Sudan-related, ~~or~~ Iran-related, Cuba-
622 related, or Syria-related activities and encourage the company,
623 within 90 days, to cease its scrutinized business operations or
624 convert such operations to inactive business operations in order
625 to avoid qualifying for divestment by the public fund.

626 4. If, within 90 days after the public fund's first
627 engagement with a company pursuant to this paragraph, that
628 company ceases scrutinized business operations, the company
629 shall be removed from the Scrutinized Companies with Activities
630 in Sudan List, ~~and~~ the Scrutinized Companies with Activities in
631 the Iran Petroleum Energy Sector List, the Scrutinized Companies
632 with Activities in Cuba List, and the Scrutinized Companies with
633 Activities in Syria List, and the provisions of this act shall
634 cease to apply to that company unless that company resumes
635 scrutinized business operations. If, within 90 days after the
636 public fund's first engagement, the company converts its
637 scrutinized active business operations to inactive business
638 operations, the company is subject to all provisions relating to

40-01080-12 20121144
 639 inactive business operations. A company may be removed from one
 640 list but remain on the other list, in which case the company
 641 shall be subject to the provisions applicable to the list on
 642 which the company remains.

643 (b) *Divestment.*—

644 1. If, after 90 days following the public fund's first
 645 engagement with a company pursuant to paragraph (a), the company
 646 continues to have scrutinized active business operations, and
 647 only while such company continues to have scrutinized active
 648 business operations, the public fund shall sell, redeem, divest,
 649 or withdraw all publicly traded securities of the company,
 650 except as provided in paragraph (d), from the public fund's
 651 assets under management within 12 months after the company's
 652 most recent appearance on the Scrutinized Companies with
 653 Activities in Sudan List, ~~or on~~ the Scrutinized Companies with
 654 Activities in the Iran Petroleum Energy Sector List, the
 655 Scrutinized Companies with Activities in Cuba List, or the
 656 Scrutinized Companies with Activities in Syria List.

657 2. If a company that ceased scrutinized active business
 658 operations following engagement pursuant to paragraph (a)
 659 resumes such operations, this paragraph immediately applies, and
 660 the public fund shall send a written notice to the company. The
 661 company shall also be immediately reintroduced onto the
 662 Scrutinized Companies with Activities in Sudan List, ~~or on~~ the
 663 Scrutinized Companies with Activities in the Iran Petroleum
 664 Energy Sector List, the Scrutinized Companies with Activities in
 665 Cuba List, or the Scrutinized Companies with Activities in Syria
 666 List, as applicable.

667 (c) *Prohibition.*—The public fund may not acquire securities

40-01080-12 20121144
 668 of companies on the Scrutinized Companies with Activities in
 669 Sudan List, ~~or~~ the Scrutinized Companies with Activities in the
 670 Iran Petroleum Energy Sector List, the Scrutinized Companies
 671 with Activities in Cuba List, or the Scrutinized Companies with
 672 Activities in Syria List that have active business operations,
 673 except as provided in paragraph (d).

674 (d) *Exemption.*—A company that the United States Government
 675 affirmatively declares to be excluded from its present or any
 676 future federal sanctions regime relating to Sudan, ~~or~~ Iran,
 677 Cuba, or Syria is not subject to divestment or the investment
 678 prohibition pursuant to paragraphs (b) and (c).

679 (e) *Excluded securities.*—Notwithstanding the provisions of
 680 this act, paragraphs (b) and (c) do not apply to indirect
 681 holdings in actively managed investment funds. However, the
 682 public fund shall submit letters to the managers of such
 683 investment funds containing companies that have scrutinized
 684 active business operations requesting that they consider
 685 removing such companies from the fund or create a similar
 686 actively managed fund having indirect holdings devoid of such
 687 companies. If the manager creates a similar fund, the public
 688 fund shall replace all applicable investments with investments
 689 in the similar fund in an expedited timeframe consistent with
 690 prudent investing standards. For the purposes of this section, a
 691 private equity fund is deemed to be an actively managed
 692 investment fund.

693 (f) *Further exclusions.*—Notwithstanding any other provision
 694 of this act, the public fund, when discharging its
 695 responsibility for operation of a defined contribution plan,
 696 shall engage the manager of the investment offerings in such

40-01080-12 20121144
 697 plans requesting that they consider removing scrutinized
 698 companies from the investment offerings or create an alternative
 699 investment offering devoid of scrutinized companies. If the
 700 manager creates an alternative investment offering and the
 701 offering is deemed by the public fund to be consistent with
 702 prudent investor standards, the public fund shall consider
 703 including such investment offering in the plan.

(4) REPORTING.—

(a) The public fund shall file a report with each member of
 706 the Board of Trustees of the State Board of Administration, the
 707 President of the Senate, and the Speaker of the House of
 708 Representatives that includes the Scrutinized Companies with
 709 Activities in Sudan List, ~~and~~ the Scrutinized Companies with
 710 Activities in the Iran Petroleum Energy Sector List, the
 711 Scrutinized Companies with Activities in Cuba List, and the
 712 Scrutinized Companies with Activities in Syria List within 30
 713 days after the list is created. This report shall be made
 714 available to the public.

(b) At each quarterly meeting of the Board of Trustees
 716 thereafter, the public fund shall file a report, which shall be
 717 made available to the public and to each member of the Board of
 718 Trustees of the State Board of Administration, the President of
 719 the Senate, and the Speaker of the House of Representatives, and
 720 send a copy of that report to the United States Presidential
 721 Special Envoy to Sudan, ~~and~~ the United States Presidential
 722 Special Envoy to Iran, the United States Presidential Special
 723 Envoy to Cuba, and the United States Presidential Special Envoy
 724 to Syria, or an appropriate designee or successor, which
 725 includes:

40-01080-12 20121144
 726 1. A summary of correspondence with companies engaged by
 727 the public fund under subparagraphs (3)(a)2. and 3.;
 728 2. All investments sold, redeemed, divested, or withdrawn
 729 in compliance with paragraph (3)(b);
 730 3. All prohibited investments under paragraph (3)(c);
 731 4. Any progress made under paragraph (3)(e); and
 732 5. A list of all publicly traded securities held directly
 733 by this state.

(5) EXPIRATION.—This act expires upon the occurrence of all
 735 of the following:

(a) If any of the following occur, the public fund shall no
 737 longer scrutinize companies according to subparagraphs (1)(w)1.,
 738 2., and 3. ~~(1)(t)1., 2., and 3.~~ and shall no longer assemble the
 739 Scrutinized Companies with Activities in Sudan List, shall cease
 740 engagement and divestment of such companies, and may reinvest in
 741 such companies as long as such companies do not satisfy the
 742 criteria for inclusion in the Scrutinized Companies with
 743 Activities in the Iran Petroleum Energy Sector List, the
 744 Scrutinized Companies with Activities in Cuba List, or the
 745 Scrutinized Companies with Activities in Syria List:

1. The Congress or President of the United States,
 747 affirmatively and unambiguously states, by means including, but
 748 not limited to, legislation, executive order, or written
 749 certification from the President to Congress, that the Darfur
 750 genocide has been halted for at least 12 months;

2. The United States revokes all sanctions imposed against
 752 the government of Sudan;

3. The Congress or President of the United States
 754 affirmatively and unambiguously states, by means including, but

40-01080-12 20121144__
 755 not limited to, legislation, executive order, or written
 756 certification from the President to Congress, that the
 757 government of Sudan has honored its commitments to cease attacks
 758 on civilians, demobilize and demilitarize the Janjaweed and
 759 associated militias, grant free and unfettered access for
 760 deliveries of humanitarian assistance, and allow for the safe
 761 and voluntary return of refugees and internally displaced
 762 persons; or

763 4. The Congress or President of the United States
 764 affirmatively and unambiguously states, by means including, but
 765 not limited to, legislation, executive order, or written
 766 certification from the President to Congress, that mandatory
 767 divestment of the type provided for in this act interferes with
 768 the conduct of United States foreign policy.

769 (b) If any of the following occur, the public fund shall no
 770 longer scrutinize companies according to subparagraph (1)(w)4.
 771 ~~(1)(t)4.~~ and shall no longer assemble the Scrutinized Companies
 772 with Activities in the Iran Petroleum Energy Sector List and
 773 shall cease engagement, investment prohibitions, and divestment.
 774 The public fund may reinvest in such companies as long as such
 775 companies do not satisfy the criteria for inclusion in the
 776 Scrutinized Companies with Activities in Sudan List, the
 777 Scrutinized Companies with Activities in Cuba List, or the
 778 Scrutinized Companies with Activities in Syria List:

779 1. The Congress or President of the United States
 780 affirmatively and unambiguously states, by means including, but
 781 not limited to, legislation, executive order, or written
 782 certification from the President to Congress, that the
 783 government of Iran has ceased to acquire weapons of mass

40-01080-12 20121144__
 784 destruction and support international terrorism;
 785 2. The United States revokes all sanctions imposed against
 786 the government of Iran; or
 787 3. The Congress or President of the United States
 788 affirmatively and unambiguously declares, by means including,
 789 but not limited to, legislation, executive order, or written
 790 certification from the President to Congress, that mandatory
 791 divestment of the type provided for in this act interferes with
 792 the conduct of United States foreign policy.

793 (c) If any of the following occur, the public fund shall no
 794 longer scrutinize companies according to subparagraphs (1)(w)5.
 795 and 6. and shall no longer assemble the Scrutinized Companies
 796 with Activities in Cuba List and shall cease engagement,
 797 investment prohibitions, and divestment. The public fund may
 798 reinvest in such companies as long as such companies do not
 799 satisfy the criteria for inclusion in the Scrutinized Companies
 800 with Activities in Sudan List, the Scrutinized Companies with
 801 Activities in the Iran Petroleum Energy Sector List, or the
 802 Scrutinized Companies with Activities in Syria List:

803 1. The Congress or President of the United States
 804 affirmatively and unambiguously states, by means including, but
 805 not limited to, legislation, executive order, or written
 806 certification from the President to Congress, that the
 807 government of Cuba has ceased to acquire weapons of mass
 808 destruction and support international terrorism;

809 2. The United States revokes all sanctions imposed against
 810 the government of Cuba; or

811 3. The Congress or President of the United States
 812 affirmatively and unambiguously declares, by means including,

40-01080-12 20121144

813 but not limited to, legislation, executive order, or written
 814 certification from the President to Congress, that mandatory
 815 divestment of the type provided for in this act interferes with
 816 the conduct of United States foreign policy.

817 (d) If any of the following occur, the public fund shall no
 818 longer scrutinize companies according to subparagraphs (1)(w)7.
 819 and 8. and shall no longer assemble the Scrutinized Companies
 820 with Activities in Syria List and shall cease engagement,
 821 investment prohibitions, and divestment. The public fund may
 822 reinvest in such companies as long as such companies do not
 823 satisfy the criteria for inclusion in the Scrutinized Companies
 824 with Activities in Sudan List, the Scrutinized Companies with
 825 Activities in the Iran Petroleum Energy Sector List, or the
 826 Scrutinized Companies with Activities in Cuba List:

827 1. The Congress or President of the United States
 828 affirmatively and unambiguously states, by means including, but
 829 not limited to, legislation, executive order, or written
 830 certification from the President to Congress, that the
 831 government of Cuba has ceased to acquire weapons of mass
 832 destruction and support international terrorism;

833 2. The United States revokes all sanctions imposed against
 834 the government of Syria; or

835 3. The Congress or President of the United States
 836 affirmatively and unambiguously declares, by means including,
 837 but not limited to, legislation, executive order, or written
 838 certification from the President to Congress, that mandatory
 839 divestment of the type provided for in this act interferes with
 840 the conduct of United States foreign policy.

841 (6) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public

40-01080-12 20121144

842 fund's actions taken in compliance with this act, including all
 843 good faith determinations regarding companies as required by
 844 this act, shall be adopted and incorporated into the public
 845 fund's investment policy statement (the IPS) as set forth in s.
 846 215.475.

847 (7) REINVESTMENT IN CERTAIN COMPANIES HAVING SCRUTINIZED
 848 ACTIVE BUSINESS OPERATIONS.—Notwithstanding any other provision
 849 of this act to the contrary, the public fund may cease divesting
 850 from certain scrutinized companies pursuant to paragraph (3) (b)
 851 or reinvest in certain scrutinized companies from which it
 852 divested pursuant to paragraph (3) (b) if clear and convincing
 853 evidence shows that the value of all assets under management by
 854 the public fund becomes equal to or less than 99.50 percent, or
 855 50 basis points, of the hypothetical value of all assets under
 856 management by the public fund assuming no divestment for any
 857 company had occurred under paragraph (3) (b). Cessation of
 858 divestment, reinvestment, or any subsequent ongoing investment
 859 authorized by this act is limited to the minimum steps necessary
 860 to avoid the contingency set forth in this subsection or that no
 861 divestment of any company is required for less than fair value.
 862 For any cessation of divestment, reinvestment, or subsequent
 863 ongoing investment authorized by this act, the public fund shall
 864 provide a written report to each member of the Board of Trustees
 865 of the State Board of Administration, the President of the
 866 Senate, and the Speaker of the House of Representatives in
 867 advance of initial reinvestment, updated semiannually thereafter
 868 as applicable, setting forth the reasons and justification,
 869 supported by clear and convincing evidence, for its decisions to
 870 cease divestment, reinvest, or remain invested in companies

40-01080-12 20121144
 871 having scrutinized active business operations. This act does not
 872 apply to reinvestment in companies on the grounds that they have
 873 ceased to have scrutinized active business operations.

874 Section 2. Section 287.135, Florida Statutes, is amended to
 875 read:

876 287.135 Prohibition against contracting with scrutinized
 877 companies.—

878 (1) In addition to the terms defined in ss. 287.012 and
 879 215.473, as used in this section, the term:

880 (a) "Awarding body" means, for purposes of state contracts,
 881 an agency or the department, and for purposes of local
 882 contracts, the governing body of the local governmental entity.

883 (b) "Local governmental entity" means a county,
 884 municipality, special district, or other political subdivision
 885 of the state.

886 (2) A company that, at the time of bidding or submitting a
 887 proposal for a new contract or renewal of an existing contract,
 888 is on the Scrutinized Companies with Activities in Sudan List,
 889 ~~or~~ the Scrutinized Companies with Activities in the Iran
 890 Petroleum Energy Sector List, the Scrutinized Companies with
 891 Activities in Cuba List, or the Scrutinized Companies with
 892 Activities in Syria List, created pursuant to s. 215.473, is
 893 ineligible for, and may not bid on, submit a proposal for, or
 894 enter into or renew a contract with an agency or local
 895 governmental entity for goods or services of \$1 million or more.

896 (3) (a) Any contract with an agency or local governmental
 897 entity for goods or services of \$1 million or more entered into
 898 or renewed on or after July 1, 2011, through June 30, 2012, must
 899 contain a provision that allows for the termination of such

40-01080-12 20121144
 900 contract at the option of the awarding body if the company is
 901 found to have submitted a false certification as provided under
 902 subsection (5) or been placed on the Scrutinized Companies with
 903 Activities in Sudan List or the Scrutinized Companies with
 904 Activities in the Iran Petroleum Energy Sector List.

905 (b) Any contract with an agency or local governmental
 906 entity for goods or services of \$1 million or more entered into
 907 or renewed on or after July 1, 2012, must contain a provision
 908 that allows for the termination of such contract at the option
 909 of the awarding body if the company is found to have submitted a
 910 false certification as provided under subsection (5) or been
 911 placed on the Scrutinized Companies with Activities in Sudan
 912 List, the Scrutinized Companies with Activities in the Iran
 913 Petroleum Energy Sector List, the Scrutinized Companies with
 914 Activities in Cuba List, or the Scrutinized Companies with
 915 Activities in Syria List.

916 (4) Notwithstanding subsection (2) or subsection (3), an
 917 agency or local governmental entity, on a case-by-case basis,
 918 may permit a company on the Scrutinized Companies with
 919 Activities in Sudan List, ~~or~~ the Scrutinized Companies with
 920 Activities in the Iran Petroleum Energy Sector List, the
 921 Scrutinized Companies with Activities in Cuba List, or the
 922 Scrutinized Companies with Activities in Syria List to be
 923 eligible for, bid on, submit a proposal for, or enter into or
 924 renew a contract for goods or services of \$1 million or more
 925 under ~~either of the following~~ conditions set forth in paragraph
 926 (a) or the conditions set forth in paragraph (b):

927 (a)1. With respect to a company on the Scrutinized
 928 Companies with Activities in Sudan List or the Scrutinized

40-01080-12 20121144

929 Companies with Activities in the Iran Petroleum Energy Sector
 930 List, all of the following occur:

931 ~~a.1-~~ The scrutinized business operations were made before
 932 July 1, 2011.

933 ~~b.2-~~ The scrutinized business operations have not been
 934 expanded or renewed after July 1, 2011.

935 ~~c.3-~~ The agency or local governmental entity determines
 936 that it is in the best interest of the state or local community
 937 to contract with the company.

938 ~~d.4-~~ The company has adopted, has publicized, and is
 939 implementing a formal plan to cease scrutinized business
 940 operations and to refrain from engaging in any new scrutinized
 941 business operations.

942 2. With respect to a company on the Scrutinized Companies
 943 with Activities in Cuba List or the Scrutinized Companies with
 944 Activities in Syria List, all of the following occur:

945 a. The scrutinized business operations were made before
 946 July 1, 2012.

947 b. The scrutinized business operations have not been
 948 expanded or renewed after July 1, 2012.

949 c. The agency or local governmental entity determines that
 950 it is in the best interest of the state or local community to
 951 contract with the company.

952 d. The company has adopted, has publicized, and is
 953 implementing a formal plan to cease scrutinized business
 954 operations and to refrain from engaging in any new scrutinized
 955 business operations.

956 (b) One of the following occurs:

957 1. The local governmental entity makes a public finding

40-01080-12 20121144

958 that, absent such an exemption, the local governmental entity
 959 would be unable to obtain the goods or services for which the
 960 contract is offered.

961 2. For a contract with an executive agency, the Governor
 962 makes a public finding that, absent such an exemption, the
 963 agency would be unable to obtain the goods or services for which
 964 the contract is offered.

965 3. For a contract with an office of a state constitutional
 966 officer other than the Governor, the state constitutional
 967 officer makes a public finding that, absent such an exemption,
 968 the office would be unable to obtain the goods or services for
 969 which the contract is offered.

970 (5) At the time a company submits a bid or proposal for a
 971 contract or before the company enters into or renews a contract
 972 with an agency or governmental entity for goods or services of
 973 \$1 million or more, the company must certify that the company is
 974 not on the Scrutinized Companies with Activities in Sudan List,
 975 ~~or~~ the Scrutinized Companies with Activities in the Iran
 976 Petroleum Energy Sector List, the Scrutinized Companies with
 977 Activities in Cuba List, or the Scrutinized Companies with
 978 Activities in Syria List.

979 (a) If, after the agency or the local governmental entity
 980 determines, using credible information available to the public,
 981 that the company has submitted a false certification, the agency
 982 or local governmental entity shall provide the company with
 983 written notice of its determination. The company shall have 90
 984 days following receipt of the notice to respond in writing and
 985 to demonstrate that the determination of false certification was
 986 made in error. If the company does not make such demonstration

40-01080-12 20121144__
 987 within 90 days after receipt of the notice, the agency or the
 988 local governmental entity shall bring a civil action against the
 989 company. If a civil action is brought and the court determines
 990 that the company submitted a false certification, the company
 991 shall pay the penalty described in subparagraph 1. and all
 992 reasonable ~~attorney~~ ~~attorney's~~ fees and costs, including any
 993 costs for investigations that led to the finding of false
 994 certification.

995 1. A civil penalty equal to the greater of \$2 million or
 996 twice the amount of the contract for which the false
 997 certification was submitted shall be imposed.

998 2. The company is ineligible to bid on any contract with an
 999 agency or local governmental entity for 3 years after the date
 1000 the agency or local governmental entity determined that the
 1001 company submitted a false certification.

1002 (b) A civil action to collect the penalties described in
 1003 paragraph (a) must commence within 3 years after the date the
 1004 false certification is submitted.

1005 (6) Only the agency or local governmental entity that is a
 1006 party to the contract may cause a civil action to be brought
 1007 under this section. This section does not create or authorize a
 1008 private right of action or enforcement of the penalties provided
 1009 in this section. An unsuccessful bidder, or any other person
 1010 other than the agency or local governmental entity, may not
 1011 protest the award of a contract or contract renewal on the basis
 1012 of a false certification.

1013 (7) This section preempts any ordinance or rule of any
 1014 agency or local governmental entity involving public contracts
 1015 for goods or services of \$1 million or more with a company

40-01080-12 20121144__
 1016 engaged in scrutinized business operations.

1017 (8) The department shall submit to the Attorney General of
 1018 the United States a written notice:

1019 (a) Describing this section within 30 days after July 1,
 1020 2011.

1021 (b) Within 30 days after July 1, 2012, apprising the
 1022 Attorney General of the United States of the inclusion of
 1023 companies on the Scrutinized Companies with Activities in Cuba
 1024 List and the Scrutinized Companies with Activities in Syria List
 1025 within the provisions of this section.

1026 (9) This section becomes inoperative on the date that
 1027 federal law ceases to authorize the states to adopt and enforce
 1028 the contracting prohibitions of the type provided for in this
 1029 section.

1030 Section 3. This act shall take effect July 1, 2012.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 1208

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Unclaimed Property/Department of Financial Services

DATE: February 2, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	Favorable
2.	<u>Seay</u>	<u>Roberts</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill is the result of the Banking and Insurance Committee’s Open Government Sunset Review of the public records exemption for social security numbers and other property identifiers or descriptors used to identify the property holder of any unclaimed or abandoned property held by the Department of Financial Services (DFS). Property identifiers could include bank account numbers, credit card numbers, or insurance policy numbers.

This bill removes the scheduled repeal date of October 2, 2012, for this exemption. The bill expands the current public records exemption by removing language allowing social security numbers to be released to a person registered under Chapter 717, F.S. with DFS who is an attorney, Florida-certified public accountant, private investigator duly licensed in Florida, or a private investigative agency licensed under Chapter 493, F.S., for the limited purpose of locating owners of abandoned or unclaimed property. As this bill expands the current exemption, it is subject to the Open Government Sunset Review Act and will expire on October 2, 2017, unless reviewed and saved from repeal by the Legislature.

This bill substantially amends section 717.117 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

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

In addition to the State Constitution, the Public Records Act,³ which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

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

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

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

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate,

¹ Section 1390, 1391 F.S. (Rev. 1892).

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

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

⁵ Section 119.011(11), F.S.

communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

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

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁵

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

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;

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

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

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

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

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

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

¹² Attorney General Opinion 85-62.

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

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(5)(a), F.S.

- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

The Act also requires consideration of the following:

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

Public Records Exemption in Section 717.117(8), F.S.

The Department of Financial Services (DFS) Bureau of Unclaimed Property (Bureau) administers the Florida Disposition of Unclaimed Property Act (Ch. 717, F.S.), which establishes the statutory procedure for the reversion and disposition of presumed abandoned, real or personal, property to the state. Under s. 717.119, F.S., the holders, including banks and insurance companies, of property that has not been claimed for a certain period of time are required to submit the unclaimed property to DFS. The proceeds from property that remains unclaimed is then deposited into the Department of Education School Trust Fund, except for \$15 million that is retained in a separate account for the prompt payment of verified claims.¹⁷ The Bureau utilizes multiple means to fulfill the state's obligation under s. 717.118, F.S., to notify owners of unclaimed property accounts valued over \$250 in a cost-effective manner.

Section 717.1400, F.S., mandates attorneys, public accountants, private investigators, or private investigative agencies to be certified or licensed within Florida in order to act as a claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS. A claimant's representative will attempt to locate the owner of unclaimed property and, through a power-of-attorney agreement, offer assistance in recovering the property in exchange for a fee. In order to identify the owner of unclaimed property, claimants' representatives will utilize the information contained in the unclaimed property reports filed with the Bureau.

Under the exemption in s. 717.117(8)(b), F.S., social security numbers and property identifiers contained in unclaimed property reports are confidential and exempt from public disclosure. In 2007, legislation was enacted that replaced the phrase "financial account numbers" with "property identifiers," defined as a "descriptor used by the holder to identify the unclaimed

¹⁶ Section 119.15(4)(b), F.S.

¹⁷ Section 717.123, F.S.

property.”¹⁸ Property identifiers contained within property reports could include bank account numbers, credit card numbers, or insurance policy numbers. The parties affected by this exemption include owners of unclaimed property, registered claimants’ representatives, and other non-registered third parties. The purpose of the exemption is to protect owners of unclaimed property from identity theft and related crimes.

Section 717.117(8)(c), F.S., allows the disclosure of property reports, containing social security numbers of unclaimed property owners along with descriptions of the property, for the limited purpose of locating the owners. The property reports can be obtained by registered claimants’ representatives from the Bureau’s website or compact discs produced by the Bureau. Representatives of the Bureau indicate that social security numbers and property identifiers utilized within the unclaimed property reports are not readily available through other means. However, access to an individual’s social security number can result in exploitation of that individual’s financial, educational, medical, or familial records or forgery of documents.

The general exemption in s. 119.071, F.S., applies to each state agency and exempts from public records social security numbers, bank account numbers, debit or charge card numbers, and credit card numbers. The exemption in s. 717.117(8), F.S., for social security numbers contained in unclaimed property reports is meant to be stronger than the general exemption, since the reports are only released to registered claimants’ representatives for the sole purpose of locating the owners of the unclaimed property. However, there have been reports that unregistered persons have received the Bureau’s compact discs containing the social security numbers of unclaimed property owners, which are often listed as a Federal Employee Identification Number. This poses a significant threat to the personal and financial information of unclaimed property owners.

Banking and Insurance Committee’s Open Government Sunset Review

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Banking and Insurance Committee recommended that the Legislature retain the public records exemption established in s. 717.117(8), F.S., which makes social security numbers and property identifiers contained in unclaimed property reports confidential and exempt from public disclosure.

This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist in maintaining the confidential nature of social security numbers and property identifiers contained in unclaimed property reports. Additionally, the Sunset Review offered findings that the public records exemption be expanded due to unregistered persons’ access to the social security numbers of unclaimed property owners. Section 717.117(8)(c) currently restricts the release of social security numbers to persons registered with DFS as an attorney, a Florida-certified public accountant, private investigator, or a private investigative agency. Due to the risk of unclaimed property being fraudulently obtained and identity theft, the requisite public necessity exists to expand the public records exemption.

¹⁸ Section 717.117(8)(a), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 717.117, F.S., saving from repeal the public records exemption for social security numbers and other property identifiers in unclaimed property reports held by the Department of Financial Services; expanding the public records exemption to provide that *all* social security numbers and other property identifiers in unclaimed property reports are confidential and exempt; subjecting the expanded public records exemption to the Open Government Sunset Review Act.

Section 2 provides a public necessity statement as required by the State Constitution. It provides that expanding the public records exemption serves a public necessity as it guards against identity theft and unclaimed property being fraudulently obtained.

Section 3 provides an effective date of October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement:

Section 24(c), art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill expands a public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill expands a public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemption will protect individuals from potential identity theft, prevent fraudulent claims of unclaimed property, and other misuses of social security numbers and property identifiers related to personal finances and other private information.

Registered claimants' representatives' ability to locate owners may be impacted by no longer providing them with the social security numbers of those individuals who have unclaimed or abandoned property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.



814418

LEGISLATIVE ACTION

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

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 24 - 36
and insert:

(a)~~(e)~~ The first five digits of social security numbers shall be released, for the limited purpose of locating owners of abandoned or unclaimed property, to a person registered with the department under this chapter who is an attorney, a Florida-certified public accountant, a private investigator who is duly licensed in this state, or a private investigative agency licensed under chapter 493.

(b)~~(d)~~ This exemption applies to social security numbers



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13 and property identifiers held by the department before, on, or
14 after the effective date of this exemption.

15 (c) As used in this subsection, the term "property
16 identifier" means the descriptor used by the holder to identify
17 the unclaimed property.

18 (d)~~(e)~~ This subsection is subject to the Open Government
19

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

21 And the title is amended as follows:

22 Delete line 7

23 and insert:

24 law; allowing the release of the first five digits of
25 the number for certain purposes; providing for future
26 legislative review and

By the Committee on Banking and Insurance

597-01561A-12

20121208__

1 A bill to be entitled
2 An act relating to public records; amending s.
3 717.117, F.S.; revising the public records exemption
4 for information held by the Department of Financial
5 Services relating to unclaimed property to permanently
6 exempt social security numbers from the public records
7 law; providing for future legislative review and
8 repeal of the exemption under the Open Government
9 Sunset Review Act; providing a statement of public
10 necessity; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (8) of section 717.117, Florida
15 Statutes, is amended to read:

16 717.117 Report of unclaimed property.—

17 (8) ~~(a) As used in this subsection, the term "property~~
18 ~~identifier" means the descriptor used by the holder to identify~~
19 ~~the unclaimed property.~~

20 ~~(b) Social security numbers and property identifiers~~
21 ~~contained in reports required under this section, held by the~~
22 ~~department, are confidential and exempt from s. 119.07(1) and s.~~
23 ~~24(a), Art. I of the State Constitution.~~

24 ~~(c) Social security numbers shall be released, for the~~
25 ~~limited purpose of locating owners of abandoned or unclaimed~~
26 ~~property, to a person registered with the department under this~~
27 ~~chapter who is an attorney, Florida-certified public accountant,~~
28 ~~private investigator who is duly licensed in this state, or a~~
29 ~~private investigative agency licensed under chapter 493.~~

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01561A-12

20121208__

30 ~~(a)-(d)~~ This exemption applies to social security numbers
31 and property identifiers held by the department before, on, or
32 after the effective date of this exemption.

33 (b) As used in this subsection, the term "property
34 identifier" means the descriptor used by the holder to identify
35 the unclaimed property.

36 ~~(c)-(e)~~ This subsection is subject to the Open Government
37 Sunset Review Act in accordance with s. 119.15, and shall stand
38 repealed October 2, 2017 ~~2012~~, unless reviewed and saved from
39 repeal through reenactment by the Legislature.

40 Section 2. The Legislature finds that it is a public
41 necessity that social security numbers contained in reports of
42 unclaimed property remain confidential and exempt from public
43 records requirements. Social security numbers, which are used by
44 a holder of unclaimed property to identify such property, could
45 be used to fraudulently obtain unclaimed property. The release
46 of social security numbers could also place owners of unclaimed
47 property at risk of identity theft. Therefore, the protection of
48 social security numbers is a public necessity in order to
49 prevent the fraudulent use of such information by creating
50 falsified or forged documents that appear to demonstrate
51 entitlement to unclaimed property and to prevent opportunities
52 for identify theft. Such use defrauds the rightful owner or the
53 State School Fund, which is the depository for all remaining
54 unclaimed funds.

55 Section 3. This act shall take effect October 1, 2012.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 Governmental Oversight and Accountability Committee

BILL: SB 1334

INTRODUCER: Senator Oelrich

SUBJECT: Florida Retirement System

DATE: February 15, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			BC	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill makes changes to the Florida Retirement System. It changes normal retirement age for Special Risk Class members to age 55 and vested; or age 48 with 25 years of special risk service; or age 52 with 25 years of service, including special risk service and up to 4 years of military service.

The bill changes vesting in the pension plan from 8 to 10 years.

The bill changes the early retirement reduction applied to benefits for members of the Regular Class, Senior Management Service Class, or Elected Officers' Class initially enrolled on or after July 1, 2012. Benefits will be reduced by 5 percent for each year a member is under age 62. The bill also changes the early retirement reduction applied to benefits for members of the Special Risk Class initially enrolled on or after July 1, 2012. Benefits will be reduced by 5 percent for each year a member is under age 55, or 48 if the member has completed 25 years of creditable special risk service.

The bill also specifies that new members of the Florida Retirement System initially enrolled on or after July 1, 2012, will be members of the Investment Plan, with a one-year window after the month of hire to elect to participate in the Pension Plan. Members forfeit the option to participate in the Pension Plan if they do not elect to do so within the first year.

This bill amends sections 121.021, 121.091, and 121.4501 of the Florida Statutes.

II. Present Situation:

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the pension plan and, in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹

The Florida Retirement System Act² governs the FRS, which is a multi-employer, contributory plan that provides retirement income benefits to 643,746 active members, 319,689 retired members and beneficiaries, and 45,092 members of the Deferred Retirement Option Program.³ It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 185 cities and 243 independent special districts that have elected to join the system.⁴

The membership of the FRS is divided into five membership classes:

- Regular Class⁵ has 551,896 active members;
- Special Risk Class⁶ has 72,675 active members;
- Special Risk Administrative Support Class⁷ has 63 active members;
- Elected Officers' Class⁸ has 2,014 active members; and
- Senior Management Service Class⁹ has 7,310 active members.¹⁰

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two plan options available for participation:

- The pension plan, which is a defined benefit plan; and
- The investment plan, which is a defined contribution plan.

Pension Plan

¹ The Florida Retirement System Annual Report, July 1, 2009 – June 30, 2010, at 60.

² See Chapter 121, F.S.

³ The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 22.

⁴ *Id.*, at 38.

⁵ Regular Class members are those members who do not qualify for membership in the other classes within the FRS. See s. 121.021(12), F.S.

⁶ Members include law enforcement officers, firefighters, correctional officers, correctional probation officers, paramedics, emergency medical technicians, certain professional health care workers within the Department of Corrections and the Department of Children and Family Services, and certain forensic employees. See s. 121.0515, F.S.

⁷ Members are former members of the special risk class who are transferred or reassigned to an administrative support position in certain circumstances. See s. 121.0515(8), F.S.

⁸ Membership is comprised of those participants who hold specified elective offices in either state or local government. See s. 121.052, F.S.

⁹ Members generally are high level executive and legal staff or as specifically provided in law. See s. 121.055, F.S.

¹⁰ The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 55.

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹¹ Investment management is handled by the State Board of Administration (SBA).

The pension plan provides retirement income expressed as a percent of final pay. The member receives a monthly benefit which begins to accrue on the first day of the month of retirement and is payable on the last day of the month for the member's lifetime.¹² Years of creditable service multiplied by average final salary multiplied by the accrual rate for the membership class, plus up to 500 hours of annual leave, yield the monthly annuity benefit at normal retirement.¹³

Current law provides that a member employed before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁴ A member employed on or after July 1, 2011, vests in the pension plan after completing eight years of service.¹⁵ Benefits payable under the pension plan are calculated based on years of service X accrual rate X average final compensation. For members of the pension plan enrolled before July 1, 2011, normal retirement occurs at the earlier attainment of 30 years of service or age 62.¹⁶ For members enrolled on or after July 1, 2011, normal retirement occurs at the earlier attainment of 33 years of service or age 65.¹⁷ For members of the Special Risk or Special Risk Administrative Support Class enrolled before July 1, 2011, normal retirement occurs at the earlier attainment of 25 years of service or age 55.¹⁸ For members of the Special Risk or Special Risk Administrative Support Class enrolled on or after July 1, 2011, the normal retirement is the attainment of eight or more years of creditable service and 60 years of age, or attainment of 30 years of creditable service.¹⁹

Investment Plan

The SBA is primarily responsible for administering the investment plan.²⁰ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.²¹

Benefits under the investment plan accrue in individual member accounts funded by employer and employee contributions and earnings.²² Benefits are provided through employee-directed investments offered by approved investment providers.

A member is immediately vested in all employee contributions paid to the investment plan.²³ With respect to the employer contributions, the member vests upon the completion of one year of work.²⁴ Vested benefits are payable upon termination or death as a lump-sum distribution, direct

¹¹ Section 121.025, F.S.

¹² Section 121.091(1), F.S.

¹³ See s. 121.091, F.S.

¹⁴ Section 121.021(45)(a), F.S.

¹⁵ Section 121.021(45)(b), F.S.

¹⁶ Section 121.021(29)(a)1.a. and b., F.S.

¹⁷ Section 121.021(29)(a), F.S.

¹⁸ Section 121.021(29)(b)1.a. and b., F.S.

¹⁹ Section 121.021(29)(b)2.a. and b., F.S.

²⁰ See s. 121.4501(8), F.S.

²¹ Established by Article IV, s. 4(e) of the State Constitution.

²² Section 121.4501(7), F.S.

²³ Section 121.4501(6)(a), F.S.

²⁴ Section 121.4501(6)(b), F.S.

rollover distribution, or periodic distribution.²⁵ In addition to normal benefits and death benefits, the investment plan also provides disability coverage.²⁶

Plan Selection

Florida law provides that a new FRS enrollee automatically defaults into the pension plan if, by the last business day of the fifth month following the month of hire, the enrollee does not make an active election of a retirement plan between the pension plan or the investment plan.²⁷ If the member does not actively select a retirement plan they are defaulted to the pension plan.²⁸

Second Election Option

Once a member completes his or her initial plan choice period, the member has a one-time second election option to switch retirement plans (pension plan to investment plan or investment plan to pension plan).²⁹ This change must be made while the member is actively working for an FRS employer. A member switching to the pension plan from the investment plan must buy-in to the pension plan using the member's account balance in the investment plan and any outside monies necessary to make the pension plan whole.³⁰

Optional Retirement Plans

State University System Optional Retirement Program

The optional retirement program for the State University System (SUSORP) is a retirement plan that is provided as an alternative to FRS membership for eligible State University System faculty, administrators, administrative professionals, and executive service personnel.^{31,32} As of June 30, 2011, there were 16,999 SUSORP participants.³³

Through this program, participants elect coverage as an alternative to membership in the traditional FRS and direct their own investments (retirement and death benefits).³⁴ Members of the SUSORP who have executed a contract may make voluntary contributions by salary reduction or deduction in an amount not to exceed the percentage amount contributed by the employer.³⁵ Current law provides that members may receive a payout of benefits funded by the member's voluntary contributions at any time within the limits of the contract between the member and the provider company.³⁶

State Community College System Optional Retirement Program

²⁵ See s. 121.591, F.S.

²⁶ See s. 121.4501, F.S.

²⁷ Section 121.4501(4)(a)1.a., F.S.

²⁸ Section 121.4501(4)(a)1.b., F.S.

²⁹ Section 121.4501(4)(g), F.S.

³⁰ Section 121.4501(4)(g)2., F.S.

³¹ Section 121.35(2)(a), F.S., provides that SUSORP is available to certain instructional and research faculty, administrative and professional personnel, and the Chancellor and university presidents. Section 121.051(1)(a)2., F.S., requires faculty members at a college with faculty practice plans to participate in the optional retirement program.

³² See s. 121.35, F.S.

³³ The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 74.

³⁴ Section 121.35(1), F.S.

³⁵ Section 121.35(4)(e), F.S.

³⁶ Section 121.35(5)(g), F.S.

The optional retirement program for the State Community College System (SCCSORP) is a retirement plan that is provided as an alternative to FRS membership for eligible State Community College employees.³⁷ Employees of public community colleges and charter technical career centers sponsored by public community colleges³⁸ who are members of the Regular Class of the FRS may, in lieu of participating in the FRS, elect to withdraw from the system and participate in the SCCSORP.³⁹

Senior Management Service Optional Annuity Program

The Senior Management Service Optional Annuity Program (SMSOAP) is a retirement plan that is provided as an alternative to FRS membership for members of the Senior Management Service Class.⁴⁰ Under this optional annuity plan, eligible members may purchase retirement, death, and disability benefits.⁴¹ As of June 30, 2011, there were 38 members of the SMSOAP.⁴²

Changes to the FRS in 2011

During the 2011 Session, the Legislature passed Senate Bill 2100. Senate Bill 2100 made several changes to the FRS, including the following changes:

- Required a 3 percent employee contribution for members of a state-administered retirement plan.⁴³
- Increased the years of service required for vesting from six to eight years of creditable service for employees initially enrolled in the pension plan on or after July 1, 2011.⁴⁴
- Revised the definition of "average final compensation" for members who initially enroll in the pension plan on or after July 1, 2011, to mean the average of the eight highest fiscal years of compensation for creditable service prior to retirement, for purposes of calculating retirement benefits.⁴⁵
- Reduced the interest accrual rate from 6.5 percent to 1.3 percent for members who enter the Deferred Retirement Option Program on or after July 1, 2011.⁴⁶
- Increased the retirement age and years of service for members of the FRS who initially enroll on or after July 1, 2011.⁴⁷

III. Effect of Proposed Changes:

Section 1 amends s. 121.021, F.S., to change the normal retirement date for Special Risk Class members initially enrolled after July 1, 2012 to:

- Age 55 and vested;

³⁷ Section 1012.875, F.S.

³⁸ See s. 1000.21(3)(a)-(bb), F.S., for a list of public community colleges and charter technical careers that are sponsored by public community colleges.

³⁹ Section 121.051(2)(c)

⁴⁰ Section 121.055(6)(a), F.S.

⁴¹ *Id.*

⁴² The Florida Retirement System Annual Report, July 1, 2010 – June 30, 2011, at 76.

⁴³ Codified in ss. 121.71, 121.055(6)(d)1.c., 121.35(4)(a)3., and 1012.875(4)(a)2., F.S.

⁴⁴ Codified in s. 121.021(45)(b), F.S.

⁴⁵ Codified in s. 121.021(24), F.S.

⁴⁶ Codified in s. 121.091(13)(c)1.b., F.S.

⁴⁷ Codified in ss. 121.021(29)(a) and (b)2.a. and b., F.S.

- Age 48 and 25 years of special risk service; or
- Age 52 and 25 years of service, to include special risk service and up to 4 years of military service.

The bill also increases the amount of time needed to vest in the pension plan to 10 years, for those initially enrolled in the FRS on or after July 1, 2012.

Section 2 amends s. 121.091, F.S., to change the early retirement reduction applied to benefits for members of the Regular Class, Senior Management Service Class, or Elected Officers' Class initially enrolled on or after July 1, 2012. Benefits will be reduced by 5 percent for each year a member is under age 62, instead of age 65.

The bill also changes the early retirement reduction applied to benefits for members of the Special Risk Class initially enrolled on or after July 1, 2012. Benefits will be reduced by 5 percent for each year a member is under age 55, or 48 if the member has completed 25 years of creditable special risk service, consistent with section 1 of the bill.

Section 3 amends s. 121.4501, F.S., to require new members initially enrolled on or after July 1, 2012, to default into the Investment Plan with a one-year window after the month of hire to elect Pension Plan participation. The default election takes effect the last business day of the twelfth month following the month of hire. If a member elects Pension Plan participation, the present value of his or her retirement contributions under the Investment Plan will be transferred to the Pension Plan. Members initially enrolled on or after July 1, 2012, forfeit the option to participate in the Pension Plan if they do not elect to do so within the first year.

Section 4 provides that the bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill would require a local government to expend funds to comply with its terms, the provisions of section 18(a) of article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must apply:

- Funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Constitution provides that any retirement or pension system supported in whole or part by public funds shall not increase benefits to the members or beneficiaries of the system after January 1, 1977, unless the provision of the funding increase is made on a sound actuarial basis.⁴⁸ The “Florida Protection of Public Employee Retirement Benefits Act” prohibits “the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”⁴⁹

Provisions in the bill that create additional benefits may require an actuarial study.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Actuarial studies may be needed to determine the fiscal impact of some provisions in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴⁸ Section 14, Art. X, Florida Constitution.

⁴⁹ Section 112.61, F.S.

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.

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

By Senator Oelrich

14-01596-12

20121334__

A bill to be entitled

An act relating to the Florida Retirement System; amending s. 121.021, F.S.; revising definitions of the terms "normal retirement date" and "vested" or "vesting"; amending s. 121.091, F.S.; revising provisions relating to the early retirement benefit calculation to conform to changes made by the act; amending s. 121.4501, F.S.; requiring new employees to, by default, be enrolled in the investment plan; extending the period during which employees may elect to participate in the pension plan; prohibiting certain employees from choosing to move to the pension plan after a certain period; providing an effective date.

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

Section 1. Paragraph (b) of subsection (29) and paragraph (b) of subsection (45) of section 121.021, Florida Statutes, are amended, and paragraph (c) is added to subsection (45) of that section, to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(29) "Normal retirement date" means the date a member attains normal retirement age and is vested, which is determined as follows:

(b)1. If a Special Risk Class member initially enrolled before July 1, 2011:

Page 1 of 18

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14-01596-12

20121334__

a. The first day of the month the member attains age 55 and completes the years of creditable service in the Special Risk Class equal to or greater than the years of service required for vesting;

b. The first day of the month following the date the member completes 25 years of creditable service in the Special Risk Class, regardless of age; or

c. The first day of the month following the date the member completes 25 years of creditable service and attains age 52, which service may include a maximum of 4 years of military service credit if such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

2. If a Special Risk Class member initially enrolled on or after July 1, 2011, but before July 1, 2012:

a. The first day of the month the member attains age 60 and completes the years of creditable service in the Special Risk Class equal to or greater than the years of service required for vesting;

b. The first day of the month following the date the member completes 30 years of creditable service in the Special Risk Class, regardless of age; or

c. The first day of the month following the date the member completes 30 years of creditable service and attains age 57, which service may include a maximum of 4 years of military service credit if such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

3. If a Special Risk Class member initially enrolled on or after July 1, 2012:

a. The first day of the month the member attains age 55 and

Page 2 of 18

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

14-01596-12 20121334__

59 completes the years of creditable service in the Special Risk
60 Class equal to or greater than the years of service required for
61 vesting;

62 b. The first day of the month the member attains age 48 and
63 completes 25 years of creditable service in the Special Risk
64 Class; or

65 c. The first day of the month following the date the member
66 completes 25 years of creditable service and attains age 52,
67 which service may include a maximum of 4 years of military
68 service credit if such credit is not claimed under any other
69 system and the remaining years are in the Special Risk Class.

70
71 "Normal retirement age" is attained on the "normal retirement
72 date."

73 (45) "Vested" or "vesting" means the guarantee that a
74 member is eligible to receive a future retirement benefit upon
75 completion of the required years of creditable service for the
76 employee's class of membership, even though the member may have
77 terminated covered employment before reaching normal or early
78 retirement date. Being vested does not entitle a member to a
79 disability benefit. Provisions governing entitlement to
80 disability benefits are set forth under s. 121.091(4).

81 (b) Any member initially enrolled in the Florida Retirement
82 System on or after July 1, 2011, but before July 1, 2012, shall
83 be vested upon completion of 8 years of creditable service.

84 (c) Any member initially enrolled in the Florida Retirement
85 System on or after July 1, 2012, shall be vested upon completion
86 of 10 years of creditable service.

87 Section 2. Paragraph (a) of subsection (3) of section

14-01596-12 20121334__

88 121.091, Florida Statutes, is amended to read:

89 121.091 Benefits payable under the system.—Benefits may not
90 be paid under this section unless the member has terminated
91 employment as provided in s. 121.021(39) (a) or begun
92 participation in the Deferred Retirement Option Program as
93 provided in subsection (13), and a proper application has been
94 filed in the manner prescribed by the department. The department
95 may cancel an application for retirement benefits when the
96 member or beneficiary fails to timely provide the information
97 and documents required by this chapter and the department's
98 rules. The department shall adopt rules establishing procedures
99 for application for retirement benefits and for the cancellation
100 of such application when the required information or documents
101 are not received.

102 (3) EARLY RETIREMENT BENEFIT.—Upon retirement on his or her
103 early retirement date, the member shall receive an immediate
104 monthly benefit that shall begin to accrue on the first day of
105 the month of the retirement date and be payable on the last day
106 of that month and each month thereafter during his or her
107 lifetime. Such benefit shall be calculated as follows:

108 (a) For a member initially enrolled:

109 1. Before July 1, 2011, the amount of each monthly payment
110 shall be computed in the same manner as for a normal retirement
111 benefit, in accordance with subsection (1), but shall be based
112 on the member's average monthly compensation and creditable
113 service as of the member's early retirement date. The benefit so
114 computed shall be reduced by five-twelfths of 1 percent for each
115 complete month by which the early retirement date precedes the
116 normal retirement date of age 62 for a member of the Regular

14-01596-12 20121334
 117 Class, Senior Management Service Class, or the Elected Officers'
 118 Class, and age 55 for a member of the Special Risk Class, or age
 119 52 if a Special Risk member has completed 25 years of creditable
 120 service in accordance with s. 121.021(29)(b)1.c.

121 2. On or after July 1, 2011, but before July 1, 2012, the
 122 amount of each monthly payment shall be computed in the same
 123 manner as for a normal retirement benefit, in accordance with
 124 subsection (1), but shall be based on the member's average
 125 monthly compensation and creditable service as of the member's
 126 early retirement date. The benefit so computed shall be reduced
 127 by five-twelfths of 1 percent for each complete month by which
 128 the early retirement date precedes the normal retirement date of
 129 age 65 for a member of the Regular Class, Senior Management
 130 Service Class, or the Elected Officers' Class, and age 60 for a
 131 member of the Special Risk Class, or age 57 if a Special Risk
 132 member has completed 30 years of creditable service in
 133 accordance with s. 121.021(29)(b)2.c.

134 3. On or after July 1, 2012, the amount of each monthly
 135 payment shall be computed in the same manner as for a normal
 136 retirement benefit, in accordance with subsection (1), but shall
 137 be based on the member's average monthly compensation and
 138 creditable service as of the member's early retirement date. The
 139 benefit so computed shall be reduced by five-twelfths of 1
 140 percent for each complete month by which the early retirement
 141 date precedes the normal retirement date of age 62 for a member
 142 of the Regular Class, Senior Management Service Class, or the
 143 Elected Officers' Class, and age 55 for a member of the Special
 144 Risk Class, or age 48 if a Special Risk member has completed 25
 145 years of creditable service in accordance with s.

14-01596-12 20121334
 146 121.021(29)(b)3.c.
 147 Section 3. Subsection (4) of section 121.4501, Florida
 148 Statutes, is amended to read:
 149 121.4501 Florida Retirement System Investment Plan.—
 150 (4) PARTICIPATION; ENROLLMENT.—
 151 (a)1. With respect to an eligible employee who is employed
 152 in a regularly established position on June 1, 2002, by a state
 153 employer:
 154 a. Any such employee may elect to participate in the
 155 investment plan in lieu of retaining his or her membership in
 156 the pension plan. The election must be made in writing or by
 157 electronic means and must be filed with the third-party
 158 administrator by August 31, 2002, or, in the case of an active
 159 employee who is on a leave of absence on April 1, 2002, by the
 160 last business day of the 5th month following the month the leave
 161 of absence concludes. This election is irrevocable, except as
 162 provided in paragraph (g). Upon making such election, the
 163 employee shall be enrolled as a member of the investment plan,
 164 the employee's membership in the Florida Retirement System is
 165 governed by the provisions of this part, and the employee's
 166 membership in the pension plan terminates. The employee's
 167 enrollment in the investment plan is effective the first day of
 168 the month for which a full month's employer contribution is made
 169 to the investment plan.
 170 b. Any such employee who fails to elect to participate in
 171 the investment plan within the prescribed time period is deemed
 172 to have elected to retain membership in the pension plan, and
 173 the employee's option to elect to participate in the investment
 174 plan is forfeited.

14-01596-12

20121334

175 2. With respect to employees who become eligible to
 176 participate in the investment plan by reason of employment in a
 177 regularly established position with a state employer commencing
 178 after April 1, 2002, but before July 1, 2012:

179 a. Any such employee shall, by default, be enrolled in the
 180 pension plan at the commencement of employment, and may, by the
 181 last business day of the 5th month following the employee's
 182 month of hire, elect to participate in the investment plan. The
 183 employee's election must be made in writing or by electronic
 184 means and must be filed with the third-party administrator. The
 185 election to participate in the investment plan is irrevocable,
 186 except as provided in paragraph (g).

187 b. If the employee files such election within the
 188 prescribed time period, enrollment in the investment plan is
 189 effective on the first day of employment. The retirement
 190 contributions paid through the month of the employee plan change
 191 shall be transferred to the investment program, and, effective
 192 the first day of the next month, the employer and employee must
 193 pay the applicable contributions based on the employee
 194 membership class in the program.

195 c. An employee who fails to elect to participate in the
 196 investment plan within the prescribed time period is deemed to
 197 have elected to retain membership in the pension plan, and the
 198 employee's option to elect to participate in the investment plan
 199 is forfeited.

200 3. With respect to employees who become eligible to
 201 participate in the investment plan pursuant to s.
 202 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to
 203 participate in the investment plan in lieu of retaining his or

14-01596-12

20121334

204 her membership in the State Community College System Optional
 205 Retirement Program or the State University System Optional
 206 Retirement Program. The election must be made in writing or by
 207 electronic means and must be filed with the third-party
 208 administrator. This election is irrevocable, except as provided
 209 in paragraph (g). Upon making such election, the employee shall
 210 be enrolled as a member in the investment plan, the employee's
 211 membership in the Florida Retirement System is governed by the
 212 provisions of this part, and the employee's participation in the
 213 State Community College System Optional Retirement Program or
 214 the State University System Optional Retirement Program
 215 terminates. The employee's enrollment in the investment plan is
 216 effective on the first day of the month for which a full month's
 217 employer and employee contribution is made to the investment
 218 plan.

219 4. With respect to employees who become eligible to
 220 participate in the investment plan by reason of employment in a
 221 regularly established position with a state employer commencing
 222 on or after July 1, 2012:

223 a. Any such employee shall, by default, be enrolled in the
 224 investment plan at the commencement of employment, and may, by
 225 the last business day of the 12th month following the employee's
 226 month of hire, elect to participate in the pension plan. The
 227 employee's election must be made in writing or by electronic
 228 means and must be filed with the third-party administrator.

229 b. If the employee files such election within the
 230 prescribed time period, enrollment in the pension plan is
 231 effective on the first day of employment. The present value of
 232 his or her retirement contributions under the investment plan

14-01596-12 20121334
 233 paid through the month of the employee plan change shall be
 234 transferred to the pension plan, and, effective the first day of
 235 the next month, the employer and employee must pay the
 236 applicable contributions based on the employee membership class
 237 in the pension plan.

238 c. An employee who fails to elect to participate in the
 239 pension plan within the prescribed time period is deemed to have
 240 elected to retain membership in the investment plan, and the
 241 employee's option to elect to participate in the pension plan is
 242 forfeited.

243 5.4. For purposes of this paragraph, "state employer" means
 244 any agency, board, branch, commission, community college,
 245 department, institution, institution of higher education, or
 246 water management district of the state, which participates in
 247 the Florida Retirement System for the benefit of certain
 248 employees.

249 (b)1. With respect to an eligible employee who is employed
 250 in a regularly established position on September 1, 2002, by a
 251 district school board employer:

252 a. Any such employee may elect to participate in the
 253 investment plan in lieu of retaining his or her membership in
 254 the pension plan. The election must be made in writing or by
 255 electronic means and must be filed with the third-party
 256 administrator by November 30, or, in the case of an active
 257 employee who is on a leave of absence on July 1, 2002, by the
 258 last business day of the 5th month following the month the leave
 259 of absence concludes. This election is irrevocable, except as
 260 provided in paragraph (g). Upon making such election, the
 261 employee shall be enrolled as a member of the investment plan,

14-01596-12 20121334
 262 the employee's membership in the Florida Retirement System is
 263 governed by the provisions of this part, and the employee's
 264 membership in the pension plan terminates. The employee's
 265 enrollment in the investment plan is effective the first day of
 266 the month for which a full month's employer contribution is made
 267 to the investment program.

268 b. Any such employee who fails to elect to participate in
 269 the investment plan within the prescribed time period is deemed
 270 to have elected to retain membership in the pension plan, and
 271 the employee's option to elect to participate in the investment
 272 plan is forfeited.

273 2. With respect to employees who become eligible to
 274 participate in the investment plan by reason of employment in a
 275 regularly established position with a district school board
 276 employer commencing after July 1, 2002, but before July 1, 2012:

277 a. Any such employee shall, by default, be enrolled in the
 278 pension plan at the commencement of employment, and may, by the
 279 last business day of the 5th month following the employee's
 280 month of hire, elect to participate in the investment plan. The
 281 employee's election must be made in writing or by electronic
 282 means and must be filed with the third-party administrator. The
 283 election to participate in the investment plan is irrevocable,
 284 except as provided in paragraph (g).

285 b. If the employee files such election within the
 286 prescribed time period, enrollment in the investment plan is
 287 effective on the first day of employment. The employer
 288 retirement contributions paid through the month of the employee
 289 plan change shall be transferred to the investment plan, and,
 290 effective the first day of the next month, the employer shall

14-01596-12 20121334__

291 pay the applicable contributions based on the employee
 292 membership class in the investment plan.

293 c. Any such employee who fails to elect to participate in
 294 the investment plan within the prescribed time period is deemed
 295 to have elected to retain membership in the pension plan, and
 296 the employee's option to elect to participate in the investment
 297 plan is forfeited.

298 3. With respect to employees who become eligible to
 299 participate in the investment plan by reason of employment in a
 300 regularly established position with a district school board
 301 employer commencing on or after July 1, 2012:

302 a. Any such employee shall, by default, be enrolled in the
 303 investment plan at the commencement of employment, and may, by
 304 the last business day of the 12th month following the employee's
 305 month of hire, elect to participate in the pension plan. The
 306 employee's election must be made in writing or by electronic
 307 means and must be filed with the third-party administrator.

308 b. If the employee files such election within the
 309 prescribed time period, enrollment in the pension plan is
 310 effective on the first day of employment. The present value of
 311 his or her retirement contributions under the investment plan
 312 paid through the month of the employee plan change shall be
 313 transferred to the pension plan, and, effective the first day of
 314 the next month, the employer shall pay the applicable
 315 contributions based on the employee membership class in the
 316 pension plan.

317 c. Any such employee who fails to elect to participate in
 318 the pension plan within the prescribed time period is deemed to
 319 have elected to retain membership in the investment plan, and

14-01596-12 20121334__

320 the employee's option to elect to participate in the pension
 321 plan is forfeited.

322 ~~4.3.~~ For purposes of this paragraph, "district school board
 323 employer" means any district school board that participates in
 324 the Florida Retirement System for the benefit of certain
 325 employees, or a charter school or charter technical career
 326 center that participates in the Florida Retirement System as
 327 provided in s. 121.051(2)(d).

328 (c)1. With respect to an eligible employee who is employed
 329 in a regularly established position on December 1, 2002, by a
 330 local employer:

331 a. Any such employee may elect to participate in the
 332 investment plan in lieu of retaining his or her membership in
 333 the pension plan. The election must be made in writing or by
 334 electronic means and must be filed with the third-party
 335 administrator by February 28, 2003, or, in the case of an active
 336 employee who is on a leave of absence on October 1, 2002, by the
 337 last business day of the 5th month following the month the leave
 338 of absence concludes. This election is irrevocable, except as
 339 provided in paragraph (g). Upon making such election, the
 340 employee shall be enrolled as a participant of the investment
 341 plan, the employee's membership in the Florida Retirement System
 342 is governed by the provisions of this part, and the employee's
 343 membership in the pension plan terminates. The employee's
 344 enrollment in the investment plan is effective the first day of
 345 the month for which a full month's employer contribution is made
 346 to the investment plan.

347 b. Any such employee who fails to elect to participate in
 348 the investment plan within the prescribed time period is deemed

14-01596-12 20121334
 349 to have elected to retain membership in the pension plan, and
 350 the employee's option to elect to participate in the investment
 351 plan is forfeited.

352 2. With respect to employees who become eligible to
 353 participate in the investment plan by reason of employment in a
 354 regularly established position with a local employer commencing
 355 after October 1, 2002, but before July 1, 2012:

356 a. Any such employee shall, by default, be enrolled in the
 357 pension plan at the commencement of employment, and may, by the
 358 last business day of the 5th month following the employee's
 359 month of hire, elect to participate in the investment plan. The
 360 employee's election must be made in writing or by electronic
 361 means and must be filed with the third-party administrator. The
 362 election to participate in the investment plan is irrevocable,
 363 except as provided in paragraph (g).

364 b. If the employee files such election within the
 365 prescribed time period, enrollment in the investment plan is
 366 effective on the first day of employment. The employer
 367 retirement contributions paid through the month of the employee
 368 plan change shall be transferred to the investment plan, and,
 369 effective the first day of the next month, the employer shall
 370 pay the applicable contributions based on the employee
 371 membership class in the investment plan.

372 c. Any such employee who fails to elect to participate in
 373 the investment plan within the prescribed time period is deemed
 374 to have elected to retain membership in the pension plan, and
 375 the employee's option to elect to participate in the investment
 376 plan is forfeited.

377 3. With respect to employees who become eligible to

14-01596-12 20121334
 378 participate in the investment plan by reason of employment in a
 379 regularly established position with a local employer commencing
 380 on or after July 1, 2012:

381 a. Any such employee shall, by default, be enrolled in the
 382 investment plan at the commencement of employment, and may, by
 383 the last business day of the 12th month following the employee's
 384 month of hire, elect to participate in the pension plan. The
 385 employee's election must be made in writing or by electronic
 386 means and must be filed with the third-party administrator.

387 b. If the employee files such election within the
 388 prescribed time period, enrollment in the pension plan is
 389 effective on the first day of employment. The present value of
 390 his or her employer retirement contributions under the
 391 investment plan paid through the month of the employee plan
 392 change shall be transferred to the pension plan, and, effective
 393 the first day of the next month, the employer shall pay the
 394 applicable contributions based on the employee membership class
 395 in the pension plan.

396 c. Any such employee who fails to elect to participate in
 397 the pension plan within the prescribed time period is deemed to
 398 have elected to retain membership in the investment plan, and
 399 the employee's option to elect to participate in the pension
 400 plan is forfeited.

401 ~~4.3-~~ For purposes of this paragraph, "local employer" means
 402 any employer not included in paragraph (a) or paragraph (b).

403 (d) Contributions available for self-direction by a member
 404 who has not selected one or more specific investment products
 405 shall be allocated as prescribed by the state board. The third-
 406 party administrator shall notify the member at least quarterly

14-01596-12 20121334

407 that the member should take an affirmative action to make an
408 asset allocation among the investment products.

409 (e) On or after July 1, 2011, a member of the pension plan
410 who obtains a refund of employee contributions retains his or
411 her prior plan choice upon return to employment in a regularly
412 established position with a participating employer.

413 (f) A member of the investment plan who takes a
414 distribution of any contributions from his or her investment
415 plan account is considered a retiree. A retiree who is initially
416 reemployed on or after July 1, 2010, is not eligible for renewed
417 membership.

418 (g) After the period during which an eligible employee had
419 the choice to elect the pension plan or the investment plan, or
420 the month following the receipt of the eligible employee's plan
421 election, if sooner, the employee shall have one opportunity, at
422 the employee's discretion, to choose to move from the pension
423 plan to the investment plan or from the investment plan to the
424 pension plan. However, employees initially enrolled in the
425 investment plan on or after July 1, 2012, may not move from the
426 investment plan to the pension plan after the close of the
427 initial prescribed time period to do so. Eligible employees may
428 elect to move between plans only if they are earning service
429 credit in an employer-employee relationship consistent with s.
430 121.021(17)(b), excluding leaves of absence without pay.
431 Effective July 1, 2005, such elections are effective on the
432 first day of the month following the receipt of the election by
433 the third-party administrator and are not subject to the
434 requirements regarding an employer-employee relationship or
435 receipt of contributions for the eligible employee in the

14-01596-12 20121334

436 effective month, except when the election is received by the
437 third-party administrator. This paragraph is contingent upon
438 approval by the Internal Revenue Service.

439 1. If the employee chooses to move to the investment plan,
440 the provisions of subsection (3) govern the transfer.

441 2. If the employee chooses to move to the pension plan, the
442 employee must transfer from his or her investment plan account,
443 and from other employee moneys as necessary, a sum representing
444 the present value of that employee's accumulated benefit
445 obligation immediately following the time of such movement,
446 determined assuming that attained service equals the sum of
447 service in the pension plan and service in the investment plan.
448 Benefit commencement occurs on the first date the employee is
449 eligible for unreduced benefits, using the discount rate and
450 other relevant actuarial assumptions that were used to value the
451 pension plan liabilities in the most recent actuarial valuation.
452 For any employee who, at the time of the second election,
453 already maintains an accrued benefit amount in the pension plan,
454 the then-present value of the accrued benefit is deemed part of
455 the required transfer amount. The division must ensure that the
456 transfer sum is prepared using a formula and methodology
457 certified by an enrolled actuary. A refund of any employee
458 contributions or additional member payments made which exceed
459 the employee contributions that would have accrued had the
460 member remained in the pension plan and not transferred to the
461 investment plan is not permitted.

462 3. Notwithstanding subparagraph 2., an employee who chooses
463 to move to the pension plan and who became eligible to
464 participate in the investment plan by reason of employment in a

14-01596-12 20121334__
 465 regularly established position with a state employer after June
 466 1, 2002; a district school board employer after September 1,
 467 2002; or a local employer after December 1, 2002, must transfer
 468 from his or her investment plan account, and from other employee
 469 moneys as necessary, a sum representing the employee's actuarial
 470 accrued liability. A refund of any employee contributions or
 471 additional participant payments made which exceed the employee
 472 contributions that would have accrued had the member remained in
 473 the pension plan and not transferred to the investment plan is
 474 not permitted.

475 4. An employee's ability to transfer from the pension plan
 476 to the investment plan pursuant to paragraphs (a)-(d), and the
 477 ability of a current employee to have an option to later
 478 transfer back into the pension plan under subparagraph 2., shall
 479 be deemed a significant system amendment. Pursuant to s.
 480 121.031(4), any resulting unfunded liability arising from actual
 481 original transfers from the pension plan to the investment plan
 482 must be amortized within 30 plan years as a separate unfunded
 483 actuarial base independent of the reserve stabilization
 484 mechanism defined in s. 121.031(3)(f). For the first 25 years, a
 485 direct amortization payment may not be calculated for this base.
 486 During this 25-year period, the separate base shall be used to
 487 offset the impact of employees exercising their second program
 488 election under this paragraph. The actuarial funded status of
 489 the pension plan will not be affected by such second program
 490 elections in any significant manner, after due recognition of
 491 the separate unfunded actuarial base. Following the initial 25-
 492 year period, any remaining balance of the original separate base
 493 shall be amortized over the remaining 5 years of the required

14-01596-12 20121334__
 494 30-year amortization period.
 495 5. If the employee chooses to transfer from the investment
 496 plan to the pension plan and retains an excess account balance
 497 in the investment plan after satisfying the buy-in requirements
 498 under this paragraph, the excess may not be distributed until
 499 the member retires from the pension plan. The excess account
 500 balance may be rolled over to the pension plan and used to
 501 purchase service credit or upgrade creditable service in the
 502 pension plan.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 1458

INTRODUCER: Judiciary Committee and Senator Diaz de la Portilla

SUBJECT: Dispute Resolution

DATE: February 10, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Cibula	JU	Fav/CS
2.	McKay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The Florida Arbitration Act (FAC), based on a 1955 model act, was passed in 1957 and revised in 1967. Since then, it has gone mostly unchanged. This bill creates the Revised Florida Arbitration Act based on a 2000 model act. The bill includes new concepts that were not included in the original act, such as the ability for arbitrators to issue provisional remedies, challenges based on notice, consolidation of separate arbitration proceedings, conflict disclosure requirements, immunity of arbitrators, and other substantive changes to the law. The bill provides a detailed framework for arbitration conducted under Florida law and repeals sections of the FAC, the substantive concepts of which are subsumed by the revised act.

This bill substantially amends the following sections of the Florida Statutes: 682.01, 682.02, 682.03, 682.04, 682.05, 682.06, 682.07, 682.08, 682.09, 682.10, 682.11, 682.12, 682.13, 682.14, 682.15, 682.19, 682.20, 44.104, 44.107, 440.1926, 489.1402, and 731.401.

This bill creates the following sections of the Florida Statutes: 682.011, 682.012, 682.013, 682.014, 682.015, 682.031, 682.032, 682.033, 682.041, 682.051, 682.081, 682.181, 682.23, and 682.25.

This bill repeals the following sections of the Florida Statutes: 682.16, 682.17, 682.18, 682.21, and 682.22.

II. Present Situation:

Florida has traditionally favored arbitration. In 1957, the Legislature enacted the Florida Arbitration Code,¹ which prescribes a framework governing the rights and procedures under arbitration agreements, and for the enforceability of arbitration agreements. It was subsequently amended in 1967,² but remains largely unchanged. Florida's current Arbitration Code is based on the 1955 Uniform Arbitration Act (UAA). Alternative dispute resolution has been recognized as a viable alternative to litigation in a court or jury trial, and it historically has been attractive for the resolution of commercial business disputes.

Arbitration Generally

Arbitration is an alternative dispute resolution process in which parties "subm[it] a dispute to one or more impartial persons for a final and binding decision."³ Arbitration is intended to be a speedy and economical alternative to court litigation, which is often slow, time-consuming, and expensive.⁴ Parties to arbitration voluntarily give up substantial safeguards that litigants in court proceedings enjoy, which may include the discovery process, where parties obtain information from one another.⁵

Federal Arbitration Act

Congress enacted the Federal Arbitration Act (FAA) in 1925 to establish, in part, the enforceability of pre-dispute arbitration agreements involving interstate commerce.⁶ The United States Supreme Court has recognized that with the passage of the FAA, Congress expressed intent for courts to enforce arbitration agreements and to place these agreements on an equal footing with other contracts.⁷ The FAA established a federal policy that favors and encourages the use of arbitration to resolve disputes. Due to this federal policy, the use of pre-dispute arbitration agreements has expanded beyond use in commercial contexts between large businesses and those with equal bargaining power to use in noncommercial consumer contracts.⁸

¹ Chapter 57-402, Laws of Fla.

² Chapter 67-254, Laws of Fla.

³ See the definition of "arbitration" at the website of the American Arbitration Association, <http://www.adr.org/sp.asp?id=28749> (last visited Jan. 18, 2012).

⁴ *ManorCare Health Services, Inc. v. Stiehl*, 22 So. 3d 96, 105 (Fla. 2d DCA 2009).

⁵ Amanda Perwin, *Mandatory Binding Arbitration: Civil Injustice By Corporate America*, White Paper for the Center for Justice & Democracy, No. 13 (August 2005), available at <http://centerjd.org/content/white-paper-mandatory-binding-arbitration-civil-injustice-corporate-america> (last visited Jan. 18, 2012).

⁶ See 9 U.S.C.A. ss. 1-16.

⁷ *Allied-Bruce Terminix Cos, Inc. v. Dobson*, 513 U.S. 265, 270-271 (1995).

⁸ Shelley McGill, *Consumer Arbitration Clause Enforcement: A Balanced Legislative Response*, 47 AM. BUS. L.J. 361, 366 (Fall 2010).

Florida Arbitration Code

The Florida Arbitration Code⁹ (FAC) is applicable to arbitration agreements that do not involve interstate commerce.¹⁰ The FAC governs the arbitration process, including the scope and enforceability of arbitration agreements, the appointment of arbitrators, arbitration hearing procedures, the entry and enforcement of arbitral awards, and any appeals of awards. Under the FAC, Florida courts have held that the determination of whether any dispute is subject to arbitration should be resolved in favor of arbitration.¹¹ A court's role in deciding whether to compel arbitration is limited to three gateway issues to determine the enforceability of an arbitration agreement: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration has been waived.¹² The FAC applies in arbitration cases only to the extent that it is not in conflict with federal law.¹³

III. Effect of Proposed Changes:

This bill largely adopts the provisions of the 2000 revision of the Uniform Arbitration Act, as approved by the National Conference of Commissioners on Uniform State Laws.¹⁴ The bill significantly amends or repeals each section of the existing Florida Arbitration Code, and amends s. 682.01, F.S., to rename the chapter as the "Revised Florida Arbitration Code." This bill also creates s. 682.011, F.S., to provide definitions.

Notice

The bill creates s. 682.012, F.S., to provide notice requirements. Notice is provided by taking reasonable action to inform the other person, regardless of actual knowledge. Actual knowledge or receipt of notice is sufficient. Additionally, the delivery of a notice to the person's residence or place of business, or another location held out by the person as a place of delivery, is sufficient to provide notice.

Applicability

The bill creates s. 682.013, F.S. providing applicability of the revised act. The revised act applies prospectively for agreements to arbitrate made on or after the effective date. It also applies retroactively if all parties agree to apply the revised act. The Revised Florida Arbitration Code does not affect an action or proceeding commenced or right accrued before the effective date of the act, July 1, 2012. Beginning July 1, 2015, an agreement to arbitrate will be subject to the then applicable law governing agreements to arbitrate.

⁹ Sections 682.01-682.22, F.S.

¹⁰ Michael Cavendish, *The Concept of Arbitrability Under the Florida Arbitration Code*, 82 FLA. B.J. 18, 19 (Nov. 2008) (citing *O'Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So. 2d 181, 184 (Fla. 2006)).

¹¹ *Id.* at 20 (citing *Waterhouse Constr. Group, Inc v. 5891 S.W. 64th Street, LLC*, 949 So. 2d 1095, 1099 (Fla. 3d DCA 2007)).

¹² *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999) (citing *Terminix Int'l Co. L.P. v. Ponzio*, 693 So. 2d 104, 106 (Fla. 5th DCA 1997)).

¹³ *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 573 (Fla. 1st DCA 1999), *review denied*, 763 So. 2d 1044 (Fla. 2000), and *Florida Power Corp. v. Casselberry*, 793 So. 2d 1174, 1179 (Fla. 5th DCA 2001).

¹⁴ See Business Law Section of The Florida Bar, *Analysis of Proposed Revisions to the Florida Arbitration Code* (2012) (on file with the Senate Committee on Judiciary).

Effect of Agreement to Arbitrate

The bill creates s. 682.014, F.S., to indicate that although the revised act is a default statute, “the parties’ autonomy as expressed in their agreements concerning an arbitration normally should control the arbitration.”¹⁵ However, there are some provisions that the parties cannot waive before a dispute arises or cannot waive at any point.¹⁶ Parties may not waive the right to judicial relief, the right to a provisional remedy, jurisdiction of the courts, the right to appeal, the right to notice, the right to disclosure, or the right to an attorney, before a controversy arises. Parties may not waive other requirements at any time which would fundamentally undermine the arbitration agreement.

Judicial Relief

The bill creates s. 682.015, F.S., providing that a petition for judicial relief must be made to the court in a manner provided by law or by the rules of court. Notice of an initial petition to the court must be provided in a manner consistent with the service of a summons in a civil action. Other motions must be made in the manner provided by law or by the rules of court for serving motions in pending cases.

Nature of Arbitration Agreements

The bill amends s. 682.02, F.S., providing that an agreement to submit to arbitration is valid, enforceable, and irrevocable except upon grounds that a contract can otherwise be revoked. The court decides whether an agreement to arbitrate is valid, while an arbitrator decides whether a condition precedent to arbitrability has been fulfilled and whether the contract containing the agreement to arbitrate is enforceable. Arbitration may continue during a court challenge of the arbitration agreement pending final resolution unless the court orders otherwise.

Compelling or Staying Arbitration

The bill amends s. 682.03, F.S., providing that if a party with a valid agreement to arbitrate fails to appear or does not oppose a motion to compel arbitration, the court must order the arbitration. If the refusing party opposes the motion, the court must decide the issue and order arbitration unless it finds that there is no enforceable agreement to arbitrate the matter. If the court finds that there is no enforceable agreement to arbitrate, then it may not order the parties to arbitrate. However, the court may not refuse to order arbitration on the merits of the claim.

The motion to compel arbitration may be made in any court having jurisdiction. However, if the controversy is already pending in court, the motion to compel arbitration must be made in the court where the controversy is pending. If a pending case exists, the court must halt the judicial proceeding until it renders a final decision regarding arbitrability. If the court orders arbitration, the judicial proceeding must be stayed pending arbitration.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 9.

Provisional Remedies

The bill creates s. 682.031, F.S., providing for conditions of provisional remedies. Before an arbitrator is appointed, the court may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action. After an arbitrator is appointed, the arbitrator may issue provisional remedies to the same extent that a court could in a civil action. After an arbitrator is appointed, a party may move for a court order for provisional remedies only if the matter is urgent and the arbitrator cannot act in a timely matter or provide an adequate remedy.

Initiation of Arbitration

The bill creates s. 682.032, F.S., providing that a person initiates arbitration by providing notice by the manner agreed to by the parties, or by certified mail if the agreement does not provide for a method of notice, or by a method allowed by law or rules of court for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought. Unless a party objects for lack of notice by the beginning of the arbitration hearing, notice challenges are waived if the party appears at the hearing.

Consolidation of Separate Arbitration Proceedings

The bill creates s. 682.033, F.S., providing several conditions upon which a court may consolidate separate arbitration proceedings:

- Separate agreements and proceedings exist between the same parties or one party is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of transactions;
- The existence of a common issue of law or fact creates the possibility of conflicting decisions if separate arbitration proceedings occur; and
- Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

The court may consolidate some claims while allowing other claims to be resolved separately. However, the court may not order consolidation if the agreement to arbitrate prohibits consolidation.

Appointment of Arbitrators by the Court

The bill amends s. 682.04, F.S., to provide conditions for the court to appoint arbitrators. The court, on motion, must appoint one or more arbitrators if the parties have not agreed on a method or the agreed upon method fails, or one or more parties failed to respond to the demand for arbitration or an arbitrator fails to act and a successor has not been appointed. The court must not appoint an arbitrator with a known, direct, and material interest in the outcome of the arbitration or a relationship to a party if the agreement calls for a neutral arbitrator.

Disclosure by Arbitrator

The bill amends s. 682.041, F.S., providing that before accepting appointment, an arbitrator must disclose potential conflicts or impartiality including financial or relationship conflicts. The arbitrator must continue to disclose any facts that may affect the arbitrator's impartiality that the arbitrator learns after accepting the appointment. Upon disclosure, if a party objects to the appointment or continued service, the objection may be grounds for vacating an award. If the arbitrator did not disclose a fact as required, the court may vacate an award upon timely objection by a party. An arbitrator who does not disclose an interest in the outcome of the arbitration is presumed to act with evident partiality. Substantial compliance with agreed upon procedures is a condition precedent to a motion to vacate an award on these grounds.

Majority Action by Arbitrators

The bill amends s. 682.05, F.S., providing that if there is more than one arbitrator; powers of the arbitrator must be exercised by a majority of the arbitrators.

Immunity of Arbitrator

The bill creates s. 682.051, F.S., granting arbitrators immunity from civil liability to the same extent as judges acting in a judicial capacity. Failure of an arbitrator to disclose conflicts does not waive immunity. Arbitrators cannot be compelled to testify about occurrences during arbitration except to determine the claim of an arbitrator against a party or to a hearing on a motion to vacate an award if the moving party establishes prima facie that a ground for vacating the award exists. An arbitrator sued by a party must be awarded attorney fees if the court decides that the arbitrator has immunity.

Hearing

The bill amends s. 682.06, F.S., granting broad authority to an arbitrator to conduct the arbitration as the arbitrator considers appropriate. An arbitrator may decide a request for summary disposition if the parties agree, or if a party gives notice of the request to the other parties and they have an opportunity to respond. The arbitrator must provide at least five days notice prior to the beginning of the hearing. The arbitrator then may control the hearing, including adjourning the hearing from time to time as necessary. Each party has the right to be heard, to present material evidence, and to cross-examine witnesses. If an arbitrator is unable to act during the proceeding, a replacement arbitrator must be appointed.

Representation by Attorney

The bill amends s. 682.07, F.S., providing that a party to an arbitration proceeding may be represented by an attorney.

Witnesses, Subpoenas, and Depositions

The bill amends s. 682.08, F.S., providing that an arbitrator has the authority to issue a subpoena in the same manner as a court in a civil action. Arbitrators may allow discovery and depositions of witnesses and may determine the conditions under which discovery and depositions may be

taken. An arbitrator may also issue a protective order to prevent disclosure of privileged or confidential information, trade secrets, or other protected information, to the same extent as a court could in a civil action. Subpoena laws apply to arbitration proceedings, and out of state subpoenas are treated like they would be in a civil action.

Judicial Enforcement of Preaward Ruling by Arbitrator

The bill creates s. 682.081, F.S., to establish that preaward rulings by an arbitrator may be incorporated into the ruling on motion by the prevailing party, and the court must then summarily decide the motion and issue an order.

Award

The bill amends s. 682.09, F.S., to provide that an arbitrator must make a signed record of an award and provide a copy to each party. The award must be made within the time specified by the agreement to arbitrate or within the time ordered by the court. The time may be extended by a court order or by agreement of the parties to the arbitration.

Change of Award by Arbitrator

The bill amends s. 682.10, F.S., to provide conditions to modify or correct an award. The arbitrator may correct an award when a miscalculation or problem of form, but not substance, results in an incorrect initial award. The arbitrator may also modify the award if the arbitrator has not yet made a final and definite award, or to clarify the award. A motion to change or modify an award must be made and notice provided within 20 days of the moving party receiving notice of the award. A motion to object to the award on any other basis must be made within 10 days of receipt of the notice of the award.

Remedies, Fees, and Expenses of Arbitration Proceeding

The bill amends s. 682.11, F.S., providing that arbitrators may award punitive damages and attorney fees to the same extent they would be available in a civil action, but the arbitrator must justify such damages in the award. An arbitrator has broad authority to impose all other remedies, regardless of whether a court would provide similar remedies in a civil action.

Confirming or Vacating an Award

The bill amends s. 682.12, F.S., providing that after an award is granted, a party may motion the court to confirm the award and provide a confirming order.

The bill amends s. 682.13, F.S., providing conditions upon which a court may vacate an award:

- Evident partiality by an arbitrator appointed as a neutral arbitrator;
- Corruption by an arbitrator;
- Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- An arbitrator refused to postpone the hearing upon showing of sufficient cause of postponement;

- An arbitrator refused to consider material evidence;
- An arbitrator conducted the hearing contrary to the act so as to substantially prejudice the rights of a party to the arbitration proceeding;
- An arbitrator exceeded his or her powers;
- There was no agreement to arbitrate, unless the moving party participated in the hearing without objection; or
- The arbitration was conducted without proper notice so as to substantially prejudice the rights of a party to the arbitration proceeding.

A motion to vacate an award must be filed within 90 days of the award, or within 90 days of the finding of corruption, fraud, or other undue means, or within 90 days of when the party knew or should have known of such a finding. If the court vacates an award for any reason other than the lack of an agreement to arbitrate, the court may order a rehearing. If a motion to vacate is denied, the court must confirm the award.

Modification or Correction of Award

The bill amends s. 682.14, F.S., providing the court must modify or correct an award if:

- A miscalculation of figures or mistake in the description of any person, thing, or property referred to in the award is evident;
- The arbitrator awarded something not submitted in the arbitration and making such a correction will not affect the merits of the decision; or
- The award is imperfect as a matter of form, not substance.

If the application is granted, the court must modify and correct the award. If not, the court must confirm the award.

Judgment or Decree on Award

The bill amends s. 682.15, F.S., requiring the court, upon granting an order confirming, vacating, modifying, or correcting an award, to enter an order as if for a civil judgment. The court may allow reasonable costs of the motion and subsequent judicial proceedings. On motion by the prevailing party, the court may add reasonable attorney fees and expenses.

Jurisdiction

The bill creates s. 682.181, F.S., providing a court with jurisdiction over the controversy has the right to enforce an agreement to arbitrate. An agreement to arbitrate in this state confers exclusive jurisdiction on the court to enter judgment on an award.

Venue

The bill amends s. 682.19, F.S., providing that a petition for judicial relief under this act must be filed in the county specified in the agreement to arbitrate, unless a hearing has already been held, in which case the petition must be filed in that court. Otherwise, the petition may be filed in any Florida county in which an adverse party has a residence or a place of business. If no adverse

party has a residence or place of business in Florida, the petition may be filed in any Florida county.

Appeals

The bill amends s. 682.20, F.S., providing for appeals from:

- An order denying an application to compel arbitration;
- An order granting a motion to stay arbitration;
- An order confirming an award;
- An order denying confirmation of an award except in certain circumstances;
- An order modifying or correcting an award;
- An order vacating an award without directing a rehearing; or
- A judgment or decree entered pursuant to this act.

Appeals are taken in the same manner and to the same extent as from orders or judgments in a civil action.

Electronic Signatures in Global and National Commerce Act

The bill creates s. 682.23, F.S., providing that the revised act conforms to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act.¹⁷

Disputes Excluded

The bill creates s. 682.25, F.S., providing that the revised act does not apply to any dispute involving child custody, visitation, or child support.

Mediation Alternatives to Judicial Action

The bill renames ch. 44, F.S., as "Alternative Dispute Resolution" and amends ss. 44.104, 44.107, and 731.401 F.S., removing references to binding arbitration. This ensures that the revised act is the sole statute in Florida pertaining to binding arbitration. The bill also amends ss. 440.1926 and 489.1402, F.S., to correctly cross-reference the revised act.

Effective Date

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁷ 15 U.S.C. s. 7002.

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.

C. Government Sector Impact:

According to the Office of the State Courts Administrator (OSCA), the fiscal impact on the courts cannot be precisely quantified, but OSCA anticipates judicial workload may increase as a result of the bill. To the extent the bill results in additional court involvement in the arbitration process it could result in the need for more judges.¹⁸

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.)

CS by Judiciary on January 25, 2012:

The committee substitute:

- Replaces “The Revised Florida Arbitration Code” with the more general phrase “this chapter” in several parts of the bill;
- Replaces the phrase “effective date of this act” in section with the specific effective date, “July 1, 2012”;
- Clarifies that arbitration agreements will be governed by the law existing at the time of the agreement unless the parties agree otherwise;

¹⁸ Office of the State Courts Administrator, *2012 Judicial Impact Statement, SB 1458* (Jan. 6, 2012) (on file with the Senate Committee on Judiciary).

- Specifies that the Revised Florida Arbitration Code will not affect an action commenced or right accrued before July 1, 2012;
- Deletes language applying the revised act to agreements to arbitrate after July 1, 2015, “whenever made”;
- Provides descriptive clauses for various cross-references;
- Deletes Section 36 of the bill, which is redundant to the effective date of the bill found in Section 45; and
- Makes other technical changes.

B. Amendments:

None.



374770

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete line 430
and insert:
a motion under this section.

(4) If an arbitrator awards a provisional remedy for injunctive or equitable relief, the arbitrator shall state in the award the factual findings and legal basis for the award.

(5) A party may seek to confirm or vacate a provisional remedy award for injunctive or equitable relief under s. 682.081.



374770

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

14 And the title is amended as follows:

15 Between lines 32 and 33

16 insert:

17 requiring that the arbitrator state the factual
18 findings and legal basis if the award is a provisional
19 remedy for injunctive or equitable relief; providing
20 for a provisional remedy award to be confirmed or
21 vacated;



625350

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment

Delete lines 749 - 757
and insert:
arbitrator.-

(1) If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request that the arbitrator incorporate the ruling into an award under s. 682.12. A prevailing party may make a motion to the court for an expedited order to confirm the award under s. 682.12, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court



625350

13 vacates, modifies, or corrects the award under s. 682.13 or s.
14 682.14, except as provided in subsection (2).

15 (2) A party to a provisional remedy award for injunctive or
16 equitable relief may make a motion to the court seeking to
17 confirm or vacate the provisional remedy award.

18 (a) The court shall confirm a provisional remedy award for
19 injunctive or equitable relief if the award satisfies the legal
20 standards for awarding a party injunctive or equitable relief.

21 (b) The court shall vacate a provisional remedy award for
22 injunctive or equitable relief which fails to satisfy the legal
23 standards for awarding a party injunctive or equitable relief.



274574

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment

Delete line 889
and insert:
hear evidence material to the controversy, or otherwise



683180

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1094 - 1209
and insert:

resolution judge, as the case requires.

(3) A trial resolution judge must be a member of The
Florida Bar in good standing for 5 years or more who has agreed
to serve.

(4)-(3) The arbitrators or trial resolution judge shall be
compensated by the parties according to their agreement with the
trial resolution judge.

(5)-(4) Within 10 days after the submission of the request



683180

13 for ~~binding arbitration, or~~ voluntary trial resolution, the
14 court shall provide for the appointment of the ~~arbitrator or~~
15 ~~arbitrators, or~~ trial resolution judge, as the case requires.
16 Once appointed, the ~~arbitrators or~~ trial resolution judge shall
17 notify the parties of the time and place for the hearing.

18 (6) ~~(5)~~ Application for ~~voluntary binding arbitration or~~
19 voluntary trial resolution shall be filed and fees paid to the
20 clerk of court as if for complaints initiating civil actions.
21 The clerk of the court shall handle and account for these
22 matters in all respects as if they were civil actions, except
23 that the clerk of court shall keep separate ~~the records of the~~
24 ~~applications for voluntary binding arbitration and~~ the records
25 of the applications for voluntary trial resolution from all
26 other civil actions.

27 (7) ~~(6)~~ Filing of the application for ~~binding arbitration or~~
28 voluntary trial resolution tolls ~~will toll~~ the running of the
29 applicable statutes of limitation.

30 (8) ~~(7)~~ The ~~chief arbitrator or~~ trial resolution judge may
31 administer oaths or affirmations and conduct the proceedings as
32 the rules of court shall provide. At the request of any party,
33 the ~~chief arbitrator or~~ trial resolution judge shall issue
34 subpoenas for the attendance of witnesses and for the production
35 of books, records, documents, and other evidence and may apply
36 to the court for orders compelling attendance and production.
37 Subpoenas shall be served and shall be enforceable in the manner
38 provided by law. The trial resolution judge may order temporary
39 relief in the same manner, and to the same extent, as in civil
40 actions generally. Any party may enforce such an order by filing
41 a petition in the court. Orders entered by the court are



683180

42 reviewable by the appellate court in the same manner, and to the
43 same extent, as orders in civil actions generally.

44 ~~(9)~~ ~~(8)~~ ~~A voluntary binding arbitration hearing shall be~~
45 ~~conducted by all of the arbitrators, but a majority may~~
46 ~~determine any question and render a final decision.~~ A trial
47 resolution judge shall conduct a voluntary trial resolution
48 hearing. The trial resolution judge may determine any question
49 and render a final decision.

50 ~~(10)~~ ~~(9)~~ ~~The Florida Evidence Code and Florida Rules of~~
51 ~~Civil Procedure shall apply to all proceedings under this~~
52 ~~section, except that voluntary trial resolution is not governed~~
53 ~~by procedural rules regulating general and special magistrates,~~
54 ~~and rulings of the trial resolution judge are not reviewable by~~
55 ~~filing exceptions with the court.~~

56 ~~(10)~~ ~~An appeal of a voluntary binding arbitration decision~~
57 ~~shall be taken to the circuit court and shall be limited to~~
58 ~~review on the record and not de novo, of:~~

59 ~~(a) Any alleged failure of the arbitrators to comply with~~
60 ~~the applicable rules of procedure or evidence.~~

61 ~~(b) Any alleged partiality or misconduct by an arbitrator~~
62 ~~prejudicing the rights of any party.~~

63 ~~(c) Whether the decision reaches a result contrary to the~~
64 ~~Constitution of the United States or of the State of Florida.~~

65 (11) Any party may enforce a final decision rendered in a
66 voluntary trial by filing a petition for final judgment in the
67 circuit court in the circuit in which the voluntary trial took
68 place. Upon entry of final judgment by the circuit court, any
69 party may appeal to the appropriate appellate court. The
70 judgment is reviewable by the appellate court in the same



683180

71 manner, and to the same extent, as a judgment in a civil action.
72 ~~Factual findings determined in the voluntary trial are not~~
73 ~~subject to appeal.~~

74 ~~(12) The harmless error doctrine shall apply in all~~
75 ~~appeals. No further review shall be permitted unless a~~
76 ~~constitutional issue is raised.~~

77 (12)~~(13)~~ If no appeal is taken within the time provided by
78 rules promulgated by the Supreme Court, ~~then~~ the decision shall
79 be referred to the presiding judge in the case, or if one has
80 not been assigned, then to the chief judge of the circuit for
81 assignment to a circuit judge, who shall enter such orders and
82 judgments as are required to carry out the terms of the
83 decision. Equitable remedies are, ~~which orders shall be~~
84 enforceable by the contempt powers of the court to the same
85 extent as in civil actions generally. When a judgment provides
86 for execution, and for which judgments execution shall issue on
87 request of a party.

88 (13)~~(14)~~ This section does ~~shall~~ not apply ~~to any dispute~~
89 ~~involving child custody, visitation, or child support, or to any~~
90 dispute that ~~which~~ involves the rights of a third party not a
91 party to the ~~arbitration or~~ voluntary trial resolution when the
92 third party would be an indispensable party if the dispute were
93 resolved in court or when the third party notifies ~~the chief~~
94 ~~arbitrator or~~ the trial resolution judge that the third party
95 would be a proper party if the dispute were resolved in court,
96 that the third party intends to intervene in the action in
97 court, and that the third party does not agree to proceed under
98 this section.

99 (14) A trial resolution judge does not have jurisdiction to



683180

100 declare unconstitutional a statute, ordinance, or provision of a
101 constitution. If any such claim is made in the voluntary trial
102 resolution proceeding, that claim shall be severed and
103 adjudicated by a judge of the court.

104 (15) The parties may agree to a trial by a privately
105 selected jury. The court's jury pool may not be used for this
106 purpose. In all other cases, the trial resolution judge shall
107 conduct a bench trial.

108 Section 38. Section 44.107, Florida Statutes, is amended to
109 read:

110 44.107 Immunity for arbitrators, voluntary trial resolution
111 judges, mediators, and mediator trainees.-

112 (1) Arbitrators serving under s. 44.103, voluntary trial
113 resolution judges serving under ~~or~~ s. 44.104, mediators serving
114 under s. 44.102, and trainees fulfilling the mentorship
115 requirements for certification by the Supreme Court as a
116 mediator ~~shall~~ have judicial immunity in the same manner and to
117 the same extent as a judge.

118 (2) A person serving as a mediator in any noncourt-ordered
119 mediation shall have immunity from liability arising from the
120 performance of that person's duties while acting within the
121 scope of the mediation function if such mediation is:

122 (a) Required by statute or agency rule or order;

123 (b) Conducted under ss. 44.401-44.406 by express agreement
124 of the mediation parties; or

125 (c) Facilitated by a mediator certified by the Supreme
126 Court, unless the mediation parties expressly agree not to be
127 bound by ss. 44.401-44.406.

128



683180

129 The mediator does not have immunity if he or she acts in bad
130 faith, with malicious purpose, or in a manner exhibiting wanton
131 and willful disregard of human rights, safety, or property.

132 (3) A person serving under s. 44.106 to assist the Supreme
133 Court in performing its disciplinary function shall have
134 absolute immunity from liability arising from the performance of
135 that person's duties while acting within the scope of that
136 person's appointed function.

137
138 ===== T I T L E A M E N D M E N T =====

139 And the title is amended as follows:

140 Delete lines 156 - 157

141 and insert:

142 amending s. 44.107,

By the Committee on Judiciary; and Senator Diaz de la Portilla

590-02348-12

20121458c1

1 A bill to be entitled
 2 An act relating to dispute resolution; amending s.
 3 682.01, F.S.; revising the short title of the "Florida
 4 Arbitration Code" to the "Revised Florida Arbitration
 5 Code"; creating s. 682.011, F.S.; providing
 6 definitions; creating s. 682.012, F.S.; specifying how
 7 a person gives notice to another person and how a
 8 person receives notice; creating s. 682.013, F.S.;
 9 specifying the applicability of the revised code;
 10 creating s. 682.014, F.S.; providing that an agreement
 11 may waive or vary the effect of statutory arbitration
 12 provisions; providing exceptions; creating s. 682.015,
 13 F.S.; providing for petitions for judicial relief;
 14 providing for service of notice of an initial petition
 15 for such relief; amending s. 682.02, F.S.; revising
 16 provisions relating to the making of arbitration
 17 agreements; requiring a court to decide whether an
 18 agreement to arbitrate exists or a controversy is
 19 subject to an agreement to arbitrate; providing for
 20 determination of specified issues by an arbitrator;
 21 providing for continuation of an arbitration
 22 proceeding pending resolution of certain issues by a
 23 court; revising provisions relating to applicability
 24 of provisions to certain interlocal agreements;
 25 amending s. 682.03, F.S.; revising provisions relating
 26 to proceedings to compel and to stay arbitration;
 27 creating s. 682.031, F.S.; providing for a court to
 28 order provisional remedies before an arbitrator is
 29 appointed and is authorized and able to act; providing

Page 1 of 43

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590-02348-12

20121458c1

30 for orders for provisional remedies by an arbitrator;
 31 providing that a party does not waive a right of
 32 arbitration by seeking provisional remedies in court;
 33 creating s. 682.032, F.S.; providing for initiation of
 34 arbitration; providing that a person waives any
 35 objection to lack of or insufficiency of notice by
 36 appearing at the arbitration hearing; providing an
 37 exception; creating s. 682.033, F.S.; providing for
 38 consolidation of separate arbitration proceedings as
 39 to all or some of the claims in certain circumstances;
 40 prohibiting consolidation if the agreement prohibits
 41 consolidation; amending s. 682.04, F.S.; revising
 42 provisions relating to appointment of an arbitrator;
 43 prohibiting an individual who has an interest in the
 44 outcome of an arbitration from serving as a neutral
 45 arbitrator; creating s. 682.041, F.S.; requiring
 46 certain disclosures of interests and relationships by
 47 a person before accepting appointment as an
 48 arbitrator; providing a continuing obligation to make
 49 such disclosures; providing for objections to an
 50 arbitrator based on information disclosed; providing
 51 for vacation of an award if an arbitrator failed to
 52 disclose a fact as required; providing that an
 53 arbitrator appointed as a neutral arbitrator who does
 54 not disclose certain interests or relationships is
 55 presumed to act with partiality for specified
 56 purposes; requiring parties to substantially comply
 57 with agreed-to procedures of an arbitration
 58 organization or any other procedures for challenges to

Page 2 of 43

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590-02348-12

20121458c1

59 arbitrators before an award is made in order to seek
 60 vacation of an award on specified grounds; amending s.
 61 682.05, F.S.; requiring that if there is more than one
 62 arbitrator, the powers of an arbitrator must be
 63 exercised by a majority of the arbitrators; requiring
 64 all arbitrators to conduct the arbitration hearing;
 65 creating s. 682.051, F.S.; providing immunity from
 66 civil liability for an arbitrator or an arbitration
 67 organization acting in that capacity; providing that
 68 this immunity is supplemental to any immunity under
 69 other law; providing that failure to make a required
 70 disclosure does not remove immunity; providing that an
 71 arbitrator or representative of an arbitration
 72 organization is not competent to testify and may not
 73 be required to produce records concerning the
 74 arbitration; providing exceptions; providing for
 75 awarding an arbitrator, arbitration organization, or
 76 representative of an arbitration organization with
 77 reasonable attorney fees and expenses of litigation
 78 under certain circumstances; amending s. 682.06, F.S.;
 79 revising provisions relating to the conduct of
 80 arbitration hearings; providing for summary
 81 disposition, notice of hearings, adjournment, and
 82 rights of a party to the arbitration proceeding;
 83 requiring appointment of a replacement arbitrator in
 84 certain circumstances; amending s. 682.07, F.S.;
 85 providing that a party to an arbitration proceeding
 86 may be represented by an attorney; amending s. 682.08,
 87 F.S.; revising provisions relating to the issuance,

590-02348-12

20121458c1

88 service, and enforcement of subpoenas; revising
 89 provisions relating to depositions; authorizing an
 90 arbitrator to permit discovery in certain
 91 circumstances; authorizing an arbitrator to order
 92 compliance with discovery; authorizing protective
 93 orders by an arbitrator; providing for applicability
 94 of laws compelling a person under subpoena to testify
 95 and all fees for attending a judicial proceeding, a
 96 deposition, or a discovery proceeding as a witness;
 97 providing for court enforcement of a subpoena or
 98 discovery-related order; providing for witness fees;
 99 creating s. 682.081, F.S.; providing for judicial
 100 enforcement of a preaward ruling by an arbitrator in
 101 certain circumstances; amending s. 682.09, F.S.;
 102 revising provisions relating to the record needed for
 103 an award; revising provisions relating to the time
 104 within which an award must be made; amending s.
 105 682.10, F.S.; revising provisions relating to
 106 requirements for a motion to modify or correct an
 107 award; amending s. 682.11, F.S.; revising provisions
 108 relating to fees and expenses of arbitration;
 109 authorizing punitive damages and other exemplary
 110 relief and remedies; amending s. 682.12, F.S.;
 111 revising provisions relating to confirmation of an
 112 award; amending s. 682.13, F.S.; revising provisions
 113 relating to grounds for vacating an award; revising
 114 provisions relating to a motion for vacating an award;
 115 providing for a rehearing in certain circumstances;
 116 amending s. 682.14, F.S.; revising provisions relating

590-02348-12

20121458c1

117 to the time for moving to modify or correct an award;
 118 deleting references to the term "umpire"; revising a
 119 provision concerning confirmation of awards; amending
 120 s. 682.15, F.S.; revising provisions relating to a
 121 court order confirming, vacating without directing a
 122 rehearing, modifying, or correcting an award;
 123 providing for award of costs and attorney fees in
 124 certain circumstances; repealing s. 682.16, F.S.,
 125 relating to judgment roll and docketing of certain
 126 orders; repealing s. 682.17, F.S., relating to
 127 application to court; repealing s. 682.18, F.S.,
 128 relating to the definition of the term "court" and
 129 jurisdiction; creating s. 682.181, F.S.; providing for
 130 jurisdiction relating to the revised code; amending s.
 131 682.19, F.S.; revising provisions relating to venue
 132 for actions relating to the code; amending s. 682.20,
 133 F.S.; providing that an appeal may be taken from an
 134 order denying confirmation of an award unless the
 135 court has entered an order under specified provisions;
 136 providing that all other orders denying confirmation
 137 of an award are final orders; repealing s. 682.21,
 138 F.S., relating to the previous code not applying
 139 retroactively; repealing s. 682.22, F.S., relating to
 140 conflict of laws; creating s. 682.23, F.S.; specifying
 141 the relationship of the code to the Electronic
 142 Signatures in Global and National Commerce Act;
 143 providing for applicability; creating s. 682.25, F.S.;
 144 providing that the revised code does not apply to any
 145 dispute involving child custody, visitation, or child

590-02348-12

20121458c1

146 support; amending s. 44.104, F.S.; deleting references
 147 to binding arbitration from provisions providing for
 148 voluntary trial resolution; providing for temporary
 149 relief; revising provisions relating to procedures in
 150 voluntary trial resolution; providing that a judgment
 151 is reviewable in the same manner as a judgment in a
 152 civil action; deleting provisions relating to
 153 applicability of the harmless error doctrine;
 154 providing limitations on the jurisdiction of a trial
 155 resolution judge; providing for the use of juries;
 156 providing for the title of a trial resolution judge
 157 and the use of judicial robes; amending s. 44.107,
 158 F.S.; providing immunity for voluntary trial
 159 resolution judges serving under specified provisions;
 160 amending ss. 440.1926, 489.1402, and 731.401, F.S.;
 161 conforming cross-references; providing a directive to
 162 the Division of Statutory Revision to redesignate the
 163 title of ch. 44, F.S., as "Alternative Dispute
 164 Resolution"; providing an effective date.

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

167
 168 Section 1. Section 682.01, Florida Statutes, is amended to
 169 read:

170 682.01 Short title Florida Arbitration Code. ~~This chapter~~
 171 ~~Sections 682.01-682.22~~ may be cited as the "Revised Florida
 172 Arbitration Code."

173 Section 2. Section 682.011, Florida Statutes, is created to
 174 read:

590-02348-12 20121458c1

175 682.011 Definitions.—As used in this chapter, the term:

176 (1) "Arbitration organization" means an association,
 177 agency, board, commission, or other entity that is neutral and
 178 initiates, sponsors, or administers an arbitration proceeding or
 179 is involved in the appointment of an arbitrator.

180 (2) "Arbitrator" means an individual appointed to render an
 181 award, alone or with others, in a controversy that is subject to
 182 an agreement to arbitrate.

183 (3) "Court" means a court of competent jurisdiction in this
 184 state.

185 (4) "Knowledge" means actual knowledge.

186 (5) "Person" means an individual, corporation, business
 187 trust, estate, trust, partnership, limited liability company,
 188 association, joint venture, or government; governmental
 189 subdivision, agency, or instrumentality; public corporation; or
 190 any other legal or commercial entity.

191 (6) "Record" means information that is inscribed on a
 192 tangible medium or that is stored in an electronic or other
 193 medium and is retrievable in perceivable form.

194 Section 3. Section 682.012, Florida Statutes, is created to
 195 read:

196 682.012 Notice.—

197 (1) Except as otherwise provided in this chapter, a person
 198 gives notice to another person by taking action that is
 199 reasonably necessary to inform the other person in ordinary
 200 course, whether or not the other person acquires knowledge of
 201 the notice.

202 (2) A person has notice if the person has knowledge of the
 203 notice or has received notice.

590-02348-12 20121458c1

204 (3) A person receives notice when it comes to the person's
 205 attention or the notice is delivered at the person's place of
 206 residence or place of business, or at another location held out
 207 by the person as a place of delivery of such communications.

208 Section 4. Section 682.013, Florida Statutes, is created to
 209 read:

210 682.013 Applicability of revised code.—

211 (1) The Revised Florida Arbitration Code governs an
 212 agreement to arbitrate made on or after July 1, 2012.

213 (2) The Revised Florida Arbitration Code governs an
 214 agreement to arbitrate made before July 1, 2012, if all the
 215 parties to the agreement or to the arbitration proceeding so
 216 agree in a record. Otherwise, such agreements shall be governed
 217 by the applicable law existing at the time the parties entered
 218 into the agreement.

219 (3) The Revised Florida Arbitration Code does not affect an
 220 action or proceeding commenced or right accrued before July 1,
 221 2012.

222 (4) Beginning July 1, 2015, an agreement to arbitrate shall
 223 be subject to the then applicable law governing agreements to
 224 arbitrate.

225 Section 5. Section 682.014, Florida Statutes, is created to
 226 read:

227 682.014 Effect of agreement to arbitrate; nonwaivable
 228 provisions.—

229 (1) Except as otherwise provided in subsections (2) and
 230 (3), a party to an agreement to arbitrate or to an arbitration
 231 proceeding may waive, or the parties may vary the effect of, the
 232 requirements of this chapter to the extent permitted by law.

590-02348-12

20121458c1

233 (2) Before a controversy arises that is subject to an
 234 agreement to arbitrate, a party to the agreement may not:
 235 (a) Waive or agree to vary the effect of the requirements
 236 of:
 237 1. Commencing a petition for judicial relief under s.
 238 682.015(1);
 239 2. Making agreements to arbitrate valid, enforceable, and
 240 irrevocable under s. 682.02(1);
 241 3. Permitting provisional remedies under s. 682.031;
 242 4. Conferring authority on arbitrators to issue subpoenas
 243 and permit depositions under s. 682.08(1) or (2);
 244 5. Conferring jurisdiction under s. 682.181; or
 245 6. Stating the bases for appeal under s. 682.20;
 246 (b) Agree to unreasonably restrict the right under s.
 247 682.032 to notice of the initiation of an arbitration
 248 proceeding;
 249 (c) Agree to unreasonably restrict the right under s.
 250 682.041 to disclosure of any facts by a neutral arbitrator; or
 251 (d) Waive the right under s. 682.07 of a party to an
 252 agreement to arbitrate to be represented by an attorney at any
 253 proceeding or hearing under this chapter, but an employer and a
 254 labor organization may waive the right to representation by an
 255 attorney in a labor arbitration.
 256 (3) A party to an agreement to arbitrate or arbitration
 257 proceeding may not waive, or the parties may not vary the effect
 258 of, the requirements in this section or:
 259 (a) The applicability of this chapter, the Revised Florida
 260 Arbitration Code under s. 682.013(1) or (4);
 261 (b) The availability of proceedings to compel or stay

Page 9 of 43

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590-02348-12

20121458c1

262 arbitration under s. 682.03;
 263 (c) The immunity conferred on arbitrators and arbitration
 264 organizations under s. 682.051;
 265 (d) A party's right to seek judicial enforcement of an
 266 arbitration preaward ruling under s. 682.081;
 267 (e) The authority conferred on an arbitrator to change an
 268 award under s. 682.10(4) or (5);
 269 (f) The remedies provided under s. 682.12;
 270 (g) The grounds for vacating an arbitration award under s.
 271 682.13;
 272 (h) The grounds for modifying an arbitration award under s.
 273 682.14;
 274 (i) The validity and enforceability of a judgment or decree
 275 based on an award under s. 682.15(1) or (2);
 276 (j) The validity of the Electronic Signatures in Global and
 277 National Commerce Act under s. 682.23; or
 278 (k) The excluded disputes involving child custody,
 279 visitation, or child support under s. 682.25.
 280 Section 6. Section 682.015, Florida Statutes, is created to
 281 read:
 282 682.015 Petition for judicial relief.—
 283 (1) Except as otherwise provided in s. 682.20, a petition
 284 for judicial relief under this chapter must be made to the court
 285 and heard in the manner provided by law or rule of court for
 286 making and hearing motions.
 287 (2) Unless a civil action involving the agreement to
 288 arbitrate is pending, notice of an initial petition to the court
 289 under this chapter must be served in the manner provided by law
 290 for the service of a summons in a civil action. Otherwise,

Page 10 of 43

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590-02348-12 20121458c1

291 notice of the motion must be given in the manner provided by law
 292 or rule of court for serving motions in pending cases.

293 Section 7. Section 682.02, Florida Statutes, is amended to
 294 read:

295 682.02 Arbitration agreements made valid, irrevocable, and
 296 enforceable; scope.—

297 (1) An agreement contained in a record to submit to
 298 arbitration any existing or subsequent controversy arising
 299 between the parties to the agreement is valid, enforceable, and
 300 irrevocable except upon a ground that exists at law or in equity
 301 for the revocation of a contract.

302 (2) The court shall decide whether an agreement to
 303 arbitrate exists or a controversy is subject to an agreement to
 304 arbitrate.

305 (3) An arbitrator shall decide whether a condition
 306 precedent to arbitrability has been fulfilled and whether a
 307 contract containing a valid agreement to arbitrate is
 308 enforceable.

309 (4) If a party to a judicial proceeding challenges the
 310 existence of, or claims that a controversy is not subject to, an
 311 agreement to arbitrate, the arbitration proceeding may continue
 312 pending final resolution of the issue by the court, unless the
 313 court otherwise orders.

314 ~~(5) Two or more parties may agree in writing to submit to~~
 315 ~~arbitration any controversy existing between them at the time of~~
 316 ~~the agreement, or they may include in a written contract a~~
 317 ~~provision for the settlement by arbitration of any controversy~~
 318 ~~thereafter arising between them relating to such contract or the~~
 319 ~~failure or refusal to perform the whole or any part thereof.~~

590-02348-12 20121458c1

320 This section also applies to written interlocal agreements under
 321 ss. 163.01 and 373.713 in which two or more parties agree to
 322 submit to arbitration any controversy between them concerning
 323 water use permit ~~motions~~ applications and other matters,
 324 regardless of whether or not the water management district with
 325 jurisdiction over the subject ~~motion~~ application is a party to
 326 the interlocal agreement or a participant in the arbitration.
 327 ~~Such agreement or provision shall be valid, enforceable, and~~
 328 ~~irrevocable without regard to the justiciable character of the~~
 329 ~~controversy; provided that this act shall not apply to any such~~
 330 ~~agreement or provision to arbitrate in which it is stipulated~~
 331 ~~that this law shall not apply or to any arbitration or award~~
 332 ~~thereunder.~~

333 Section 8. Section 682.03, Florida Statutes, is amended to
 334 read:

335 682.03 Proceedings to compel and to stay arbitration.—

336 (1) On motion of a person showing an agreement to arbitrate
 337 and alleging another person's refusal to arbitrate pursuant to
 338 the agreement:

339 (a) If the refusing party does not appear or does not
 340 oppose the motion, the court shall order the parties to
 341 arbitrate.

342 (b) If the refusing party opposes the motion, the court
 343 shall proceed summarily to decide the issue and order the
 344 parties to arbitrate unless it finds that there is no
 345 enforceable agreement to arbitrate. A party to an agreement or
 346 provision for arbitration subject to this law claiming the
 347 neglect or refusal of another party thereto to comply therewith
 348 may make application to the court for an order directing the

590-02348-12 20121458c1
 349 ~~parties to proceed with arbitration in accordance with the terms~~
 350 ~~thereof. If the court is satisfied that no substantial issue~~
 351 ~~exists as to the making of the agreement or provision, it shall~~
 352 ~~grant the application. If the court shall find that a~~
 353 ~~substantial issue is raised as to the making of the agreement or~~
 354 ~~provision, it shall summarily hear and determine the issue and,~~
 355 ~~according to its determination, shall grant or deny the~~
 356 ~~application.~~

357 (2) On motion of a person alleging that an arbitration
 358 proceeding has been initiated or threatened but that there is no
 359 agreement to arbitrate, the court shall proceed summarily to
 360 decide the issue. If the court finds that there is an
 361 enforceable agreement to arbitrate, it shall order the parties
 362 to arbitrate. If an issue referable to arbitration under an
 363 agreement or provision for arbitration subject to this law
 364 becomes involved in an action or proceeding pending in a court
 365 having jurisdiction to hear an application under subsection (1),
 366 such application shall be made in said court. Otherwise and
 367 subject to s. 682.19, such application may be made in any court
 368 of competent jurisdiction.

369 (3) If the court finds that there is no enforceable
 370 agreement to arbitrate, it may not order the parties to
 371 arbitrate pursuant to subsection (1) or subsection (2). Any
 372 action or proceeding involving an issue subject to arbitration
 373 under this law shall be stayed if an order for arbitration or an
 374 application therefor has been made under this section or, if the
 375 issue is severable, the stay may be with respect thereto only.
 376 When the application is made in such action or proceeding, the
 377 order for arbitration shall include such stay.

590-02348-12 20121458c1
 378 (4) The court may not refuse to order arbitration because
 379 the claim subject to arbitration lacks merit or grounds for the
 380 claim have not been established. On application the court may
 381 stay an arbitration proceeding commenced or about to be
 382 commenced, if it shall find that no agreement or provision for
 383 arbitration subject to this law exists between the party making
 384 the application and the party causing the arbitration to be had.
 385 The court shall summarily hear and determine the issue of the
 386 making of the agreement or provision and, according to its
 387 determination, shall grant or deny the application.

388 (5) If a proceeding involving a claim referable to
 389 arbitration under an alleged agreement to arbitrate is pending
 390 in court, a motion under this section must be made in that
 391 court. Otherwise, a motion under this section may be made in any
 392 court as provided in s. 682.19. An order for arbitration shall
 393 not be refused on the ground that the claim in issue lacks merit
 394 or bona fides or because any fault or grounds for the claim
 395 sought to be arbitrated have not been shown.

396 (6) If a party makes a motion to the court to order
 397 arbitration, the court on just terms shall stay any judicial
 398 proceeding that involves a claim alleged to be subject to the
 399 arbitration until the court renders a final decision under this
 400 section.

401 (7) If the court orders arbitration, the court on just
 402 terms shall stay any judicial proceeding that involves a claim
 403 subject to the arbitration. If a claim subject to the
 404 arbitration is severable, the court may limit the stay to that
 405 claim.

406 Section 9. Section 682.031, Florida Statutes, is created to

590-02348-12 20121458c1

407 read:

408 682.031 Provisional remedies.-

409 (1) Before an arbitrator is appointed and is authorized and
 410 able to act, the court, upon motion of a party to an arbitration
 411 proceeding and for good cause shown, may enter an order for
 412 provisional remedies to protect the effectiveness of the
 413 arbitration proceeding to the same extent and under the same
 414 conditions as if the controversy were the subject of a civil
 415 action.

416 (2) After an arbitrator is appointed and is authorized and
 417 able to act:

418 (a) The arbitrator may issue such orders for provisional
 419 remedies, including interim awards, as the arbitrator finds
 420 necessary to protect the effectiveness of the arbitration
 421 proceeding and to promote the fair and expeditious resolution of
 422 the controversy, to the same extent and under the same
 423 conditions as if the controversy were the subject of a civil
 424 action.

425 (b) A party to an arbitration proceeding may move the court
 426 for a provisional remedy only if the matter is urgent and the
 427 arbitrator is not able to act timely or the arbitrator cannot
 428 provide an adequate remedy.

429 (3) A party does not waive a right of arbitration by making
 430 a motion under this section.

431 Section 10. Section 682.032, Florida Statutes, is created
 432 to read:

433 682.032 Initiation of arbitration.-

434 (1) A person initiates an arbitration proceeding by giving
 435 notice in a record to the other parties to the agreement to

590-02348-12 20121458c1

436 arbitrate in the agreed manner between the parties or, in the
 437 absence of agreement, by certified or registered mail, return
 438 receipt requested and obtained, or by service as authorized for
 439 the commencement of a civil action. The notice must describe the
 440 nature of the controversy and the remedy sought.

441 (2) Unless a person objects for lack or insufficiency of
 442 notice under s. 682.06(3) not later than the beginning of the
 443 arbitration hearing, the person by appearing at the hearing
 444 waives any objection to lack of or insufficiency of notice.

445 Section 11. Section 682.033, Florida Statutes, is created
 446 to read:

447 682.033 Consolidation of separate arbitration proceedings.-

448 (1) Except as otherwise provided in subsection (3), upon
 449 motion of a party to an agreement to arbitrate or to an
 450 arbitration proceeding, the court may order consolidation of
 451 separate arbitration proceedings as to all or some of the claims
 452 if:

453 (a) There are separate agreements to arbitrate or separate
 454 arbitration proceedings between the same persons or one of them
 455 is a party to a separate agreement to arbitrate or a separate
 456 arbitration proceeding with a third person;

457 (b) The claims subject to the agreements to arbitrate arise
 458 in substantial part from the same transaction or series of
 459 related transactions;

460 (c) The existence of a common issue of law or fact creates
 461 the possibility of conflicting decisions in the separate
 462 arbitration proceedings; and

463 (d) Prejudice resulting from a failure to consolidate is
 464 not outweighed by the risk of undue delay or prejudice to the

590-02348-12 20121458c1

465 rights of or hardship to parties opposing consolidation.

466 (2) The court may order consolidation of separate
 467 arbitration proceedings as to some claims and allow other claims
 468 to be resolved in separate arbitration proceedings.

469 (3) The court may not order consolidation of the claims of
 470 a party to an agreement to arbitrate if the agreement prohibits
 471 consolidation.

472 Section 12. Section 682.04, Florida Statutes, is amended to
 473 read:

474 682.04 Appointment of arbitrators by court.-

475 (1) If the parties to an agreement to arbitrate agree on ~~or~~
 476 ~~provision for arbitration subject to this law provides a method~~
 477 ~~for appointing the appointment of arbitrators or an umpire, this~~
 478 method ~~must shall~~ be followed, unless the method fails.

479 (2) The court, on application of a party to an arbitration
 480 agreement, shall appoint one or more arbitrators, if:

481 (a) The parties have not agreed on a method;

482 (b) The agreed method fails;

483 (c) One or more of the parties failed to respond to the
 484 demand for arbitration; or

485 (d) An arbitrator fails to act and a successor has not been
 486 appointed.

487 (3) ~~In the absence thereof, or if the agreed method fails~~
 488 ~~or for any reason cannot be followed, or if an arbitrator or~~
 489 ~~umpire who has been appointed fails to act and his or her~~
 490 ~~successor has not been duly appointed, the court, on application~~
 491 ~~of a party to such agreement or provision shall appoint one or~~
 492 ~~more arbitrators or an umpire. An arbitrator or umpire so~~
 493 appointed ~~has all the shall have like powers of an arbitrator~~

590-02348-12 20121458c1

494 ~~designated as if named or provided for~~ in the agreement to
 495 arbitrate appointed pursuant to the agreed method ~~or provision.~~

496 (4) An individual who has a known, direct, and material
 497 interest in the outcome of the arbitration proceeding or a
 498 known, existing, and substantial relationship with a party may
 499 not serve as an arbitrator required by an agreement to be
 500 neutral.

501 Section 13. Section 682.041, Florida Statutes, is created
 502 to read:

503 682.041 Disclosure by arbitrator.-

504 (1) Before accepting appointment, an individual who is
 505 requested to serve as an arbitrator, after making a reasonable
 506 inquiry, shall disclose to all parties to the agreement to
 507 arbitrate and arbitration proceeding and to any other
 508 arbitrators any known facts that a reasonable person would
 509 consider likely to affect the person's impartiality as an
 510 arbitrator in the arbitration proceeding, including:

511 (a) A financial or personal interest in the outcome of the
 512 arbitration proceeding.

513 (b) An existing or past relationship with any of the
 514 parties to the agreement to arbitrate or the arbitration
 515 proceeding, their counsel or representative, a witness, or
 516 another arbitrator.

517 (2) An arbitrator has a continuing obligation to disclose
 518 to all parties to the agreement to arbitrate and arbitration
 519 proceeding and to any other arbitrators any facts that the
 520 arbitrator learns after accepting appointment that a reasonable
 521 person would consider likely to affect the impartiality of the
 522 arbitrator.

590-02348-12 20121458c1

523 (3) If an arbitrator discloses a fact required by
 524 subsection (1) or subsection (2) to be disclosed and a party
 525 timely objects to the appointment or continued service of the
 526 arbitrator based upon the fact disclosed, the objection may be a
 527 ground under s. 682.13(1)(b) for vacating an award made by the
 528 arbitrator.

529 (4) If the arbitrator did not disclose a fact as required
 530 by subsection (1) or subsection (2), upon timely objection by a
 531 party, the court may vacate an award under s. 682.13(1)(b).

532 (5) An arbitrator appointed as a neutral arbitrator who
 533 does not disclose a known, direct, and material interest in the
 534 outcome of the arbitration proceeding or a known, existing, and
 535 substantial relationship with a party is presumed to act with
 536 evident partiality under s. 682.13(1)(b).

537 (6) If the parties to an arbitration proceeding agree to
 538 the procedures of an arbitration organization or any other
 539 procedures for challenges to arbitrators before an award is
 540 made, substantial compliance with those procedures is a
 541 condition precedent to a motion to vacate an award on that
 542 ground under s. 682.13(1)(b).

543 Section 14. Section 682.05, Florida Statutes, is amended to
 544 read:

545 682.05 Majority action by arbitrators.—If there is more
 546 than one arbitrator, the powers of an arbitrator must be
 547 exercised by a majority of the arbitrators, but all of the
 548 arbitrators shall conduct the hearing under s. 682.06(3). ~~The~~
 549 ~~powers of the arbitrators may be exercised by a majority of~~
 550 ~~their number unless otherwise provided in the agreement or~~
 551 ~~provision for arbitration.~~

590-02348-12 20121458c1

552 Section 15. Section 682.051, Florida Statutes, is created
 553 to read:

554 682.051 Immunity of arbitrator; competency to testify;
 555 attorney fees and costs.—

556 (1) An arbitrator or an arbitration organization acting in
 557 that capacity is immune from civil liability to the same extent
 558 as a judge of a court of this state acting in a judicial
 559 capacity.

560 (2) The immunity afforded under this section supplements
 561 any immunity under other law.

562 (3) The failure of an arbitrator to make a disclosure
 563 required by s. 682.041 does not cause any loss of immunity under
 564 this section.

565 (4) In a judicial, administrative, or similar proceeding,
 566 an arbitrator or representative of an arbitration organization
 567 is not competent to testify, and may not be required to produce
 568 records as to any statement, conduct, decision, or ruling
 569 occurring during the arbitration proceeding, to the same extent
 570 as a judge of a court of this state acting in a judicial
 571 capacity. This subsection does not apply:

572 (a) To the extent necessary to determine the claim of an
 573 arbitrator, arbitration organization, or representative of the
 574 arbitration organization against a party to the arbitration
 575 proceeding; or

576 (b) To a hearing on a motion to vacate an award under s.
 577 682.13(1)(a) or (b) if the movant establishes prima facie that a
 578 ground for vacating the award exists.

579 (5) If a person commences a civil action against an
 580 arbitrator, arbitration organization, or representative of an

590-02348-12 20121458c1

581 arbitration organization arising from the services of the
 582 arbitrator, organization, or representative or if a person seeks
 583 to compel an arbitrator or a representative of an arbitration
 584 organization to testify or produce records in violation of
 585 subsection (4), and the court decides that the arbitrator,
 586 arbitration organization, or representative of an arbitration
 587 organization is immune from civil liability or that the
 588 arbitrator or representative of the organization is not
 589 competent to testify, the court shall award to the arbitrator,
 590 organization, or representative reasonable attorney fees and
 591 other reasonable expenses of litigation.

592 Section 16. Section 682.06, Florida Statutes, is amended to
 593 read:

594 682.06 Hearing.-

595 (1) An arbitrator may conduct an arbitration in such manner
 596 as the arbitrator considers appropriate for a fair and
 597 expeditious disposition of the proceeding. The arbitrator's
 598 authority includes the power to hold conferences with the
 599 parties to the arbitration proceeding before the hearing and,
 600 among other matters, determine the admissibility, relevance,
 601 materiality, and weight of any evidence. Unless otherwise
 602 provided by the agreement or provision for arbitration:

603 ~~(1)(a) The arbitrators shall appoint a time and place for~~
 604 ~~the hearing and cause notification to the parties to be served~~
 605 ~~personally or by registered or certified mail not less than 5~~
 606 ~~days before the hearing. Appearance at the hearing waives a~~
 607 ~~party's right to such notice. The arbitrators may adjourn their~~
 608 ~~hearing from time to time upon their own motion and shall do so~~
 609 ~~upon the request of any party to the arbitration for good cause~~

590-02348-12 20121458c1

610 ~~shown, provided that no adjournment or postponement of their~~
 611 ~~hearing shall extend beyond the date fixed in the agreement or~~
 612 ~~provision for making the award unless the parties consent to a~~
 613 ~~later date. An umpire authorized to hear and decide the cause~~
 614 ~~upon failure of the arbitrators to agree upon an award shall, in~~
 615 ~~the course of his or her jurisdiction, have like powers and be~~
 616 ~~subject to like limitations thereon.~~

617 ~~(b) The arbitrators, or umpire in the course of his or her~~
 618 ~~jurisdiction, may hear and decide the controversy upon the~~
 619 ~~evidence produced notwithstanding the failure or refusal of a~~
 620 ~~party duly notified of the time and place of the hearing to~~
 621 ~~appear. The court on application may direct the arbitrators, or~~
 622 ~~the umpire in the course of his or her jurisdiction, to proceed~~
 623 ~~promptly with the hearing and making of the award.~~

624 (2) An arbitrator may decide a request for summary
 625 disposition of a claim or particular issue:

626 (a) If all interested parties agree; or

627 (b) Upon request of one party to the arbitration
 628 proceeding, if that party gives notice to all other parties to
 629 the proceeding and the other parties have a reasonable
 630 opportunity to respond. The parties are entitled to be heard, to
 631 ~~present evidence material to the controversy and to cross-~~
 632 ~~examine witnesses appearing at the hearing.~~

633 (3) If an arbitrator orders a hearing, the arbitrator shall
 634 set a time and place and give notice of the hearing not less
 635 than 5 days before the hearing begins. Unless a party to the
 636 arbitration proceeding makes an objection to lack or
 637 insufficiency of notice not later than the beginning of the
 638 hearing, the party's appearance at the hearing waives the

590-02348-12

20121458c1

639 objection. Upon request of a party to the arbitration proceeding
 640 and for good cause shown, or upon the arbitrator's own
 641 initiative, the arbitrator may adjourn the hearing from time to
 642 time as necessary but may not postpone the hearing to a time
 643 later than that fixed by the agreement to arbitrate for making
 644 the award unless the parties to the arbitration proceeding
 645 consent to a later date. The arbitrator may hear and decide the
 646 controversy upon the evidence produced although a party who was
 647 duly notified of the arbitration proceeding did not appear. The
 648 court, on request, may direct the arbitrator to conduct the
 649 hearing promptly and render a timely decision. The hearing shall
 650 be conducted by all of the arbitrators but a majority may
 651 determine any question and render a final award. An umpire
 652 authorized to hear and decide the cause upon the failure of the
 653 arbitrators to agree upon an award shall sit with the
 654 arbitrators throughout their hearing but shall not be counted as
 655 a part of their quorum or in the making of their award. If,
 656 during the course of the hearing, an arbitrator for any reason
 657 ceases to act, the remaining arbitrator, arbitrators or umpire
 658 appointed to act as neutrals may continue with the hearing and
 659 determination of the controversy.

660 (4) At a hearing under subsection (3), a party to the
 661 arbitration proceeding has a right to be heard, to present
 662 evidence material to the controversy, and to cross-examine
 663 witnesses appearing at the hearing.

664 (5) If an arbitrator ceases or is unable to act during the
 665 arbitration proceeding, a replacement arbitrator must be
 666 appointed in accordance with s. 682.04 to continue the
 667 proceeding and to resolve the controversy.

Page 23 of 43

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590-02348-12

20121458c1

668 Section 17. Section 682.07, Florida Statutes, is amended to
 669 read:

670 682.07 Representation by attorney.—A party to an
 671 arbitration proceeding may ~~has the right to~~ be represented by an
 672 attorney ~~at any arbitration proceeding or hearing under this~~
 673 ~~law. A waiver thereof prior to the proceeding or hearing is~~
 674 ~~ineffective.~~

675 Section 18. Section 682.08, Florida Statutes, is amended to
 676 read:

677 682.08 Witnesses, subpoenas, depositions.—

678 (1) An arbitrator may issue a subpoena for the attendance
 679 of a witness and for the production of records and other
 680 evidence at any hearing and may administer oaths. A subpoena
 681 must be served in the manner for service of subpoenas in a civil
 682 action and, upon motion to the court by a party to the
 683 arbitration proceeding or the arbitrator, enforced in the manner
 684 for enforcement of subpoenas in a civil action. Arbitrators, or
 685 an umpire authorized to hear and decide the cause upon failure
 686 of the arbitrators to agree upon an award, in the course of her
 687 or his jurisdiction, may issue subpoenas for the attendance of
 688 witnesses and for the production of books, records, documents
 689 and other evidence, and shall have the power to administer
 690 oaths. Subpoenas so issued shall be served, and upon application
 691 to the court by a party to the arbitration or the arbitrators,
 692 or the umpire, enforced in the manner provided by law for the
 693 service and enforcement of subpoenas in a civil action.

694 (2) In order to make the proceedings fair, expeditious, and
 695 cost effective, upon request of a party to, or a witness in, an
 696 arbitration proceeding, an arbitrator may permit a deposition of

Page 24 of 43

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590-02348-12 20121458c1

697 any witness to be taken for use as evidence at the hearing,
 698 including a witness who cannot be subpoenaed for or is unable to
 699 attend a hearing. The arbitrator shall determine the conditions
 700 under which the deposition is taken. On application of a party
 701 to the arbitration and for use as evidence, the arbitrators, or
 702 the umpire in the course of her or his jurisdiction, may permit
 703 a deposition to be taken, in the manner and upon the terms
 704 designated by them or her or him of a witness who cannot be
 705 subpoenaed or is unable to attend the hearing.

706 (3) An arbitrator may permit such discovery as the
 707 arbitrator decides is appropriate in the circumstances, taking
 708 into account the needs of the parties to the arbitration
 709 proceeding and other affected persons and the desirability of
 710 making the proceeding fair, expeditious, and cost effective. All
 711 provisions of law compelling a person under subpoena to testify
 712 are applicable.

713 (4) If an arbitrator permits discovery under subsection
 714 (3), the arbitrator may order a party to the arbitration
 715 proceeding to comply with the arbitrator's discovery-related
 716 orders, issue subpoenas for the attendance of a witness and for
 717 the production of records and other evidence at a discovery
 718 proceeding, and take action against a noncomplying party to the
 719 extent a court could if the controversy were the subject of a
 720 civil action in this state.

721 (5) An arbitrator may issue a protective order to prevent
 722 the disclosure of privileged information, confidential
 723 information, trade secrets, and other information protected from
 724 disclosure to the extent a court could if the controversy were
 725 the subject of a civil action in this state.

590-02348-12 20121458c1

726 (6) All laws compelling a person under subpoena to testify
 727 and all fees for attending a judicial proceeding, a deposition,
 728 or a discovery proceeding as a witness apply to an arbitration
 729 proceeding as if the controversy were the subject of a civil
 730 action in this state.

731 (7) The court may enforce a subpoena or discovery-related
 732 order for the attendance of a witness within this state and for
 733 the production of records and other evidence issued by an
 734 arbitrator in connection with an arbitration proceeding in
 735 another state upon conditions determined by the court so as to
 736 make the arbitration proceeding fair, expeditious, and cost
 737 effective. A subpoena or discovery-related order issued by an
 738 arbitrator in another state must be served in the manner
 739 provided by law for service of subpoenas in a civil action in
 740 this state and, upon motion to the court by a party to the
 741 arbitration proceeding or the arbitrator, enforced in the manner
 742 provided by law for enforcement of subpoenas in a civil action
 743 in this state.

744 (8)(4) Fees for attendance as a witness shall be the same
 745 as for a witness in the circuit court.

746 Section 19. Section 682.081, Florida Statutes, is created
 747 to read:

748 682.081 Judicial enforcement of preaward ruling by
 749 arbitrator.—If an arbitrator makes a preaward ruling in favor of
 750 a party to the arbitration proceeding, the party may request
 751 that the arbitrator incorporate the ruling into an award under
 752 s. 682.12. A prevailing party may make a motion to the court for
 753 an expedited order to confirm the award under s. 682.12, in
 754 which case the court shall summarily decide the motion. The

590-02348-12 20121458c1

755 court shall issue an order to confirm the award unless the court
 756 vacates, modifies, or corrects the award under s. 682.13 or s.
 757 682.14.

758 Section 20. Section 682.09, Florida Statutes, is amended to
 759 read:

760 682.09 Award.—

761 (1) An arbitrator shall make a record of an award. The
 762 record must be signed or otherwise authenticated by any
 763 arbitrator who concurs with the award. The arbitrator or the
 764 arbitration organization shall give notice of the award,
 765 including a copy of the award, to each party to the arbitration
 766 proceeding. The award shall be in writing and shall be signed by
 767 the arbitrators joining in the award or by the umpire in the
 768 course of his or her jurisdiction. They or he or she shall
 769 deliver a copy to each party to the arbitration either
 770 personally or by registered or certified mail, or as provided in
 771 the agreement or provision.

772 (2) An award must be made within the time specified by the
 773 agreement to arbitrate or, if not specified therein, within the
 774 time ordered by the court. The court may extend, or the parties
 775 to the arbitration proceeding may agree in a record to extend,
 776 the time. The court or the parties may do so within or after the
 777 time specified or ordered. A party waives any objection that an
 778 award was not timely made unless the party gives notice of the
 779 objection to the arbitrator before receiving notice of the
 780 award. An award shall be made within the time fixed therefor by
 781 the agreement or provision for arbitration or, if not so fixed,
 782 within such time as the court may order on application of a
 783 party to the arbitration. The parties may, by written agreement,

590-02348-12 20121458c1

784 ~~extend the time either before or after the expiration thereof.~~
 785 ~~Any objection that an award was not made within the time~~
 786 ~~required is waived unless the objecting party notifies the~~
 787 ~~arbitrators or umpire in writing of his or her objection prior~~
 788 ~~to the delivery of the award to him or her.~~

789 Section 21. Section 682.10, Florida Statutes, is amended to
 790 read:

791 682.10 Change of award by arbitrators ~~or umpire.~~—

792 (1) On motion to an arbitrator by a party to an arbitration
 793 proceeding, the arbitrator may modify or correct an award:

794 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

795 (b) Because the arbitrator has not made a final and
 796 definite award upon a claim submitted by the parties to the
 797 arbitration proceeding; or

798 (c) To clarify the award.

799 (2) A motion under subsection (1) must be made and notice
 800 given to all parties within 20 days after the movant receives
 801 notice of the award.

802 (3) A party to the arbitration proceeding must give notice
 803 of any objection to the motion within 10 days after receipt of
 804 the notice.

805 (4) If a motion to the court is pending under s. 682.12, s.
 806 682.13, or s. 682.14, the court may submit the claim to the
 807 arbitrator to consider whether to modify or correct the award:

808 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

809 (b) Because the arbitrator has not made a final and
 810 definite award upon a claim submitted by the parties to the
 811 arbitration proceeding; or

812 (c) To clarify the award.

590-02348-12

20121458c1

813 (5) An award modified or corrected pursuant to this section
 814 is subject to ss. 682.09(1), 682.12, 682.13, and 682.14. On
 815 application of a party to the arbitration, or if an application
 816 to the court is pending under s. 682.12, s. 682.13 or s. 682.14,
 817 on submission to the arbitrators, or to the umpire in the case
 818 of an umpire's award, by the court under such conditions as the
 819 court may order, the arbitrators or umpire may modify or correct
 820 the award upon the grounds stated in s. 682.14(1)(a) and (c) or
 821 for the purpose of clarifying the award. The application shall
 822 be made within 20 days after delivery of the award to the
 823 applicant. Written notice thereof shall be given forthwith to
 824 the other party to the arbitration, stating that he or she must
 825 serve his or her objections thereto, if any, within 10 days from
 826 the notice. The award so modified or corrected is subject to the
 827 provisions of ss. 682.12-682.14.

828 Section 22. Section 682.11, Florida Statutes, is amended to
 829 read:

830 682.11 Remedies; fees and expenses of arbitration
 831 proceeding.-

832 (1) An arbitrator may award punitive damages or other
 833 exemplary relief if such an award is authorized by law in a
 834 civil action involving the same claim and the evidence produced
 835 at the hearing justifies the award under the legal standards
 836 otherwise applicable to the claim.

837 (2) An arbitrator may award reasonable attorney fees and
 838 other reasonable expenses of arbitration if such an award is
 839 authorized by law in a civil action involving the same claim or
 840 by the agreement of the parties to the arbitration proceeding.

841 (3) As to all remedies other than those authorized by

590-02348-12

20121458c1

842 subsections (1) and (2), an arbitrator may order such remedies
 843 as the arbitrator considers just and appropriate under the
 844 circumstances of the arbitration proceeding. The fact that such
 845 a remedy could not or would not be granted by the court is not a
 846 ground for refusing to confirm an award under s. 682.12 or for
 847 vacating an award under s. 682.13.

848 (4) An arbitrator's expenses and fees, together with other
 849 expenses, must be paid as provided in the award.

850 (5) If an arbitrator awards punitive damages or other
 851 exemplary relief under subsection (1), the arbitrator shall
 852 specify in the award the basis in fact justifying and the basis
 853 in law authorizing the award and state separately the amount of
 854 the punitive damages or other exemplary relief. Unless otherwise
 855 provided in the agreement or provision for arbitration, the
 856 arbitrators' and umpire's expenses and fees, together with other
 857 expenses, not including counsel fees, incurred in the conduct of
 858 the arbitration, shall be paid as provided in the award.

859 Section 23. Section 682.12, Florida Statutes, is amended to
 860 read:

861 682.12 Confirmation of an award.-After a party to an
 862 arbitration proceeding receives notice of an award, the party
 863 may make a motion to the court for an order confirming the award
 864 at which time the court shall issue a confirming order unless
 865 the award is modified or corrected pursuant to s. 682.10 or s.
 866 682.14 or is vacated pursuant to s. 682.13. Upon application of
 867 a party to the arbitration, the court shall confirm an award,
 868 unless within the time limits hereinafter imposed grounds are
 869 urged for vacating or modifying or correcting the award, in
 870 which case the court shall proceed as provided in ss. 682.13 and

590-02348-12 20121458c1

871 ~~682.14.~~
 872 Section 24. Section 682.13, Florida Statutes, is amended to
 873 read:
 874 682.13 Vacating an award.—
 875 (1) Upon motion application of a party to an arbitration
 876 proceeding, the court shall vacate an arbitration award if when:
 877 (a) The award was procured by corruption, fraud, or other
 878 undue means;—
 879 (b) There was:
 880 1. Evident partiality by an arbitrator appointed as a
 881 neutral arbitrator;
 882 2. Corruption by an arbitrator; or
 883 3. Misconduct by an arbitrator prejudicing the rights of a
 884 party to the arbitration proceeding; or corruption in any of the
 885 arbitrators or umpire or misconduct prejudicing the rights of
 886 any party.
 887 (c) An arbitrator refused to postpone the hearing upon
 888 showing of sufficient cause for postponement, refused to
 889 consider evidence material to the controversy, or otherwise
 890 conducted the hearing contrary to s. 682.06, so as to prejudice
 891 substantially the rights of a party to the arbitration
 892 proceeding; The arbitrators or the umpire in the course of her
 893 or his jurisdiction exceeded their powers.
 894 (d) An arbitrator exceeded the arbitrator's powers; The
 895 arbitrators or the umpire in the course of her or his
 896 jurisdiction refused to postpone the hearing upon sufficient
 897 cause being shown therefor or refused to hear evidence material
 898 to the controversy or otherwise so conducted the hearing,
 899 contrary to the provisions of s. 682.06, as to prejudice

590-02348-12 20121458c1

900 ~~substantially the rights of a party.~~
 901 (e) There was no agreement to arbitrate, unless the person
 902 participated in the arbitration proceeding without raising the
 903 objection under s. 682.06(3) not later than the beginning of the
 904 arbitration hearing; or There was no agreement or provision for
 905 arbitration subject to this law, unless the matter was
 906 determined in proceedings under s. 682.03 and unless the party
 907 participated in the arbitration hearing without raising the
 908 objection.
 909 (f) The arbitration was conducted without proper notice of
 910 the initiation of an arbitration as required in s. 682.032 so as
 911 to prejudice substantially the rights of a party to the
 912 arbitration proceeding.
 913
 914 ~~But the fact that the relief was such that it could not or would~~
 915 ~~not be granted by a court of law or equity is not ground for~~
 916 ~~vacating or refusing to confirm the award.~~
 917 (2) A motion under this section must be filed within 90
 918 days after the movant receives notice of the award pursuant to
 919 s. 682.09 or within 90 days after the movant receives notice of
 920 a modified or corrected award pursuant to s. 682.10, unless the
 921 movant alleges that the award was procured by corruption, fraud,
 922 or other undue means, in which case the motion must be made
 923 within 90 days after the ground is known or by the exercise of
 924 reasonable care would have been known by the movant. An
 925 application under this section shall be made within 90 days
 926 after delivery of a copy of the award to the applicant, except
 927 that, if predicated upon corruption, fraud or other undue means,
 928 it shall be made within 90 days after such grounds are known or

590-02348-12

20121458c1

929 ~~should have been known.~~

930 (3) If the court vacates an award on a ground other than
 931 that set forth in paragraph (1) (e), it may order a rehearing. If
 932 the award is vacated on a ground stated in paragraph (1) (a) or
 933 paragraph (1) (b), the rehearing must be before a new arbitrator.
 934 If the award is vacated on a ground stated in paragraph (1) (c),
 935 paragraph (1) (d), or paragraph (1) (f), the rehearing may be
 936 before the arbitrator who made the award or the arbitrator's
 937 successor. The arbitrator must render the decision in the
 938 rehearing within the same time as that provided in s. 682.09(2)
 939 for an award. In vacating the award on grounds other than those
 940 stated in paragraph (1) (c), the court may order a rehearing
 941 before new arbitrators chosen as provided in the agreement or
 942 provision for arbitration or by the court in accordance with s.
 943 682.04, or, if the award is vacated on grounds set forth in
 944 paragraphs (1) (c) and (d), the court may order a rehearing
 945 before the arbitrators or umpire who made the award or their
 946 successors appointed in accordance with s. 682.04. The time
 947 within which the agreement or provision for arbitration requires
 948 the award to be made is applicable to the rehearing and
 949 commences from the date of the order therefor.

950 (4) If a motion the application to vacate is denied and no
 951 motion to modify or correct the award is pending, the court
 952 shall confirm the award.

953 Section 25. Section 682.14, Florida Statutes, is amended to
 954 read:

955 682.14 Modification or correction of award.-

956 (1) Upon motion made within 90 days after the movant
 957 receives notice of the award pursuant to s. 682.09 or within 90

590-02348-12

20121458c1

958 days after the movant receives notice of a modified or corrected
 959 award pursuant to s. 682.10, the court shall modify or correct
 960 the award if Upon application made within 90 days after delivery
 961 of a copy of the award to the applicant, the court shall modify
 962 or correct the award when:

963 (a) There is an evident miscalculation of figures or an
 964 evident mistake in the description of any person, thing, or
 965 property referred to in the award.

966 (b) The arbitrators ~~or umpire~~ have awarded upon a matter
 967 not submitted in the arbitration to them or him or her and the
 968 award may be corrected without affecting the merits of the
 969 decision upon the issues submitted.

970 (c) The award is imperfect as a matter of form, not
 971 affecting the merits of the controversy.

972 (2) If the application is granted, the court shall modify
 973 and correct the award ~~so as to effect its intent~~ and shall
 974 confirm the award as so modified and corrected. Otherwise,
 975 unless a motion to vacate the award under s. 682.13 is pending,
 976 the court shall confirm the award as made.

977 (3) An application to modify or correct an award may be
 978 joined in the alternative with an application to vacate the
 979 award under s. 682.13.

980 Section 26. Section 682.15, Florida Statutes, is amended to
 981 read:

982 682.15 Judgment or decree on award.-

983 (1) Upon granting an order confirming, vacating without
 984 directing a rehearing, modifying, or correcting an award, the
 985 court shall enter a judgment in conformity therewith. The
 986 judgment may be recorded, docketed, and enforced as any other

590-02348-12 20121458c1

987 judgment in a civil action.988 (2) A court may allow reasonable costs of the motion and
989 subsequent judicial proceedings.990 (3) On motion of a prevailing party to a contested judicial
991 proceeding under s. 682.12, s. 682.13, or s. 682.14, the court
992 may add reasonable attorney fees and other reasonable expenses
993 of litigation incurred in a judicial proceeding after the award
994 is made to a judgment confirming, vacating without directing a
995 rehearing, modifying, or correcting an award. ~~Upon the granting~~
996 of an order confirming, modifying or correcting an award,
997 judgment or decree shall be entered in conformity therewith and
998 be enforced as any other judgment or decree. Costs of the
999 application and of the proceedings subsequent thereto, and
1000 disbursements may be awarded by the court.1001 Section 27. Section 682.16, Florida Statutes, is repealed.1002 Section 28. Section 682.17, Florida Statutes, is repealed.1003 Section 29. Section 682.18, Florida Statutes, is repealed.1004 Section 30. Section 682.181, Florida Statutes, is created
1005 to read:1006 682.181 Jurisdiction.—1007 (1) A court of this state having jurisdiction over the
1008 controversy and the parties may enforce an agreement to
1009 arbitrate.1010 (2) An agreement to arbitrate providing for arbitration in
1011 this state confers exclusive jurisdiction on the court to enter
1012 judgment on an award under this chapter.1013 Section 31. Section 682.19, Florida Statutes, is amended to
1014 read:1015 682.19 Venue.—A petition pursuant to s. 682.015 must be

590-02348-12 20121458c1

1016 filed in the court of the county in which the agreement to
1017 arbitrate specifies the arbitration hearing is to be held or, if
1018 the hearing has been held, in the court of the county in which
1019 it was held. Otherwise, the petition may be made in the court of
1020 any county in which an adverse party resides or has a place of
1021 business or, if no adverse party has a residence or place of
1022 business in this state, in the court of any county in this
1023 state. All subsequent petitions must be made in the court
1024 hearing the initial petition unless the court otherwise directs.1025 Any application under this law may be made to the court of the
1026 county in which the other party to the agreement or provision
1027 for arbitration resides or has a place of business, or, if she
1028 or he has no residence or place of business in this state, then
1029 to the court of any county. All applications under this law
1030 subsequent to an initial application shall be made to the court
1031 hearing the initial application unless it shall order otherwise.1032 Section 32. Section 682.20, Florida Statutes, is amended to
1033 read:

1034 682.20 Appeals.—

1035 (1) An appeal may be taken from:

1036 (a) An order denying an application to compel arbitration
1037 made under s. 682.03.1038 (b) An order granting a motion ~~an application~~ to stay
1039 arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).1040 (c) An order confirming ~~or denying confirmation of an~~
1041 award.1042 (d) An order denying confirmation of an award unless the
1043 court has entered an order under s. 682.10(4) or s. 682.13. All
1044 other orders denying confirmation of an award are final orders.

590-02348-12 20121458c1

1045 ~~(e)(d)~~ An order modifying or correcting an award.

1046 ~~(f)(e)~~ An order vacating an award without directing a
1047 rehearing.

1048 ~~(g)(f)~~ A judgment or decree entered pursuant to this
1049 chapter ~~the provisions of this law.~~

1050 (2) The appeal shall be taken in the manner and to the same
1051 extent as from orders or judgments in a civil action.

1052 Section 33. Section 682.21, Florida Statutes, is repealed.

1053 Section 34. Section 682.22, Florida Statutes, is repealed.

1054 Section 35. Section 682.23, Florida Statutes, is created to
1055 read:

1056 682.23 Relationship to Electronic Signatures in Global and
1057 National Commerce Act.—The provisions of this chapter governing
1058 the legal effect, validity, and enforceability of electronic
1059 records or electronic signatures and of contracts performed with
1060 the use of such records or signatures conform to the
1061 requirements of s. 102 of the Electronic Signatures in Global
1062 and National Commerce Act, 15 U.S.C. s. 7002.

1063 Section 36. Section 682.25, Florida Statutes, is created to
1064 read:

1065 682.25 Disputes excluded.—This chapter does not apply to
1066 any dispute involving child custody, visitation, or child
1067 support.

1068 Section 37. Section 44.104, Florida Statutes, is amended to
1069 read:

1070 44.104 Voluntary ~~binding arbitration and voluntary~~ trial
1071 resolution.—

1072 (1) Two or more opposing parties who are involved in a
1073 civil dispute may agree in writing to submit the controversy to

590-02348-12 20121458c1

1074 ~~voluntary binding arbitration, or~~ voluntary trial resolution, in
1075 lieu of judicial litigation of the issues involved, prior to or
1076 after a lawsuit has been filed, ~~provided no constitutional issue~~
1077 ~~is involved.~~

1078 (2) If the parties have entered into such an agreement and
1079 the agreement ~~which provides in voluntary binding arbitration~~
1080 ~~for a method for appointing of one or more arbitrators, or which~~
1081 ~~provides in voluntary trial resolution~~ a method for appointing
1082 ~~the a member of The Florida Bar in good standing for more than 5~~
1083 ~~years to act as trial resolution judge, that method shall be~~
1084 followed ~~the court shall proceed with the appointment as~~
1085 ~~prescribed. However, in voluntary binding arbitration at least~~
1086 ~~one of the arbitrators, who shall serve as the chief arbitrator,~~
1087 ~~shall meet the qualifications and training requirements adopted~~
1088 ~~pursuant to s. 44.106. In the absence of an agreement on a~~
1089 ~~method for appointing the trial resolution judge, or if the~~
1090 ~~agreement method fails or for any reason cannot be followed, and~~ and
1091 the parties fail to agree on the person to serve as the trial
1092 resolution judge, the court, on application of a party, shall
1093 ~~appoint one or more qualified arbitrators, or~~ the trial
1094 resolution judge, as the case requires. A trial resolution judge
1095 must be a member of The Florida Bar in good standing for 5 years
1096 or more who has agreed to serve.

1097 (3) The ~~arbitrators or~~ trial resolution judge shall be
1098 compensated by the parties according to their agreement with the
1099 trial resolution judge.

1100 (4) Within 10 days after the submission of the request for
1101 ~~binding arbitration, or~~ voluntary trial resolution, the court
1102 shall provide for the appointment of the ~~arbitrator or~~

590-02348-12 20121458c1

1103 ~~arbitrators, or~~ trial resolution judge, as the case requires.
 1104 Once appointed, the ~~arbitrators or~~ trial resolution judge shall
 1105 notify the parties of the time and place for the hearing.

1106 (5) Application for ~~voluntary binding arbitration or~~
 1107 voluntary trial resolution shall be filed and fees paid to the
 1108 clerk of court as if for complaints initiating civil actions.
 1109 The clerk of the court shall handle and account for these
 1110 matters in all respects as if they were civil actions, except
 1111 that the clerk of court shall keep separate ~~the records of the~~
 1112 ~~applications for voluntary binding arbitration and the records~~
 1113 of the applications for voluntary trial resolution from all
 1114 other civil actions.

1115 (6) Filing of the application for ~~binding arbitration or~~
 1116 voluntary trial resolution tolls ~~will toll~~ the running of the
 1117 applicable statutes of limitation.

1118 (7) The ~~chief arbitrator or~~ trial resolution judge may
 1119 administer oaths or affirmations and conduct the proceedings as
 1120 the rules of court shall provide. At the request of any party,
 1121 the ~~chief arbitrator or~~ trial resolution judge shall issue
 1122 subpoenas for the attendance of witnesses and for the production
 1123 of books, records, documents, and other evidence and may apply
 1124 to the court for orders compelling attendance and production.
 1125 Subpoenas shall be served and shall be enforceable in the manner
 1126 provided by law. The trial resolution judge may order temporary
 1127 relief in the same manner, and to the same extent, as in civil
 1128 actions generally. Any party may enforce such an order by filing
 1129 a petition in the court. Orders entered by the court are
 1130 reviewable by the appellate court in the same manner, and to the
 1131 same extent, as orders in civil actions generally.

590-02348-12 20121458c1

1132 (8) ~~A voluntary binding arbitration hearing shall be~~
 1133 ~~conducted by all of the arbitrators, but a majority may~~
 1134 ~~determine any question and render a final decision.~~ A trial
 1135 resolution judge shall conduct a voluntary trial resolution
 1136 hearing. The trial resolution judge may determine any question
 1137 and render a final decision.

1138 (9) The Florida Evidence Code and Florida Rules of Civil
 1139 Procedure shall apply to all proceedings under this section,
 1140 except that voluntary trial resolution is not governed by
 1141 procedural rules regulating general and special magistrates, and
 1142 rulings of the trial resolution judge are not reviewable by
 1143 filing exceptions with the court.

1144 ~~(10) An appeal of a voluntary binding arbitration decision~~
 1145 ~~shall be taken to the circuit court and shall be limited to~~
 1146 ~~review on the record and not de novo, of:~~

1147 ~~(a) Any alleged failure of the arbitrators to comply with~~
 1148 ~~the applicable rules of procedure or evidence.~~

1149 ~~(b) Any alleged partiality or misconduct by an arbitrator~~
 1150 ~~prejudicing the rights of any party.~~

1151 ~~(c) Whether the decision reaches a result contrary to the~~
 1152 ~~Constitution of the United States or of the State of Florida.~~

1153 ~~(10)(11)~~ Any party may enforce a final decision rendered in
 1154 a voluntary trial by filing a petition for final judgment in the
 1155 circuit court in the circuit in which the voluntary trial took
 1156 place. Upon entry of final judgment by the circuit court, any
 1157 party may appeal to the appropriate appellate court. The
 1158 judgment is reviewable by the appellate court in the same
 1159 manner, and to the same extent, as a judgment in a civil action.
 1160 ~~Factual findings determined in the voluntary trial are not~~

590-02348-12

20121458c1

1161 ~~subject to appeal.~~

1162 ~~(12) The harmless error doctrine shall apply in all~~
 1163 ~~appeals. No further review shall be permitted unless a~~
 1164 ~~constitutional issue is raised.~~

1165 ~~(11)(13)~~ If no appeal is taken within the time provided by
 1166 rules promulgated by the Supreme Court, ~~then~~ the decision shall
 1167 be referred to the presiding judge in the case, or if one has
 1168 not been assigned, then to the chief judge of the circuit for
 1169 assignment to a circuit judge, who shall enter such orders and
 1170 judgments as are required to carry out the terms of the
 1171 decision. Equitable remedies are, which orders shall be
 1172 enforceable by the contempt powers of the court to the same
 1173 extent as in civil actions generally. When a judgment provides
 1174 for execution, and for which judgments execution shall issue on
 1175 request of a party.

1176 ~~(12)(14)~~ This section does ~~shall~~ not apply ~~to any dispute~~
 1177 ~~involving child custody, visitation, or child support, or to any~~
 1178 ~~dispute that which~~ involves the rights of a third party not a
 1179 party to the ~~arbitration or~~ voluntary trial resolution when the
 1180 third party would be an indispensable party if the dispute were
 1181 resolved in court or when the third party notifies ~~the chief~~
 1182 ~~arbitrator or~~ the trial resolution judge that the third party
 1183 would be a proper party if the dispute were resolved in court,
 1184 that the third party intends to intervene in the action in
 1185 court, and that the third party does not agree to proceed under
 1186 this section.

1187 (13) A trial resolution judge does not have jurisdiction to
 1188 declare unconstitutional a statute, ordinance, or provision of a
 1189 constitution. If any such claim is made in the voluntary trial

590-02348-12

20121458c1

1190 resolution proceeding, that claim shall be severed and
 1191 adjudicated by a judge of the court.

1192 (14) (a) The parties may agree to a trial by a privately
 1193 selected jury. The court's jury pool may not be used for this
 1194 purpose. In all other cases, the trial resolution judge shall
 1195 conduct a bench trial.

1196 (b) The trial resolution judge may wear a judicial robe and
 1197 use the title "Trial Resolution Judge" when acting in that
 1198 capacity.

1199 Section 38. Subsection (1) of section 44.107, Florida
 1200 Statutes, is amended to read:

1201 44.107 Immunity for arbitrators, voluntary trial resolution
 1202 judges, mediators, and mediator trainees.-

1203 (1) Arbitrators serving under s. 44.103, voluntary trial
 1204 resolution judges serving under ~~or~~ s. 44.104, mediators serving
 1205 under s. 44.102, and trainees fulfilling the mentorship
 1206 requirements for certification by the Supreme Court as a
 1207 mediator ~~shall~~ have judicial immunity in the same manner and to
 1208 the same extent as a judge and are entitled to the same immunity
 1209 and remedies provided in s. 682.051.

1210 Section 39. Section 440.1926, Florida Statutes, is amended
 1211 to read:

1212 440.1926 Alternate dispute resolution; claim arbitration.-
 1213 Notwithstanding any other provision of this chapter, the
 1214 employer, carrier, and employee may mutually agree to seek
 1215 consent from a judge of compensation claims to enter into
 1216 binding claim arbitration in lieu of any other remedy provided
 1217 for in this chapter to resolve all issues in dispute regarding
 1218 an injury. Arbitrations agreed to pursuant to this section shall

590-02348-12

20121458c1

1219 be governed by chapter 682, the Revised Florida Arbitration
1220 Code, except that, notwithstanding any provision in chapter 682,
1221 the term "court" shall mean a judge of compensation claims. An
1222 arbitration award in accordance with this section ~~is shall be~~
1223 enforceable in the same manner and with the same powers as any
1224 final compensation order.

1225 Section 40. Paragraph (a) of subsection (1) of section
1226 489.1402, Florida Statutes, is amended to read:

1227 489.1402 Homeowners' Construction Recovery Fund;
1228 definitions.-

1229 (1) The following definitions apply to ss. 489.140-489.144:

1230 (a) "Arbitration" means alternative dispute resolution
1231 entered into between a claimant and a contractor either pursuant
1232 to a construction contract that contains a mandatory arbitration
1233 clause or through any binding arbitration under chapter 682, the Revised
1234 Florida Arbitration Code.

1235 Section 41. Subsection (2) of section 731.401, Florida
1236 Statutes, is amended to read:

1237 731.401 Arbitration of disputes.-

1238 (2) Unless otherwise specified in the will or trust, a will
1239 or trust provision requiring arbitration shall be presumed to
1240 require binding arbitration under chapter 682, the Revised
1241 Florida Arbitration Code ~~s. 44.104~~.

1242 Section 42. The Division of Statutory Revision is directed
1243 to redesignate the title of chapter 44, Florida Statutes, as
1244 "Alternative Dispute Resolution."

1245 Section 43. This act shall take effect July 1, 2012.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 1460

INTRODUCER: Senator Simmons

SUBJECT: Preference in Award of State Contracts

DATE: February 17, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Favorable
2.	McKay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill expands the reciprocal preference provided in current law to include the purchase of construction services. It also provides that for a competitive solicitation in which payment is to be made, in whole or in part, from funds appropriated by the state, Florida's reciprocal preference preempts and supersedes any local ordinance or regulation based upon specified criteria. Finally, the bill provides that, other than the requirements imposed for solicitations involving state funds, a county, municipality, school district, or other political subdivision of the state is not prevented from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

This bill substantially amends s. 287.084 of the Florida Statutes.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services. The Department of Management Services is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.² The Division of

¹ As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

² See ss. 287.032 and 287.042, F.S.

State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.³

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are 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," which are 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," which are 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," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.⁴

Current law requires that contracts for commodities or contractual services in excess of \$35,000⁵ must be procured utilizing a competitive solicitation process.^{6,7}

Local governmental units are not subject to the provisions of Chapter 287, F.S. Local governmental units may look to Chapter 287, F.S., for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

Florida Business Preference

Pursuant to s. 287.084, F.S., state agencies, counties, municipalities, school districts, and other political subdivisions are authorized to use a preference in the award of contracts for the purchase of personal property, through competitive solicitation, when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state, or political subdivision of that state. The reciprocal preference is discretionary and may be used by a procuring entity to award a preference to the lowest responsible and responsive vendor having a principal place of business in this state. The preference available is limited to the preference provided for by an out-of-state bidder's home state. Florida state and local agencies can only apply a preference against a bidder from another state if, and to the extent that, the other state imposes a preference on Florida bidders.

³ Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.

⁴ See ss. 287.012(6) and 287.057, F.S.

⁵ Section 287.012, F.S.

⁶ Section 287.057(1), F.S.

⁷ As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

If a solicitation to purchase personal property provides for the granting of a preference, any vendor whose principal place of business is not in Florida must submit with the bid, proposal, or reply documents with a written opinion of an attorney, licensed in the vendor's state, explaining the preferences that state provides to vendors, within the vendor's state, for public contracts.⁸

Florida's preference law does not apply to transportation projects for which federal aid funds are available.⁹

Procurement of Construction Services

Portions of Ch. 255, F.S., specify procedures to be followed in the procurement of construction services¹⁰ for public property and publically owned buildings. The Department of Management Services is responsible for establishing, through administrative rules, the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state.¹¹

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.¹² In addition, such projects must be advertised in the Florida Administrative Weekly at least 21 days prior to the bid opening.^{13,14} Counties, municipalities, special districts,¹⁵

⁸ Section 287.084(2), F.S.

⁹ See s. 287.084(1), F.S. The Common Grant Rule issued by the U.S. Department of Transportation, 49 C.F.R. 18.36(c)(2), prohibits the use of state or local geographical preferences in the evaluation of bids or proposals for projects involving federal funds.

¹⁰ As defined in s. 255.072(2), F.S., "construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term "construction services" does not include contracts or work performed for the Department of Transportation.

¹¹ Section 255.29, F.S.

¹² See 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

¹³ Section 255.0525(1), F.S.

¹⁴ State construction projects that are projected to exceed \$500,000 are required to be published 30 days prior to bid opening in the Florida Administrative Weekly, and at least once in a newspaper of general circulation in the county where the project is located. See s. 255.0525(1), F.S.

¹⁵ As defined in s. 189.403(1), F.S., "special district" means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts must be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000.¹⁶

Preference to State Residents in Construction Contracts

Pursuant to s. 255.099, F.S., each contract for construction that is funded by state funds must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work on the project if state residents have substantially equal qualifications to those of nonresidents. A contract for construction funded by local funds may contain such a provision. A contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system. No contract can be let to any person refusing to execute an agreement containing these provisions. However, in work involving the expenditure of federal aid funds, these provisions may not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, or marines, or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.

III. Effect of Proposed Changes:

Section 1 amends s. 287.084, F.S., relating to preference to Florida business. The bill expands the reciprocal preference in current law to include the purchase of construction services.

The bill requires the procuring entity to disclose in its solicitation documents if state funds are being used in the payment, and the amount of the funds or the percentage of the funds compared to the anticipated total cost of the personal property or construction services. For a competitive solicitation in which payment is to be made, in whole or in part, from funds appropriated by the state, the bill provides that Florida's reciprocal preference preempts and supersedes any local ordinance or regulation that grants a preference to a vendor based upon the following specified criteria:

- The vendor maintaining an office or place of business within a particular jurisdiction;
- The vendor hiring employees or subcontractors from within a specific jurisdiction; or
- The vendor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

Finally, the bill provides that, other than the requirements imposed for solicitations involving state funds, a county, municipality, school district, or other political subdivision of the state is not prevented from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

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

¹⁶ See s. 255.20(1), F.S.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The establishment of local preference laws could implicate the Equal Protection Clause and the Commerce Clause of the United States Constitution.

The Equal Protection Clause

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”¹⁷ The in-state preference provisions in this bill could constitute an equal protection violation. If such legislation is challenged, the court would use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.¹⁸ Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.¹⁹

The Commerce Clause

The United States Constitution provides that Congress shall have the power “to regulate commerce . . . among the states.”²⁰ The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.²¹

Courts have used a two-tiered analysis to determine whether a statutory scheme violates the Commerce Clause:

1. “If a statute ‘directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,’ the court may declare it unconstitutional as applied, without further inquiry.”²²

¹⁷ U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

¹⁸ *Nordlinger v. Hahn*, 505 U.S. 1, 33-34 (1992) (stating that a “classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose.”).

¹⁹ *Id.*

²⁰ U.S. CONST. art. I, s. 8, cl. 3.

²¹ *See Gibbons v. Ogden*, 22 U.S. 1 (1824).

²² *National Collegiate Athletic Ass’n v. Associated Press*, 18 So. 3d 1201, 1211 (Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579).

2. “. . . if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state’s interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits.”²³

However, when a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Commerce Clause.²⁴ A state is considered to be a “market participant” when it is acting as an economic actor such as a purchaser of goods and services.²⁵ Since the state is acting as a “market participant” under this bill, the in-state preference provisions herein are likely to be upheld as an exception to the Commerce Clause.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could result in more business being awarded to Florida based companies as a result of the new preference for construction services.

C. Government Sector Impact:

There is no known fiscal impact on local governments; however, there may be an operational impact as the statute would preempt local ordinances or regulations in certain circumstances. The Department of Revenue estimated an increase in cost of \$125,000.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 287, F.S., regulates agency procurement of commodities and services; portions of Ch. 255, F.S., regulate procurement of construction services by public entities. Interpretation and application of the preference in this bill might be aided by placing the procurement preference applicable to construction contracting in Ch. 255, F.S., instead of Ch. 287, F.S.

Current law does not provide for a definition of “principle place of business.” There are two competing tests to determine where a company’s principle place of business is located. The first is the “substantial predominance” test, which analyzes the following criteria: the location of its

²³ *Id.* (citations omitted); *See Bainbridge v. Turner*, 311 F.3d 1104, 1108-1109.

²⁴ *See White v. Massachusetts Council of Constr. Employers*, 460 U.S. 204, 204 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).

²⁵ *Id.*

²⁶ Substantive Analysis of SB 574, Department of Revenue, February 21, 2011 (on file with the Community Affairs Committee). SB 1460 is identical to SB 574, which was filed during the 2011 Legislative Session.

employees, where sales took place, its production activities, its tangible property, its sources of income, the value of land owned and leased, and the replacement cost of assets located in a certain state.²⁷ The second test is the “nerve center test.” Under this test, a company’s principle place of business refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.²⁸ The Department of Management Services (department) has previously utilized the “nerve center” test to determine a company’s principle place of business. In a 2010 memorandum to purchasing directors, the department indicated it intended to use the nerve center test when applying the Florida-based business preference found in section 49 of Chapter 2010-151, Laws of Florida, to both state term contracts and other department-issued solicitations.²⁹

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.

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

²⁷ *Ghaderi v. United Airlines, Inc.*, 136 F.Supp.2d 1041, 1044-46 (N.D. Cal. 2001). See also, *Diaz v. Target Corp.*, No. 09-3477, 2009 U.S. Dist. LEXIS 62000 (C.D. Cal. July 2, 2009); *Castaneda v. Costco Wholesale Corp.*, No. 08-7599, 2009 U.S. Dist. LEXIS 3595 (C.D. Cal. Jan. 9, 2009).

²⁸ *Hertz Corp. v. Friend et al.*, 130 S.Ct. 1181 (2010).

²⁹ Memorandum to Purchasing Directors, Department of Management Services, September 2, 2010 at 3.

By Senator Simmons

22-00860B-12

20121460__

1 A bill to be entitled
 2 An act relating to preference in award of state
 3 contracts; amending s. 287.084, F.S.; expanding
 4 provisions that authorize an agency, county,
 5 municipality, school district, or other political
 6 subdivision of the state to provide preferential
 7 consideration to a Florida business in awarding
 8 competitively bid contracts to purchase personal
 9 property to include the purchase of construction
 10 services; providing that for specified competitive
 11 solicitations the authority to grant preference
 12 supersedes any local ordinance or regulation which
 13 grants preference to specified vendors; requiring a
 14 county, municipality, school district, or other
 15 political subdivision to make specified disclosures in
 16 competitive solicitation documents; providing
 17 construction; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsection (1) of section 287.084, Florida
 22 Statutes, is amended to read:

23 287.084 Preference to Florida businesses.—

24 (1) (a) When an agency, county, municipality, school
 25 district, or other political subdivision of the state is
 26 required to make purchases of personal property or construction
 27 services through competitive solicitation and the lowest
 28 responsible and responsive bid, proposal, or reply is by a
 29 vendor whose principal place of business is in a state or

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

22-00860B-12

20121460__

30 political subdivision thereof which grants a preference for the
 31 purchase of such personal property or construction services to a
 32 person whose principal place of business is in such state, then
 33 the agency, county, municipality, school district, or other
 34 political subdivision of this state may award a preference to
 35 the lowest responsible and responsive vendor having a principal
 36 place of business within this state, which preference is equal
 37 to the preference granted by the state or political subdivision
 38 thereof in which the lowest responsible and responsive vendor
 39 has its principal place of business. However, this section does
 40 not apply to transportation projects for which federal aid funds
 41 are available.

42 (b)1. For a competitive solicitation in which payment for
 43 the personal property or construction services is to be made in
 44 whole or in part from funds appropriated by the state, this
 45 section preempts and supersedes any local ordinance or
 46 regulation that grants preference to a vendor based upon:

47 a. The vendor maintaining an office or place of business
 48 within a particular local jurisdiction;

49 b. The vendor hiring employees or subcontractors from
 50 within a particular local jurisdiction; or

51 c. The vendor's prior payment of local taxes, assessments,
 52 or duties within a particular local jurisdiction.

53 2. In any competitive solicitation subject to this section,
 54 a county, municipality, school district, or other political
 55 subdivision shall disclose in the solicitation document whether
 56 payment will come from funds appropriated by the state and, if
 57 known, the amount of such funds or the percentage of such funds
 58 as compared to the anticipated total cost of the personal

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

22-00860B-12

20121460__

59 property or construction services.

60 3. Except as provided in subparagraph 1., this section does
61 not prevent a county, municipality, school district, or other
62 political subdivision of this state from awarding a contract to
63 any vendor in accordance with applicable state laws or local
64 ordinances or regulations.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 1584

INTRODUCER: Senator Thrasher

SUBJECT: Public Records/Money Services Businesses/Office of Financial Regulation

DATE: February 19, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	Favorable
2.	<u>Seay</u>	<u>Roberts</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates a public records exemption for information contained in a payment instrument transaction database that will be created through the passage of Senate Bill 1586. The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

This bill creates section 560.312 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One-hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24, of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body,

¹ Section 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

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

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

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

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

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.

⁵ Section 119.011(12), F.S.

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

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

⁸ Florida Attorney General Opinion 85-62.

disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Only the Legislature is authorized to create exemptions to open government requirements.¹⁰ Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption¹² may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁵ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

⁹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

¹⁰ *Supra* fn. 1.

¹¹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

¹² Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹³ *Supra* fn. 1.

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁷ The Legislature is only limited in its review process by constitutional requirements.

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

“notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.”

Payment Instrument Transaction Database

Pending legislation¹⁸ authorizes the Office of Financial Regulation (OFR) to implement a centralized statewide database to gather transactional data from check cashers for checks exceeding \$1,000, corporate payment instruments, and third-party payment instruments.

Implementation of the database is aimed at targeting workers' compensation insurance fraud. In many scenarios, contractors and check cashers have colluded on a scheme that allows contractors to hide their payroll and obtain workers' compensation coverage without purchasing such coverage. In addition to the workers' compensation fraud, these contractors are avoiding the payment of state and federal taxes. For their participation and risk, check cashers may receive a fee of 7 percent of the value of the check or more for cashing the checks – which exceeds the statutory limit check cashers are allowed to charge.¹⁹

The centralization of the data will allow regulators and law enforcement to effectively target individuals who are engaging in criminal activity. In addition, the centralization of the data will also allow information to be compared on a statewide basis. With the creation of a statewide database, the database would also include personal financial information of those utilizing check cashing services and private business transaction information that is traditionally private.

¹⁷ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

¹⁸ Senate Bill 1586, 2012 Regular Session.

¹⁹ See Bill Analysis for SB 1586, Banking and Insurance Committee, 2012 Regular Session (for a more thorough discussion of workers' compensation insurance fraud).

III. Effect of Proposed Changes:

Section 1 creates s. 560.312, F.S., creating a new public records exemption; providing that information contained in the payment instrument transaction database administered by the Office of Financial Regulation (OFR) is confidential and exempt from public records requirements; providing that a licensee may access information that it administers to OFR for inclusion in the database; providing that OFR may enter into information-sharing agreements with other governmental entities to deter financial crimes; providing that shared information must remain confidential unless compelled by court order; providing future review and repeal pursuant to the Open Government Sunset Review Act.

Section 2 provides a statement of public necessity as required by the State Constitution.

Section 3 provides an effective contingent date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The contingent effective date within the bill (line 73) needs to be amended to reflect the bill number of the linked substantive bill – Senate Bill 1586.

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.



306632

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 28 - 31
and insert:

(1) Payment instrument transaction information held by the office pursuant to s. 560.311 which identifies a licensee, payor, payee, or conductor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Delete lines 50 - 71
and insert:

Section 2. The Legislature finds that it is a public necessity that payment instrument transaction information held



306632

13 by the Office of Financial Regulation pursuant to s. 560.311,
14 Florida Statutes, which identifies a licensee, payor, payee, or
15 conductor be made confidential and exempt from s. 119.07(1),
16 Florida Statutes, and s. 24(a), Article I of the State
17 Constitution.

18 (1) Pursuant to s. 560.311, Florida Statutes, money
19 services businesses that cash a payment instrument exceeding
20 \$1,000 must submit information about the transaction to the
21 Office of Financial Regulation in order to deter money
22 laundering through these entities and in response to the
23 findings of the Money Service Business Facilitated Workers'
24 Compensation Fraud Work Group that these entities are being used
25 to facilitate financial crimes, including fraud relating to
26 workers' compensation. The report issued by the group found that
27 this type of workers' compensation fraud could be costing the
28 state upwards of \$1 billion dollars annually in unreported
29 payroll taxes, unreported premium taxes, and higher costs to
30 insurance carriers who must process workers' compensation claims
31 from uninsured workers. This type of fraud places tremendous
32 pressure on law-abiding businesses to absorb these costs.

33 (a) Submission of this information to the office is
34 intended to assist the office, the Department of Financial
35 Services, law enforcement agencies, and other governmental
36 agencies in detecting and deterring these financial crimes and
37 related fraudulent activities.

38 (b) The availability of this information to these agencies
39 will help to increase premium collection, lower costs to
40 insurance carriers, and alleviate premium avoidance, as well as
41 reduce the cost of administering these public programs.



306632

42 (2) However, the public availability of payment instrument
43 transaction information would reveal sensitive, personal
44 financial information about payees and conductors who use check-
45 cashing programs, including paycheck amounts, salaries, and
46 business activities, as well as information regarding the
47 financial stability of these persons. Such information is
48 traditionally private and sensitive. Protecting the
49 confidentiality of information that would identify these payees
50 and conductors would provide adequate protection for these
51 persons while still providing public oversight of the program.

52 (3) The public release of payment instrument transaction
53 information would also identify licensees or payors and reveal
54 private business transaction information that is traditionally
55 private and could be used by competitors to harm licensees or
56 payors in the marketplace. If such information were publicly
57 available, competitors could determine the amount of business
58 conducted by other licensees and payors.

59 (4) Therefore, the Legislature finds that information that
60 would identify the licensee, payor, payee, or conductor in
61 payment instrument transaction information be made confidential
62 and exempt from public records requirements.

63
64 ===== T I T L E A M E N D M E N T =====

65 And the title is amended as follows:

66 Delete lines 4 - 8

67 and insert:

68 records requirements for payment instrument
69 transaction information held by the Office of
70 Financial Regulation; providing

By Senator Thrasher

8-01441A-12

20121584

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 560.312, F.S.; providing an exemption from public
 4 records requirements for information contained in the
 5 database of payment instrument transactions within the
 6 Office of Financial Regulation into which payment
 7 instrument transaction information submitted by money
 8 services business licensees is maintained; providing
 9 for specified access to such information; authorizing
 10 the office to enter into information-sharing
 11 agreements and provide access to information contained
 12 in the database to certain governmental agencies;
 13 requiring any department or agency that receives
 14 confidential information to maintain the
 15 confidentiality of the information, except as
 16 otherwise required by court order; providing a penalty
 17 for willful disclosure of confidential information;
 18 providing for future review and repeal of the
 19 exemption; providing a statement of public necessity;
 20 providing a contingent effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 560.312, Florida Statutes, is created to
 25 read:

26 560.312 Database of payment instrument transactions;
 27 confidentiality.-

28 (1) Information contained in the database of payment
 29 instrument transactions administered by the office pursuant to

8-01441A-12

20121584

30 s. 560.311 is confidential and exempt from s. 119.07(1) and s.
 31 24(a), Art. I of the State Constitution.

32 (2) (a) A licensee may access information that it submits to
 33 the office for inclusion in the database.

34 (b) The office, to the extent permitted by state and
 35 federal law, may enter into information-sharing agreements with
 36 the department, law enforcement agencies, and other governmental
 37 agencies and, in accordance with such agreements, may provide
 38 the department, law enforcement agencies, and other governmental
 39 agencies with access to information contained in the database
 40 for use in detecting and deterring financial crimes. Any
 41 department or agency that receives confidential information from
 42 the office under this paragraph must maintain the
 43 confidentiality of the information, unless, and only to the
 44 extent that, a court order compels production of this
 45 information to a specific party or parties.

46 (3) Subsection (1) is subject to the Open Government Sunset
 47 Review Act in accordance with s. 119.15 and shall stand repealed
 48 on October 2, 2017, unless reviewed and saved from repeal
 49 through reenactment by the Legislature.

50 Section 2. The Legislature finds that it is a public
 51 necessity that information contained in the database of payment
 52 instrument transactions administered by the Office of Financial
 53 Regulation pursuant to s. 560.311, Florida Statutes, be held
 54 confidential and exempt from s. 119.07(1), Florida Statutes, and
 55 s. 24(a), Article I of the State Constitution. The electronic
 56 database provides for the maintenance of payment instrument
 57 transaction information that, pursuant to s. 560.311, Florida
 58 Statutes, money services business licensees are required to

8-01441A-12

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59 submit to the office and is intended to assist the office, the
60 Department of Financial Services, law enforcement agencies, and
61 other governmental agencies in detecting and deterring financial
62 crimes. Licensees that cash a payment instrument exceeding a
63 specified amount, a corporate payment instrument, or a third-
64 party payment instrument must submit information about the
65 transaction to the office for inclusion in the database.
66 Information submitted includes personal identifying information
67 of licensees, sensitive financial information, and other
68 sensitive information such as insurance policy numbers and
69 workers' compensation information that, if not held exempt from
70 public disclosure, could be used to the detriment or
71 disadvantage of a licensee.

72 Section 3. This act shall take effect on the same date that
73 SB __ or similar legislation takes effect, if such legislation
74 is adopted in the same legislative session or an extension
75 thereof and becomes a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 1824

INTRODUCER: Health Regulation Committee and Senator Garcia

SUBJECT: Department of Health

DATE: February 18, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HR	Fav/CS
2.	McKay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates, repeals, and amends a number of sections which affect the Department of Health (DOH or department), some of the significant changes include:

- Revising the legislative purpose of the DOH;
- Renaming and revising many of the divisions within the DOH;
- Eliminating two of the DOH trust funds
 - The Florida Drug, Device, and Cosmetic Trust Fund
 - The Nursing Student Loan Forgiveness Trust Fund;
- Revising the legislative intent behind the public health system;
- Revising the powers and duties of the DOH;
- Granting counties the authority to pass health regulations, with certain restrictions;
- Repealing the Hepatitis A Awareness Program;
- Amending sections relating to HIV and AIDS;
- Amending the DOH’s authority to accredit laboratories under the National Environmental Laboratory Accreditation Program (NELAP);
- Significantly amending portions of law relating to onsite sewage treatment and disposal;
- Fixing fee rates for tattoo establishments;

- Repealing obsolete provisions of the DOH’s pharmacy services program;
- Assigning responsibility to the DOH to publish the Florida Patient’s Bill of Rights and Responsibilities online;
- Revising the Community Hospital Education Act;
- Repealing community health pilot projects;
- Revising requirements for persons selling compressed air for recreational sport diving;
- Amending the statewide tuberculosis control program and requiring a transition plan for the closure of the A.G. Holley State Hospital;
- Transferring the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program from the DOH to the Florida Department of Education;
- Requiring Division of Medical Quality Assurance (MQA) to develop a plan to improve the efficiency of its functions;
- And significantly cleaning up the Florida Statutes related to the DOH by repealing outdated language and obsolete programs, deleting language related to legislative intent, deleting language which establishes unused rulemaking authority, and making conforming changes and amending cross-references.

This bill amends ss. 20.43, 20.435, 215.5602, 381.0016, 381.004, 381.0041, 381.0046, 381.005, 381.0051, 381.0052, 381.0053, 381.0056, 381.0057, 381.00591, 381.00593, 381.0062, 381.0065, 381.0066, 381.0068, 381.00781, 381.0098, 381.0101, 381.0203, 381.0261, 381.0303, 381.0403, 381.0405, 381.0406, 381.06015, 381.4018, 381.7352, 381.7353, 381.7356, 381.765, 381.853, 381.91, 84.25, 392.51, 392.56, 392.61, 392.62, 395.1027, 401.243, 401.245, 401.271, 400.914, 409.256, 456.032, 462.19, 464.208, 633.115, 768.28, 775.0877, 1009.66, and 1009.67 of the Florida Statutes.

The bill repeals ss. 381.0013, 381.0015, 381.0017, 381.00325, 381.0037, 381.00656, 381.0301, 381.0302, 381.04015, 381.045, 381.0605, 381.102, 381.60225, 381.77, 381.795, 381.855, 381.87, 381.895, 381.90, 402.45, 458.346, and 464.0197 of the Florida Statutes.

The bill creates s. 381.00651, F.S., and three unnumbered sections of law.

II. Present Situation:

Department of Health

Prior to 1991, most of Florida’s health and human services programs were administered by a single state agency, the Department of Health and Rehabilitative Services (HRS). From 1991 through 1997, the Legislature subdivided the programmatic functions of HRS, now the Department of Children and Family Services, and created four new agencies to achieve more effective program management.

By 1997, the Department of Children and Family Services, and the four new agencies—the Department of Elder Affairs, Agency for Health Care Administration (AHCA), the Department of Juvenile Justice, and the Department of Health¹—were responsible for administering the majority of Florida’s health and human services programs.

¹ Chapter 96-403, L.O.F.

The DOH is established pursuant to section 20.43, Florida Statutes. Since being established in 1996, the DOH's mission has persistently grown and diversified. Currently, the DOH's 13 statutory mission statements comprise the following:²

- Prevent the occurrence and progression of communicable and non-communicable diseases and disabilities.
- Maintain a constant surveillance of disease occurrence and accumulate health statistics to establish disease trends and design health programs.
- Conduct special studies of the causes of diseases and formulate preventive strategies.
- Promote the maintenance and improvement of the environment as it affects public health.
- Promote the maintenance and improvement of health in the residents of the state.
- Provide leadership, in cooperation with the public and private sectors, to establish statewide and community public health delivery systems.
- Provide health care and early intervention services to infants, toddlers, children, adolescents, and high-risk perinatal patients who are at risk for disabling conditions or have chronic illnesses.
- Provide services to abused and neglected children through child protection teams and sexual abuse treatment programs.
- Develop working associations with all agencies and organizations involved and interested in health and health care delivery.
- Analyze trends in the evolution of health systems, and identify and promote the use of innovative, cost-effective health delivery systems.
- Serve as the statewide repository of all aggregate data accumulated by state agencies related to health care; analyze that data and issue periodic reports and policy statements, as appropriate; require that all aggregated data be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; provide technical assistance as required; and work cooperatively with the state's higher education programs to promote further study and analysis of health care systems and health care outcomes.
- Include in the department's strategic plan developed under section 186.021, Florida Statutes, an assessment of current health programs, systems, and costs; projections of future problems and opportunities; and recommended changes that are needed in the health care system to improve the public health.
- Regulate health practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public.

Generally, the State Surgeon General has statutory authority to be the leading voice on wellness and disease prevention efforts through specified means; advocate on health lifestyles; develop public health policy; and build collaborative partnerships with other entities to promote health literacy.³

The DOH has 11 statutory divisions: Administration, Environmental Health, Disease Control, Family Health Services, Children's Medical Services Network, Emergency Medical Operations, Medical Quality Assurance, Children's Medical Services Prevention and Intervention,

² Section 20.43(1), F.S.

³ Section 20.43(2), F.S.

Information Technology, Health Access and Tobacco, and Disability Determinations.⁴ The DOH operates numerous programs, provides administrative support for 29 statutory health care boards and commissions, contracts with thousands of vendors, oversees 67 county health departments, and performs a variety of regulatory functions.

The DOH is authorized to use state and federal funds to protect and improve the public health by administering health education campaigns; providing health promotional items such as shirts, hats, sports items, and calendars; planning and conducting promotional campaigns to recruit health professionals to work for the DOH or participants for the DOH programs; or providing incentives to encourage health lifestyles and disease prevention behaviors.⁵

When the DOH was created in 1996, it received a total appropriation of \$1.4 billion, including \$384 million in general revenue funds, and had approximately 14,000 full-time equivalents (FTE) positions. “In Fiscal Year 2011-2012, the DOH received more than \$377 million in general revenue fund and is authorized to spend a total of \$2.8 billion.” Fiscal Year 2011-2012, the General Appropriations Act funded 17,107.5 FTE.⁶

In 2010⁷, the Legislature transferred the drug, device, and cosmetic (DDC) program to the Department of Business and Professional Regulation.⁸ DDC regulates oversight of the manufacture and distribution of drugs, devices, cosmetics, either within or into Florida, pursuant to part I of chapter 499, Florida Statutes.

In 2010⁹, the Legislature directed the DOH to conduct a comprehensive evaluation and justification review of each division and submit a report to the Legislature by March 1, 2011. The review was to be comprehensive in scope and, at a minimum, be conducted in a manner that:

- Identified the costs of each division and programs within the division;
- Specified the purpose of each division and programs;
- Specified the public health benefit derived from each program;
- Identified the progress toward achieving the outputs and outcomes associated with each division and program;
- Explained the circumstances for the ability to achieve, not achieve, or exceed projected outputs and outcomes for each program;
- Provided alternate course of action to administer the same program in a more efficient or effective manner. The course of action must include:
 - A determination on whether the DOH could be organized in a more efficient and effective manner to include a recommendation for reductions and restructuring;

⁴ Section 20.43(3), F.S.

⁵ Section 20.43(7), F.S.

⁶ This number includes County Health Department staff.

⁷ Chapter 2010-161, L.O.F.

⁸ Among many other provisions, chapter 499 provides for: criminal prohibitions against the distribution of contraband and adulterated prescription drugs; regulation of the advertising and labeling of drugs, devices, and cosmetics; establishment of permits for manufacturing and distributing drugs, devices, and cosmetics; regulation of the wholesale distribution of prescription drugs, which includes pedigree papers; regulation of the provision of drug samples; establishment of the Cancer Drug Donation Program; establishment of numerous enforcement avenues for DOH, including seizure and condemnation of drugs, devices, and cosmetics.

⁹ Chapter 2010-161, L.O.F.

- Whether the goals, mission, or objectives of the DOH, divisions, or programs be redefined to avoid duplication, maximize the return on investment, or performed more efficiently or more effectively by another unit of government or private entity;
- A determination of whether the cost to administer exceeds the revenues collected.

Starting Fiscal Year 2010-2011, the DOH was precluded from initiating or commencing any new programs without express authorization from the Legislative Budget Commission. Also, before applying for any continuation or new federal or private grant in an amount of \$50,000 or greater, the DOH is required to provide written notification to the Governor and Legislature.¹⁰ The notification must include detailed information about the purpose of the grant, the intended use of the funds, and the number of full-time permanent or temporary employees needed to administer the program funded by the grant.

On March 1, 2011, the DOH submitted the report titled, “Florida Department of Health Evaluation and Justification Review: Report on Findings & Recommendations.” The report contained recommendations in the following areas:

- Transfer programs or activities to another state government agency,
- Outsource the program or activity and maintain contractual oversight ;
- Privatize the program or activity with no contractual oversight; and
- Eliminate the program or activity.

EMTs and Paramedics

Section 20.43, F.S., provides a detailed list of all the boards and professions that are established under and the responsibility of MQA. Currently, EMTs and Paramedics are not included in the list of professions governed by MQA under s. 20.43, F.S.

James and Esther King Biomedical Research Program, Annual Progress Report

The Biomedical Research Advisory Council currently provides this annual report on the state of biomedical research in the state to FLCURED, the Governor, the State Surgeon General, the President of the Senate, and the Speaker of the House of Representatives by February 1. Per statute, FLCURED currently receives up to \$250,000 for operating costs from funds appropriated to accomplish the goals of this section.

Eminent Domain

“Eminent domain” may be described as the fundamental power of the sovereign to take private property for a public use without the owner's consent. The power of eminent domain is absolute, except as limited by the Federal and State Constitutions, and all private property is subject to the superior power of the government to take private property by eminent domain.

The U.S. Constitution places two general constraints on the use of eminent domain: The taking must be for a “public use” and government must pay the owner “just compensation” for the taken

¹⁰ Chapter 2010-161, L.O.F.

property.¹¹ Even though the U.S. Constitution requires private property to be taken for a “public use”, the U.S. Supreme Court long ago rejected any requirement that condemned property be put into use for the general public. Instead, the Court embraced what the Court characterizes as a broader and more natural interpretation of public use as “public purpose”.

The Florida Constitution prohibits takings of private property unless the taking is for a “public purpose” and the property owner is paid “full compensation.” The Florida Supreme Court recognized long ago that the taking of private property is one of the most harsh proceedings known to the law, that “private ownership and possession of property was one of the great rights preserved in our constitution and for which our forefathers fought and died; it must be jealously preserved within the reasonable limits prescribed pursuant to ch. 73, F.S.”¹² Currently, the DOH does not exercise the power of eminent domain.

Regulations Superseded

Section 381.0014, F.S., provides that the rules adopted concerning public health by the DOH supersede all rules enacted by other state departments, boards or commissions, or ordinances and regulations enacted by municipalities, except that this chapter does not alter or supersede any of the provisions set forth in chapter 502, F.S. Chapter 502, F.S., regulates milk, milk products, and frozen desserts. According to the DOH, it is unknown how this section of law is used.¹³

Presumptions

Section 381.0015, F.S., provides that the authority, action, and proceedings of the department in enforcing the rules adopted by it under the provisions of Ch. 381, F.S., shall be regarded as judicial in nature and treated as prima facie just and legal.

Ordinances and regulations

In 1955,¹⁴ the Legislature enacted a provision permitting any municipality to enact, in a manner prescribed by law, health regulations and ordinances not inconsistent with state public health laws and rules adopted by the department.

Real Property

Section 381.0017, F.S., provides the DOH the authority to purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state, for the use and benefit of the DOH when the acquisition is necessary to the efficient accomplishment of public health. According to the DOH, this section is obsolete: the DOH does not take deeds to buildings, and all lands reside with the Department of Environmental Protection.

¹¹ U.S. Const. amend. V.

¹² *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).

Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale, 315 So.2d 451 (Fla. 1975).

¹³ Email correspondence with DOH staff January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

¹⁴ Chapter 29834, L.O.F.

Hepatitis A Awareness Program

Currently, the DOH has a hepatitis A (infectious hepatitis) awareness program to educate the public regarding the availability of hepatitis A vaccine and testing under the DOH's Hepatitis Prevention Program (HPP), which provides hepatitis A, hepatitis B, and hepatitis C services.

Currently, there are two separate statutory provisions that grant the DOH similar authority. Section 381.00325, F.S., requires the DOH to develop a Hepatitis A Awareness Program. The purpose of the program is to provide education and information to the public regarding the availability of the Hepatitis A vaccine. Section 381.0011(7), F.S., requires the DOH to provide information to the public regarding the prevention, control, and cure of diseases and illnesses. Under this authority, the Division of Disease Control, within the DOH, currently maintains a Hepatitis Awareness Program web page that provides necessary information regarding vaccines and educational tools for Hepatitis A, B and C.

HIV and AIDS Prevention

Currently, the DOH operates a comprehensive program for prevention and control of HIV/AIDS which includes education programs.

Currently, the statewide AIDS minority coordinator reports directly to the Bureau Chief of HIV/AIDS, within the Division of Disease Control. These coordinators facilitate statewide efforts to implement and coordinate HIV and AIDS prevention and treatment programs.

Primary and Preventive Health Services

Section 381.005(2), F.S., was enacted in 1991.¹⁵ It directs hospitals licensed by AHCA pursuant to ch 395, F.S., to implement a program to offer an immunization program against influenza and pneumococcal bacteria to patients over 65.¹⁶ According to AHCA, they have no authority to enforce this requirement.¹⁷

Family Planning

The DOH currently makes available to citizens of the state of childbearing age comprehensive medical knowledge, assistance, and services relating to the planning of families and maternal health care.

Dental Health and Comprehensive Nutrition Program, Rulemaking

The DOH has not established any rules under either section of law. Eligibility for dental services and comprehensive nutrition program services is established under primary care rules in ch. 64F-10, F.A.C., and ch. 64F-16, F.A.C.

¹⁵ Chapter. 91-297, s. 18, L.O.F.

¹⁶ Section 381.005(2), F.S.

¹⁷ Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

School Health Services Program

Section 381.0056, F.S., authorizes the School Health Services Act. The act, in s. 381.0056(11), F.S., specifies that school health programs that are funded by health care districts or health care entity must be supplementary and consistent with the requirements of the act.

Currently, each county health department, in cooperation with its local school district, develops a school health plan, submitted every 2 years to the DOH for review and approval.

Environmental Health Laboratories

Section 381.00591, F.S., states that the DOH may apply for and become a National Environmental Laboratory Accreditation Program accrediting authority. The DOH, as an accrediting entity, may adopt rules to implement standards of the National Environmental Laboratory Accreditation Program, including requirements for proficiency testing providers to include rules pertaining to fees, application procedures, standards applicable to environmental or public water supply laboratories, and compliance.

Public School Volunteer Health Care Practitioner Program

The DOH has not established any rules under this subsection. County health departments currently have the ability, pursuant to ch. 110, F.S., to utilize volunteers to support the provision of county health department services, such as developmental, vision, and hearing screenings, in local schools. Chapter 110, F.S., provides all the benefits of state employees, including sovereign immunity, travel reimbursement, etc., to county health department volunteers.

The Department of Health's Regulation of Septic Tanks

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is administration of septic systems.¹⁸

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.¹⁹

¹⁸ See s. 381.006, F.S.

¹⁹ Section 381.0065(2)(j), F.S.

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.²⁰ The DOH's Bureau of Onsite Sewage (bureau) develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic system contractors, funds a hands-on training center, and mediates septic system contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.²¹

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.²² This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (report).²³ According to the report, three Florida counties, Charlotte, Escambia, and Santa Rosa, have implemented mandatory septic tank inspections at a cost of \$83.93 to \$215 per inspection.

The report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and may be under-designed by today's standards. The DOH's statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic system in Florida.²⁴ Because repairs of septic systems were not regulated or permitted by the DOH until March 1992, some septic systems may have been unlawfully repaired, modified, or replaced. Furthermore, 1.3 million septic systems were installed prior to 1983. Pre-1983 septic systems were required to have a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The standard since 1983 for drainfield separation is 24 inches and is based on the 1982 Water Quality Assurance Act and on research findings compiled by the DOH that indicate for septic tank effluent, the presence of at least 24 inches of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for pathogens and most other septic system effluent constituents.²⁵ Therefore, Florida's pre-1983 septic systems and any

²⁰ Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, <http://www.myfloridaeh.com/ostds/index.html> (last visited January 29, 2012).

²¹ Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (last visited January 29, 2012).

²² See ch. 2008-152, Laws of Fla.

²³ Florida Dep't of Health, Bureau of Onsite Sewage, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at <http://www.doh.state.fl.us/environment/ostds/pdfs/forms/MSIP.pdf> (last visited January 29, 2012).

²⁴ Florida Dep't of Health, Bureau of Onsite Sewage, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at <http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf> (last visited January 29, 2012). See also Florida Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at <http://www.doh.state.fl.us/environment/ostds/New.htm> (last visited on January 29, 2012).

²⁵ Florida Dep't of Health, Bureau of Onsite Sewage, *Bureau of Onsite Sewage Programs Introduction*, available at <http://www.doh.state.fl.us/Environment/learning/hses-intro-transcript.htm> (last visited January 29, 2012).

illegally repaired, modified, or installed septic systems may not provide the same level of protection expected from systems permitted and installed under current construction standards.²⁶

Flow and Septic System Design Determinations

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed additions.²⁷ Depending on the estimated sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.²⁸

Minimum required treatment capacities for septic systems serving any structure, building, or group of buildings are based on estimated daily sewage flows as determined below.²⁹

TABLE OF AEROBIC SYSTEMS PLANT SIZING RESIDENTIAL		
Number of Bedrooms	Building Area (ft²)	Minimum Required Treatment Capacity (gallons per day)
1 or 2	Up to 1200	400
3	1201-2250	500
4	2251-3300	600

Minimum design flows for septic systems serving any structure, building, or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single- or multiple-family dwelling unit, the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for two bedrooms with 751-1,200 square feet, 200 gallons; for three bedrooms with 1,201-2,250 square feet, 300 gallons; and for four bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing is to be increased by 100 gallons.³⁰

Current Status of Evaluation Program

In 2010, SB 550 was signed into law, which became ch. 2010-205, Laws of Florida. This law provides for additional legislative intent on the importance of properly managing septic tanks and creates a septic system evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.³¹ The evaluation program:

- Requires all septic tanks to be evaluated for functionality at least once every 5 years;

²⁶ *Id.*

²⁷ Rule 64E-6.001, F.A.C.

²⁸ *Id.*

²⁹ Table adapted from Rule 64E-6.012, F.A.C.

³⁰ Rule 64E-6.008, F.A.C.

³¹ However, implementation was delayed until July 1, 2011, by the Legislature’s enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

- Directs the DOH to provide proper notice to septic owners that their evaluations are due;
- Ensures proper separations from the wettest-season water table; and
- Specifies the professional qualifications necessary to carry out an evaluation.

The law also establishes a grant program under s. 381.00656, F.S., for owners of septic systems earning less than or equal to 133 percent of the federal poverty level. The grant program is to provide funding for inspections, pump-outs, repairs, or replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grants.

Finally, ch. 2010-205, Laws of Florida, amends s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH may collect. No more than \$5 of each evaluation fee may be used to fund the grant program. The State Surgeon General, in consultation with the Revenue Estimating Conference, must determine a revenue neutral evaluation fee.

Several bills were introduced during the 2011 Regular Session aimed at either eliminating the inspection program or scaling it back. Although none passed, language was inserted into a budget implementing bill that prohibited the DOH from expending funds to implement the inspection program until it submitted a plan to the Legislative Budget Commission (LBC).³² If approved, the DOH would then be able to expend funds to begin implementation. Currently, the DOH has not submitted a plan to the LBC for approval.

Springs in Florida

Florida has more than 700 recognized springs. It also has 33 historical first magnitude springs in 19 counties that discharge more than 64 million gallons of water per day.³³ First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry. Springs are historically low nitrogen systems. The DEP recently submitted numeric nutrient standards to the Legislature for ratification that include a nitrate-nitrite (variants of nitrogen) limit of 0.35 milligrams per liter for springs. For comparison, the U.S. Environmental Protection Agency's drinking water standard for nitrite is 1.0 milligrams per liter; for nitrate, 10 milligrams per liter.³⁴

Local Government Powers and Legislative Preemption

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.³⁵ Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the

³² See ch. 2011-047, s. 13, Laws of Fla.

³³ Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Dec. 19, 2011).

³⁴ U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations*, available at <http://water.epa.gov/drink/contaminants/upload/mcl-2.pdf> (last visited January 29, 2012).

³⁵ FLA. CONST. art. VIII, s. 1(f).

vote of the electors.³⁶ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³⁷ Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.³⁸ Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.³⁹ A county or municipality cannot forbid what legislature has expressly licensed, authorized, or required, nor may it authorize what legislature has expressly forbidden.⁴⁰ The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.⁴¹

Fees for Tattoo Profession

In 2010⁴², the Legislature began regulation of tattoo artists and tattoo establishments. As part of the created regulatory scheme, fees were authorized to support the cost of regulation. Section 381.00781(2), F.S., allowed the DOH to annually adjust the maximum fees authorized according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the United States Department of Labor.

Environmental Health Professionals

Section 381.0101, F.S., provides for the regulation for environmental health professions to include definitions of certified and environmental health profession. The definition of "certified" is a person who has displayed competency to perform evaluations of environmental or sanitary conditions through examination. The definition of "environmental health professional" is a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. Environmental health professionals may be either field, supervisory, or administrative staff members.⁴³

Section 381.0101(3), F.S., provides that no person shall perform environmental health or sanitary evaluations in any primary program area of environmental health without being certified by the department as competent to perform such evaluations.

³⁶ FLA. CONST. art. VIII, s. 1(g).

³⁷ FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.

³⁸ *See, e.g., City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

³⁹ *Id.*

⁴⁰ *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

⁴¹ *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

⁴² Chapter 2010-220, L.O.F.

⁴³ Section 381.0101(2)(d), F.S.

Statewide Pharmacy

Section 381.0203, F.S., authorizes the DOH to contract on a statewide basis for the purchase of drugs, to be used by state agencies and CHDs. The DOH is directed to establish and maintain:⁴⁴

- A central pharmacy to support pharmaceutical services provided by the CHDs, including pharmaceutical repackaging, dispensing, and the purchase and distribution of immunizations and other pharmaceuticals.
- Regulation of drugs, cosmetics, and household products pursuant to ch. 499.⁴⁵
- Consultation to CHDs.

Moreover, this section also establishes eligibility for a contraception distribution program to be operated through the licensed pharmacies of CHDs. According to the DOH, the contraception distribution program has never been implemented because funding has never been appropriated.

Section 381.0051, F.S., creates the comprehensive family planning act that requires the DOH to provide women medically recognized methods of contraception. Under s. 154.01(2)(c), F.S., the CHDs are required to provide primary care services, which includes family planning. As noted above, the statewide pharmacy is required to support pharmaceutical services provided by the CHDs, which would include contraceptives.

Patient's Bill of Rights

Section 381.0261, F.S., creates the Patient's Bill of Rights. Currently, AHCA is directed to print and make continuously available to health care facilities licensed under chapter 395, physicians licensed under chapter 458, osteopathic physicians licensed under chapter 459, and podiatric physicians licensed under chapter 461 a summary of the Florida Patient's Bill of Rights and Responsibilities. In adopting and making available to patients the summary of the Florida Patient's Bill of Rights and Responsibilities, health care providers and health care facilities are not limited to the format in which AHCA prints and distributes the summary.

According to AHCA, the Patient's Bill of Rights may be accessed on their website. AHCA does not print or distribute this document.⁴⁶

The Florida Health Services Corps

This section of law was enacted in 1992,⁴⁷ and is modeled on the National Health Services Corps,⁴⁸ offering loan repayment and scholarships for health professionals in return for service in

⁴⁴ Section 381.0203(2), F.S.

⁴⁵ Effective October 1, 2011, the regulatory authority over, ch. 499, F.S., The Florida Drug and Cosmetic Act, was transferred to the Department of Business and Professional Regulation from the DOH. *See* s. 27, ch. 2010-161, L.O.F..

⁴⁶ Email correspondence with AHCA staff, January 21, 2012, on file with the House Health & Human Services Quality Subcommittee staff.

⁴⁷ Chapter 92-33, s. 111, L.O.F.

⁴⁸ *See*, <http://nhsc.hrsa.gov/> (site last visited February 2, 2012).

public health care programs or underserved areas. This program has not been funded since 1996.⁴⁹

Office of Women's Health Strategy

In 2004⁵⁰, the Legislature created the Office of Women's Health Strategy.⁵¹ The strategy is administered by a Women's Health Officer and is intended to focus on the unique health care needs of women. The Officer of Women's Health Strategy is tasked with:⁵²

- Ensuring state policies and programs are responsive to sex and gender differences and women's health needs;
- Organizing an interagency Committee for Women's Health with the DOH, AHCA, the Department of Education, the Department of Elderly Affairs, the Department of Corrections, the Office of Insurance Regulation, and the Department of Juvenile Justice in order to integrate women's health into current state programs;
- Collecting and reviewing health data and trends to assess the health status of women;
- Reviewing the state's insurance code as it relates to women's health issues;
- Working with medical school curriculum committees to integrate women's health issues into course requirements and promote clinical practice guidelines;
- Organizing statewide Women's Health Month activities;
- Coordinating a Governor's statewide conference on women's health;
- Promoting research, treatment, and collaboration on women's health issues at universities and medical centers in the state;
- Promoting employer incentives for wellness programs targeting women's health programs;
- Serving as the primary state resource for women's health information;
- Developing a statewide women's health plan emphasizing collaborative approaches to meeting the health needs of women;
- Promoting clinical practice guidelines specific to women;
- Serving as the state's liaison with other states and federal agencies and programs to develop best practices in women's health;
- Developing a statewide, web-based clearinghouse on women's health issues and resources; and
- Promoting public awareness campaigns and education on the health needs of women.

The Women's Health Officer provides an annual report to the Governor and presiding officers of the Legislature that includes recommended policy changes for implementing the strategy.⁵³ According to the National Conference on State Legislatures, at least 18 states have created either offices or commissions dedicated to women's health, while three states—Florida, Illinois and Maine—have designated a women's health officer or coordinator.⁵⁴

⁴⁹ Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

⁵⁰ Chapter 2004-350, LO.F.

⁵¹ Section 381.04015, F.S.

⁵² Section 381.04015(4), F.S.

⁵³ Section 381.04015(2)(p), F.S.

⁵⁴ "Laws and Initiatives on Women's Health," National Conference of State Legislatures, *available at*: <http://www.ncsl.org/default.aspx?tabid=14377> (last viewed on March 17, 2010).

Hepatitis B or HIV Carriers

Section 381.045, F.S., authorizes the DOH to establish procedures to handle, counsel, and provide other services to health care professionals licensed or certified under chapter 401, chapter 467, part IV of chapter 468, and chapter 483 who are infected with hepatitis B or the human immunodeficiency virus.

AHCA Survey of State Hospital Facilities

Section 381.0605, F.S., designates AHCA as the sole agency of the state to carry out the purposes and administration of the Federal Hospital and Medical Facilities Amendments (Hill-Burton Act) of 1964.⁵⁵ Section 381.0605, F.S., also authorizes the Governor to provide for carrying out such purposes in accordance with the standards prescribed by the Surgeon General of the United States. According to AHCA, the current certificate of need program meets this requirement, although the federal funds to support this program have long since stopped.⁵⁶

Community Health Pilot

This section of law was enacted in 1999⁵⁷ to develop community health pilot projects in rural and urban low-income areas. Specifically, this section of law created pilot projects in:

- Pinellas County, for the Greenwood Health Center in Clearwater;
- Escambia County, for the low income communities in the Palafox Redevelopment Area;
- In Hillsborough, Pasco, Pinellas, and Manatee Counties, for the Urban League of Pinellas County;
- In Palm Beach County, for the low income communities within the City of Riveria;
- In the City of St. Petersburg, for the low-income communities within the Challenge 2001 Area; and
- Broward County, for the communities surrounding Miles Health Center in Ft. Lauderdale.

The department is authorized, to the extent that is possible, to assist pilot projects to enhance synergies and reduce duplication of efforts.⁵⁸ The pilot programs do not exist: the DOH states that they were unable to find any information on these two provisions, and the Division of Family Health Services did not implement the pilot programs.⁵⁹

AHCA Background Screening

Section 381.60225, F.S., was created by chapter 98-171, L.O.F., to provide the following background screening requirements for licensure by AHCA:

- AHCA must require background screening of the managing employee, agency, or entity;

⁵⁵ 42 U.S.C. 29 – Sec. 291

⁵⁶ Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

⁵⁷ Chapter. 99-356, ss. 11-12, L.O.F.

⁵⁸ Section 381.103, F.S.

⁵⁹ Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

- The applicant must comply with the procedures for level 2 background screening;
- AHCA may require background screening of any individual who is an applicant if they have probable cause to believe the applicant has been convicted of a crime and/or committed any other crime prohibited under the level 2 standards for screening;
- Each applicant must submit with its application to AHCA a description of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs;
- Each applicant must submit with its application to AHCA a description of any conviction of an offense prohibited under the level 2 standards by a member of the boards of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant; and
- Any organization, agency, or entity that has been found guilty of any offense prohibited under the level 2 standards for screening may not be certified by AHCA.

Nursing Home Residents, 55 and Younger, Survey

The Brain and Spinal Cord Injury Program administers a statewide coordinated system of care to serve persons who have sustained moderate-to-severe traumatic brain and/or spinal cord injuries.⁶⁰

In 1976⁶¹, the Legislature required the DOH to conduct annual surveys of nursing homes in the state to determine the number of persons 55 years of age and under who reside in such homes due to brain or spinal cord injuries and were evaluated to determine if they would benefit from rehabilitation program.⁶² At that time, persons who had sustained a brain or spinal cord injury were sent to nursing homes from acute care settings.

Today, individuals who are injured are referred to the Brain and Spinal Cord Injury Program Central Registry. If a person is placed in a nursing home they are provided services for 1 year to determine if they will improve and are a candidate for community reintegration and may receive services through the Nursing Home Transition Initiative and the TBI/SCI Home and Community-Based Medicaid Waiver. The DOH states there is no funding allocated to conduct the survey and recommends repealing the program.

Long-term Community-based Supports

Section 381.795, F.S., authorizes the DOH to establish, contingent upon specific appropriations, a program of long-term community-based supports and services for individuals who have sustained traumatic brain or spinal cord injuries and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries. Currently, eligible individuals who have sustained a brain or spinal cord injury receive services through the Home and Community-based Medicaid Waiver.

According to the DOH, no specific appropriation has ever been appropriated to implement this program. The DOH recommends repeal.⁶³

⁶⁰ Section 381.76, F.S.

⁶¹ Chapter 76-201, L.O.F.

⁶² Section 381.77, F.S.

⁶³ Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee

Florida Center to Eradicate Disease

The Florida Center for Universal Research to Eradicate Disease (FLCURED) was created by the 2004 Legislature. The legislation followed a Senate Interim Report that found a need for improved coordination, information sharing and reduced duplication within Florida's medical research enterprise. To accomplish these goals, FLCURED holds an annual biomedical research summit, hosts this website, and produces an annual report. FLCURED is operated within the Florida State University College of Medicine and is sponsored by the department. FLCURED has a 16 member Advisory Council that guides FLCURED's activities and recommends policies regarding biomedical research to the legislature.

Osteoporosis Prevention and Education Program

This section of law was enacted in 1996,⁶⁴ and directs the department to establish, promote and maintain an osteoporosis education and prevention program in the state. The program has not been funded since Fiscal Year 2008-2009. The DOH recommends repeal.⁶⁵

Standards for Compressed Air

In 1999, section 381.895, F.S., was enacted and requires the DOH to establish by rule the maximum allowable levels for contaminants in compressed air used for recreational sport diving.⁶⁶ These standards must take into consideration the levels of contaminants allowed by the Grade "E" Recreational Diving Standards of the Compressed Gas Association.⁶⁷

Moreover, section 381.895(3), F.S., requires any compressed air provider receiving compensation for providing compressed air for recreational sport diving to have the air tested quarterly by specified accredited laboratories.⁶⁸ In addition, the compressed air provider must provide the DOH a copy of the quarterly test result and the DOH is required to maintain a record of all results.⁶⁹ The compressed air provider must post a certificate certifying that the compressed air meets the standards for contaminate levels.⁷⁰ The certificate must be posted in a conspicuous location where it can readily be seen by any person purchasing air.⁷¹ It is a second degree misdemeanor⁷² if:

- A compressed air provider does not receive a valid certificate that certifies that the compressed air meets the standards for contaminate levels established by the DOH; and

staff.

⁶⁴ Chapter 96-282, s. 1, L.O.F.

⁶⁵ Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

⁶⁶ This includes any compressed air that may be provided as part of a dive package of equipment rental, or dive boat charter.

⁶⁷ Section 381.895(1), F.S.

⁶⁸ The laboratory must be accredited by either the American Industrial Hygiene Association or the American Association for Laboratory Accreditation

⁶⁹ Section 381.895(3),(4), F.S.

⁷⁰ Section 381.895(3), F.S.

⁷¹ *Id.*

⁷² A person who has been convicted of a second degree misdemeanor may be sentenced for a definite term of imprisonment not exceeding 60 days and a fine of up to \$500. *See* ss. 775.082(4) and 775.083(1), F.S.

- The certificate is not posted in a conspicuous location.⁷³

The following entities are exempt from these requirements:

- Individuals who provide compressed air for their own use;
- Any governmental entity that owns its own compressed air source, which is used for work related to the governmental entity; or
- Any foreign registered vessel that uses a compressor to compress air for its own work-related purposes.⁷⁴

Since enactment, the provision has been amended once to delete the January 1, 2000, implementation date.⁷⁵ Florida is the only state that has a law governing the regulation of compressed air standards in recreational diving.⁷⁶

Currently, the DOH maintains a database that contains 13 years of test results from approximately 250 compressed air providers located throughout the state.⁷⁷ According to the DOH, since 1999 none of the submitted reports⁷⁸ show any evidence of contamination.⁷⁹ Additionally, there have been no reports of injury, illness, or death associated with contaminated compressed air.⁸⁰

The DOH recommended repeal of section 381.895, F.S., in its 2008 legislative package. When the provision was enacted, the DOH did not receive an appropriation to support the database, enforcement, or rule promulgation.

The dive industry considers itself a self-regulating body⁸¹ and has mechanisms in place to ensure customers have quality compressed air.⁸² According to professional organizations in the field, repealing this provision in Florida will not have an impact on current business practices. Currently, dive shops are required to monitor air quality to maintain certification or membership in worldwide recreational dive associations. Consumers will still be required to have their tanks inspected by dive shops or instructors, as this is an industry-mandated requirement.⁸³

⁷³ Section 381.895(5), F.S.

⁷⁴ Section 381.895(2), F.S.

⁷⁵ Chapter 2002-1, L.O.F.

⁷⁶ Westlaw search for state statutory provisions requiring compressed air standards for recreational diving.

⁷⁷ Per email correspondence with DOH staff on file with the Health & Human Services Access Subcommittee staff (October 21, 2011).

⁷⁸ As of November 3, 2011, the DOH has received approximately a total of 3,395 reports.

⁷⁹ Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011).

⁸⁰ *Id.*

⁸¹ “PADI has worked very hard over the years to keep the scuba diving industry as free from legislation as possible.” See Professional Association of Diving Instructors, History of PADI, available at: <http://www.padi.com/scuba/about-padi/PADI-history/default.aspx> (last viewed October 21, 2011).

⁸² Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011); telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).

⁸³ Per telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).

There are three major organizations that engage in recreational diving training and certification: Professional Association of Diving Instructors (PADI), National Association of Underwater Instructors (NAUI), and Scuba Schools International (SSI).⁸⁴ According to NAUI, these three organizations represent 90 percent of the recreational diving market for training certification and professional association memberships worldwide. Many recreational dive operations hold certifications and/or memberships with all three organizations. This practice tends to make them more marketable to consumers who are seeking certain types of dive certifications.⁸⁵

According to the Professional Association of Diving Instructors (PADI)⁸⁶, members of their organization are required to constantly maintain Compressed Gas Association, Grade “E” Recreational Diving Compressed Air Standards. If a member does not meet these standards their membership is revoked. PADI posts a list of all expelled members online.⁸⁷ According to PADI, many dive operations are starting to utilize constant air quality monitoring devices, which self-monitor compressed air quality and just need to be calibrated every 90 days.⁸⁸

The National Association of Underwater Instructors (NAUI)⁸⁹, requires certified businesses to provide medical grade compressed air, which NAUI considers a community standard. Dive operations that receive certification from NAUI are required to have their air checked and tested by an accredited nationally recognized lab every 2 years and the test results must be posted and available for consumers to view. According to NAUI, they have sales representatives that interact with dive shop owners multiple times a year. When NAUI salesmen are on site they are required to check compliance with NAUI policies. If a dive operator is not in compliance it will lose their NAUI certification. NAUI posts a list of all suspended and revoked certifications online.⁹⁰

Health Information Systems Council

The Florida Health Information Systems Council (Council) was created in the Department of Health by the Information Resource Management Reform Act of 1997.⁹¹ The purpose of the Council is to coordinate, and provide for, the identification, collection, standardization, and sharing of health-related data among federal, state, local, and private entities.⁹² Members of the Council include:

- The State Surgeon General;
- The Executive Director of the Department of Veterans’ Affairs;
- The Secretary of Children and Family Services;
- The Secretary of Health Care Administration;

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ PADI represents approximately 125 dive operations located throughout Florida.

⁸⁷ Professional Association of Diving Instructors, Quality Management: Consumer Alerts, *available at*: <http://www.padi.com/scuba/about-padi/quality-management/consumer-alerts/default.aspx> (last viewed October 21, 2011).

⁸⁸ Per email correspondence with Professional Association of Diving Instructors staff on file with Health & Human Services Access Subcommittee staff (October 21, 2011).

⁸⁹ NAUI represents approximately 120 dive operations located throughout Florida.

⁹⁰ National Association of Underwater Instructors Worldwide, Quality and Ethics: Revoked and Suspended Memberships, *available at*: http://www.naui.org/quality_assurance.aspx (last viewed October 21, 2011).

⁹¹ Chapter 97-286, L.O.F.

⁹² Section 381.90(2), F.S.

- The Secretary of Corrections;
- The Attorney General;
- The Executive Director of the Corrections Medical Authority;
- One member representing a small CHD and one member representing a large CHD, both appointed by the Governor;
- A representative from the Florida Association of Counties;
- The Chief Financial Officer;
- A representative from the Florida Health Kids Corporation;
- A representative from a school of public health chosen by the Commissioner of Education;
- The Commissioner of Education;
- The Secretary of Elder Affairs; and
- The Secretary of Juvenile Justice.

Representatives from the federal government may also serve on the Council, but do not have voting rights.⁹³ The Council is required to meet at least quarterly, but may also meet at the call of its chair, at the request of a majority of the membership, or at the request of a department.⁹⁴

According to the DOH, the Council has continued to meet as required, but takes no official action.⁹⁵ The last meeting of the Council at which any official action was taken occurred on October 22, 2003.⁹⁶ At that meeting, the Council adopted revisions to its Strategic Plan for FY 2004-05 through 2008-09.⁹⁷ However, none of the recommendations contained in the Plan have been implemented over the last 8 years. Lastly, the Council has not received any recent funding, nor have any appointments to the Council been made in the last 2 years.⁹⁸

Arthritis Prevention and Education

The department has a cooperative agreement with the Centers for Disease Control and Prevention (CDC) for a project titled Implementation of Arthritis Evidence-Based Self-Management and Physical Activity, commonly referred to as the “Arthritis Program”.

The program serves the purpose outlined in s. 385.210, including creating a statewide program to evaluate surveillance data, increase public and provider awareness about the impact of arthritis on the state, and facilitate evidence-based programs to prevent, reduce, and manage the impact of arthritis on an individual. The cooperative agreement ends June 29, 2012. The program has worked with several large partners, including the Department of Elderly Affairs, Health

⁹³ Section 381.90(3), F.S.

⁹⁴ Section 381.90(5), F.S.

⁹⁵ Telephone conference between Department of Health legislative affairs staff and Health and Human Services Quality Subcommittee staff.

⁹⁶ Florida Department of Health, Florida Health Information Systems Council, *Meeting Minutes, October 22, 2003*, available at <http://www.doh.state.fl.us/floridahisc/Meetings/102203mts.html> (last viewed on January 21, 2012).

⁹⁷ Department of Health, Florida Health Information Systems Council, *Strategic Plan-Fiscal Years 2004-05 through 2008-09*, May 15, 2003 (revised October 22, 2003), available at http://www.doh.state.fl.us/floridahisc/Plan/FHISCSP_2003_approved_revision_10_22_2003.pdf (last viewed January 22, 2012).

⁹⁸ Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

Foundation of South Florida, the Veterans Administration, and Florida Hospital to establish self-sustaining chronic disease self management programs, at the community level, which help prevent the onset of or complications due to chronic diseases. According to the DOH, these programs have been structured to be sustainable after the grant funding ends.⁹⁹

A.G. Holley State Hospital

According to the United States Census Bureau, there are approximately four active tuberculosis hospitals in the United States.¹⁰⁰ Florida operates one of these tuberculosis hospitals, known as the A.G. Holley State Hospital. A.G. Holley was opened in 1950 as the Southeast Tuberculosis Hospital, the second of four state tuberculosis hospitals built in Florida between 1938 and 1952.¹⁰¹ Today, however, A.G. Holley is the only state-operated tuberculosis (TB) hospital in the state and is the last of the original American sanatoriums dedicated to treating tuberculosis patients.¹⁰² A.G. Holley operates a complete X-ray department, bronchoscopy suite, dental office, optometric clinic, and pharmacy.

A.G. Holley is located in the City of Lantana on a 134 acre plot. In May 2007, the land was appraised at \$34.1 million. The hospital is four stories and encompasses 194,000 square feet. It was originally built to serve 500 patients, with living accommodations for the physicians, nurses, and administrative staff. However, by 1971 the daily census at the hospital dropped to less than half of the original 500. By 1976, the beds and staff at A.G. Holley were reduced to serve a maximum of 150 patients. Currently, the hospital does not operate at full capacity and receives state funding for 50 beds, of which, sixteen are isolation (negative air pressure) rooms.

Today, the hospital receives funding for approximately 160 FTE positions for an average daily census of 37 patients, some of whom are involuntarily committed to the hospital. It costs approximately \$10 million a year to manage the hospital, and the hospital consistently runs an annual deficit. Moreover, the hospital will require significant outlay for capital improvements in the near future.

In addition to the main hospital, the campus includes a lab that is part of the state laboratory service (16,700 sq. ft.), a county health department (35,000 sq. ft.), a warehouse (26,500 sq. ft.), a boiler room (4,552 sq ft), a water treatment plant (880 sq. ft.), an additional building (26,500 sq. ft.), and ten small residential cottages.

According to a recent research memorandum issued by the Office of Program Policy Analysis and Government Accountability (OPPAGA), only one other large state, Texas, operates a state-run infectious disease hospital that treats TB patients. In other large states, such as California, Illinois, Michigan, New York, North Carolina, and Ohio, local health departments use local or regional hospitals to treat such medically complex TB patients.¹⁰³

⁹⁹ Florida Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 1263, February 2, 2012.

¹⁰⁰ United States Census Bureau, Hospitals-Summary Characteristics, *available at*: <http://www.census.gov/compendia/statab/2007/tables/07s0162.xls> (last viewed March 30, 2010).

¹⁰¹ Bureau of TB and Refugee Health, Florida Department of Health, A.G. Holley Hospital History, *available at*: <http://www.doh.state.fl.us/AGHolley/history.htm> (last viewed March 30, 210).

¹⁰² *Id.*

¹⁰³ “Tuberculosis Hospitalization in Other States,” OPPAGA Research Memorandum (March 11, 2010).

In 2006, the department proposed developing the A.G. Holley hospital and campus into a Florida Institute for Public Health at a cost of approximately \$10 million. In 2008, the Legislature directed the DOH to procure a new TB hospital more suited to modern treatment and caseloads, and to outsource the management functions to a private vendor. The procurement was not successful. In 2009, the Legislature gave new, more specific direction to the DOH to initiate a second procurement. The DOH received one proposal, but the bidder did not meet the requirements of the procurement. In 2010¹⁰⁴, the Legislature, directed the DOH to develop a plan that exclusively uses private and nonstate public hospitals to provide treatment to cure, hospitalization, and isolation.

Public Sector Physician Advisory Committee

Section 458.346, F.S., creates a Public Sector Physician Advisory Committee, which must review and make recommendations to the Board of Medicine on all matters relating to public sector physicians that come before the board.

Nursing Scholarship Program and Nursing Student Loan Forgiveness Program

Section 1009.66, F.S., creates a nursing student loan forgiveness program within DOH, and s. 1009.67, F.S., creates a scholarship program within DOH for attracting capable and promising students to the nursing profession.

Division of Medical Quality Assurance (MQA)

The MQA regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils.

Legislative Findings and Intent

Legislative findings or intent language related to DOH programs are specified in law as follows:

- Section 381.0037, F.S., relating to findings and intent for the AIDS program.
- Section 381.004(1), F.S., relating to HIV testing.
- Section 381.0051(2), F.S., relating to Family planning.
- Section 381.0056(2), F.S., relating to the School health services program.
- Section 381.0057(1), F.S., relating to Funding for school health services.
- Section 381.0062(1), F.S., relating to Supervision, private and certain public water systems.
- Section 381.0098(1), F.S., relating to Biomedical waste.
- Section 381.0101(1), F.S., relating to Environmental health professionals.
- Section 381.0301(1)-(2), F.S., relating to Education and Resource Development.
- Section 381.0403(2), F.S., relating to the Community Hospital Education Act.
- Section 381.4018(2), F.S., relating to Physician workforce assessment and development.
- Section 381.7352(1), F.S., relating to Legislative intent and findings for the Closing the Gap Act.

¹⁰⁴ Chapter 2010-161, L.O.F.

- Section 381.853(1), F.S., relating to the Florida Center for Brain Tumor Research.
- Section 381.91(1)(a), F.S., relating to the Jessie Trice Cancer Prevention Program.

Unused Rulemaking Authority

According to the DOH, no rules have been adopted which use the following sections of rulemaking authority:¹⁰⁵

- Section 381.0052(5), F.S., related to dental health;
- Section 381.0053(4), F.S., related to the comprehensive nutrition program;
- Section 381.00593(8), F.S., related to the public school volunteer healthcare practitioner program;
- Section 381.765(3), F.S., related to retention of title and disposal of equipment;
- Section 401.243(4), F.S., related to the injury prevention program;
- Section 401.245(5), F.S., related to the Emergency Medical Services Advisory Council;
- Section 401.271(2), F.S., related to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces, and their spouses;
- Section 402.45(9), F.S., related to the community resource mother or father program;
- Section 462.19(2), F.S., related to renewal of licenses and inactive status for naturopaths; and
- Section 464.208(4), F.S., related to background screening information for nurse licensure.

Method of Reorganization for the Executive Branch

Pursuant to s. 20.06, F.S., the executive branch of state government must be reorganized by transferring the specified agencies, programs, and functions to other specified departments, commissions, or offices. Such a transfer does not affect the validity of any judicial or administrative proceeding pending on the day of the transfer, and any agency or department to which are transferred the powers, duties, and functions relating to the pending proceeding must be substituted as a party in interest for the proceeding.

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.¹⁰⁶ Any agency or department or a program, activity, or function transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided.¹⁰⁷ Unless otherwise provided, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department

¹⁰⁵ Department of Health Memorandum, “Unused Rulemaking Authority”, February 1, 2012, on file with House Health & Human Services Quality Subcommittee staff.

¹⁰⁶ Section 20.06(2), F.S.

¹⁰⁷ Section 20.06(2)(a), F.S.

is assigned, and to assign administrative authority for identifiable programs, activities, or functions.¹⁰⁸ Unless otherwise provided, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.¹⁰⁹

III. Effect of Proposed Changes:

Section 1 amends s. 20.43, F.S., to significantly alter the purpose of the DOH, to remove several of the Surgeon General's powers and duties, to eliminate the Officer of Women's Health Strategy, to rename several divisions of the DOH, and to place emergency medical technicians and paramedics under the oversight of MQA.

Section 2 amends s. 20.435, F.S., to eliminate two trust funds: the Drugs, Devices, and Cosmetics Trust Fund, and the Nursing Student Loan Forgiveness Trust Fund.

Section 3 amends s. 215.5602, F.S., the James and Esther King Biomedical Research Program, to eliminate references to the Florida Center for Universal Research to Eradicate Disease (FLCURED) and language authorizing up to \$250,000 to be made available to this entity. It eliminates the requirement for the Biomedical Research Advisory Council to submit an annual progress report on biomedical research in the state to FLCURED. The FLCURED is repealed in this bill.

Section 4 amends s. 381.001, F.S., pertaining to the legislative intent behind the public health system, so that the DOH is responsible for the state's public health system, which shall be designed to promote, protect, and improve the health of all people in the state; provide leadership for an active partnership, working toward shared public health goals and involving federal, state, and local governments, and the private sector.

This section deletes language setting forth that the mission of the state's public health system is to foster the conditions in which people can be healthy; language setting forth legislative intent that the DOH, in carrying out the mission of public health, focuses on identifying, assessing, and controlling the presence and spread of communicable diseases and other activities; and legislative intent language regarding comprehensive planning, data collection, technical support, and health resource development.

Section 5 amends 381.0011, F.S., by:

- Removing the specific means by which the DOH is to assess public health status and needs of the state;
- Changing the duty of DOH from "cooperate with and accept assistance from" to "coordinate with" federal, state, and local officials for the prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health;
- Deleting the requirement that the DOH conduct a workshop before issuing any health alert or advisory related to any food-borne illness or communicable disease in public lodging or food service establishments in order to inform persons, trade associations, and businesses of the

¹⁰⁸ Section 20.06(2)(b), F.S.

¹⁰⁹ Section 20.06(2)(c), F.S.

risk to public health and to seek input of affected persons, trade associations, and businesses on the best methods of informing and protecting the public, except in an emergency, in which case the workshop must be held within 14 days after the issuance of the emergency alert or advisory.

- Deleting the powers and duties of the DOH to cooperate with and assist federal health officials in enforcing public health laws and regulations and to cooperate with other departments, local officials, and private boards and organizations for the improvement and preservation of the public health; and
- Deleting language giving the DOH authority to perform any other duties prescribed by law.

Section 6 repeals s. 381.0013, F.S., which grants the power of eminent domain to DOH.

Section 7 repeals s. 381.0015, F.S., which states that the DOH's actions in enforcing its rules should be presumed just and legal.

Section 8 amends s. 381.0016, F.S., so that counties, as well as municipalities, may enact health regulations and ordinances which are not inconsistent with state public health laws and rules adopted by the DOH.

Section 9 repeals s. 381.0017, F.S., which provides the DOH the authority to purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state for the use and benefit of the DOH, when the acquisition is necessary to the efficient accomplishment of public health.

Section 10 repeals s. 381.00325, F.S., which mandates that the DOH develop a Hepatitis A awareness program.

Section 11 amends s. 381.0034, F.S., which is related to the requirement for instruction on HIV and AIDS, to remove an obsolete date.

Section 12 repeals s. 381.0037, F.S., which establishes legislative findings and intent regarding HIV/AIDS education.

Section 13 amends s. 381.004, F.S., on HIV testing, to strike language establishing legislative intent.

Section 14 amends s. 381.0046, F.S., the statewide HIV and AIDS prevention campaign, to change the required number of AIDS regional minority coordinators from four to an unspecified number of dedicated positions and to remove the provision that the statewide AIDS minority coordinator must report directly to the Bureau Chief of HIV/AIDS within the DOH.

Section 15 amends s. 381.005, F.S., which is related to primary preventive health services, to remove the requirement that hospitals licensed pursuant to chapter 395, F.S., under the Agency for Health Care Administration, implement a program to offer immunizations against the influenza virus and pneumococcal bacteria to all patients age 65 or older.

Section 16 amends s. 381.0051, F.S., so that subsection (2), related to legislative intent, is deleted.

Section 17 amends s. 381.0052, F.S., to delete subsection (5), which grants the DOH rulemaking authority related to the “Public Health Dental Program Act.”

Section 18 amends s. 381.0053, F.S., related to the comprehensive nutrition program, by deleting subsection (4), which grants the DOH rulemaking authority.

Section 19 amends s. 381.0056, F.S., related to school health services programs, by deleting subsection (2), which establishes legislative intent, and subsection (11), which requires that school health programs funded by health care districts or entities must be supplementary to and consistent with the requirements of this section and ss. 381.0057 and 381.0059, F.S.

Section 20 amends s. 381.0057, F.S., by deleting subsection (1) pertaining to legislative intent.

Section 21 amends s. 381.00591, F.S., related to national environmental laboratory accreditation, by granting authority to the DOH to apply for and become a NELAP accrediting body, rather than an accrediting authority. The bill also deletes the DOH’s authority to adopt rules to implement NELAP standards, including requirements for proficiency testing of providers and other rules pertaining to fees, application procedures, standards that are applicable to environmental or public water supply laboratories, and compliance.

Section 22 amends s. 381.00593, F.S., relating to the public school volunteer health care practitioner program, by removing the rulemaking authority the DOH has with the Florida Department of Education to implement the public school volunteer health care practitioner program.

Section 23 amends s. 381.0062, F.S., regarding the supervision of private and certain public waters systems, by deleting subsection (1), which provides legislative intent.

Section 24 amends s. 381.0065, F.S., relating to onsite sewage treatment and disposal systems. The bill repeals the state-wide septic system evaluation program, including program requirements, and the DOH’s rulemaking authority to implement the program. It repeals legislative intent regarding the DOH’s administration of a state-wide septic system evaluation program, and an obsolete reporting requirement regarding the land application of septage.

The bill defines “bedroom” as a room that can be used for sleeping that, for site-built dwellings, has a minimum 70 square feet of conditioned space; or for manufactured homes, constructed to HUD standards having a minimum of 50 square feet of floor area. The room must be located along an exterior wall, have a closet and a door or an entrance where a door could be reasonably installed. It also must have an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet. The term does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. It also fixes two cross-references. One is

related to research fees collected to fund hands-on training centers for septic systems. The other relates to determining the mean annual flood line.

The bill provides that a permit issued and approved by the DOH for the installation, modification, or repair of a septic system transfers with the title to the property. A title is not encumbered when transferred by new permit requirements that differ from the original permit requirements in effect when the septic system was permitted, modified, or repaired. It also prohibits a government entity from requiring a septic system inspection at the point of sale in a real estate transaction.

The bill specifies that a septic system serving a foreclosed property is not considered abandoned. It also specifies that a septic system is not considered “abandoned” if it was properly functioning when disconnected from a structure made unusable or destroyed following a disaster, and the septic system was not adversely affected by the disaster. The septic system may be reconnected to a rebuilt structure if:

- Reconnection of the septic system is to the same type of structure that existed prior to the disaster;
- The rebuilt structure has the same number of bedrooms or less than the structure that existed prior to the disaster;
- The rebuilt structure is within 110 percent of the size of the structure that existed prior to the disaster;
- The septic system is not a sanitary nuisance; and
- The septic system has not been altered without prior authorization.

The bill provides that if a rule change occurs within 5 years after approval for construction, the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system, but only if fundamental site conditions have not changed between the time of construction approval and final approval.

The bill provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.

Section 25 creates s. 381.00651, F.S.

A county or municipality containing a first magnitude spring within its boundary must develop and adopt by ordinance a local septic system evaluation and assessment program meeting the requirements of this section within all or part of its geographic area by January 1, 2013, unless it opts out. All other counties and municipalities may opt in but otherwise are not required to take any affirmative action. Evaluation programs adopted before July 1, 2011, which do not contain a mandatory septic system inspection at the point of sale in a real estate transaction are not affected by this bill. Existing evaluation programs that require point of sale inspections are preempted by the bill regardless of when the program was adopted.

A county or municipality may opt out by majority plus one vote of the local elected body before January 1, 2013, by adopting a separate resolution. The resolution must be filed with the Secretary of State. Absent an interlocal agreement or county charter provision to the contrary, a municipality may elect to opt out of the requirements of this section notwithstanding the decision

of the county in which it is located. A county or municipality may subsequently adopt an ordinance imposing a septic system evaluation and assessment program if the program meets the requirements of this section. The bill preempts counties' and municipalities' authority to adopt more stringent requirements for a septic system evaluation program than those contained in the bill.

Local ordinances must provide for the following:

- An evaluation of a septic system, including drainfield, every 5 years to assess the fundamental operational condition of the system and to identify system failures. The ordinance may not mandate an evaluation at the point of sale in a real estate transaction or a soil examination. The location of the system shall be identified;
- May not require a septic system inspection at the point of sale in a real estate transaction;
- May not require a soil examination;
- Each evaluation must be performed by:
 - A septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.,
 - A professional engineer having wastewater treatment system experience and licensed pursuant to ch. 471, F.S.,
 - An environmental health professional certified under ch. 381, F.S., in the area of septic system evaluation, or
 - An authorized employee working under the supervision of any of the above four listed individuals. Soil samples may only be conducted by certified individuals.

Evaluation forms must be written or electronically signed by a qualified contractor.

The local ordinance may not require a repair, modification, or replacement of a septic system as a result of an evaluation unless the evaluation identifies a failure. The term "system failure" is defined as:

- A condition existing within a septic system that results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water; or
- A condition which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly.

A system is not a failure if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. The bill specifies that a drainfield not achieving the minimum separation distance from the bottom of the drainfield to the wettest season water table contained in current law is not a system failure.

The local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet, to the extent possible, the requirements in effect at the time the repair is made, subject to the exceptions specified in s. 381.0065(4)(g), F.S. This allows certain older septic systems to be repaired instead of replaced if they cannot be repaired to operate to current code. An ordinance may not require an engineer-designed performance-based system as an alternative septic system to remediate a failure of a conventional septic system.

The bill specifies that the following systems are exempt from inclusion in a septic system evaluation program:

- A septic system that is required to obtain an operating permit or that is inspected by the department on an annual basis pursuant to ch. 513, F.S., related to mobile home and recreational vehicle parks;. and
- A septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater. For example, if a person has a four-bedroom house served by a septic system on a four-acre or larger lot, that septic system is exempt.

An ordinance may also exempt or grant an extension of time for a septic system serving a structure that will soon be connected to a sewer system if the connection is available, imminent, and written arrangements have been made for payment of connection fees or assessments by the septic system owner.

The bill requires the owner of a septic system subject to an evaluation program to have it pumped out and evaluated at least once every 5 years. A pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair, or modification of the septic system within the previous 5 years. The documentation must show both the capacity and that the condition of the tank is structurally sound and watertight.

If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection. Replacing broken or damaged lids or manholes does not require a repair permit.

In addition to a pump out, the evaluation procedures require an assessment of the apparent structural condition and watertightness of the tank and an estimation of its size. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks, or other defects. The baffles or tees must be checked to ensure that they are intact and secure.¹¹⁰ The evaluation must note the presence and condition of:

- Outlet devices;
- Effluent filters;
- Compartment walls;
- Any structural defect in the tank; and
- The condition and fit of the tank lid, including manholes.

The bill also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons, or alarms. The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation must contain a statement noting whether there is any visible effluent on the ground or discharging to a ditch or

¹¹⁰ The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow into the inlet or outlet pipe. The device may be made of concrete, steel, plastic, or other materials, but in all cases the septic tank tee or baffle forms a barrier between the septic tank and the inlet or outlet pipes to or from the septic tank. InspectAPedia, *Encyclopedia of Building & Environmental Inspection, Testing, Diagnosis, Repair*, available at <http://www.inspectapedia.com/septic/tanktees.htm> (last visited January 29, 2012).

water body and identifying the location of any downspout or other source of water near the drainfield.

If the septic system contains pumps, siphons or alarms, the following information may be provided:

- An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- Whether the pump is elevated off of the bottom of the chamber and its operational status;
- Whether the septic system has a check valve and purge hole; and
- Whether there is a high-water alarm, including whether the type of alarm is audio, visual, or both, the location of the alarm, its operational condition, and whether the electrical connections appears satisfactory.

The bill provides that if a homeowner does not request information about the system's pumps, siphons, or alarms, the qualified contractor and its employee are not liable for any damages directly relating from a failure of the system's pumps, siphons, or alarms. The evaluation report completed by the contractor must include a statement on the front cover that provides notice of the exclusion of such liability.

The reporting procedures provided for in the bill require:

- The qualified contractor to document all the evaluation procedures used;
- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner and the county health department within 30 days after the evaluation;
- The name and license number of the company providing the report;
- The local county health department to retain a copy of the evaluation report for a minimum of 5 years and until a subsequent report is filed;
- The front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- The report to identify tank defects, improper fit, or other defects in the tank, manhole, or lid, and any other missing component of the septic system;
- Noting if any sewage or effluent is present on the ground or discharging to a ditch or surface water body;
- Stating if any downspout, stormwater, or other source of water is directed onto or towards the septic system;
- Identification of any maintenance need or condition that has the potential to interfere with or restrict any future repair or modification to the existing septic system; and
- Conclude with an overall assessment of the fundamental operational condition of the septic system.

The county health department will be responsible for administering the program on behalf of a county or municipality. A county or municipality may develop a reasonable fee schedule in consultation with a county health department. The fee must only be used to pay for the costs of administering the program and must be revenue neutral. The fee schedule must be included in the adopted ordinance for a septic system evaluation program. The fee shall be assessed to the septic

system owner, collected by the qualified contractor, and remitted to the county health department.

The county health department in a jurisdiction where a septic system evaluation program is adopted must:

- Provide a notice to a septic system owner at least 60 days before the septic system is due for an evaluation;
- In consultation with the DOH, provide for uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance; and
- Be the sole entity to assess penalties against a septic tank owner who fails to comply with the requirements of an adopted ordinance.

The bill requires the DOH to allow county health departments and qualified contractors to access the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The database must be used by qualified contractors to report service evaluations and by county health departments to notify septic system owners that their evaluations are due.

The bill requires a county or municipality that adopts a septic system evaluation and assessment program to notify the Secretary of Environmental Protection, the DOH, and the requisite county health department. Once the DEP receives notice a county or municipality has adopted an evaluation program, it must, within existing resources, notify the county or municipality of the potential availability of Clean Water Act or Clean Water State Revolving Fund funds. If a county or municipality requests, the DEP must, within existing resources, provide guidance in the application process to access the abovementioned funding sources and provide advice and technical assistance on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs. The bill specifically prohibits the DOH from adopting any rule that alters the provisions contained in the bill.

The bill specifies that it does not derogate or limit county and municipal home rule authority to act outside the scope of the evaluation program created in this bill. The bill clarifies it does not repeal or affect any other law relating to the subject matter of this section. It does not prohibit a county or municipality that has adopted an evaluation program pursuant to this section from:

- Enforcing existing ordinances or adopting new ordinances if such ordinances do not repeal, suspend or alter the requirements or limitations of this section; or
- Exercising its independent and existing authority to use and meet the requirements of s. 381.00655, F.S. (relating to connection to central sewer systems).

Section 26 repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.

Section 27 amends s. 381.0066, F.S., related to septic system fees. The bill deletes the existing fees for the 5-year evaluation report. The bill also reduces the annual operating permit fee for

waterless, incinerating or organic waste composting toilets from not less than \$50 to not less than \$15 and from not more than \$150 to not more than \$30.

The bill repeals an obsolete provision related to setting a revenue neutral fee schedule for a state-wide septic system inspection program.

Section 28 amends s. 381.0068, F.S., related to a technical review and advisory panel, by deleting an obsolete date and redundant language.

Section 29 amends s. 381.00781, F.S., by deleting subsection (2), removing language that gives the DOH the authority to annually adjust the maximum fees authorized for tattoo establishments according to the rate of inflation or deflation as indicated by the Consumer Price Index.

Section 30 amends s. 381.0098, F.S., to remove legislative intent related to the biomedical waste program.

Section 31 amends s. 381.0101, F.S., related to environmental health professionals. It deletes legislative intent in subsection (1), and changes the Division Director of Environmental Health to the Division Director of Emergency Preparedness and Community Support.

Section 32 amends s. 381.0203, F.S., related to pharmacy services. It deletes the program that regulates drugs, cosmetics, and household products, pursuant to Ch. 499, F.S., as this program was transferred to the Department of Business and Professional Regulation. It also deletes a contraception distribution program to be implemented through the licensed pharmacies of county health departments as the program was never funded or implemented.

Section 33 amends s. 381.0261(1), F.S., to transfer responsibility to the DOH from AHCA to publish, on its internet web site, a summary of the Florida Patients' Bill of Rights and Responsibilities, and deletes a requirement that it be made available in a printed format.

Section 34 repeals s. 381.0301, F.S., related to education and resource development, requiring DOH to foster the recruitment, retention, and continuing education and training of health professionals and managers needed to administer the public health mission.

Section 35 repeals s. 381.0302, F.S., Florida Health Services Corps, a long dormant and unfunded program.

Section 36 amends s. 381.0303(5), F.S., related to the Special Needs Shelter Interagency Committee, to delete the requirement for the committee to submit recommendations to the legislature as necessary.

Section 37 repeals s. 381.04015, F.S., related to the designation and duties of an Officer of Women's Health Strategy.

Section 38 amends s. 381.0403, F.S., related to the Community Hospital Education Act.

The bill amends subsection (2)(a) to delete legislative intent language stipulating that health care services for the citizens of this state be upgraded, and that a program for continuing these services be maintained for community medical education. It amends the remaining legislative intent language to require a program be established for community medical education, increase the supply of highly trained physicians, and expand graduate medical education.

The bill also deletes subsection (2)(b), which established that the legislature acknowledges the critical need for increased numbers of primary care physicians, supports an expansion in the number of family practice residency positions, and intends that the funding for graduate education in family practice be maintained and that funding for all primary care specialties be provided at a minimum of \$10,000 per resident per year.

This section also amends subsections (3) and (4), to delete reference to the program for statewide graduate medical education, to make technical changes deleting obsolete language, as well as removing the authority of the Community Hospital Education Council to approve new program participants.

Section 39 amends s. 381.0405, F.S., related to the Office of Rural Health, to delete subsection (7), requiring the legislature to appropriate funds as are necessary to support the Office of Rural Health.

Section 40 amends s. 381.0406, F.S., related to rural health networks, to remove unnecessary language.

Section 41 repeals s. 381.045, F.S., related to hepatitis B or HIV carriers, which authorizes the DOH to establish procedures to handle, counsel, and provide other services to health care professionals infected with hepatitis B or HIV.

Section 42 amends s. 381.06015, F.S., related to Public Cord Blood Tissue Bank, to repeal subsection (7), which required AHCA and the DOH to seek private or federal funds to initiate program actions for fiscal year 2000-2001.

Section 43 repeals s. 381.0605, F.S., specifying AHCA as the agency to conduct a specified survey of state hospital facilities. The provision does not pertain to the DOH.

Section 44 repeals s. 381.102, F.S., related to community health pilot projects, which establishes community health pilot projects in order to promote disease prevention and health promotion among low-income persons living in urban and rural communities.

Section 45 repeals s. 381.103, F.S., related to community health pilot projects, which establishes the duties of the DOH, to the extent feasible, for the purpose of supporting community health pilot projects established in s. 381.102, F.S.

Section 46 amends s. 381.4018, F.S., to delete legislative intent language related to Physician Workforce Assessment and Development.

Section 47 repeals s. 381.60225, F.S., requiring AHCA to handle background screenings for certain applicants for certification. According to AHCA, it has sufficient authority under the Core Licensure Act, part II of chapter 408, F.S., and s. 381.60225, F.S., is unnecessary.¹¹¹

Section 48 deletes s. 381.7352(1), F.S., to remove legislative findings regarding the Office of Minority Health.

Section 49 deletes s. 381.7353(3), F.S., which authorizes the State Surgeon General to appoint an ad hoc advisory committee to examine areas where public awareness, public education, research, and coordination regarding racial and ethnic health outcome disparities are lacking; consider access and transportation issues which contribute to health access disparities; and make recommendations for closing gaps in health outcomes and increasing the public's awareness of health outcome disparities that exist between racial and ethnic populations.

Section 50 deletes s. 381.7356(4), F.S., which requires the dissemination of specified grant awards to begin no later than January 1, 2001.

Section 51 deletes s. 381.765(3), F.S., which grants the DOH the authority to adopt rules relating to records and recordkeeping for DOH-owned property related to the brain and spinal cord injury program.

Section 52 repeals s. 381.77, F.S., relating to an annual survey of nursing home residents 55 and under who would benefit from rehabilitation programs. Other procedures are used to identify residents who should be targeted for rehabilitation.

Section 53 repeals s. 381.795, F.S., related to long-term community-based supports for individuals who have sustained traumatic brain or spinal cord injuries, and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries. Other community-based services and support are available.

Section 54 deletes s. 381.853(1), F.S., legislative findings related to Florida Center for Brain Tumor Research. Substantive provisions remain in effect.

Section 55 repeals s. 381.855, F.S., related to the Florida Center for Universal Research to Eradicate Disease (FLCURED). This repeal eliminates the center, the center's goal, purpose, responsibilities, and advisory council.

Section 56 repeals s. 381.87, F.S., related to the Osteoporosis Prevention and Education Program, which directs the DOH to establish, promote, and maintain an osteoporosis prevention and education program to promote public awareness of the causes of osteoporosis, options for prevention, value of early detection, and possible treatments, including the benefits and risks of those treatments. According to the DOH, this program has not been funded since June 30, 2009, and no longer operates.

¹¹¹ Email correspondence with AHCA staff, January 21, 2012, on file with the House Health & Human Services Quality Subcommittee staff.

Section 57 amends s. 381.895, F.S., to delete provisions requiring the DOH to regulate compressed air for recreational diving, and substitutes a community-based approach requiring standards for certification, posting, and quality. Violating these standards is a misdemeanor of the first degree.

Section 58 repeals s. 381.90, F.S., related to the Health Information Systems Council, established in 1997 to facilitate the identification, collection, standardization, sharing, and coordination of health-related data. According to the DOH, this council is not active.

Section 59 deletes s. 381.91(1)(a), F.S., related to the Jessie Trice Cancer Prevention Program, to remove legislative intent language to reduce the rates of illness and death from lung cancer and other cancers, and improve the quality of life among low-income African-American and Hispanic populations through increased access to early effective screening and diagnosis, education, and treatment programs.

Section 60 amends s. 381.922(5), F.S., related to the William G. “Bill” Bankhead, Jr., and David Coley Cancer Research Program, eliminating funding of \$250,000 to be provided for the operating costs of FLCURED.

Sections 61 – 64 address tuberculosis control. The bill removes the authority for the DOH to operate a TB hospital, effective January 1, 2013. The bill authorizes the DOH to contract for the operation of a treatment program for persons with active TB. The contractor must use existing licensed community hospitals and other facilities for the care and treatment to cure persons with active TB and a history of non-compliance with prescribed drug regimens. The bill requires the DOH to develop and implement a transition plan for the closure of AG Holley.

The bill makes conforming changes to ss. 392.51, 392.61, and 392.62, F.S., to reflect the closure of AG Holley State Hospital.

Section 61 amends s. 392.51, F.S., related to tuberculosis control, effective January 1, 2013. It deletes legislative intent language and creates language to establish a statewide system to control tuberculosis infection, and mitigate its effects. Further, it amends this section to direct that tuberculosis control services shall be provided by the coordinated efforts of the respective county health departments and contracted or other private health care providers, rather than the A.G. Holley State Hospital (AGH) and the private health care delivery system.

Section 62 amends s. 392.61, F.S., related to community tuberculosis control programs, and eliminates the requirement for the DOH to develop, by rule, a methodology for distributing funds appropriated for TB control programs that considers the basic infrastructure available for TB control, caseload requirements, laboratory support services needed, and epidemiologic factors, effective January 1, 2013.

Section 63 amends s. 392.62, F.S., related to hospitalization and placement programs for persons who have active TB.

Subsection (1) is amended to require the DOH contract for operation of a program for the treatment of persons who have active TB in hospitals licensed under ch. 395, F.S. Also, it

requires the DOH to require the contractor to use existing, licensed community hospitals and other facilities for the care and treatment of persons who have active TB, a history of non-compliance with prescribed drug regimens, and require inpatient or other residential services.

Subsection (2), which authorized the DOH to operate a licensed hospital for the care and treatment, to cure, for persons with active TB, is deleted.

Subsection (3) is amended to delete language referencing a licensed hospital operated by the DOH, and inserts new language specifying that the program for control of TB shall provide funding for participating facilities and requiring the facilities to meet specific conditions.

Subsection (3)(c) is amended to change the requirement that TB facilities provide for a method of paying for the care of patients who cannot afford to do so, requiring the facility to provide for the care of patients in the program regardless of ability to pay.

Subsection (3)(g) is amended to delete the word “all” with regard to patients discharged from the hospital.

Section 64 directs the DOH to develop and implement a transition plan for closure of A.G. Holley State Hospital. The plan shall include specific steps to end voluntary admissions, transfer patients to alternate facilities, communicate with families, providers, other affected parties, and the general public, enter into any necessary contracts with providers, and coordinate with the Department of Management Services regarding the disposition of equipment and supplies and the closure of the facility. The plan shall be submitted to the Governor, the Speaker of the House of Representatives and the President of the Senate by May 31, 2012. This section requires that the DOH fully implement the plan by January 1, 2013.

Section 65 amends s. 395.1027, F.S., to correct cross references.

Section 66 deletes s. 401.243(4), F.S., the grant of rulemaking authority related to the injury prevention program.

Section 67 deletes s. 401.245(5), F.S., the grant of rulemaking authority related to the Emergency Medical Services Advisory Council.

Section 68 deletes s. 401.271(2), F.S., the grant of rulemaking authority related to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces of the United States.

Section 69 repeals s. 402.45, F.S., which requires DOH to establish a community resource mother or father program.

Section 70 amends s. 400.914, F.S., to correct cross references.

Section 71 makes a technical amendment to s. 409.256(11)(d), F.S., related to administrative proceedings to establish paternity or paternity and child support; to change the name of the Division of Vital Statistics to the Bureau of Vital Statistics.

Section 72 repeals s. 458.346, F.S., related to the Public Sector Physicians Advisory Committee, as the committee is dormant.

Section 73 deletes s. 462.19(2), F.S., the grant of rulemaking authority to the DOH for biennial renewal of licenses for naturopathic physicians.

Section 74 repeals s. 464.0197, F.S., legislative findings related to the Florida Center for Nursing, as well as the direction that the center be given state budget support for its operations so that it has adequate resources for the tasks assigned by the legislature in s. 464.0195, F.S.

Section 75 deletes s. 464.208(4), F.S., the grant of rulemaking authority related to background screening. No rules have been adopted under this section of law.

Section 76 amends s. 633.115, F.S., related to Fire and Emergency Incident Information Reporting Program, within the Division of the State Fire Marshall. Subsections (1)(b) and (2)(c) are amended to change the name of Emergency Medical Services to the Bureau of Emergency Preparedness and Response.

Section 77 amends s. 768.28, F.S., to correct cross references.

Sections 78-80 provide for a Type Two transfer of the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program, and the Nursing Student Loan Forgiveness Trust Fund from the DOH to the Florida Department of Education. This is a DOH recommendation, and part of their 2012 legislative package.

Section 81 requires the DOH's Division of Medical Quality Assurance (MQA) to develop a plan to improve the efficiency of its functions. Specifically, the plan is required to delineate methods to: reduce the average length of time for a qualified applicant to receive initial and renewal licensure, certification, or registration, by one-third; improve the agenda process for board meetings to increase transparency, timeliness, and usefulness for board decision-making; and improve the cost-effectiveness and efficiency of the joint functions of MQA and the regulatory boards. MQA is required to identify and analyze best practices found within MQA and other state agencies with similar functions, options for information technology improvements, options for contracting with outside entities, and any other option MQA deems useful. MQA is required to consult with and solicit recommendations from the regulatory boards in developing the plan. MQA is required to prepare and submit the plan to the Governor, Speaker of the House of Representatives, and President of the Senate by November 1, 2012.

Sections 82-86 amend ss. 381.0041, 384.25, 392.56, 456.032, and 775.0877, F.S., to correct cross references.

Section 87 provides that except as expressly provided otherwise, the bill takes effect upon becoming law.

Other Potential Implications:

The bill prohibits local ordinances from requiring repairs, modifications or system replacements unless a septic system is found to be failing. Septic system problems that do not rise to the level of a system failure cannot be required to be remedied under an ordinance. The septic system owner will have the option to repair or modify a septic system found to have problems. A county or municipality is preempted from requiring more stringent repair guidelines in its ordinance.

The bill prohibits counties and municipalities from acting outside the requirements and limitations of the bill to address public health and safety or provide for pollution abatement measures for water quality improvements. This prohibition may directly conflict with existing laws to address these issues. In addition, a local county or municipality may be required to take future action to comply with a future determination that an area within its jurisdiction is contributing to violations of water quality standards, but may be prohibited from doing so by the provisions in this bill.

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 full fiscal analysis has not been conducted on this bill; however, these are some possible fiscal results which could occur from implementation of the provisions of this bill:

A. Tax/Fee Issues:

The bill reduces the fees for annual operating permits for waterless, incinerating, or organic waste composting toilets from not less than \$50 to not less than \$15, and from not more than \$150 to not more than \$30.

B. Private Sector Impact:

Owners of septic systems subject to the evaluation program will have to pay for septic system evaluations, including pump outs, every 5 years. The owners will also be responsible for the cost of required repairs, modifications, or replacements of the septic system if it is found to be “failing.” Although owners are responsible under current law

for repairing failing septic systems, they may be unaware of the failing condition or unwilling or unable to pay for repairs or replacements.

A survey of septic contractors has not been completed to determine costs for inspections; however, anecdotal evidence has demonstrated a cost between \$75 and \$200, depending on the area of the state.

Current costs for pump outs range as low as \$75 to over \$300 depending on the size of the tank and local disposal options. Evaluation costs would be set by private contractors. Septic system owners would pay for any necessary remediation, including permit fees. Repair costs will vary from minor repairs to full system replacements and will only be available on a case-by-case basis. Whether or not demand for septic system contractor service increases is dependent on how many counties or municipalities implement inspection programs. Therefore, the impact of supply and demand on pricing trends cannot be determined at this time.

Therefore, adding in all potential costs not including repairs or replacements required under current law or the local administrative fee, a septic system owner can expect to pay between \$150 and \$500 every 5 years. It should be noted that in June 2010, the DOH and the Revenue Estimating Conference settled on a \$50 fee per inspection report to cover programmatic costs of implementing a state-wide program.

The DOH estimates a cost savings to the public of \$2,500 to \$7,500 per system through preventive maintenance, thus eliminating the need for costly repairs associated with neglected, failing, or improperly functioning systems.

C. Government Sector Impact:

The cost to counties or municipalities adopting evaluation programs is indeterminate as it depends on how large an area is covered by the evaluation program and how many septic systems are included.¹¹² Counties or municipalities with first magnitude springs will be required to expend funds to implement the provisions of this bill unless they opt out.

The DOH may incur costs associated with reprogramming the environmental health database to support the information reported by contractors and to be used by county health departments to notify owners when system evaluations are due. The DOH is in the process of determining whether there is a fiscal impact associated with reprogramming the database.

The DEP is required to take certain actions if and when it is notified of an ordinance that implements a local septic system evaluation program but only within existing resources.

Eventual closure of the A.G. Holley State Hospital will make possible the sale of public land upon which it is sited.

¹¹² There are 19 counties with first magnitude springs: Alachua, Bay, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison, Marion, Suwannee, Volusia and Wakulla.

Additional savings in operating, maintenance, and repair costs will occur from the closure of the A.G. Holley State Hospital.

There may be some savings as a result of repealing duplicative and unnecessary programs.

VI. Technical Deficiencies:

Section 2 of the bill eliminates the Nursing Student Loan Forgiveness Trust Fund. Section 80 moves that trust fund by type two transfer to DOE. The trust fund should not be repealed.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Health Regulation on February 16, 2012:

The committee substitute is substantially different from the bill as filed. It

- Maintains the Division of Medical Quality Assurance without changing its name;
- Revises the powers and duties of the DOH;
 - Eliminates the need to conduct a workshop before issuing any health alert or advisory relating to food-borne illness or communicable disease in public lodging or food service establishments.
 - Eliminates the duty to cooperate with federal health officials in enforcing public health laws and other departments, local officials, and private entities for the improvement and preservation of public health.
- Reinstates the CMS Network Advisory Council;
- Grants counties the authority to pass health regulations, with certain restrictions;
- Amends sections relating to HIV and AIDS awareness and prevention;
- Amends the DOH's authority to accredit laboratories under the National Environmental Laboratory Accreditation Program;
- Significantly amends portions of law relating to onsite sewage treatment and disposal;
- Deletes provisions which allow fee rates for tattoo establishments to be adjusted for inflation;
- Repeals obsolete provisions of the DOH's pharmacy services program;
- Assigns responsibility to the DOH to publish the Florida Patient's Bill of Rights and Responsibilities online;
- Revises the Community Hospital Education Act;
- Repeals community health pilot projects;
- Revises requirements for persons selling compressed air for recreational sport diving;
- Requires that the Division of Medical Quality Assurance develop a plan to improve the efficiency of its functions;

- Removes unused and obsolete provisions from several sections of law pertaining to the DOH's rulemaking authority;
- Deletes obsolete language pertaining to legislative intent from several sections of law;
- Eliminates obsolete and unfunded statutory programs.

B. Amendments:

None.

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

By the Committee on Health Regulation; and Senator Garcia

588-03554A-12

20121824c1

1 A bill to be entitled
 2 An act relating to the Department of Health; amending
 3 s. 20.43, F.S.; revising the purpose of the
 4 department; revising duties of the State Surgeon
 5 General; eliminating the Officer of Women's Health
 6 Strategy; revising divisions within the department;
 7 amending s. 20.435, F.S.; eliminating the Florida
 8 Drug, Device, and Cosmetic Trust Fund and the Nursing
 9 Student Loan Forgiveness Trust Fund as trust funds
 10 under the department; amending s. 215.5602, F.S.;
 11 conforming references; amending s. 381.001, F.S.;
 12 deleting legislative intent; requiring the Department
 13 of Health to be responsible for the state public
 14 health system; requiring the department to provide
 15 leadership for a partnership involving federal, state,
 16 and local government and the private sector to
 17 accomplish public health goals; amending s. 381.0011,
 18 F.S.; deleting duties and powers of the department;
 19 repealing s. 381.0013, F.S., relating to the
 20 department's authority to exercise the power of
 21 eminent domain; repealing s. 381.0015, F.S., relating
 22 to judicial presumptions regarding the department's
 23 authority to enforce public health rules; amending s.
 24 381.0016, F.S.; allowing a county to enact health
 25 regulations and ordinances consistent with state law;
 26 repealing s. 381.0017, F.S., relating to the purchase,
 27 lease, and sale of real property by the department;
 28 repealing s. 381.00325, F.S., relating to the
 29 Hepatitis A awareness program; amending s. 381.0034,

Page 1 of 105

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588-03554A-12

20121824c1

30 F.S.; deleting an obsolete qualifying date reference;
 31 repealing s. 381.0037, F.S., relating to legislative
 32 findings and intent with respect to AIDS; amending s.
 33 381.004, F.S.; deleting legislative intent; conforming
 34 cross-references; amending 381.0046, F.S.; requiring
 35 the department to establish dedicated HIV and AIDS
 36 regional and statewide minority coordinators; deleting
 37 the requirement that the statewide director report to
 38 the chief of the Bureau of HIV and AIDS within the
 39 department; amending s. 381.005, F.S.; deleting the
 40 requirement that hospitals implement a plan to offer
 41 immunizations for pneumococcal bacteria and influenza
 42 virus to all patients 65 years of age or older;
 43 amending s. 381.0051, F.S.; deleting legislative
 44 intent for the Comprehensive Family Planning Act;
 45 amending s. 381.0052, F.S., relating to the "Public
 46 Health Dental Program Act"; deleting unused department
 47 rulemaking authority; amending s. 381.0053, F.S.,
 48 relating to the comprehensive nutrition program;
 49 deleting unused department rulemaking authority;
 50 amending s. 381.0056, F.S., relating to the "School
 51 Health Services Act"; deleting legislative findings;
 52 deleting the requirement that school health programs
 53 funded by health care districts or entities be
 54 supplementary to and consistent with the act and other
 55 applicable statutes; amending s. 381.0057, F.S.,
 56 relating to funding for school health services;
 57 deleting legislative intent; amending s. 381.00591,
 58 F.S.; permitting the department to apply for and

Page 2 of 105

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588-03554A-12

20121824c1

59 become a National Environmental Laboratory
 60 Accreditation Program accreditation body; eliminating
 61 rulemaking authority of the department to implement
 62 standards of the National Environmental Laboratory
 63 Accreditation Program; amending s. 381.00593, F.S.;
 64 deleting unused rulemaking authority relating to the
 65 public school volunteer health care practitioner
 66 program; amending s. 381.0062, F.S., relating to the
 67 "Comprehensive Family Planning Act"; deleting
 68 legislative intent; amending s. 381.0065, F.S.;
 69 deleting legislative intent; defining the term
 70 "bedroom"; conforming cross-references; providing for
 71 any permit issued and approved by the Department of
 72 Health for the installation, modification, or repair
 73 of an onsite sewage treatment and disposal system to
 74 transfer with the title of the property; providing
 75 circumstances in which an onsite sewage treatment and
 76 disposal system is not considered abandoned; providing
 77 for the validity of an onsite sewage treatment and
 78 disposal system permit if rules change before final
 79 approval of the constructed system, under certain
 80 conditions; providing that a system modification,
 81 replacement, or upgrade is not required unless a
 82 bedroom is added to a single-family home; deleting
 83 provisions requiring the department to administer an
 84 evaluation and assessment program of onsite sewage
 85 treatment and disposal systems and requiring property
 86 owners to have such systems evaluated at least once
 87 every 5 years; deleting obsolete provisions; creating

Page 3 of 105

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588-03554A-12

20121824c1

88 s. 381.00651, F.S.; requiring a county or municipality
 89 containing a first magnitude spring to adopt by
 90 ordinance, under certain circumstances, the program
 91 for the periodic evaluation and assessment of onsite
 92 sewage treatment and disposal systems; requiring the
 93 county or municipality to notify the Secretary of
 94 State of the ordinance; authorizing a county or
 95 municipality, in specified circumstances, to opt out
 96 by a majority plus one vote of certain requirements by
 97 a specified date; authorizing a county or municipality
 98 to adopt or repeal, after a specified date, an
 99 ordinance creating an evaluation and assessment
 100 program, subject to notification of the Secretary of
 101 State; providing criteria for evaluations, qualified
 102 contractors, and repair of systems; providing for
 103 certain procedures and exemptions in special
 104 circumstances; defining the term "system failure";
 105 requiring that certain procedures be used for
 106 conducting tank and drainfield evaluations; providing
 107 for certain procedures in special circumstances;
 108 providing for contractor immunity from liability under
 109 certain conditions; providing for assessment
 110 procedures; providing requirements for county health
 111 departments; requiring the Department of Health to
 112 allow county health departments and qualified
 113 contractors to access the state database to track data
 114 and evaluation reports; requiring counties and
 115 municipalities to notify the Secretary of
 116 Environmental Protection and the Department of Health

Page 4 of 105

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588-03554A-12

20121824c1

117 when an evaluation program ordinance is adopted;
 118 requiring the Department of Environmental Protection
 119 to notify those counties or municipalities of the use
 120 of, and access to, certain state and federal program
 121 funds and to provide certain guidance and technical
 122 assistance upon request; prohibiting the adoption of
 123 certain rules by the Department of Health; providing
 124 for applicability; repealing s. 381.00656, F.S.,
 125 relating to a grant program for the repair of onsite
 126 sewage treatment and disposal systems; amending s.
 127 381.0066, F.S.; lowering the fees imposed by the
 128 department for certain permits; conforming cross-
 129 references; amending s. 381.0068, F.S.; deleting a
 130 date by which a technical review and advisory panel
 131 must be established within the department for
 132 assistance with rule adoption; deleting the authority
 133 of the chair of the panel to advise affected persons
 134 or the Legislature of the panel's position on
 135 legislation or a proposed state policy or other issue;
 136 amending s. 381.00781, F.S.; eliminating the authority
 137 of the department to annually adjust maximum fees
 138 according to the Consumer Price Index; amending s.
 139 381.0098, F.S.; deleting legislative intent with
 140 respect to standards for the safe packaging,
 141 transport, storage, treatment, and disposal of
 142 biomedical waste; amending s. 381.0101, F.S.; deleting
 143 legislative intent regarding certification of
 144 environmental health professionals; deleting
 145 definitions; providing for the Division Director for

588-03554A-12

20121824c1

146 Emergency Preparedness and Community Support to serve
 147 on an environmental health professionals advisory
 148 board; conforming a cross-reference; amending s.
 149 381.0203, F.S.; eliminating the regulation of drugs,
 150 cosmetics, and household products under ch. 499, F.S.,
 151 from the pharmacy services program; eliminating the
 152 contraception distribution program at county health
 153 departments; amending s. 381.0261, F.S.; requiring the
 154 department, rather than the Agency for Health Care
 155 Administration, to publish a summary of the Florida
 156 Patient's Bill of Rights and Responsibilities on its
 157 Internet website; deleting the requirement to print
 158 and distribute the summary; repealing s. 381.0301,
 159 F.S., relating to the Centers for Disease Control and
 160 Prevention, the State University System, Florida
 161 medical schools, and the College of Public Health of
 162 the University of South Florida; deleting the
 163 requirement that the College of Public Health be
 164 consulted by state officials in the management of
 165 public health; repealing s. 381.0302, F.S.;
 166 eliminating the Florida Health Services Corps;
 167 amending s. 381.0303, F.S.; eliminating the
 168 requirement that the Special Needs Shelter Interagency
 169 Committee submit recommendations to the Legislature;
 170 repealing s. 381.04015, F.S.; eliminating the Women's
 171 Health Strategy Office and Officer of Women's Health
 172 Strategy; amending s. 381.0403, F.S., relating to the
 173 "Community Hospital Education Act"; deleting
 174 legislative findings and intent; revising the mission

588-03554A-12

20121824c1

175 of the program; requiring minimum funding for graduate
 176 education in family practice; deleting reference to an
 177 intent to establish a statewide graduate medical
 178 education program; amending s. 381.0405, F.S.;
 179 deleting an appropriation to the Office of Rural
 180 Health; amending s. 381.0406, F.S.; deleting
 181 unnecessary introductory language in provisions
 182 relating to rural health networks; repealing s.
 183 381.045, F.S.; eliminating department authority to
 184 provide services to certain health care providers
 185 infected with Hepatitis B or HIV; amending s.
 186 381.06015, F.S.; deleting obsolete provision that
 187 requires the department, the Agency for Health Care
 188 Administration, and private consortium members seeking
 189 private or federal funds to initiate certain program
 190 actions relating to the Public Cord Blood Tissue Bank;
 191 repealing s. 381.0605, F.S., relating to designating
 192 the Agency for Health Care Administration as the state
 193 agency to administer the Federal Hospital and Medical
 194 Facilities Amendments of 1964; eliminating authority
 195 of the Governor to provide for administration of the
 196 amendments; repealing s. 381.102, F.S., to eliminate
 197 the community health pilot projects; repealing s.
 198 381.103, F.S., to eliminate the duties of the
 199 department to assist the community health pilot
 200 projects; amending s. 381.4018, F.S.; deleting
 201 legislative findings and intent with respect to
 202 physician workforce assessment and development;
 203 conforming a cross-reference: repealing s. 381.60225,

588-03554A-12

20121824c1

204 F.S., to eliminate background screening requirements
 205 for health care professionals and owners, operators,
 206 and employees of certain health care providers,
 207 services, and programs; amending s. 381.7352, F.S.;
 208 deleting legislative findings relating to the
 209 "Reducing Racial and Ethnic Health Disparities:
 210 Closing the Gap Act"; amending s. 381.7353, F.S.;
 211 removing the authority of the State Surgeon General to
 212 appoint an ad hoc committee to study certain aspects
 213 of racial and ethnic health outcome disparities and
 214 make recommendations; amending s. 381.7356, F.S.;
 215 deleting a provision requiring dissemination of
 216 Closing the Gap grant awards to begin on a date
 217 certain; amending s. 381.765, F.S.; deleting unused
 218 rulemaking authority relating to records and
 219 recordkeeping for department-owned property; repealing
 220 s. 381.77, F.S., to eliminate the annual survey of
 221 nursing home residents age 55 and under; repealing s.
 222 381.795, F.S., to eliminate the requirement that the
 223 department establish a program of long-term community-
 224 based supports and services for individuals with
 225 traumatic brain or spinal cord injuries; amending s.
 226 381.853, F.S.; deleting legislative findings relating
 227 to brain tumor research; repealing s. 381.855, F.S.,
 228 which established the Florida Center for Universal
 229 Research to Eradicate Disease; repealing s. 381.87,
 230 F.S., to eliminate the osteoporosis prevention and
 231 education program; amending s. 381.895, F.S.; revising
 232 standards for compressed air used for recreational

588-03554A-12

20121824c1

233 diving; repealing s. 381.90, F.S., to eliminate the
 234 Health Information Systems Council; amending s.
 235 381.91, F.S., relating to the Jesse Trice Cancer
 236 Program; revising legislative intent; amending
 237 381.922, F.S.; conforming a reference; amending s.
 238 392.51, F.S., relating to tuberculosis control;
 239 removing legislative findings and intent; amending s.
 240 392.61, F.S.; eliminating the requirement that the
 241 department develop a methodology for distributing
 242 funds appropriated for community tuberculosis control
 243 programs; amending s. 392.62, F.S.; requiring a
 244 contractor to use licensed community hospitals and
 245 other facilities for the care and treatment of persons
 246 who have active tuberculosis or a history of
 247 noncompliance with prescribed drug regimens and
 248 require inpatient or other residential services;
 249 removing authority of the department to operate a
 250 licensed hospital to treat tuberculosis patients;
 251 requiring the tuberculosis control program to fund
 252 participating facilities; requiring facilities to meet
 253 specific conditions; requiring the department to
 254 develop a transition plan for the closure of A.G.
 255 Holley State Hospital; specifying content of
 256 transition plan; requiring submission of the plan to
 257 the Governor and Legislature; requiring full
 258 implementation of the transition plan by a certain
 259 date; amending s. 395.1027, F.S., relating to the
 260 regional poison control centers; conforming
 261 provisions; amending s. 401.243, F.S.; deleting unused

588-03554A-12

20121824c1

262 rulemaking authority governing the implementation of
 263 injury-prevention grant programs; amending s. 401.245,
 264 F.S.; deleting unused rulemaking authority relating to
 265 operating procedures for the Emergency Medical
 266 Services Advisory Council; amending s. 401.271, F.S.;
 267 deleting unused rulemaking authority relating to an
 268 exemption for the spouse of a member of the Armed
 269 Forces of the United States on active duty from
 270 certification renewal provisions while the spouse is
 271 absent from the state because of the member's active
 272 duty with the Armed Forces; repealing s. 402.45, F.S.,
 273 relating to the community resource mother or father
 274 program; amending ss. 400.914 and 409.256, F.S.;
 275 conforming references; repealing s. 458.346, F.S.,
 276 which created the Public Sector Physician Advisory
 277 Committee and established its responsibilities;
 278 amending s. 462.19, F.S., relating to the renewal of
 279 licenses for practitioners of naturopathy; deleting
 280 unused rulemaking authority; repealing s. 464.0197,
 281 F.S., relating to state budget support for the Florida
 282 Center for Nursing; amending s. 464.208, F.S.;
 283 deleting unused rulemaking authority relating to
 284 background screening information of certified nursing
 285 assistants; amending s. 633.115, F.S.; making
 286 conforming changes; amending s. 768.28, F.S., relating
 287 to the state's waiver of sovereign immunity;
 288 conforming provisions; amending s. 1009.66, F.S.;
 289 reassigning responsibility for the Nursing Student
 290 Loan Forgiveness Program from the Department of Health

588-03554A-12

20121824c1

291 to the Department of Education; amending s. 1009.67,
 292 F.S.; reassigning responsibility for the nursing
 293 scholarship program from the Department of Health to
 294 the Department of Education; providing type two
 295 transfers of the programs; providing for transfer of a
 296 trust fund; providing applicability to contracts;
 297 authorizing transfer of funds and positions between
 298 departments; requiring the Division of Medical Quality
 299 Assurance to create a plan to improve efficiency of
 300 the function of the division; directing the division
 301 to take certain actions in creating the plan;
 302 directing the division to address particular topics in
 303 the plan; requiring all executive branch agencies to
 304 assist the department in creating the plan; requesting
 305 all other state agencies to assist the department in
 306 creating the plan; amending ss. 381.0041, 384.25,
 307 392.56, 456.032, and 775.0877, F.S.; conforming cross-
 308 references; providing effective dates.

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

311 Section 1. Subsections (1), (2), and (3) of section 20.43,
 312 Florida Statutes, are amended to read:

313 20.43 Department of Health.—There is created a Department
 314 of Health.

315 (1) The purpose of the Department of Health is to protect
 316 and promote ~~and protect~~ the health of all residents and visitors
 317 in the state through organized state and community efforts,
 318 including cooperative agreements with counties. The department
 319

588-03554A-12

20121824c1

320 shall:

321 (a) Identify, diagnose, and conduct surveillance of
 322 diseases and health conditions in the state and accumulate the
 323 health statistics necessary to establish trends ~~Prevent to the~~
 324 ~~fullest extent possible, the occurrence and progression of~~
 325 ~~communicable and noncommunicable diseases and disabilities.~~

326 (b) Implement interventions that prevent or limit the
 327 impact or spread of diseases and health conditions ~~Maintain a~~
 328 ~~constant surveillance of disease occurrence and accumulate~~
 329 ~~health statistics necessary to establish disease trends and to~~
 330 ~~design health programs.~~

331 (c) Collect, manage, and analyze vital statistics and other
 332 health data to inform the public and formulate public health
 333 policy and planning ~~Conduct special studies of the causes of~~
 334 ~~diseases and formulate preventive strategies.~~

335 (d) Maintain and coordinate preparedness for and responses
 336 to public health emergencies in the state ~~Promote the~~
 337 ~~maintenance and improvement of the environment as it affects~~
 338 ~~public health.~~

339 (e) Provide or ensure the provision of quality health care
 340 and related services to identified populations in the state
 341 ~~Promote the maintenance and improvement of health in the~~
 342 ~~residents of the state.~~

343 (f) Regulate environmental activities that have a direct
 344 impact on public health in the state ~~Provide leadership, in~~
 345 ~~cooperation with the public and private sectors, in establishing~~
 346 ~~statewide and community public health delivery systems.~~

347 (g) Regulate health practitioners for the preservation of
 348 the health, safety, and welfare of the public ~~Provide health~~

588-03554A-12 20121824c1

349 ~~care and early intervention services to infants, toddlers,~~
 350 ~~children, adolescents, and high-risk perinatal patients who are~~
 351 ~~at risk for disabling conditions or have chronic illnesses.~~

352 ~~(h) Provide services to abused and neglected children~~
 353 ~~through child protection teams and sexual abuse treatment~~
 354 ~~programs.~~

355 ~~(i) Develop working associations with all agencies and~~
 356 ~~organizations involved and interested in health and health care~~
 357 ~~delivery.~~

358 ~~(j) Analyze trends in the evolution of health systems, and~~
 359 ~~identify and promote the use of innovative, cost-effective~~
 360 ~~health delivery systems.~~

361 ~~(k) Serve as the statewide repository of all aggregate data~~
 362 ~~accumulated by state agencies related to health care; analyze~~
 363 ~~that data and issue periodic reports and policy statements, as~~
 364 ~~appropriate; require that all aggregated data be kept in a~~
 365 ~~manner that promotes easy utilization by the public, state~~
 366 ~~agencies, and all other interested parties; provide technical~~
 367 ~~assistance as required; and work cooperatively with the state's~~
 368 ~~higher education programs to promote further study and analysis~~
 369 ~~of health care systems and health care outcomes.~~

370 ~~(l) Include in the department's strategic plan developed~~
 371 ~~under s. 186.021 an assessment of current health programs,~~
 372 ~~systems, and costs; projections of future problems and~~
 373 ~~opportunities; and recommended changes that are needed in the~~
 374 ~~health care system to improve the public health.~~

375 ~~(m) Regulate health practitioners, to the extent authorized~~
 376 ~~by the Legislature, as necessary for the preservation of the~~
 377 ~~health, safety, and welfare of the public.~~

588-03554A-12 20121824c1

378 (2)(a) The head of the Department of Health is the State
 379 Surgeon General and State Health Officer. The State Surgeon
 380 General must be a physician licensed under chapter 458 or
 381 chapter 459 who has advanced training or extensive experience in
 382 public health administration. The State Surgeon General is
 383 appointed by the Governor subject to confirmation by the Senate.
 384 The State Surgeon General serves at the pleasure of the
 385 Governor. ~~The State Surgeon General shall serve as the leading~~
 386 ~~voice on wellness and disease prevention efforts, including the~~
 387 ~~promotion of healthful lifestyles, immunization practices,~~
 388 ~~health literacy, and the assessment and promotion of the~~
 389 ~~physician and health care workforce in order to meet the health~~
 390 ~~care needs of the state. The State Surgeon General shall focus~~
 391 ~~on advocating healthy lifestyles, developing public health~~
 392 ~~policy, and building collaborative partnerships with schools,~~
 393 ~~businesses, health care practitioners, community-based~~
 394 ~~organizations, and public and private institutions in order to~~
 395 ~~promote health literacy and optimum quality of life for all~~
 396 ~~Floridians.~~

397 ~~(b) The Officer of Women's Health Strategy is established~~
 398 ~~within the Department of Health and shall report directly to the~~
 399 ~~State Surgeon General.~~

400 (3) The following divisions of the Department of Health are
 401 established:

402 (a) Division of Administration.

403 (b) Division of Emergency Preparedness and Community
 404 Support Environmental Health.

405 (c) Division of Disease Control and Health Protection.

406 (d) Division of Community Health Promotion Family Health

588-03554A-12 20121824c1

- 407 ~~Services.~~
- 408 (e) Division of Children's Medical Services ~~Network.~~
- 409 (f) Division of Public Health Statistics and Performance
- 410 Management Emergency Medical Operations.
- 411 (g) Division of Medical Quality Assurance, which is
- 412 responsible for the following boards and professions established
- 413 within the division:
- 414 1. The Board of Acupuncture, created under chapter 457.
 - 415 2. The Board of Medicine, created under chapter 458.
 - 416 3. The Board of Osteopathic Medicine, created under chapter
 - 417 459.
 - 418 4. The Board of Chiropractic Medicine, created under
 - 419 chapter 460.
 - 420 5. The Board of Podiatric Medicine, created under chapter
 - 421 461.
 - 422 6. Naturopathy, as provided under chapter 462.
 - 423 7. The Board of Optometry, created under chapter 463.
 - 424 8. The Board of Nursing, created under part I of chapter
 - 425 464.
 - 426 9. Nursing assistants, as provided under part II of chapter
 - 427 464.
 - 428 10. The Board of Pharmacy, created under chapter 465.
 - 429 11. The Board of Dentistry, created under chapter 466.
 - 430 12. Midwifery, as provided under chapter 467.
 - 431 13. The Board of Speech-Language Pathology and Audiology,
 - 432 created under part I of chapter 468.
 - 433 14. The Board of Nursing Home Administrators, created under
 - 434 part II of chapter 468.
 - 435 15. The Board of Occupational Therapy, created under part

588-03554A-12 20121824c1

- 436 III of chapter 468.
- 437 16. Respiratory therapy, as provided under part V of
- 438 chapter 468.
- 439 17. Dietetics and nutrition practice, as provided under
- 440 part X of chapter 468.
- 441 18. The Board of Athletic Training, created under part XIII
- 442 of chapter 468.
- 443 19. The Board of Orthotists and Prosthetists, created under
- 444 part XIV of chapter 468.
- 445 20. Electrolysis, as provided under chapter 478.
- 446 21. The Board of Massage Therapy, created under chapter
- 447 480.
- 448 22. The Board of Clinical Laboratory Personnel, created
- 449 under part III of chapter 483.
- 450 23. Medical physicists, as provided under part IV of
- 451 chapter 483.
- 452 24. The Board of Opticianry, created under part I of
- 453 chapter 484.
- 454 25. The Board of Hearing Aid Specialists, created under
- 455 part II of chapter 484.
- 456 26. The Board of Physical Therapy Practice, created under
- 457 chapter 486.
- 458 27. The Board of Psychology, created under chapter 490.
- 459 28. School psychologists, as provided under chapter 490.
- 460 29. The Board of Clinical Social Work, Marriage and Family
- 461 Therapy, and Mental Health Counseling, created under chapter
- 462 491.
- 463 30. Emergency medical technicians and paramedics, as
- 464 provided under part III of chapter 401.

588-03554A-12

20121824c1

465 ~~(h) Division of Children's Medical Services Prevention and~~
 466 ~~Intervention-~~
 467 ~~(i) Division of Information Technology-~~
 468 ~~(j) Division of Health Access and Tobacco-~~
 469 (h)(k) Division of Disability Determinations.
 470 Section 2. Subsections (14) through (22) of section 20.435,
 471 Florida Statutes, are renumbered as subsection (13) through
 472 (20), respectively, and present subsections (13) and (17) of
 473 that section are amended to read:
 474 20.435 Department of Health; trust funds.—The following
 475 trust funds shall be administered by the Department of Health:
 476 ~~(13) Florida Drug, Device, and Cosmetic Trust Fund-~~
 477 ~~(a) Funds to be credited to and uses of the trust fund~~
 478 ~~shall be administered in accordance with the provisions of~~
 479 ~~chapter 499-~~
 480 ~~(b) Notwithstanding the provisions of s. 216.301 and~~
 481 ~~pursuant to s. 216.351, any balance in the trust fund at the end~~
 482 ~~of any fiscal year shall remain in the trust fund at the end of~~
 483 ~~the year and shall be available for carrying out the purposes of~~
 484 ~~the trust fund-~~
 485 ~~(17) Nursing Student Loan Forgiveness Trust Fund-~~
 486 ~~(a) Funds to be credited to and uses of the trust fund~~
 487 ~~shall be administered in accordance with the provisions of s.~~
 488 ~~1009.66-~~
 489 ~~(b) Notwithstanding the provisions of s. 216.301 and~~
 490 ~~pursuant to s. 216.351, any balance in the trust fund at the end~~
 491 ~~of any fiscal year shall remain in the trust fund at the end of~~
 492 ~~the year and shall be available for carrying out the purposes of~~
 493 ~~the trust fund-~~

Page 17 of 105

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588-03554A-12

20121824c1

494 Section 3. Subsections (10) and (12) of section 215.5602,
 495 Florida Statutes, are amended to read:
 496 215.5602 James and Esther King Biomedical Research
 497 Program.—
 498 (10) The council shall submit an annual progress report on
 499 the state of biomedical research in this state to ~~the Florida~~
 500 ~~Center for Universal Research to Eradicate Disease and to the~~
 501 ~~Governor, the State Surgeon General, the President of the~~
 502 ~~Senate, and the Speaker of the House of Representatives by~~
 503 ~~February 1. The report must include:~~
 504 (a) A list of research projects supported by grants or
 505 fellowships awarded under the program.
 506 (b) A list of recipients of program grants or fellowships.
 507 (c) A list of publications in peer reviewed journals
 508 involving research supported by grants or fellowships awarded
 509 under the program.
 510 (d) The total amount of biomedical research funding
 511 currently flowing into the state.
 512 (e) New grants for biomedical research which were funded
 513 based on research supported by grants or fellowships awarded
 514 under the program.
 515 (f) Progress in the prevention, diagnosis, treatment, and
 516 cure of diseases related to tobacco use, including cancer,
 517 cardiovascular disease, stroke, and pulmonary disease.
 518 (12) ~~From funds appropriated to accomplish the goals of~~
 519 ~~this section, up to \$250,000 shall be available for the~~
 520 ~~operating costs of the Florida Center for Universal Research to~~
 521 ~~Eradicate Disease. Beginning in the 2011-2012 fiscal year and~~
 522 ~~thereafter, \$25 million from the revenue deposited into the~~

Page 18 of 105

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588-03554A-12 20121824c1

523 Health Care Trust Fund pursuant to ss. 210.011(9) and 210.276(7)
 524 shall be reserved for research of tobacco-related or cancer-
 525 related illnesses. Of the revenue deposited in the Health Care
 526 Trust Fund pursuant to this section, \$25 million shall be
 527 transferred to the Biomedical Research Trust Fund within the
 528 Department of Health. Subject to annual appropriations in the
 529 General Appropriations Act, \$5 million shall be appropriated to
 530 the James and Esther King Biomedical Research Program, \$5
 531 million shall be appropriated to the William G. "Bill" Bankhead,
 532 Jr., and David Coley Cancer Research Program created under s.
 533 381.922, \$5 million shall be appropriated to the H. Lee Moffitt
 534 Cancer Center and Research Institute established under s.
 535 1004.43, \$5 million shall be appropriated to the Sylvester
 536 Comprehensive Cancer Center of the University of Miami, and \$5
 537 million shall be appropriated to the University of Florida
 538 Shands Cancer Hospital Center.

539 Section 4. Section 381.001, Florida Statutes, is amended to
 540 read:

541 381.001 ~~Legislative intent~~, Public health system.—

542 ~~(1) It is the intent of the Legislature that~~ The Department
 543 of Health is be responsible for the state's public health system
 544 which shall be designed to promote, protect, and improve the
 545 health of all people in the state. ~~The mission of the state's~~
 546 ~~public health system is to foster the conditions in which people~~
 547 ~~can be healthy, by assessing state and community health needs~~
 548 ~~and priorities through data collection, epidemiologic studies,~~
 549 ~~and community participation; by developing comprehensive public~~
 550 ~~health policies and objectives aimed at improving the health~~
 551 ~~status of people in the state; and by ensuring essential health~~

588-03554A-12 20121824c1

552 ~~care and an environment which enhances the health of the~~
 553 ~~individual and the community.~~ The department shall provide
 554 leadership for Legislature recognizes that the state's public
 555 ~~health system must be founded on~~ an active partnership working
 556 toward shared public health goals and involving ~~between~~ federal,
 557 state, and local governments and the private sector ~~government~~
 558 ~~and between the public and private sectors, and, therefore,~~
 559 ~~assessment, policy development, and service provision must be~~
 560 ~~shared by all of these entities to achieve its mission.~~

561 ~~(2) It is the intent of the Legislature that the~~
 562 ~~department, in carrying out the mission of public health, focus~~
 563 ~~attention on identifying, assessing, and controlling the~~
 564 ~~presence and spread of communicable diseases; on monitoring and~~
 565 ~~regulating factors in the environment which may impair the~~
 566 ~~public's health, with particular attention to preventing~~
 567 ~~contamination of drinking water, the air people breathe, and the~~
 568 ~~food people consume; and ensuring availability of and access to~~
 569 ~~preventive and primary health care, including, but not limited~~
 570 ~~to, acute and episodic care, prenatal and postpartum care, child~~
 571 ~~health, family planning, school health, chronic disease~~
 572 ~~prevention, child and adult immunization, dental health,~~
 573 ~~nutrition, and health education and promotion services.~~

574 ~~(3) It is, furthermore, the intent of the Legislature that~~
 575 ~~the public health system include comprehensive planning, data~~
 576 ~~collection, technical support, and health resource development~~
 577 ~~functions. These functions include, but are not limited to,~~
 578 ~~state laboratory and pharmacy services, the state vital~~
 579 ~~statistics system, the Florida Center for Health Information and~~
 580 ~~Policy Analysis, emergency medical services coordination and~~

588-03554A-12 20121824c1

581 ~~support, and recruitment, retention, and development of~~
 582 ~~preventive and primary health care professionals and managers.~~

583 ~~(4) It is, furthermore, the intent of the Legislature that~~
 584 The department shall provide public health services through the
 585 67 county health departments in partnership with county
 586 governments, as specified in part I of chapter 154, and in so
 587 doing make every attempt possible to solicit the support and
 588 involvement of private and not-for-profit health care agencies
 589 in fulfilling the public health mission.

590 Section 5. Section 381.0011, Florida Statutes, is amended
 591 to read:

592 381.0011 Duties and powers of the Department of Health.—It
 593 is the duty of the Department of Health to:

594 (1) Assess the public health status and needs of the state
 595 ~~through statewide data collection and other appropriate means,~~
 596 ~~with special attention to future needs that may result from~~
 597 ~~population growth, technological advancements, new societal~~
 598 ~~priorities, or other changes.~~

599 (2) Formulate general policies affecting the public health
 600 of the state.

601 (3) Administer and enforce laws and rules relating to
 602 sanitation, control of communicable diseases, illnesses and
 603 hazards to health among humans and from animals to humans, and
 604 the general health of the people of the state.

605 (4) Coordinate with ~~Cooperate with and accept assistance~~
 606 ~~from~~ federal, state, and local officials for the prevention and
 607 suppression of communicable and other diseases, illnesses,
 608 injuries, and hazards to human health.

609 (5) Declare, enforce, modify, and abolish quarantine of

588-03554A-12 20121824c1

610 persons, animals, and premises as the circumstances indicate for
 611 controlling communicable diseases or providing protection from
 612 unsafe conditions that pose a threat to public health, except as
 613 provided in ss. 384.28 and 392.545-392.60.

614 (a) The department shall adopt rules to specify the
 615 conditions and procedures for imposing and releasing a
 616 quarantine. The rules must include provisions related to:

617 1. The closure of premises.

618 2. The movement of persons or animals exposed to or
 619 infected with a communicable disease.

620 3. The tests or treatment, including vaccination, for
 621 communicable disease required prior to employment or admission
 622 to the premises or to comply with a quarantine.

623 4. Testing or destruction of animals with or suspected of
 624 having a disease transmissible to humans.

625 5. Access by the department to quarantined premises.

626 6. The disinfection of quarantined animals, persons, or
 627 premises.

628 7. Methods of quarantine.

629 (b) Any health regulation that restricts travel or trade
 630 within the state may not be adopted or enforced in this state
 631 except by authority of the department.

632 (6) Provide for a thorough investigation and study of the
 633 incidence, causes, modes of propagation and transmission, and
 634 means of prevention, control, and cure of diseases, illnesses,
 635 and hazards to human health.

636 (7) Provide for the dissemination of information to the
 637 public relative to the prevention, control, and cure of
 638 diseases, illnesses, and hazards to human health. ~~The department~~

588-03554A-12 20121824c1

639 ~~shall conduct a workshop before issuing any health alert or~~
 640 ~~advisory relating to food-borne illness or communicable disease~~
 641 ~~in public lodging or food service establishments in order to~~
 642 ~~inform persons, trade associations, and businesses of the risk~~
 643 ~~to public health and to seek the input of affected persons,~~
 644 ~~trade associations, and businesses on the best methods of~~
 645 ~~informing and protecting the public, except in an emergency, in~~
 646 ~~which case the workshop must be held within 14 days after the~~
 647 ~~issuance of the emergency alert or advisory.~~

648 (8) Act as registrar of vital statistics.

649 ~~(9) Cooperate with and assist federal health officials in~~
 650 ~~enforcing public health laws and regulations.~~

651 ~~(10) Cooperate with other departments, local officials, and~~
 652 ~~private boards and organizations for the improvement and~~
 653 ~~preservation of the public health.~~

654 (9)~~(11)~~ Maintain a statewide injury-prevention program.

655 (10)~~(12)~~ Adopt rules pursuant to ss. 120.536(1) and 120.54
 656 to implement the provisions of law conferring duties upon it.
 657 This subsection does not authorize the department to require a
 658 permit or license unless such requirement is specifically
 659 provided by law.

660 (11)~~(13)~~ Manage and coordinate emergency preparedness and
 661 disaster response functions to: investigate and control the
 662 spread of disease; coordinate the availability and staffing of
 663 special needs shelters; support patient evacuation; ensure the
 664 safety of food and drugs; provide critical incident stress
 665 debriefing; and provide surveillance and control of
 666 radiological, chemical, biological, and other environmental
 667 hazards.

588-03554A-12 20121824c1

668 ~~(14) Perform any other duties prescribed by law.~~

669 Section 6. Section 381.0013, Florida Statutes, is repealed.

670 Section 7. Section 381.0015, Florida Statutes, is repealed.

671 Section 8. Section 381.0016, Florida Statutes, is amended
 672 to read:

673 381.0016 County and municipal regulations and ordinances.—
 674 Any county or municipality may enact, in a manner prescribed by
 675 law, health regulations and ordinances not inconsistent with
 676 state public health laws and rules adopted by the department.

677 Section 9. Section 381.0017, Florida Statutes, is repealed.

678 Section 10. Section 381.00325, Florida Statutes, is
 679 repealed.

680 Section 11. Subsection (1) of section 381.0034, Florida
 681 Statutes, is amended to read:

682 381.0034 Requirement for instruction on HIV and AIDS.—

683 (1) ~~As of July 1, 1991,~~ The Department of Health shall
 684 require each person licensed or certified under chapter 401,
 685 chapter 467, part IV of chapter 468, or chapter 483, as a
 686 condition of biennial relicensure, to complete an educational
 687 course approved by the department on the modes of transmission,
 688 infection control procedures, clinical management, and
 689 prevention of human immunodeficiency virus and acquired immune
 690 deficiency syndrome. Such course shall include information on
 691 current Florida law on acquired immune deficiency syndrome and
 692 its impact on testing, confidentiality of test results, and
 693 treatment of patients. Each such licensee or certificateholder
 694 shall submit confirmation of having completed said course, on a
 695 form provided by the department, when submitting fees or
 696 application for each biennial renewal.

588-03554A-12

20121824c1

697 Section 12. Section 381.0037, Florida Statutes, is
 698 repealed.

699 Section 13. Subsections (2) through (11) of section 381.004,
 700 Florida Statutes, are renumbered as subsections (1) through
 701 (10), respectively, and present subsection (1), paragraph (a) of
 702 present subsection (3), paragraph (d) of present subsection (5),
 703 present subsection (7), and paragraph (c) of present subsection
 704 (11) of that section are amended to read:

705 381.004 HIV testing.—

706 ~~(1) LEGISLATIVE INTENT. The Legislature finds that the use~~
 707 ~~of tests designed to reveal a condition indicative of human~~
 708 ~~immunodeficiency virus infection can be a valuable tool in~~
 709 ~~protecting the public health. The Legislature finds that despite~~
 710 ~~existing laws, regulations, and professional standards which~~
 711 ~~require or promote the informed, voluntary, and confidential use~~
 712 ~~of tests designed to reveal human immunodeficiency virus~~
 713 ~~infection, many members of the public are deterred from seeking~~
 714 ~~such testing because they misunderstand the nature of the test~~
 715 ~~or fear that test results will be disclosed without their~~
 716 ~~consent. The Legislature finds that the public health will be~~
 717 ~~served by facilitating informed, voluntary, and confidential use~~
 718 ~~of tests designed to detect human immunodeficiency virus~~
 719 ~~infection.~~

720 (2)(3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
 721 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

722 (a) No person in this state shall order a test designed to
 723 identify the human immunodeficiency virus, or its antigen or
 724 antibody, without first obtaining the informed consent of the
 725 person upon whom the test is being performed, except as

588-03554A-12

20121824c1

726 specified in paragraph (h). Informed consent shall be preceded
 727 by an explanation of the right to confidential treatment of
 728 information identifying the subject of the test and the results
 729 of the test to the extent provided by law. Information shall
 730 also be provided on the fact that a positive HIV test result
 731 will be reported to the county health department with sufficient
 732 information to identify the test subject and on the availability
 733 and location of sites at which anonymous testing is performed.
 734 As required in paragraph (3)(c) ~~(4)(e)~~, each county health
 735 department shall maintain a list of sites at which anonymous
 736 testing is performed, including the locations, phone numbers,
 737 and hours of operation of the sites. Consent need not be in
 738 writing provided there is documentation in the medical record
 739 that the test has been explained and the consent has been
 740 obtained.

741 (4)(5) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
 742 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
 743 REGISTRATION.—No county health department and no other person in
 744 this state shall conduct or hold themselves out to the public as
 745 conducting a testing program for acquired immune deficiency
 746 syndrome or human immunodeficiency virus status without first
 747 registering with the Department of Health, reregistering each
 748 year, complying with all other applicable provisions of state
 749 law, and meeting the following requirements:

750 (d) The program must meet all the informed consent criteria
 751 contained in subsection (2) ~~(3)~~.

752 (6)(7) EXEMPTIONS.—Except as provided in paragraph (3)(d)
 753 ~~(4)(d)~~ and ss. 627.429 and 641.3007, insurers and others
 754 participating in activities related to the insurance application

588-03554A-12 20121824c1

755 and underwriting process shall be exempt from this section.
 756 (10)~~(11)~~ TESTING AS A CONDITION OF TREATMENT OR ADMISSION.-
 757 (c) Any violation of this subsection or the rules
 758 implementing it shall be punishable as provided in subsection
 759 (5) ~~(6)~~.
 760 Section 14. Subsection (2) of section 381.0046, Florida
 761 Statutes, is amended to read:
 762 381.0046 Statewide HIV and AIDS prevention campaign.-
 763 (2) The Department of Health shall establish dedicated four
 764 positions within the department for HIV and AIDS regional
 765 minority coordinators and ~~one position for~~ a statewide HIV and
 766 AIDS minority coordinator. The coordinators shall facilitate
 767 statewide efforts to implement and coordinate HIV and AIDS
 768 prevention and treatment programs. ~~The statewide coordinator~~
 769 ~~shall report directly to the chief of the Bureau of HIV and AIDS~~
 770 ~~within the Department of Health.~~
 771 Section 15. Subsection (3) of section 381.005, Florida
 772 Statutes, is renumbered as subsection (2), and present
 773 subsection (2) of that section is amended to read:
 774 381.005 Primary and preventive health services.-
 775 ~~(2) Between October 1, or earlier if the vaccination is~~
 776 ~~available, and February 1 of each year, subject to the~~
 777 ~~availability of an adequate supply of the necessary vaccine,~~
 778 ~~each hospital licensed pursuant to chapter 395 shall implement a~~
 779 ~~program to offer immunizations against the influenza virus and~~
 780 ~~pneumococcal bacteria to all patients age 65 or older, in~~
 781 ~~accordance with the recommendations of the Advisory Committee on~~
 782 ~~Immunization Practices of the United States Centers for Disease~~
 783 ~~Control and Prevention and subject to the clinical judgment of~~

Page 27 of 105

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588-03554A-12 20121824c1

784 ~~the responsible practitioner.~~
 785 Section 16. Subsections (3) through (7) of section
 786 381.0051, Florida Statutes, are renumbered as subsections (2)
 787 through (6), respectively, and present subsection (2) of that
 788 section is amended to read:
 789 381.0051 Family planning.-
 790 ~~(2) LEGISLATIVE INTENT. It is the intent of the Legislature~~
 791 ~~to make available to citizens of the state of childbearing age~~
 792 ~~comprehensive medical knowledge, assistance, and services~~
 793 ~~relating to the planning of families and maternal health care.~~
 794 Section 17. Subsection (5) of section 381.0052, Florida
 795 Statutes, is amended to read:
 796 381.0052 Dental health.-
 797 ~~(5) The department may adopt rules to implement this~~
 798 ~~section.~~
 799 Section 18. Subsection (4) of section 381.0053, Florida
 800 Statutes, is amended to read:
 801 381.0053 Comprehensive nutrition program.-
 802 ~~(4) The department may promulgate rules to implement the~~
 803 ~~provisions of this section.~~
 804 Section 19. Subsections (3) through (11) of section
 805 381.0056, Florida Statutes are renumbered as subsections (2)
 806 through (9), respectively, and present subsections (2), (3), and
 807 (11) of that section are amended to read:
 808 381.0056 School health services program.-
 809 ~~(2) The Legislature finds that health services conducted as~~
 810 ~~a part of the total school health program should be carried out~~
 811 ~~to appraise, protect, and promote the health of students. School~~
 812 ~~health services supplement, rather than replace, parental~~

Page 28 of 105

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03554A-12

20121824c1

813 ~~responsibility and are designed to encourage parents to devote~~
 814 ~~attention to child health, to discover health problems, and to~~
 815 ~~encourage use of the services of their physicians, dentists, and~~
 816 ~~community health agencies.~~

817 (2) ~~(3)~~ As when used in ~~or for purposes of~~ this section:

818 (a) "Emergency health needs" means onsite management and
 819 aid for illness or injury pending the student's return to the
 820 classroom or release to a parent, guardian, designated friend,
 821 or designated health care provider.

822 (b) "Entity" or "health care entity" means a unit of local
 823 government or a political subdivision of the state; a hospital
 824 licensed under chapter 395; a health maintenance organization
 825 certified under chapter 641; a health insurer authorized under
 826 the Florida Insurance Code; a community health center; a migrant
 827 health center; a federally qualified health center; an
 828 organization that meets the requirements for nonprofit status
 829 under s. 501(c)(3) of the Internal Revenue Code; a private
 830 industry or business; or a philanthropic foundation that agrees
 831 to participate in a public-private partnership with a county
 832 health department, local school district, or school in the
 833 delivery of school health services, and agrees to the terms and
 834 conditions for the delivery of such services as required by this
 835 section and as documented in the local school health services
 836 plan.

837 (c) "Invasive screening" means any screening procedure in
 838 which the skin or any body orifice is penetrated.

839 (d) "Physical examination" means a thorough evaluation of
 840 the health status of an individual.

841 (e) "School health services plan" means the document that

588-03554A-12

20121824c1

842 describes the services to be provided, the responsibility for
 843 provision of the services, the anticipated expenditures to
 844 provide the services, and evidence of cooperative planning by
 845 local school districts and county health departments.

846 (f) "Screening" means presumptive identification of unknown
 847 or unrecognized diseases or defects by the application of tests
 848 that can be given with ease and rapidity to apparently healthy
 849 persons.

850 ~~(11) School health programs funded by health care districts~~
 851 ~~or entities defined in subsection (3) must be supplementary to~~
 852 ~~and consistent with the requirements of this section and ss.~~
 853 ~~381.0057 and 381.0059.~~

854 Section 20. Subsections (2) through (7) of section
 855 381.0057, Florida Statutes, are renumbered as subsections (1)
 856 through (6), respectively, and present subsections (1), (4), and
 857 (6) of that section are amended to read:

858 381.0057 Funding for school health services.—

859 ~~(1) It is the intent of the Legislature that funds in~~
 860 ~~addition to those provided under the School Health Services Act~~
 861 ~~be provided to those school districts and schools where there is~~
 862 ~~a high incidence of medically underserved high-risk children,~~
 863 ~~low birthweight babies, infant mortality, or teenage pregnancy.~~
 864 ~~The purpose of this funding is to phase in those programs which~~
 865 ~~offer the greatest potential for promoting the health of~~
 866 ~~students and reducing teenage pregnancy.~~

867 (3) ~~(4)~~ Any school district, school, or laboratory school
 868 which desires to receive state funding under the provisions of
 869 this section shall submit a proposal to the joint committee
 870 established in subsection (2) ~~(3)~~. The proposal shall state the

588-03554A-12 20121824c1

871 goals of the program, provide specific plans for reducing
 872 teenage pregnancy, and describe all of the health services to be
 873 available to students with funds provided pursuant to this
 874 section, including a combination of initiatives such as health
 875 education, counseling, extracurricular, and self-esteem
 876 components. School health services shall not promote elective
 877 termination of pregnancy as a part of counseling services. Only
 878 those program proposals which have been developed jointly by
 879 county health departments and local school districts or schools,
 880 and which have community and parental support, shall be eligible
 881 for funding. Funding shall be available specifically for
 882 implementation of one of the following programs:

883 (a) *School health improvement pilot project.*—The program
 884 shall include basic health care to an elementary school, middle
 885 school, and high school feeder system. Program services shall
 886 include, but not be limited to:

887 1. Planning, implementing, and evaluating school health
 888 services. Staffing shall include a full-time, trained school
 889 health aide in each elementary, middle, and high school; one
 890 full-time nurse to supervise the aides in the elementary and
 891 middle schools; and one full-time nurse in each high school.

892 2. Providing student health appraisals and identification
 893 of actual or potential health problems by screenings, nursing
 894 assessments, and record reviews.

895 3. Expanding screening activities.

896 4. Improving the student utilization of school health
 897 services.

898 5. Coordinating health services for students with parents
 899 or guardians and other agencies in the community.

588-03554A-12 20121824c1

900 (b) *Student support services team program.*—The program
 901 shall include a multidisciplinary team composed of a
 902 psychologist, social worker, and nurse whose responsibilities
 903 are to provide basic support services and to assist, in the
 904 school setting, children who exhibit mild to severely complex
 905 health, behavioral, or learning problems affecting their school
 906 performance. Support services shall include, but not be limited
 907 to: evaluation and treatment for minor illnesses and injuries,
 908 referral and followup for serious illnesses and emergencies,
 909 onsite care and consultation, referral to a physician, and
 910 followup care for pregnancy or chronic diseases and disorders as
 911 well as emotional or mental problems. Services also shall
 912 include referral care for drug and alcohol abuse and sexually
 913 transmitted diseases, sports and employment physicals,
 914 immunizations, and in addition, effective preventive services
 915 aimed at delaying early sexual involvement and aimed at
 916 pregnancy, acquired immune deficiency syndrome, sexually
 917 transmitted diseases, and destructive lifestyle conditions, such
 918 as alcohol and drug abuse. Moneys for this program shall be used
 919 to fund three teams, each consisting of one half-time
 920 psychologist, one full-time nurse, and one full-time social
 921 worker. Each team shall provide student support services to an
 922 elementary school, middle school, and high school that are a
 923 part of one feeder school system and shall coordinate all
 924 activities with the school administrator and guidance counselor
 925 at each school. A program which places all three teams in middle
 926 schools or high schools may also be proposed.

927 (c) *Full service schools.*—The full-service schools shall
 928 integrate the services of the Department of Health that are

588-03554A-12 20121824c1

929 critical to the continuity-of-care process. The department shall
 930 provide services to students on the school grounds. Department
 931 personnel shall provide their specialized services as an
 932 extension of the educational environment. Such services may
 933 include nutritional services, medical services, aid to dependent
 934 children, parenting skills, counseling for abused children, and
 935 education for the students' parents or guardians.

936
 937 Funding may also be available for any other program that is
 938 comparable to a program described in this subsection but is
 939 designed to meet the particular needs of the community.

940 (5)~~(6)~~ Each school district or school program that is
 941 funded through the provisions of this section shall provide a
 942 mechanism through which a parent may, by written request, exempt
 943 a child from all or certain services provided by a school health
 944 services program described in subsection (3) ~~(4)~~.

945 Section 21. Section 381.00591, Florida Statutes, is amended
 946 to read:

947 381.00591 Department of Health; National Environmental
 948 Laboratory accreditation; application; ~~rules.~~The Department of
 949 Health may apply for and become a National Environmental
 950 Laboratory Accreditation Program accreditation body accrediting
 951 authority. The department, as an accrediting entity, may adopt
 952 rules pursuant to ss. 120.536(1) and 120.54, to implement
 953 standards of the National Environmental Laboratory Accreditation
 954 Program, including requirements for proficiency testing
 955 providers and other rules that are not inconsistent with this
 956 section, including rules pertaining to fees, application
 957 procedures, standards applicable to environmental or public

588-03554A-12 20121824c1

958 ~~water supply laboratories, and compliance.~~

959 Section 22. Subsection (9) of section 381.00593, Florida
 960 Statutes, is renumbered as subsection (8), and present
 961 subsection (8) of that section is amended to read:

962 381.00593 Public school volunteer health care practitioner
 963 program.—

964 ~~(8) The Department of Health, in cooperation with the~~
 965 ~~Department of Education, may adopt rules necessary to implement~~
 966 ~~this section. The rules shall include the forms to be completed~~
 967 ~~and procedures to be followed by applicants and school personnel~~
 968 ~~under the program.~~

969 Section 23. Subsections (2) through (6) of section
 970 381.0062, Florida Statutes, are renumbered as subsections (1)
 971 through (6), respectively, and present subsection (1) of that
 972 section is amended to read:

973 381.0062 Supervision; private and certain public water
 974 systems.—

975 ~~(1) LEGISLATIVE INTENT.—It is the intent of the Legislature~~
 976 ~~to protect the public's health by establishing standards for the~~
 977 ~~construction, modification, and operation of public and private~~
 978 ~~water systems to assure consumers that the water provided by~~
 979 ~~those systems is potable.~~

980 Section 24. Subsections (1), (5), (6), and (7) of section
 981 381.0065, Florida Statutes, are amended, paragraphs (b) through
 982 (p) of subsection (2) of that section are redesignated as
 983 paragraphs (c) through (q), respectively, a new paragraph (b) is
 984 added to that subsection, paragraph (j) of subsection (3) and
 985 paragraph (n) of subsection (4) of that section are amended, and
 986 paragraphs (w) through (z) are added to subsection (4) of that

588-03554A-12

20121824c1

987 section, to read:

988 381.0065 Onsite sewage treatment and disposal systems;
989 regulation.—

990 (1) LEGISLATIVE INTENT.—

991 (a) It is the intent of the Legislature that proper
992 management of onsite sewage treatment and disposal systems is
993 paramount to the health, safety, and welfare of the public. ~~It~~
994 ~~is further the intent of the Legislature that the department~~
995 ~~shall administer an evaluation program to ensure the operational~~
996 ~~condition of the system and identify any failure with the~~
997 ~~system.~~

998 ~~(b)~~ It is the intent of the Legislature that where a
999 publicly owned or investor-owned sewerage system is not
1000 available, the department shall issue permits for the
1001 construction, installation, modification, abandonment, or repair
1002 of onsite sewage treatment and disposal systems under conditions
1003 as described in this section and rules adopted under this
1004 section. It is further the intent of the Legislature that the
1005 installation and use of onsite sewage treatment and disposal
1006 systems not adversely affect the public health or significantly
1007 degrade the groundwater or surface water.

1008 (2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the
1009 term:

1010 (b)1. "Bedroom" means a room that can be used for sleeping
1011 and that:

1012 a. For site-built dwellings, has a minimum of 70 square
1013 feet of conditioned space;

1014 b. For manufactured homes, is constructed according to
1015 standards of the United States Department of Housing and Urban

588-03554A-12

20121824c1

1016 Development and has a minimum of 50 square feet of floor area;

1017 c. Is located along an exterior wall;

1018 d. Has a closet and a door or an entrance where a door
1019 could be reasonably installed; and

1020 e. Has an emergency means of escape and rescue opening to
1021 the outside.

1022 2. A room may not be considered a bedroom if it is used to
1023 access another room except a bathroom or closet.

1024 3. "Bedroom" does not include a hallway, bathroom, kitchen,
1025 living room, family room, dining room, den, breakfast nook,
1026 pantry, laundry room, sunroom, recreation room, media/video
1027 room, or exercise room.

1028 (3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.—The
1029 department shall:

1030 (j) Supervise research on, demonstration of, and training
1031 on the performance, environmental impact, and public health
1032 impact of onsite sewage treatment and disposal systems within
1033 this state. Research fees collected under s. 381.0066(2)(k)
1034 ~~381.0066(2)(1)~~ must be used to develop and fund hands-on
1035 training centers designed to provide practical information about
1036 onsite sewage treatment and disposal systems to septic tank
1037 contractors, master septic tank contractors, contractors,
1038 inspectors, engineers, and the public and must also be used to
1039 fund research projects which focus on improvements of onsite
1040 sewage treatment and disposal systems, including use of
1041 performance-based standards and reduction of environmental
1042 impact. Research projects shall be initially approved by the
1043 technical review and advisory panel and shall be applicable to
1044 and reflect the soil conditions specific to Florida. Such

588-03554A-12 20121824c1
 1045 projects shall be awarded through competitive negotiation, using
 1046 the procedures provided in s. 287.055, to public or private
 1047 entities that have experience in onsite sewage treatment and
 1048 disposal systems in Florida and that are principally located in
 1049 Florida. Research projects shall not be awarded to firms or
 1050 entities that employ or are associated with persons who serve on
 1051 either the technical review and advisory panel or the research
 1052 review and advisory committee.

1053 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not
 1054 construct, repair, modify, abandon, or operate an onsite sewage
 1055 treatment and disposal system without first obtaining a permit
 1056 approved by the department. The department may issue permits to
 1057 carry out this section, but shall not make the issuance of such
 1058 permits contingent upon prior approval by the Department of
 1059 Environmental Protection, except that the issuance of a permit
 1060 for work seaward of the coastal construction control line
 1061 established under s. 161.053 shall be contingent upon receipt of
 1062 any required coastal construction control line permit from the
 1063 Department of Environmental Protection. A construction permit is
 1064 valid for 18 months from the issuance date and may be extended
 1065 by the department for one 90-day period under rules adopted by
 1066 the department. A repair permit is valid for 90 days from the
 1067 date of issuance. An operating permit must be obtained prior to
 1068 the use of any aerobic treatment unit or if the establishment
 1069 generates commercial waste. Buildings or establishments that use
 1070 an aerobic treatment unit or generate commercial waste shall be
 1071 inspected by the department at least annually to assure
 1072 compliance with the terms of the operating permit. The operating
 1073 permit for a commercial wastewater system is valid for 1 year

588-03554A-12 20121824c1
 1074 from the date of issuance and must be renewed annually. The
 1075 operating permit for an aerobic treatment unit is valid for 2
 1076 years from the date of issuance and must be renewed every 2
 1077 years. If all information pertaining to the siting, location,
 1078 and installation conditions or repair of an onsite sewage
 1079 treatment and disposal system remains the same, a construction
 1080 or repair permit for the onsite sewage treatment and disposal
 1081 system may be transferred to another person, if the transferee
 1082 files, within 60 days after the transfer of ownership, an
 1083 amended application providing all corrected information and
 1084 proof of ownership of the property. There is no fee associated
 1085 with the processing of this supplemental information. A person
 1086 may not contract to construct, modify, alter, repair, service,
 1087 abandon, or maintain any portion of an onsite sewage treatment
 1088 and disposal system without being registered under part III of
 1089 chapter 489. A property owner who personally performs
 1090 construction, maintenance, or repairs to a system serving his or
 1091 her own owner-occupied single-family residence is exempt from
 1092 registration requirements for performing such construction,
 1093 maintenance, or repairs on that residence, but is subject to all
 1094 permitting requirements. A municipality or political subdivision
 1095 of the state may not issue a building or plumbing permit for any
 1096 building that requires the use of an onsite sewage treatment and
 1097 disposal system unless the owner or builder has received a
 1098 construction permit for such system from the department. A
 1099 building or structure may not be occupied and a municipality,
 1100 political subdivision, or any state or federal agency may not
 1101 authorize occupancy until the department approves the final
 1102 installation of the onsite sewage treatment and disposal system.

588-03554A-12 20121824c1

1103 A municipality or political subdivision of the state may not
 1104 approve any change in occupancy or tenancy of a building that
 1105 uses an onsite sewage treatment and disposal system until the
 1106 department has reviewed the use of the system with the proposed
 1107 change, approved the change, and amended the operating permit.

1108 (n) Evaluations for determining the seasonal high-water
 1109 table elevations or the suitability of soils for the use of a
 1110 new onsite sewage treatment and disposal system shall be
 1111 performed by department personnel, professional engineers
 1112 registered in the state, or such other persons with expertise,
 1113 as defined by rule, in making such evaluations. Evaluations for
 1114 determining mean annual flood lines shall be performed by those
 1115 persons identified in paragraph (2)(j) ~~(2)(i)~~. The department
 1116 shall accept evaluations submitted by professional engineers and
 1117 such other persons as meet the expertise established by this
 1118 section or by rule unless the department has a reasonable
 1119 scientific basis for questioning the accuracy or completeness of
 1120 the evaluation.

1121 (w) Any permit issued and approved by the department for
 1122 the installation, modification, or repair of an onsite sewage
 1123 treatment and disposal system shall transfer with the title to
 1124 the property in a real estate transaction. A title may not be
 1125 encumbered at the time of transfer by new permit requirements by
 1126 a governmental entity for an onsite sewage treatment and
 1127 disposal system which differ from the permitting requirements in
 1128 effect at the time the system was permitted, modified, or
 1129 repaired. No inspection of a system shall be mandated by any
 1130 governmental entity at the point of sale in a real estate
 1131 transaction.

588-03554A-12 20121824c1

1132 (x)1. An onsite sewage treatment and disposal system is not
 1133 considered abandoned if the system is disconnected from a
 1134 structure that was made unusable or destroyed following a
 1135 disaster and was properly functioning at the time of
 1136 disconnection and not adversely affected by the disaster. The
 1137 onsite sewage treatment and disposal system may be reconnected
 1138 to a rebuilt structure if:

1139 a. The reconnection of the system is to the same type of
 1140 structure which contains the same number of bedrooms or less,
 1141 provided the square footage of the structure is less than or
 1142 equal to 110 percent of the original square footage of the
 1143 structure that existed prior to the disaster;

1144 b. The system is not a sanitary nuisance; and

1145 c. The system has not been altered without prior
 1146 authorization.

1147 2. An onsite sewage treatment and disposal system that
 1148 serves a property that is foreclosed upon is not considered
 1149 abandoned.

1150 (y) If an onsite sewage treatment and disposal system
 1151 permittee receives, relies upon, and undertakes construction of
 1152 a system based upon a validly issued construction permit under
 1153 rules applicable at the time of construction but a change to a
 1154 rule occurs within 5 years after the approval of the system for
 1155 construction but before the final approval of the system, the
 1156 rules applicable and in effect at the time of construction
 1157 approval apply at the time of final approval if fundamental site
 1158 conditions have not changed between the time of construction
 1159 approval and final approval.

1160 (z) A modification, replacement, or upgrade of an onsite

588-03554A-12 20121824c1

1161 sewage treatment and disposal system is not required for a
 1162 remodeling addition to a single-family home if a bedroom is not
 1163 added.

1164 ~~(5) EVALUATION AND ASSESSMENT.-~~

1165 ~~(a) Beginning July 1, 2011, the department shall administer~~
 1166 ~~an onsite sewage treatment and disposal system evaluation~~
 1167 ~~program for the purpose of assessing the fundamental operational~~
 1168 ~~condition of systems and identifying any failures within the~~
 1169 ~~systems. The department shall adopt rules implementing the~~
 1170 ~~program standards, procedures, and requirements, including, but~~
 1171 ~~not limited to, a schedule for a 5 year evaluation cycle,~~
 1172 ~~requirements for the pump-out of a system or repair of a failing~~
 1173 ~~system, enforcement procedures for failure of a system owner to~~
 1174 ~~obtain an evaluation of the system, and failure of a contractor~~
 1175 ~~to timely submit evaluation results to the department and the~~
 1176 ~~system owner. The department shall ensure statewide~~
 1177 ~~implementation of the evaluation and assessment program by~~
 1178 ~~January 1, 2016.~~

1179 ~~(b) Owners of an onsite sewage treatment and disposal~~
 1180 ~~system, excluding a system that is required to obtain an~~
 1181 ~~operating permit, shall have the system evaluated at least once~~
 1182 ~~every 5 years to assess the fundamental operational condition of~~
 1183 ~~the system, and identify any failure within the system.~~

1184 ~~(c) All evaluation procedures must be documented and~~
 1185 ~~nothing in this subsection limits the amount of detail an~~
 1186 ~~evaluator may provide at his or her professional discretion. The~~
 1187 ~~evaluation must include a tank and drainfield evaluation, a~~
 1188 ~~written assessment of the condition of the system, and, if~~
 1189 ~~necessary, a disclosure statement pursuant to the department's~~

588-03554A-12 20121824c1

1190 ~~procedure.~~

1191 ~~(d)1. Systems being evaluated that were installed prior to~~
 1192 ~~January 1, 1983, shall meet a minimum 6-inch separation from the~~
 1193 ~~bottom of the drainfield to the wettest season water table~~
 1194 ~~elevation as defined by department rule. All drainfield repairs,~~
 1195 ~~replacements or modifications to systems installed prior to~~
 1196 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
 1197 ~~the bottom of the drainfield to the wettest season water table~~
 1198 ~~elevation as defined by department rule.~~

1199 ~~2. Systems being evaluated that were installed on or after~~
 1200 ~~January 1, 1983, shall meet a minimum 12 inch separation from~~
 1201 ~~the bottom of the drainfield to the wettest season water table~~
 1202 ~~elevation as defined by department rule. All drainfield repairs,~~
 1203 ~~replacements or modification to systems developed on or after~~
 1204 ~~January 1, 1983, shall meet a minimum 24-inch separation from~~
 1205 ~~the bottom of the drainfield to the wettest season water table~~
 1206 ~~elevation.~~

1207 ~~(e) If documentation of a tank pump-out or a permitted new~~
 1208 ~~installation, repair, or modification of the system within the~~
 1209 ~~previous 5 years is provided, and states the capacity of the~~
 1210 ~~tank and indicates that the condition of the tank is not a~~
 1211 ~~sanitary or public health nuisance pursuant to department rule,~~
 1212 ~~a pump-out of the system is not required.~~

1213 ~~(f) Owners are responsible for paying the cost of any~~
 1214 ~~required pump-out, repair, or replacement pursuant to department~~
 1215 ~~rule, and may not request partial evaluation or the omission of~~
 1216 ~~portions of the evaluation.~~

1217 ~~(g) Each evaluation or pump-out required under this~~
 1218 ~~subsection must be performed by a septic tank contractor or~~

588-03554A-12 20121824c1

1219 ~~master septic tank contractor registered under part III of~~
 1220 ~~chapter 489, a professional engineer with wastewater treatment~~
 1221 ~~system experience licensed pursuant to chapter 471, or an~~
 1222 ~~environmental health professional certified under chapter 381 in~~
 1223 ~~the area of onsite sewage treatment and disposal system~~
 1224 ~~evaluation.~~

1225 ~~(h) The evaluation report fee collected pursuant to s.~~
 1226 ~~381.0066(2)(b) shall be remitted to the department by the~~
 1227 ~~evaluator at the time the report is submitted.~~

1228 ~~(i) Prior to any evaluation deadline, the department must~~
 1229 ~~provide a minimum of 60 days' notice to owners that their~~
 1230 ~~systems must be evaluated by that deadline. The department may~~
 1231 ~~include a copy of any homeowner educational materials developed~~
 1232 ~~pursuant to this section which provides information on the~~
 1233 ~~proper maintenance of onsite sewage treatment and disposal~~
 1234 ~~systems.~~

1235 ~~(5)(6) ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.-~~

1236 (a) Department personnel who have reason to believe
 1237 noncompliance exists, may at any reasonable time, enter the
 1238 premises permitted under ss. 381.0065-381.0066, or the business
 1239 premises of any septic tank contractor or master septic tank
 1240 contractor registered under part III of chapter 489, or any
 1241 premises that the department has reason to believe is being
 1242 operated or maintained not in compliance, to determine
 1243 compliance with the provisions of this section, part I of
 1244 chapter 386, or part III of chapter 489 or rules or standards
 1245 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
 1246 part III of chapter 489. As used in this paragraph, the term
 1247 "premises" does not include a residence or private building. To

588-03554A-12 20121824c1

1248 gain entry to a residence or private building, the department
 1249 must obtain permission from the owner or occupant or secure an
 1250 inspection warrant from a court of competent jurisdiction.

1251 (b)1. The department may issue citations that may contain
 1252 an order of correction or an order to pay a fine, or both, for
 1253 violations of ss. 381.0065-381.0067, part I of chapter 386, or
 1254 part III of chapter 489 or the rules adopted by the department,
 1255 when a violation of these sections or rules is enforceable by an
 1256 administrative or civil remedy, or when a violation of these
 1257 sections or rules is a misdemeanor of the second degree. A
 1258 citation issued under ss. 381.0065-381.0067, part I of chapter
 1259 386, or part III of chapter 489 constitutes a notice of proposed
 1260 agency action.

1261 2. A citation must be in writing and must describe the
 1262 particular nature of the violation, including specific reference
 1263 to the provisions of law or rule allegedly violated.

1264 3. The fines imposed by a citation issued by the department
 1265 may not exceed \$500 for each violation. Each day the violation
 1266 exists constitutes a separate violation for which a citation may
 1267 be issued.

1268 4. The department shall inform the recipient, by written
 1269 notice pursuant to ss. 120.569 and 120.57, of the right to an
 1270 administrative hearing to contest the citation within 21 days
 1271 after the date the citation is received. The citation must
 1272 contain a conspicuous statement that if the recipient fails to
 1273 pay the fine within the time allowed, or fails to appear to
 1274 contest the citation after having requested a hearing, the
 1275 recipient has waived the recipient's right to contest the
 1276 citation and must pay an amount up to the maximum fine.

588-03554A-12

20121824c1

1277 5. The department may reduce or waive the fine imposed by
 1278 the citation. In determining whether to reduce or waive the
 1279 fine, the department must consider the gravity of the violation,
 1280 the person's attempts at correcting the violation, and the
 1281 person's history of previous violations including violations for
 1282 which enforcement actions were taken under ss. 381.0065-
 1283 381.0067, part I of chapter 386, part III of chapter 489, or
 1284 other provisions of law or rule.

1285 6. Any person who willfully refuses to sign and accept a
 1286 citation issued by the department commits a misdemeanor of the
 1287 second degree, punishable as provided in s. 775.082 or s.
 1288 775.083.

1289 7. The department, pursuant to ss. 381.0065-381.0067, part
 1290 I of chapter 386, or part III of chapter 489, shall deposit any
 1291 fines it collects in the county health department trust fund for
 1292 use in providing services specified in those sections.

1293 8. This section provides an alternative means of enforcing
 1294 ss. 381.0065-381.0067, part I of chapter 386, and part III of
 1295 chapter 489. This section does not prohibit the department from
 1296 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
 1297 III of chapter 489, or its rules, by any other means. However,
 1298 the department must elect to use only a single method of
 1299 enforcement for each violation.

1300 ~~(6)(7)~~ LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective
 1301 January 1, 2016, the land application of septage from onsite
 1302 sewage treatment and disposal systems is prohibited. ~~By February~~
 1303 ~~1, 2011, the department, in consultation with the Department of~~
 1304 ~~Environmental Protection, shall provide a report to the~~
 1305 ~~Governor, the President of the Senate, and the Speaker of the~~

Page 45 of 105

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588-03554A-12

20121824c1

1306 ~~House of Representatives, recommending alternative methods to~~
 1307 ~~establish enhanced treatment levels for the land application of~~
 1308 ~~septage from onsite sewage and disposal systems. The report~~
 1309 ~~shall include, but is not limited to, a schedule for the~~
 1310 ~~reduction in land application, appropriate treatment levels,~~
 1311 ~~alternative methods for treatment and disposal, enhanced~~
 1312 ~~application site permitting requirements including any~~
 1313 ~~requirements for nutrient management plans, and the range of~~
 1314 ~~costs to local governments, affected businesses, and individuals~~
 1315 ~~for alternative treatment and disposal methods. The report shall~~
 1316 ~~also include any recommendations for legislation or rule~~
 1317 ~~authority needed to reduce land application of septage.~~

1318 Section 25. Section 381.00651, Florida Statutes, is created
 1319 to read:

1320 381.00651 Periodic evaluation and assessment of onsite
 1321 sewage treatment and disposal systems.—

1322 (1) For the purposes of this section, the term "first
 1323 magnitude spring" means a spring that has a median water
 1324 discharge of greater than or equal to 100 cubic feet per second
 1325 for the period of record, as determined by the Department of
 1326 Environmental Protection.

1327 (2) A county or municipality that contains a first
 1328 magnitude spring shall, by no later than January 1, 2013,
 1329 develop and adopt by local ordinance an onsite sewage treatment
 1330 and disposal system evaluation and assessment program that meets
 1331 the requirements of this section. The ordinance may apply within
 1332 all or part of its geographic area. Those counties or
 1333 municipalities containing a first magnitude spring which have
 1334 already adopted an onsite sewage treatment and disposal system

Page 46 of 105

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588-03554A-12 20121824c1

1335 evaluation and assessment program and which meet the
 1336 grandfathering requirements contained in this section, or have
 1337 chosen to opt out of this section in the manner provided herein,
 1338 are exempt from the requirement to adopt an ordinance
 1339 implementing an evaluation and assessment program. The governing
 1340 body of a local government that chooses to opt out of this
 1341 section, by a majority plus one vote of the members of the
 1342 governing board, shall do so by adopting a resolution that
 1343 indicates an intent on the part of such local government not to
 1344 adopt an onsite sewage treatment and disposal system evaluation
 1345 and assessment program. Such resolution shall be addressed and
 1346 transmitted to the Secretary of State. Absent an interlocal
 1347 agreement or county charter provision to the contrary, a
 1348 municipality may elect to opt out of the requirements of this
 1349 section, by a majority plus one vote of the members of the
 1350 governing board, notwithstanding a contrary decision of the
 1351 governing body of a county. Any local government that has
 1352 properly opted out of this section but subsequently chooses to
 1353 adopt an evaluation and assessment program may do so only
 1354 pursuant to the requirements of this section and may not deviate
 1355 from such requirements.

1356 (3) Any county or municipality that does not contain a
 1357 first magnitude spring may at any time develop and adopt by
 1358 local ordinance an onsite sewage treatment and disposal system
 1359 evaluation and assessment program, provided such program meets
 1360 and does not deviate from the requirements of this section.

1361 (4) Notwithstanding any other provision in this section, a
 1362 county or municipality that has adopted a program before July 1,
 1363 2011, may continue to enforce its current program without having

Page 47 of 105

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588-03554A-12 20121824c1

1364 to meet the requirements of this section, provided such program
 1365 does not require an evaluation at the point of sale in a real
 1366 estate transaction.

1367 (5) Any county or municipality may repeal an ordinance
 1368 adopted pursuant to this section only if the county or
 1369 municipality notifies the Secretary of State by letter of the
 1370 repeal. A county or municipality may not adopt an onsite sewage
 1371 treatment and disposal system evaluation and assessment program
 1372 except pursuant to this section.

1373 (6) The requirements for an onsite sewage treatment and
 1374 disposal system evaluation and assessment program are as
 1375 follows:

1376 (a) Evaluations.—An evaluation of each onsite sewage
 1377 treatment and disposal system within all or part of the county's
 1378 or municipality's jurisdiction must take place once every 5
 1379 years to assess the fundamental operational condition of the
 1380 system and to identify system failures. The ordinance may not
 1381 mandate an evaluation at the point of sale in a real estate
 1382 transaction and may not require a soil examination. The location
 1383 of the system shall be identified. A tank and drainfield
 1384 evaluation and a written assessment of the overall condition of
 1385 the system pursuant to the assessment procedure prescribed in
 1386 subsection (7) are required.

1387 (b) Qualified contractors.—Each evaluation required under
 1388 this subsection must be performed by a qualified contractor, who
 1389 may be a septic tank contractor or master septic tank contractor
 1390 registered under part III of chapter 489, a professional
 1391 engineer having wastewater treatment system experience and
 1392 licensed under chapter 471, or an environmental health

Page 48 of 105

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588-03554A-12 20121824c1

1393 professional certified under this chapter in the area of onsite
 1394 sewage treatment and disposal system evaluation. Evaluations and
 1395 pump-outs may also be performed by an authorized employee
 1396 working under the supervision of an individual listed in this
 1397 paragraph; however, all evaluation forms must be signed by a
 1398 qualified contractor in writing or by electronic signature.

1399 (c) Repair of systems.—The local ordinance may not require
 1400 a repair, modification, or replacement of a system as a result
 1401 of an evaluation unless the evaluation identifies a system
 1402 failure. For purposes of this subsection, the term "system
 1403 failure" means a condition existing within an onsite sewage
 1404 treatment and disposal system which results in the discharge of
 1405 untreated or partially treated wastewater onto the ground
 1406 surface or into surface water or that results in the failure of
 1407 building plumbing to discharge properly and presents a sanitary
 1408 nuisance. A system is not in failure if the system does not have
 1409 a minimum separation distance between the drainfield and the
 1410 wettest season water table or if an obstruction in a sanitary
 1411 line or an effluent screen or filter prevents effluent from
 1412 flowing into a drainfield. If a system failure is identified and
 1413 several allowable remedial measures are available to resolve the
 1414 failure, the system owner may choose the least costly allowable
 1415 remedial measure to fix the system. There may be instances in
 1416 which a pump-out is sufficient to resolve a system failure.
 1417 Allowable remedial measures to resolve a system failure are
 1418 limited to what is necessary to resolve the failure and must
 1419 meet, to the maximum extent practicable, the requirements of the
 1420 repair code in effect when the repair is made, subject to the
 1421 exceptions specified in s. 381.0065(4)(g). An engineer-designed

Page 49 of 105

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588-03554A-12 20121824c1

1422 performance-based treatment system to reduce nutrients may not
 1423 be required as an alternative remediation measure to resolve the
 1424 failure of a conventional system.

1425 (d) Exemptions.—

1426 1. The local ordinance shall exempt from the evaluation
 1427 requirements any system that is required to obtain an operating
 1428 permit pursuant to state law or that is inspected by the
 1429 department pursuant to the annual permit inspection requirements
 1430 of chapter 513.

1431 2. The local ordinance may provide for an exemption or an
 1432 extension of time to obtain an evaluation and assessment if
 1433 connection to a sewer system is available, connection to the
 1434 sewer system is imminent, and written arrangements for payment
 1435 of any utility assessments or connection fees have been made by
 1436 the system owner.

1437 3. An onsite sewage treatment and disposal system serving a
 1438 residential dwelling unit on a lot with a ratio of one bedroom
 1439 per acre or greater is exempt from the requirements of this
 1440 section and may not be included in any onsite sewage treatment
 1441 and disposal system inspection program.

1442 (7) The following procedures shall be used for conducting
 1443 evaluations:

1444 (a) Tank evaluation.—The tank evaluation shall assess the
 1445 apparent structural condition and watertightness of the tank and
 1446 shall estimate the size of the tank. The evaluation must include
 1447 a pump-out. However, an ordinance may not require a pump-out if
 1448 there is documentation indicating that a tank pump-out or a
 1449 permitted new installation, repair, or modification of the
 1450 system has occurred within the previous 5 years, identifying the

Page 50 of 105

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588-03554A-12 20121824c1

1451 capacity of the tank, and indicating that the condition of the
 1452 tank is structurally sound and watertight. Visual inspection of
 1453 the tank must be made when the tank is empty to detect cracks,
 1454 leaks, or other defects. Baffles or tees must be checked to
 1455 ensure that they are intact and secure. The evaluation shall
 1456 note the presence and condition of outlet devices, effluent
 1457 filters, and compartment walls; any structural defect in the
 1458 tank; the condition and fit of the tank lid, including manholes;
 1459 whether surface water can infiltrate the tank; and whether the
 1460 tank was pumped out. If the tank, in the opinion of the
 1461 qualified contractor, is in danger of being damaged by leaving
 1462 the tank empty after inspection, the tank shall be refilled
 1463 before concluding the inspection. Broken or damaged lids or
 1464 manholes shall be replaced without obtaining a repair permit.

1465 (b) Drainfield evaluation.—The drainfield evaluation must
 1466 include a determination of the approximate size and location of
 1467 the drainfield. The evaluation shall state whether there is any
 1468 sewage or effluent visible on the ground or discharging to a
 1469 ditch or other water body and the location of any downspout or
 1470 other source of water near or in the vicinity of the drainfield.

1471 (c) Special circumstances.—If the system contains pumps,
 1472 siphons, or alarms, the following information may be provided at
 1473 the request of the homeowner:

1474 1. An assessment of dosing tank integrity, including the
 1475 approximate volume and the type of material used in the tank's
 1476 construction;

1477 2. Whether the pump is elevated off the bottom of the
 1478 chamber and its operational status;

1479 3. Whether the system has a check valve and purge hole; and

588-03554A-12 20121824c1

1480 4. Whether the system has a high-water alarm, and if so
 1481 whether the alarm is audio or visual or both, the location and
 1482 operational condition of the alarm, and whether the electrical
 1483 connections to the alarm appear satisfactory.

1484
 1485 If the homeowner does not request this information, the
 1486 qualified contractor and its employee are not liable for any
 1487 damages directly relating from a failure of the system's pumps,
 1488 siphons, or alarms. This exclusion of liability must be stated
 1489 on the front cover of the report required under paragraph (d).

1490 (d) Assessment procedure.—All evaluation procedures used by
 1491 a qualified contractor shall be documented in the environmental
 1492 health database of the Department of Health. The qualified
 1493 contractor shall provide a copy of a written, signed evaluation
 1494 report to the property owner upon completion of the evaluation
 1495 and to the county health department within 30 days after the
 1496 evaluation. The report shall contain the name and license number
 1497 of the company providing the report. A copy of the evaluation
 1498 report shall be retained by the local county health department
 1499 for a minimum of 5 years and until a subsequent inspection
 1500 report is filed. The front cover of the report must identify any
 1501 system failure and include a clear and conspicuous notice to the
 1502 owner that the owner has a right to have any remediation of the
 1503 failure performed by a qualified contractor other than the
 1504 contractor performing the evaluation. The report must further
 1505 identify any crack, leak, improper fit, or other defect in the
 1506 tank, manhole, or lid, and any other damaged or missing
 1507 component; any sewage or effluent visible on the ground or
 1508 discharging to a ditch or other surface water body; any

588-03554A-12 20121824c1
 1509 downspout, stormwater, or other source of water directed onto or
 1510 toward the system; and any other maintenance need or condition
 1511 of the system at the time of the evaluation which, in the
 1512 opinion of the qualified contractor, would possibly interfere
 1513 with or restrict any future repair or modification to the
 1514 existing system. The report shall conclude with an overall
 1515 assessment of the fundamental operational condition of the
 1516 system.

1517 (8) The county health department shall administer any
 1518 evaluation program on behalf of a county, or a municipality
 1519 within the county, that has adopted an evaluation program
 1520 pursuant to this section. In order to administer the evaluation
 1521 program, the county or municipality, in consultation with the
 1522 county health department, may develop a reasonable fee schedule
 1523 to be used solely to pay for the costs of administering the
 1524 evaluation program. Such a fee schedule shall be identified in
 1525 the ordinance that adopts the evaluation program. When arriving
 1526 at a reasonable fee schedule, the estimated annual revenues to
 1527 be derived from fees may not exceed reasonable estimated annual
 1528 costs of the program. Fees shall be assessed to the system owner
 1529 during an inspection and separately identified on the invoice of
 1530 the qualified contractor. Fees shall be remitted by the
 1531 qualified contractor to the county health department. The county
 1532 health department's administrative responsibilities include the
 1533 following:

1534 (a) Providing a notice to the system owner at least 60 days
 1535 before the system is due for an evaluation. The notice may
 1536 include information on the proper maintenance of onsite sewage
 1537 treatment and disposal systems.

588-03554A-12 20121824c1
 1538 (b) In consultation with the Department of Health,
 1539 providing uniform disciplinary procedures and penalties for
 1540 qualified contractors who do not comply with the requirements of
 1541 the adopted ordinance, including, but not limited to, failure to
 1542 provide the evaluation report as required in this subsection to
 1543 the system owner and the county health department. Only the
 1544 county health department may assess penalties against system
 1545 owners for failure to comply with the adopted ordinance,
 1546 consistent with existing requirements of law.

1547 (9) (a) A county or municipality that adopts an onsite
 1548 sewage treatment and disposal system evaluation and assessment
 1549 program pursuant to this section shall notify the Secretary of
 1550 Environmental Protection, the Department of Health, and the
 1551 applicable county health department upon the adoption of its
 1552 ordinance establishing the program.

1553 (b) Upon receipt of the notice under paragraph (a), the
 1554 Department of Environmental Protection shall, within existing
 1555 resources, notify the county or municipality of the potential
 1556 use of, and access to, program funds under the Clean Water State
 1557 Revolving Fund or s. 319 of the Clean Water Act, provide
 1558 guidance in the application process to receive such moneys, and
 1559 provide advice and technical assistance to the county or
 1560 municipality on how to establish a low-interest revolving loan
 1561 program or how to model a revolving loan program after the low-
 1562 interest loan program of the Clean Water State Revolving Fund.
 1563 This paragraph does not obligate the Department of Environmental
 1564 Protection to provide any county or municipality with money to
 1565 fund such programs.

1566 (c) The Department of Health may not adopt any rule that

588-03554A-12 20121824c1

1567 alters the provisions of this section.

1568 (d) The Department of Health must allow county health
 1569 departments and qualified contractors access to the
 1570 environmental health database to track relevant information and
 1571 assimilate data from assessment and evaluation reports of the
 1572 overall condition of onsite sewage treatment and disposal
 1573 systems. The environmental health database must be used by
 1574 contractors to report each service and evaluation event and by a
 1575 county health department to notify owners of onsite sewage
 1576 treatment and disposal systems when evaluations are due. Data
 1577 and information must be recorded and updated as service and
 1578 evaluations are conducted and reported.

1579 (10) This section does not:

1580 (a) Limit county and municipal home rule authority to act
 1581 outside the scope of the evaluation and assessment program set
 1582 forth in this section;

1583 (b) Repeal or affect any other law relating to the subject
 1584 matter of onsite sewage treatment and disposal systems; or

1585 (c) Prohibit a county or municipality from:

1586 1. Enforcing existing ordinances or adopting new ordinances
 1587 relating to onsite sewage treatment facilities to address public
 1588 health and safety if such ordinances do not repeal, suspend, or
 1589 alter the requirements or limitations of this section.

1590 2. Adopting local environmental and pollution abatement
 1591 ordinances for water quality improvement as provided for by law
 1592 if such ordinances do not repeal, suspend, or alter the
 1593 requirements or limitations of this section.

1594 3. Exercising its independent and existing authority to
 1595 meet the requirements of s. 381.0065.

588-03554A-12 20121824c1

1596 Section 26. Section 381.00656, Florida Statutes, is
 1597 repealed.

1598 Section 27. Subsection (2) of section 381.0066, Florida
 1599 Statutes, is amended to read:

1600 381.0066 Onsite sewage treatment and disposal systems;
 1601 fees.—

1602 (2) The minimum fees in the following fee schedule apply
 1603 until changed by rule by the department within the following
 1604 limits:

1605 (a) Application review, permit issuance, or system
 1606 inspection, including repair of a subsurface, mound, filled, or
 1607 other alternative system or permitting of an abandoned system: a
 1608 fee of not less than \$25, or more than \$125.

1609 ~~(b) A 5-year evaluation report submitted pursuant to s.~~
 1610 ~~381.0065(5): a fee not less than \$15, or more than \$30. At least~~
 1611 ~~\$1 and no more than \$5 collected pursuant to this paragraph~~
 1612 ~~shall be used to fund a grant program established under s.~~
 1613 ~~381.00656.~~

1614 ~~(b)(e)~~ Site evaluation, site reevaluation, evaluation of a
 1615 system previously in use, or a per annum septage disposal site
 1616 evaluation: a fee of not less than \$40, or more than \$115.

1617 ~~(c)(d)~~ Biennial Operating permit for aerobic treatment
 1618 units or performance-based treatment systems: a fee of not more
 1619 than \$100.

1620 ~~(d)(e)~~ Annual operating permit for systems located in areas
 1621 zoned for industrial manufacturing or equivalent uses or where
 1622 the system is expected to receive wastewater which is not
 1623 domestic in nature: a fee of not less than \$150, or more than
 1624 \$300.

588-03554A-12 20121824c1

1625 ~~(e)(f)~~ Innovative technology: a fee not to exceed \$25,000.
 1626 ~~(f)(g)~~ Septage disposal service, septage stabilization
 1627 facility, portable or temporary toilet service, tank
 1628 manufacturer inspection: a fee of not less than \$25, or more
 1629 than \$200, per year.
 1630 ~~(g)(h)~~ Application for variance: a fee of not less than
 1631 \$150, or more than \$300.
 1632 ~~(h)(i)~~ Annual operating permit for waterless, incinerating,
 1633 or organic waste composting toilets: a fee of not less than \$15
 1634 ~~\$50~~, or more than \$30 ~~\$150~~.
 1635 ~~(i)(j)~~ Aerobic treatment unit or performance-based
 1636 treatment system maintenance entity permit: a fee of not less
 1637 than \$25, or more than \$150, per year.
 1638 ~~(j)(k)~~ Reinspection fee per visit for site inspection after
 1639 system construction approval or for noncompliant system
 1640 installation per site visit: a fee of not less than \$25, or more
 1641 than \$100.
 1642 ~~(k)(l)~~ Research: An additional \$5 fee shall be added to
 1643 each new system construction permit issued to be used to fund
 1644 onsite sewage treatment and disposal system research,
 1645 demonstration, and training projects. Five dollars from any
 1646 repair permit fee collected under this section shall be used for
 1647 funding the hands-on training centers described in s.
 1648 381.0065(3)(j).
 1649 ~~(l)(m)~~ Annual operating permit, including annual inspection
 1650 and any required sampling and laboratory analysis of effluent,
 1651 for an engineer-designed performance-based system: a fee of not
 1652 less than \$150, or more than \$300.
 1653

Page 57 of 105

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588-03554A-12 20121824c1

1654 ~~On or before January 1, 2011, the Surgeon General, after~~
 1655 ~~consultation with the Revenue Estimating Conference, shall~~
 1656 ~~determine a revenue neutral fee schedule for services provided~~
 1657 ~~pursuant to s. 381.0065(5) within the parameters set in~~
 1658 ~~paragraph (b). Such determination is not subject to the~~
 1659 ~~provisions of chapter 120. The funds collected pursuant to this~~
 1660 ~~subsection must be deposited in a trust fund administered by the~~
 1661 ~~department, to be used for the purposes stated in this section~~
 1662 ~~and ss. 381.0065 and 381.00655.~~
 1663 Section 28. Section 381.0068, Florida Statutes, is amended
 1664 to read:
 1665 381.0068 Technical review and advisory panel.—
 1666 (1) The Department of Health shall, ~~by July 1, 1996,~~
 1667 establish and staff a technical review and advisory panel to
 1668 assist the department with rule adoption.
 1669 (2) The primary purpose of the panel is to assist the
 1670 department in rulemaking and decisionmaking by drawing on the
 1671 expertise of representatives from several groups that are
 1672 affected by onsite sewage treatment and disposal systems. The
 1673 panel may also review and comment on any legislation or any
 1674 existing or proposed state policy or issue related to onsite
 1675 sewage treatment and disposal systems. ~~If requested by the~~
 1676 ~~panel, the chair will advise any affected person or member of~~
 1677 ~~the Legislature of the panel's position on the legislation or~~
 1678 ~~any existing or proposed state policy or issue.~~ The chair may
 1679 also take such other action as is appropriate to allow the panel
 1680 to function. At a minimum, the panel shall consist of a soil
 1681 scientist; a professional engineer registered in this state who
 1682 is recommended by the Florida Engineering Society and who has

Page 58 of 105

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588-03554A-12 20121824c1

1683 work experience in onsite sewage treatment and disposal systems;
 1684 two representatives from the home-building industry recommended
 1685 by the Florida Home Builders Association, including one who is a
 1686 developer in this state who develops lots using onsite sewage
 1687 treatment and disposal systems; a representative from the county
 1688 health departments who has experience permitting and inspecting
 1689 the installation of onsite sewage treatment and disposal systems
 1690 in this state; a representative from the real estate industry
 1691 who is recommended by the Florida Association of Realtors; a
 1692 consumer representative with a science background; two
 1693 representatives of the septic tank industry recommended by the
 1694 Florida Onsite Wastewater Association, including one who is a
 1695 manufacturer of onsite sewage treatment and disposal systems; a
 1696 representative from local government who is knowledgeable about
 1697 domestic wastewater treatment and who is recommended by the
 1698 Florida Association of Counties and the Florida League of
 1699 Cities; and a representative from the environmental health
 1700 profession who is recommended by the Florida Environmental
 1701 Health Association and who is not employed by a county health
 1702 department. Members are to be appointed for a term of 2 years.
 1703 The panel may also, as needed, be expanded to include ad hoc,
 1704 nonvoting representatives who have topic-specific expertise. All
 1705 rules proposed by the department which relate to onsite sewage
 1706 treatment and disposal systems must be presented to the panel
 1707 for review and comment prior to adoption. The panel's position
 1708 on proposed rules shall be made a part of the rulemaking record
 1709 that is maintained by the agency. The panel shall select a
 1710 chair, who shall serve for a period of 1 year and who shall
 1711 direct, coordinate, and execute the duties of the panel. The

588-03554A-12 20121824c1

1712 panel shall also solicit input from the department's variance
 1713 review and advisory committee before submitting any comments to
 1714 the department concerning proposed rules. The panel's comments
 1715 must include any dissenting points of view concerning proposed
 1716 rules. The panel shall hold meetings as it determines necessary
 1717 to conduct its business, except that the chair, a quorum of the
 1718 voting members of the panel, or the department may call
 1719 meetings. The department shall keep minutes of all meetings of
 1720 the panel. Panel members shall serve without remuneration, but,
 1721 if requested, shall be reimbursed for per diem and travel
 1722 expenses as provided in s. 112.061.

1723 Section 29. Section 381.00781, Florida Statutes, is amended
 1724 to read:

1725 381.00781 Fees; disposition.—

1726 ~~(1)~~ The department shall establish by rule the following
 1727 fees:

1728 (1)(a) Fee For the initial licensure of a tattoo
 1729 establishment and the renewal of such license, a fee which,
 1730 ~~except as provided in subsection (2), may not to~~ exceed \$250 per
 1731 year.

1732 (2)(b) Fee For licensure of a temporary establishment, a
 1733 fee which, ~~except as provided in subsection (2), may not to~~
 1734 exceed \$250.

1735 (3)(c) Fee For the initial licensure of a tattoo artist and
 1736 the renewal of such license, a fee which, ~~except as provided in~~
 1737 ~~subsection (2), may not to~~ exceed \$150 per year.

1738 (4)(d) Fee For registration or reregistration of a guest
 1739 tattoo artist, a fee which, ~~except as provided in subsection~~
 1740 ~~(2), may not to~~ exceed \$45.

588-03554A-12

20121824c1

1741 (5)(e) Fee For reactivation of an inactive tattoo
 1742 establishment license or tattoo artist license. A license
 1743 becomes inactive if it is not renewed before the expiration of
 1744 the current license.

1745 ~~(2) The department may annually adjust the maximum fees~~
 1746 ~~authorized under subsection (1) according to the rate of~~
 1747 ~~inflation or deflation indicated by the Consumer Price Index for~~
 1748 ~~All Urban Consumers, U.S. City Average, All Items, as reported~~
 1749 ~~by the United States Department of Labor.~~

1750 Section 30. Subsection (1) of section 381.0098, Florida
 1751 Statutes, is amended to read:

1752 381.0098 Biomedical waste.—

1753 (1) LEGISLATIVE INTENT.—~~It is the intent of the Legislature~~
 1754 ~~to protect the public health by establishing standards for the~~
 1755 ~~safe packaging, transport, storage, treatment, and disposal of~~
 1756 ~~biomedical waste.~~ Except as otherwise provided herein, the
 1757 Department of Health shall regulate the packaging, transport,
 1758 storage, and treatment of biomedical waste. The Department of
 1759 Environmental Protection shall regulate onsite and offsite
 1760 incineration and disposal of biomedical waste. Consistent with
 1761 the foregoing, the Department of Health shall have the exclusive
 1762 authority to establish treatment efficacy standards for
 1763 biomedical waste and the Department of Environmental Protection
 1764 shall have the exclusive authority to establish statewide
 1765 standards relating to environmental impacts, if any, of
 1766 treatment and disposal including, but not limited to, water
 1767 discharges and air emissions. An interagency agreement between
 1768 the Department of Environmental Protection and the Department of
 1769 Health shall be developed to ensure maximum efficiency in

Page 61 of 105

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588-03554A-12

20121824c1

1770 coordinating, administering, and regulating biomedical wastes.

1771 Section 31. Subsections (2) through (8) of section
 1772 381.0101, Florida Statutes, are renumbered as subsection (1)
 1773 through (7), respectively, and present subsections (1), (2),
 1774 (3), and (4) and paragraph (a) of present subsection (5) of that
 1775 section are amended to read:

1776 381.0101 Environmental health professionals.—

1777 ~~(1) LEGISLATIVE INTENT. Persons responsible for providing~~
 1778 ~~technical and scientific evaluations of environmental health and~~
 1779 ~~sanitary conditions in business establishments and communities~~
 1780 ~~throughout the state may create a danger to the public health if~~
 1781 ~~they are not skilled or competent to perform such evaluations.~~
 1782 ~~The public relies on the judgment of environmental health~~
 1783 ~~professionals employed by both government agencies and~~
 1784 ~~industries to assure them that environmental hazards are~~
 1785 ~~identified and removed before they endanger the health or safety~~
 1786 ~~of the public. The purpose of this section is to assure the~~
 1787 ~~public that persons specifically responsible for performing~~
 1788 ~~environmental health and sanitary evaluations have been~~
 1789 ~~certified by examination as competent to perform such work.~~

1790 (1)(2) DEFINITIONS.—As used in this section:

1791 (a) "Board" means the Environmental Health Professionals
 1792 Advisory Board.

1793 (b) "Department" means the Department of Health.

1794 (c) "Environmental health" means that segment of public
 1795 health work which deals with the examination of those factors in
 1796 the human environment which may impact adversely on the health
 1797 status of an individual or the public.

1798 (d) "Environmental health professional" means a person who

Page 62 of 105

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588-03554A-12 20121824c1

1799 is employed or assigned the responsibility for assessing the
 1800 environmental health or sanitary conditions, as defined by the
 1801 department, within a building, on an individual's property, or
 1802 within the community at large, and who has the knowledge,
 1803 skills, and abilities to carry out these tasks. Environmental
 1804 health professionals may be either field, supervisory, or
 1805 administrative staff members.

1806 (e) "Certified" means a person who has displayed competency
 1807 to perform evaluations of environmental or sanitary conditions
 1808 through examination.

1809 (f) "Registered sanitarian," "R.S.," "Registered
 1810 Environmental Health Specialist," or "R.E.H.S." means a person
 1811 who has been certified by either the National Environmental
 1812 Health Association or the Florida Environmental Health
 1813 Association as knowledgeable in the environmental health
 1814 profession.

1815 (g) "Primary environmental health program" means those
 1816 programs determined by the department to be essential for
 1817 providing basic environmental and sanitary protection to the
 1818 public. At a minimum, these programs shall include food
 1819 protection program work and onsite sewage treatment and disposal
 1820 system evaluations.

1821 ~~(2)-(3)~~ CERTIFICATION REQUIRED.—~~A~~ No person may not shall
 1822 perform environmental health or sanitary evaluations in any
 1823 primary program area of environmental health without being
 1824 certified by the department as competent to perform such
 1825 evaluations. This section does not apply to:

1826 (a) Persons performing inspections of public food service
 1827 establishments licensed under chapter 509; or

588-03554A-12 20121824c1

1828 (b) Persons performing site evaluations in order to
 1829 determine proper placement and installation of onsite wastewater
 1830 treatment and disposal systems who have successfully completed a
 1831 department-approved soils morphology course and who are working
 1832 under the direct responsible charge of an engineer licensed
 1833 under chapter 471.

1834 ~~(3)-(4)~~ ENVIRONMENTAL HEALTH PROFESSIONALS ADVISORY BOARD.—
 1835 The State Health Officer shall appoint an advisory board to
 1836 assist the department in the promulgation of rules for
 1837 certification, testing, establishing standards, and seeking
 1838 enforcement actions against certified professionals.

1839 (a) The board shall be comprised of the Division Director
 1840 for Emergency Preparedness and Community Support ~~Environmental~~
 1841 ~~Health~~ or his or her designee, one individual who will be
 1842 certified under this section, one individual not employed in a
 1843 governmental capacity who will or does employ a certified
 1844 environmental health professional, one individual whose business
 1845 is or will be evaluated by a certified environmental health
 1846 professional, a citizen of the state who neither employs nor is
 1847 routinely evaluated by a person certified under this section.

1848 (b) The board shall advise the department as to the minimum
 1849 disciplinary guidelines and standards of competency and
 1850 proficiency necessary to obtain certification in a primary area
 1851 of environmental health practice.

1852 1. The board shall recommend primary areas of environmental
 1853 health practice in which environmental health professionals
 1854 should be required to obtain certification.

1855 2. The board shall recommend minimum standards of practice
 1856 which the department shall incorporate into rule.

588-03554A-12 20121824c1

1857 3. The board shall evaluate and recommend to the department
 1858 existing registrations and certifications which meet or exceed
 1859 minimum department standards and should, therefore, exempt
 1860 holders of such certificates or registrations from compliance
 1861 with this section.

1862 4. The board shall hear appeals of certificate denials,
 1863 revocation, or suspension and shall advise the department as to
 1864 the disposition of such an appeal.

1865 5. The board shall meet as often as necessary, but no less
 1866 than semiannually, handle appeals to the department, and conduct
 1867 other duties of the board.

1868 6. Members of the board shall receive no compensation but
 1869 are entitled to reimbursement for per diem and travel expenses
 1870 in accordance with s. 112.061.

1871 (4)~~(5)~~ STANDARDS FOR CERTIFICATION.—The department shall
 1872 adopt rules that establish definitions of terms and minimum
 1873 standards of education, training, or experience for those
 1874 persons subject to this section. The rules must also address the
 1875 process for application, examination, issuance, expiration, and
 1876 renewal of certification and ethical standards of practice for
 1877 the profession.

1878 (a) Persons employed as environmental health professionals
 1879 shall exhibit a knowledge of rules and principles of
 1880 environmental and public health law in Florida through
 1881 examination. A person may not conduct environmental health
 1882 evaluations in a primary program area unless he or she is
 1883 currently certified in that program area or works under the
 1884 direct supervision of a certified environmental health
 1885 professional.

Page 65 of 105

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588-03554A-12 20121824c1

1886 1. All persons who begin employment in a primary
 1887 environmental health program on or after September 21, 1994,
 1888 must be certified in that program within 6 months after
 1889 employment.

1890 2. Persons employed in the primary environmental health
 1891 program of a food protection program or an onsite sewage
 1892 treatment and disposal system prior to September 21, 1994, shall
 1893 be considered certified while employed in that position and
 1894 shall be required to adhere to any professional standards
 1895 established by the department pursuant to paragraph (b),
 1896 complete any continuing education requirements imposed under
 1897 paragraph (d), and pay the certificate renewal fee imposed under
 1898 subsection (6) ~~(7)~~.

1899 3. Persons employed in the primary environmental health
 1900 program of a food protection program or an onsite sewage
 1901 treatment and disposal system prior to September 21, 1994, who
 1902 change positions or program areas and transfer into another
 1903 primary environmental health program area on or after September
 1904 21, 1994, must be certified in that program within 6 months
 1905 after such transfer, except that they will not be required to
 1906 possess the college degree required under paragraph (e).

1907 4. Registered sanitarians shall be considered certified and
 1908 shall be required to adhere to any professional standards
 1909 established by the department pursuant to paragraph (b).

1910 Section 32. Section 381.0203, Florida Statutes, is amended
 1911 to read:

1912 381.0203 Pharmacy services.—

1913 (1) The department may contract on a statewide basis for
 1914 the purchase of drugs, as defined in s. 499.003, to be used by

Page 66 of 105

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588-03554A-12 20121824c1

1915 state agencies and political subdivisions, and may adopt rules
1916 to administer this section.

1917 (2) The department shall establish and maintain a pharmacy
1918 services program, including, but not limited to:

1919 (a) A central pharmacy to support pharmaceutical services
1920 provided by the county health departments, including
1921 pharmaceutical repackaging, dispensing, and the purchase and
1922 distribution of immunizations and other pharmaceuticals.

1923 ~~(b) Regulation of drugs, cosmetics, and household products~~
1924 ~~pursuant to chapter 499.~~

1925 (b)(e) Consultation to county health departments as
1926 required by s. 154.04(1)(c).

1927 ~~(d) A contraception distribution program which shall be~~
1928 ~~implemented, to the extent resources permit, through the~~
1929 ~~licensed pharmacies of county health departments. A woman who is~~
1930 ~~eligible for participation in the contraceptive distribution~~
1931 ~~program is deemed a patient of the county health department.~~

1932 1. ~~To be eligible for participation in the program a woman~~
1933 ~~must:~~

1934 a. ~~Be a client of the department or the Department of~~
1935 ~~Children and Family Services.~~

1936 b. ~~Be of childbearing age with undesired fertility.~~

1937 c. ~~Have an income between 150 and 200 percent of the~~
1938 ~~federal poverty level.~~

1939 d. ~~Have no Medicaid benefits or applicable health insurance~~
1940 ~~benefits.~~

1941 e. ~~Have had a medical examination by a licensed health care~~
1942 ~~provider within the past 6 months.~~

1943 f. ~~Have a valid prescription for contraceptives that are~~

588-03554A-12 20121824c1

1944 ~~available through the contraceptive distribution program.~~

1945 ~~g. Consent to the release of necessary medical information~~
1946 ~~to the county health department.~~

1947 ~~2. Fees charged for the contraceptives under the program~~
1948 ~~must cover the cost of purchasing and providing contraceptives~~
1949 ~~to women participating in the program.~~

1950 ~~3. The department may adopt rules to administer this~~
1951 ~~program.~~

1952 Section 33. Subsection (1) of section 381.0261, Florida
1953 Statutes, is amended to read:

1954 381.0261 Summary of patient's bill of rights; distribution;
1955 penalty.—

1956 (1) The Department of Health shall publish on its Internet
1957 website Agency for Health Care Administration shall have printed
1958 and made continuously available to health care facilities
1959 licensed under chapter 395, physicians licensed under chapter
1960 458, osteopathic physicians licensed under chapter 459, and
1961 pediatric physicians licensed under chapter 461 a summary of the
1962 Florida Patient's Bill of Rights and Responsibilities. In
1963 adopting and making available to patients the summary of the
1964 Florida Patient's Bill of Rights and Responsibilities, health
1965 care providers and health care facilities are not limited to the
1966 format in which the department publishes Agency for Health Care
1967 Administration prints and distributes the summary.

1968 Section 34. Section 381.0301, Florida Statutes, is
1969 repealed.

1970 Section 35. Section 381.0302, Florida Statutes, is
1971 repealed.

1972 Section 36. Subsection (5) of section 381.0303, Florida

588-03554A-12 20121824c1

1973 Statutes, is amended to read:

1974 381.0303 Special needs shelters.-

1975 (5) SPECIAL NEEDS SHELTER INTERAGENCY COMMITTEE.--The State
 1976 Surgeon General may establish a special needs shelter
 1977 interagency committee and serve as, or appoint a designee to
 1978 serve as, the committee's chair. The department shall provide
 1979 any necessary staff and resources to support the committee in
 1980 the performance of its duties. The committee shall address and
 1981 resolve problems related to special needs shelters not addressed
 1982 in the state comprehensive emergency medical plan and shall
 1983 consult on the planning and operation of special needs shelters.

1984 (a) The committee shall+

1985 ~~1-~~ develop, negotiate, and regularly review any necessary
 1986 interagency agreements, and-

1987 ~~2-~~ undertake other such activities as the department deems
 1988 necessary to facilitate the implementation of this section.

1989 ~~3. Submit recommendations to the Legislature as necessary.-~~

1990 (b) The special needs shelter interagency committee shall
 1991 be composed of representatives of emergency management, health,
 1992 medical, and social services organizations. Membership shall
 1993 include, but shall not be limited to, representatives of the
 1994 Departments of Health, Children and Family Services, Elderly
 1995 Affairs, and Education; the Agency for Health Care
 1996 Administration; the Division of Emergency Management; the
 1997 Florida Medical Association; the Florida Osteopathic Medical
 1998 Association; Associated Home Health Industries of Florida, Inc.;
 1999 the Florida Nurses Association; the Florida Health Care
 2000 Association; the Florida Assisted Living Affiliation; the
 2001 Florida Hospital Association; the Florida Statutory Teaching

588-03554A-12 20121824c1

2002 Hospital Council; the Florida Association of Homes for the
 2003 Aging; the Florida Emergency Preparedness Association; the
 2004 American Red Cross; Florida Hospices and Palliative Care, Inc.;
 2005 the Association of Community Hospitals and Health Systems; the
 2006 Florida Association of Health Maintenance Organizations; the
 2007 Florida League of Health Systems; the Private Care Association;
 2008 the Salvation Army; the Florida Association of Aging Services
 2009 Providers; the AARP; and the Florida Renal Coalition.

2010 (c) Meetings of the committee shall be held in Tallahassee,
 2011 and members of the committee shall serve at the expense of the
 2012 agencies or organizations they represent. The committee shall
 2013 make every effort to use teleconference or videoconference
 2014 capabilities in order to ensure statewide input and
 2015 participation.

2016 Section 37. Section 381.04015, Florida Statutes, is
 2017 repealed.

2018 Section 38. Subsections (2), (3), and (4) of section
 2019 381.0403, Florida Statutes, are amended to read:

2020 381.0403 The Community Hospital Education Act.-

2021 (2) ESTABLISHMENT OF PROGRAM LEGISLATIVE INTENT.-

2022 ~~(a) It is the intent of the Legislature that health care~~
 2023 ~~services for the citizens of this state be upgraded and that a~~
 2024 ~~program for continuing these services be maintained through a~~
 2025 ~~plan for community medical education. The A program is intended~~
 2026 established to plan for community medical education, provide
 2027 additional outpatient and inpatient services, increase the a
 2028 continuing supply of highly trained physicians, and expand
 2029 graduate medical education.

2030 ~~(b) The Legislature further acknowledges the critical need~~

588-03554A-12

20121824c1

2031 ~~for increased numbers of primary care physicians to provide the~~
 2032 ~~necessary current and projected health and medical services. In~~
 2033 ~~order to meet both present and anticipated needs, the~~
 2034 ~~Legislature supports an expansion in the number of family~~
 2035 ~~practice residency positions. The Legislature intends that the~~
 2036 ~~funding for graduate education in family practice be maintained~~
 2037 ~~and that funding for all primary care specialties be provided at~~
 2038 ~~a minimum of \$10,000 per resident per year. Should funding for~~
 2039 ~~this act remain constant or be reduced, it is intended that all~~
 2040 ~~programs funded by this act be maintained or reduced~~
 2041 ~~proportionately.~~

2042 (3) PROGRAM FOR COMMUNITY HOSPITAL EDUCATION; STATE AND
 2043 LOCAL PLANNING.—

2044 (a) ~~There is established under the Department of Health a~~
 2045 ~~program for statewide graduate medical education. It is intended~~
 2046 ~~that continuing graduate medical education programs for interne~~
 2047 ~~and residents be established on a statewide basis. The program~~
 2048 ~~shall provide financial support for primary care specialty~~
 2049 ~~interns and residents based on recommendations of policies~~
 2050 ~~recommended and approved by the Community Hospital Education~~
 2051 ~~Council, herein established, and the Department of Health, as~~
 2052 ~~authorized by the General Appropriations Act. Only those~~
 2053 ~~programs with at least three residents or interns in each year~~
 2054 ~~of the training program are qualified to apply for financial~~
 2055 ~~support. Programs with fewer than three residents or interns per~~
 2056 ~~training year are qualified to apply for financial support, but~~
 2057 ~~only if the appropriate accrediting entity for the particular~~
 2058 ~~specialty has approved the program for fewer positions. New~~
 2059 ~~programs added after fiscal year 1997-1998 shall have 5 years to~~

Page 71 of 105

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588-03554A-12

20121824c1

2060 attain the requisite number of residents or interns. When
 2061 feasible and to the extent allowed through the General
 2062 Appropriations Act, state funds shall be used to generate
 2063 federal matching funds under Medicaid, or other federal
 2064 programs, and the resulting combined state and federal funds
 2065 shall be allocated to participating hospitals for the support of
 2066 graduate medical education.

2067 (b) For the purposes of this section, primary care
 2068 specialties include emergency medicine, family practice,
 2069 internal medicine, pediatrics, psychiatry,
 2070 obstetrics/gynecology, and combined pediatrics and internal
 2071 medicine, and other primary care specialties as may be included
 2072 by the council and Department of Health.

2073 (c) Medical institutions throughout the state may apply to
 2074 the Community Hospital Education Council for grants-in-aid for
 2075 financial support of their approved programs. Recommendations
 2076 for funding of approved programs shall be forwarded to the
 2077 Department of Health.

2078 (d) The program shall provide a plan for community clinical
 2079 teaching and training with the cooperation of the medical
 2080 profession, hospitals, and clinics. The plan shall also include
 2081 formal teaching opportunities for intern and resident training.
 2082 In addition, the plan shall establish an off-campus medical
 2083 faculty with university faculty review to be located throughout
 2084 the state in local communities.

2085 (4) PROGRAM FOR GRADUATE MEDICAL EDUCATION INNOVATIONS.—

2086 (a) There is established under the Department of Health a
 2087 program for fostering graduate medical education innovations.
 2088 Funds appropriated annually by the Legislature for this purpose

Page 72 of 105

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588-03554A-12 20121824c1

2089 shall be distributed to participating hospitals or consortia of
 2090 participating hospitals and Florida medical schools or to a
 2091 Florida medical school for the direct costs of providing
 2092 graduate medical education in community-based clinical settings
 2093 on a competitive grant or formula basis to achieve state health
 2094 care workforce policy objectives, including, but not limited to:
 2095 1. Increasing the number of residents in primary care and
 2096 other high demand specialties or fellowships;
 2097 2. Enhancing retention of primary care physicians in
 2098 Florida practice;
 2099 3. Promoting practice in medically underserved areas of the
 2100 state;
 2101 4. Encouraging racial and ethnic diversity within the
 2102 state's physician workforce; and
 2103 5. Encouraging increased production of geriatricians.
 2104 (b) Participating hospitals or consortia of participating
 2105 hospitals and Florida medical schools or a Florida medical
 2106 school providing graduate medical education in community-based
 2107 clinical settings may apply to the Community Hospital Education
 2108 Council for funding under this innovations program, except when
 2109 such innovations directly compete with services or programs
 2110 provided by participating hospitals or consortia of
 2111 participating hospitals, or by both hospitals and consortia.
 2112 Innovations program funding shall be allocated provide funding
 2113 based on recommendations of policies recommended and approved by
 2114 the Community Hospital Education Council and the Department of
 2115 Health, as authorized by the General Appropriations Act.
 2116 (c) Participating hospitals or consortia of participating
 2117 hospitals and Florida medical schools or Florida medical schools

Page 73 of 105

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588-03554A-12 20121824c1

2118 awarded an innovations grant shall provide the Community
 2119 Hospital Education Council and Department of Health with an
 2120 annual report on their project.
 2121 Section 39. Subsection (7) of section 381.0405, Florida
 2122 Statutes, is amended to read:
 2123 381.0405 Office of Rural Health.-
 2124 ~~(7) APPROPRIATION. The Legislature shall appropriate such~~
 2125 ~~sums as are necessary to support the Office of Rural Health.~~
 2126 Section 40. Subsection (3) of section 381.0406, Florida
 2127 Statutes, is amended to read:
 2128 381.0406 Rural health networks.-
 2129 (3) ~~Because each rural area is unique, with a different~~
 2130 ~~health care provider mix,~~ Health care provider membership may
 2131 vary, but all networks shall include members that provide public
 2132 health, comprehensive primary care, emergency medical care, and
 2133 acute inpatient care.
 2134 Section 41. Section 381.045, Florida Statutes, is repealed.
 2135 Section 42. Subsection (7) of section 381.06015, Florida
 2136 Statutes, is amended to read:
 2137 381.06015 Public Cord Blood Tissue Bank.-
 2138 ~~(7) In order to fund the provisions of this section the~~
 2139 ~~consortium participants, the Agency for Health Care~~
 2140 ~~Administration, and the Department of Health shall seek private~~
 2141 ~~or federal funds to initiate program actions for fiscal year~~
 2142 ~~2000-2001.~~
 2143 Section 43. Section 381.0605, Florida Statutes, is
 2144 repealed.
 2145 Section 44. Section 381.102, Florida Statutes, is repealed.
 2146 Section 45. Section 381.103, Florida Statutes, is repealed.

Page 74 of 105

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588-03554A-12

20121824c1

2147 Section 46. Subsections (3) through (5) of section
 2148 381.4018, Florida Statutes, are renumbered as subsections (2)
 2149 through (4), respectively, and present subsection (2) and
 2150 paragraph (f) of present subsection (4) of that section are
 2151 amended to read:

2152 381.4018 Physician workforce assessment and development.—

2153 ~~(2) LEGISLATIVE INTENT.—The Legislature recognizes that~~
 2154 ~~physician workforce planning is an essential component of~~
 2155 ~~ensuring that there is an adequate and appropriate supply of~~
 2156 ~~well trained physicians to meet this state's future health care~~
 2157 ~~service needs as the general population and elderly population~~
 2158 ~~of the state increase. The Legislature finds that items to~~
 2159 ~~consider relative to assessing the physician workforce may~~
 2160 ~~include physician practice status; specialty mix; geographic~~
 2161 ~~distribution; demographic information, including, but not~~
 2162 ~~limited to, age, gender, race, and cultural considerations; and~~
 2163 ~~needs of current or projected medically underserved areas in the~~
 2164 ~~state. Long-term strategic planning is essential as the period~~
 2165 ~~from the time a medical student enters medical school to~~
 2166 ~~completion of graduate medical education may range from 7 to 10~~
 2167 ~~years or longer. The Legislature recognizes that strategies to~~
 2168 ~~provide for a well-trained supply of physicians must include~~
 2169 ~~ensuring the availability and capacity of quality medical~~
 2170 ~~schools and graduate medical education programs in this state,~~
 2171 ~~as well as using new or existing state and federal programs~~
 2172 ~~providing incentives for physicians to practice in needed~~
 2173 ~~specialties and in underserved areas in a manner that addresses~~
 2174 ~~projected needs for physician manpower.~~

2175 (3)(4) GENERAL FUNCTIONS.—The department shall maximize the

Page 75 of 105

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588-03554A-12

20121824c1

2176 use of existing programs under the jurisdiction of the
 2177 department and other state agencies and coordinate governmental
 2178 and nongovernmental stakeholders and resources in order to
 2179 develop a state strategic plan and assess the implementation of
 2180 such strategic plan. In developing the state strategic plan, the
 2181 department shall:

2182 (f) Develop strategies to maximize federal and state
 2183 programs that provide for the use of incentives to attract
 2184 physicians to this state or retain physicians within the state.
 2185 Such strategies should explore and maximize federal-state
 2186 partnerships that provide incentives for physicians to practice
 2187 in federally designated shortage areas. Strategies shall also
 2188 consider the use of state programs, such as the Florida Health
 2189 Service Corps established pursuant to s. 381.0302 and the
 2190 Medical Education Reimbursement and Loan Repayment Program
 2191 pursuant to s. 1009.65, which provide for education loan
 2192 repayment or loan forgiveness and provide monetary incentives
 2193 for physicians to relocate to underserved areas of the state.

2194 Section 47. Section 381.60225, Florida Statutes, is
 2195 repealed.

2196 Section 48. Section 381.7352, Florida Statutes, is amended
 2197 to read:

2198 381.7352 Legislative findings and intent.—

2199 ~~(1) The Legislature finds that despite state investments in~~
 2200 ~~health care programs, certain racial and ethnic populations in~~
 2201 ~~Florida continue to have significantly poorer health outcomes~~
 2202 ~~when compared to non-Hispanic whites. The Legislature finds that~~
 2203 ~~local solutions to health care problems can have a dramatic and~~
 2204 ~~positive effect on the health status of these populations. Local~~

Page 76 of 105

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588-03554A-12 20121824c1

2205 ~~governments and communities are best equipped to identify the~~
 2206 ~~health education, health promotion, and disease prevention needs~~
 2207 ~~of the racial and ethnic populations in their communities,~~
 2208 ~~mobilize the community to address health outcome disparities,~~
 2209 ~~enlist and organize local public and private resources, and~~
 2210 ~~faith-based organizations to address these disparities, and~~
 2211 ~~evaluate the effectiveness of interventions.~~

2212 ~~(2)~~ It is ~~therefore~~ the intent of the Legislature to
 2213 provide funds within Florida counties and Front Porch Florida
 2214 Communities, in the form of Reducing Racial and Ethnic Health
 2215 Disparities: Closing the Gap grants, to stimulate the
 2216 development of community-based and neighborhood-based projects
 2217 which will improve the health outcomes of racial and ethnic
 2218 populations. Further, it is the intent of the Legislature that
 2219 these programs foster the development of coordinated,
 2220 collaborative, and broad-based participation by public and
 2221 private entities, and faith-based organizations. Finally, it is
 2222 the intent of the Legislature that the grant program function as
 2223 a partnership between state and local governments, faith-based
 2224 organizations, and private sector health care providers,
 2225 including managed care, voluntary health care resources, social
 2226 service providers, and nontraditional partners.

2227 Section 49. Subsection (3) of section 381.7353, Florida
 2228 Statutes, is amended to read:

2229 381.7353 Reducing Racial and Ethnic Health Disparities:
 2230 Closing the Gap grant program; administration; department
 2231 duties.—

2232 ~~(3) Pursuant to s. 20.43(6), the State Surgeon General may~~
 2233 ~~appoint an ad hoc advisory committee to: examine areas where~~

588-03554A-12 20121824c1

2234 ~~public awareness, public education, research, and coordination~~
 2235 ~~regarding racial and ethnic health outcome disparities are~~
 2236 ~~lacking; consider access and transportation issues which~~
 2237 ~~contribute to health status disparities; and make~~
 2238 ~~recommendations for closing gaps in health outcomes and~~
 2239 ~~increasing the public's awareness and understanding of health~~
 2240 ~~disparities that exist between racial and ethnic populations.~~

2241 Section 50. Subsections (5) and (6) of section 381.7356,
 2242 Florida Statutes, are renumbered as subsections (4) and (5),
 2243 respectively, and present subsection (4) of that section is
 2244 amended to read:

2245 381.7356 Local matching funds; grant awards.—

2246 ~~(4) Dissemination of grant awards shall begin no later than~~
 2247 ~~January 1, 2001.~~

2248 Section 51. Subsection (3) of section 381.765, Florida
 2249 Statutes, is amended to read:

2250 381.765 Retention of title to and disposal of equipment.—

2251 ~~(3) The department may adopt rules relating to records and~~
 2252 ~~recordkeeping for department-owned property referenced in~~
 2253 ~~subsections (1) and (2).~~

2254 Section 52. Section 381.77, Florida Statutes, is repealed.

2255 Section 53. Section 381.795, Florida Statutes, is repealed.

2256 Section 54. Subsections (2) through (5) of section 381.853,
 2257 Florida Statutes, are renumbered as subsections (1) through (4),
 2258 respectively, and present subsection (1) of that section is
 2259 amended to read:

2260 381.853 Florida Center for Brain Tumor Research.—

2261 ~~(1) The Legislature finds that each year an estimated~~
 2262 ~~190,000 citizens of the United States are diagnosed with~~

588-03554A-12

20121824c1

2263 ~~cancerous and noncancerous brain tumors and that biomedical~~
 2264 ~~research is the key to finding cures for these tumors. The~~
 2265 ~~Legislature further finds that, although brain tumor research is~~
 2266 ~~being conducted throughout the state, there is a lack of~~
 2267 ~~coordinated efforts among researchers and health care providers.~~
 2268 ~~Therefore, the Legislature finds that there is a significant~~
 2269 ~~need for a coordinated effort to achieve the goal of curing~~
 2270 ~~brain tumors. The Legislature further finds that the biomedical~~
 2271 ~~technology sector meets the criteria of a high-impact sector,~~
 2272 ~~pursuant to s. 288.108(6), having a high importance to the~~
 2273 ~~state's economy with a significant potential for growth and~~
 2274 ~~contribution to our universities and quality of life.~~

2275 Section 55. Section 381.855, Florida Statutes, is repealed.

2276 Section 56. Section 381.87, Florida Statutes, is repealed.

2277 Section 57. Section 381.895, Florida Statutes, is amended
 2278 to read:

2279 381.895 Standards for compressed air used for recreational
 2280 diving.-

2281 (1) A person selling compressed air for recreational sport
 2282 diving must:

2283 (a) Maintain certification or membership in at least one of
 2284 the following organizations:

2285 1. Professional Association of Diving Instructors (PADI);

2286 2. National Association of Underwater Instructors (NAUI);

2287 or

2288 3. Scuba Schools International (SSI);

2289 (b) Post in a conspicuous place on the premises a copy of
 2290 the certification or documentation of membership in the
 2291 organization; and

588-03554A-12

20121824c1

2292 (c) Maintain compliance with the Compressed Gas
 2293 Association, Grade "E" Recreational Diving Compressed Air
 2294 Standards, provide medical-grade compressed air, or use constant
 2295 air-quality-monitoring devices that are calibrated at least
 2296 every 90 days. The Department of Health shall establish maximum
 2297 allowable levels for contaminants in compressed air used for
 2298 recreational sport diving in this state. In developing the
 2299 standards, the department must take into consideration the
 2300 levels of contaminants allowed by the Grade "E" Recreational
 2301 Diving Standards of the Compressed Gas Association.

2302 (2) The Department of Health may adopt rules to revise or
 2303 add to the list of organizations authorized in subsection (1),
 2304 or to recognize additional standards that are nationally
 2305 recognized for ensuring compressed air is safe for recreation
 2306 sport diving. The standards prescribed under this section do not
 2307 apply to:

2308 (a) Any person providing compressed air for his or her own
 2309 use.

2310 (b) Any governmental entity using a governmentally owned
 2311 compressed air source for work related to the governmental
 2312 entity.

2313 (c) Foreign registered vessels upon which a compressor is
 2314 used to provide compressed air for work related to the operation
 2315 of the vessel.

2316 (3) A person who does not comply with the requirements in
 2317 subsection (1) or the rules adopted pursuant to subsection (2)
 2318 commits a misdemeanor of the first degree, punishable as
 2319 provided in s. 775.082 and s. 775.083. A person or entity that,
 2320 for compensation, provides compressed air for recreational sport

588-03554A-12

20121824c1

2321 ~~diving in this state, including compressed air provided as part~~
 2322 ~~of a dive package of equipment rental, dive boat rental, or dive~~
 2323 ~~boat charter, must ensure that the compressed air is tested~~
 2324 ~~quarterly by a laboratory that is accredited by either the~~
 2325 ~~American Industrial Hygiene Association or the American~~
 2326 ~~Association for Laboratory Accreditation and that the results of~~
 2327 ~~such tests are provided quarterly to the Department of Health.~~
 2328 ~~In addition, the person or entity must post the certificate~~
 2329 ~~issued by the laboratory accredited by the American Industrial~~
 2330 ~~Hygiene Association or the American Association for Laboratory~~
 2331 ~~Accreditation in a conspicuous location where it can readily be~~
 2332 ~~seen by any person purchasing compressed air.~~

2333 ~~(4) The Department of Health shall maintain a record of all~~
 2334 ~~quarterly test results provided under this section.~~

2335 ~~(5) It is a misdemeanor of the second degree for any person~~
 2336 ~~or entity to provide, for compensation, compressed air for~~
 2337 ~~recreational sport diving in this state, including compressed~~
 2338 ~~air provided as part of a dive package of equipment rental, dive~~
 2339 ~~boat rental, or dive boat charter, without:~~

2340 ~~(a) Having received a valid certificate issued by a~~
 2341 ~~laboratory accredited by the American Industrial Hygiene~~
 2342 ~~Association or the American Association for Laboratory~~
 2343 ~~Accreditation which certifies that the compressed air meets the~~
 2344 ~~standards for contaminant levels established by the Department~~
 2345 ~~of Health.~~

2346 ~~(b) Posting the certificate issued by a laboratory~~
 2347 ~~accredited by the American Industrial Hygiene Association or the~~
 2348 ~~American Association for Laboratory Accreditation in a~~
 2349 ~~conspicuous location where it can readily be seen by persons~~

588-03554A-12

20121824c1

2350 ~~purchasing compressed air.~~

2351 ~~(6) The department shall adopt rules necessary to carry out~~
 2352 ~~the provisions of this section, which must include:~~

2353 ~~(a) Maximum allowable levels of contaminants in compressed~~
 2354 ~~air used for sport diving.~~

2355 ~~(b) Procedures for the submission of test results to the~~
 2356 ~~department.~~

2357 Section 58. Section 381.90, Florida Statutes, is repealed.

2358 Section 59. Subsection (1) of section 381.91, Florida
 2359 Statutes, is amended to read:

2360 381.91 Jessie Trice Cancer Prevention Program.—

2361 (1) It is the intent of the Legislature to+

2362 ~~(a) Reduce the rates of illness and death from lung cancer~~
 2363 ~~and other cancers and improve the quality of life among low-~~
 2364 ~~income African-American and Hispanic populations through~~
 2365 ~~increased access to early, effective screening and diagnosis,~~
 2366 ~~education, and treatment programs.~~

2367 ~~(b) create a community faith-based disease-prevention~~
 2368 ~~program in conjunction with the Health Choice Network and other~~
 2369 ~~community health centers to build upon the natural referral and~~
 2370 ~~education networks in place within minority communities and to~~
 2371 ~~increase access to health service delivery in Florida and-~~

2372 ~~(c) establish a funding source to build upon local private~~
 2373 ~~participation to sustain the operation of the program.~~

2374 Section 60. Subsection (5) of section 381.922, Florida
 2375 Statutes, is amended to read:

2376 381.922 William G. "Bill" Bankhead, Jr., and David Coley
 2377 Cancer Research Program.—

2378 (5) The William G. "Bill" Bankhead, Jr., and David Coley

588-03554A-12 20121824c1

2379 Cancer Research Program is funded pursuant to s. 215.5602(12).
 2380 Funds appropriated for the William G. "Bill" Bankhead, Jr., and
 2381 David Coley Cancer Research Program shall be distributed
 2382 pursuant to this section to provide grants to researchers
 2383 seeking cures for cancer and cancer-related illnesses, with
 2384 emphasis given to the goals enumerated in this section. From the
 2385 total funds appropriated, an amount of up to 10 percent may be
 2386 used for administrative expenses. ~~From funds appropriated to~~
 2387 ~~accomplish the goals of this section, up to \$250,000 shall be~~
 2388 ~~available for the operating costs of the Florida Center for~~
 2389 ~~Universal Research to Eradicate Disease.~~

2390 Section 61. Effective January 1, 2013, section 392.51,
 2391 Florida Statutes, is amended to read:

2392 392.51 Tuberculosis control Findings and intent.-A
 2393 statewide system is established to control tuberculosis
 2394 infection and mitigate its effects. The system consists ~~The~~
 2395 ~~Legislature finds and declares that active tuberculosis is a~~
 2396 ~~highly contagious infection that is sometimes fatal and~~
 2397 ~~constitutes a serious threat to the public health. The~~
 2398 ~~Legislature finds that there is a significant reservoir of~~
 2399 ~~tuberculosis infection in this state and that there is a need to~~
 2400 ~~develop community programs to identify tuberculosis and to~~
 2401 ~~respond quickly with appropriate measures. The Legislature finds~~
 2402 ~~that some patients who have active tuberculosis have complex~~
 2403 ~~medical, social, and economic problems that make outpatient~~
 2404 ~~control of the disease difficult, if not impossible, without~~
 2405 ~~posing a threat to the public health. The Legislature finds that~~
 2406 ~~in order to protect the citizenry from those few persons who~~
 2407 ~~pose a threat to the public, it is necessary to establish a~~

588-03554A-12 20121824c1

2408 ~~system~~ of mandatory contact identification, treatment to cure,
 2409 hospitalization, ~~and~~ isolation for contagious cases, ~~and to~~
 2410 ~~provide a system of~~ voluntary, community-oriented care and
 2411 surveillance in all other cases. ~~The Legislature finds that the~~
 2412 ~~delivery of~~ Tuberculosis control services shall be provided ~~is~~
 2413 ~~best accomplished~~ by the coordinated efforts of the respective
 2414 county health departments and contracted or other private health
 2415 care providers, ~~the A.C. Holley State Hospital, and the private~~
 2416 ~~health care delivery system.~~

2417 Section 62. Effective January 1, 2013, subsection (4) of
 2418 section 392.61, Florida Statutes, is amended to read:

2419 392.61 Community tuberculosis control programs.-

2420 ~~(4) The department shall develop, by rule, a methodology~~
 2421 ~~for distributing funds appropriated for tuberculosis control~~
 2422 ~~programs. Criteria to be considered in this methodology include,~~
 2423 ~~but are not limited to, the basic infrastructure available for~~
 2424 ~~tuberculosis control, caseload requirements, laboratory support~~
 2425 ~~services needed, and epidemiologic factors.~~

2426 Section 63. Effective January 1, 2013, section 392.62,
 2427 Florida Statutes, is amended to read:

2428 392.62 Hospitalization and placement programs.-

2429 (1) The department shall contract for operation of ~~operate~~
 2430 a program for the treatment ~~hospitalization~~ of persons who have
 2431 active tuberculosis in hospitals licensed under chapter 395 and
 2432 may provide for appropriate placement of persons who have active
 2433 tuberculosis in other health care facilities or residential
 2434 facilities. The department shall require the contractor to use
 2435 existing licensed community hospitals and other facilities for
 2436 the care and treatment to cure of persons who have active

588-03554A-12

20121824c1

2437 tuberculosis or a history of noncompliance with prescribed drug
 2438 regimens and require inpatient or other residential services.

2439 ~~(2) The department may operate a licensed hospital for the~~
 2440 ~~care and treatment to cure of persons who have active~~
 2441 ~~tuberculosis. The hospital may have a forensic unit where, under~~
 2442 ~~medical protocol, a patient can be held in a secure or~~
 2443 ~~protective setting. The department shall also seek to maximize~~
 2444 ~~use of existing licensed community hospitals for the care and~~
 2445 ~~treatment to cure of persons who have active tuberculosis.~~

2446 (2)(3) The program for control of tuberculosis shall
 2447 provide funding for participating facilities and require any
 2448 such facilities to meet the following conditions Any licensed
 2449 hospital operated by the department, any licensed hospital under
 2450 contract with the department, and any other health care facility
 2451 or residential facility operated by or under contract with the
 2452 department for the care and treatment of patients who have
 2453 active tuberculosis shall:

2454 (a) Admit patients voluntarily and under court order as
 2455 appropriate for each particular facility;

2456 (b) Require that each patient pay the actual cost of care
 2457 provided whether the patient is admitted voluntarily or by court
 2458 order;

2459 (c) Provide for ~~a method of paying for~~ the care of patients
 2460 in the program regardless of ability to pay who cannot afford to
 2461 do so;

2462 (d) Require a primary clinical diagnosis of active
 2463 tuberculosis by a physician licensed under chapter 458 or
 2464 chapter 459 before admitting the patient; provided that there
 2465 may be more than one primary diagnosis;

Page 85 of 105

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588-03554A-12

20121824c1

2466 (e) Provide a method of notification to the county health
 2467 department and to the patient's family, if any, before
 2468 discharging the patient from the hospital or other facility;

2469 (f) Provide for the necessary exchange of medical
 2470 information to assure adequate community treatment to cure and
 2471 followup of discharged patients, as appropriate; and

2472 (g) Provide for a method of medical care and counseling and
 2473 for housing, social service, and employment referrals, if
 2474 appropriate, for all patients discharged from the hospital.

2475 (3)(4) A hospital may, pursuant to court order, place a
 2476 patient in temporary isolation for a period of no more than 72
 2477 continuous hours. The department shall obtain a court order in
 2478 the same manner as prescribed in s. 392.57. Nothing in this
 2479 subsection precludes a hospital from isolating an infectious
 2480 patient for medical reasons.

2481 (4)(5) Any person committed under s. 392.57 who leaves the
 2482 tuberculosis hospital or residential facility without having
 2483 been discharged by the designated medical authority, except as
 2484 provided in s. 392.63, shall be apprehended by the sheriff of
 2485 the county in which the person is found and immediately
 2486 delivered to the facility from which he or she left.

2487 Section 64. The Department of Health shall develop and
 2488 implement a transition plan for the closure of A.G. Holley State
 2489 Hospital. The plan shall include specific steps to end voluntary
 2490 admissions; transfer patients to alternate facilities;
 2491 communicate with families, providers, other affected parties,
 2492 and the general public; enter into any necessary contracts with
 2493 providers; coordinate with the Department of Management Services
 2494 regarding the disposition of equipment and supplies and the

Page 86 of 105

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588-03554A-12 20121824c1
 2495 closure of the facility; and seek federal approval, if needed,
 2496 to continue Medicaid funding throughout the treatment period in
 2497 community hospitals and other facilities. The plan shall be
 2498 submitted to the Governor, the Speaker of the House of
 2499 Representatives, and the President of the Senate by May 31,
 2500 2012. The department shall fully implement the plan by January
 2501 1, 2013.

2502 Section 65. Subsections (1) and (4) of section 395.1027,
 2503 Florida Statutes, are amended to read:

2504 395.1027 Regional poison control centers.—

2505 (1) There shall be created three certified regional poison
 2506 control centers, one each in the north, central, and southern
 2507 regions of the state. Each regional poison control center shall
 2508 be affiliated with and physically located in a certified Level I
 2509 trauma center. Each regional poison control center shall be
 2510 affiliated with an accredited medical school or college of
 2511 pharmacy. The regional poison control centers shall be
 2512 coordinated under the aegis of the Division of Children's
 2513 Medical Services ~~Prevention and Intervention~~ in the department.

2514 (4) The Legislature hereby finds and declares that it is in
 2515 the public interest to shorten the time required for a citizen
 2516 to request and receive directly from designated regional poison
 2517 control centers telephonic management advice for acute poisoning
 2518 emergencies. To facilitate rapid and direct access, telephone
 2519 numbers for designated regional poison control centers shall be
 2520 given special prominence. The local exchange telecommunications
 2521 companies shall print immediately below "911" or other emergency
 2522 calling instructions on the inside front cover of the telephone
 2523 directory the words "Poison Information Center," the logo of the

588-03554A-12 20121824c1
 2524 American Association of Poison Control Centers, and the
 2525 telephone number of the local, if applicable, or, if not local,
 2526 other toll-free telephone number of the Florida Poison
 2527 Information Center Network. This information shall be outlined
 2528 and be no less than 1 inch in height by 2 inches in width. Only
 2529 those facilities satisfying criteria established in the current
 2530 "Criteria for Certification of a Regional Poison Center" set by
 2531 the American Association of Poison Control Centers, and the
 2532 "Standards of the Poison Information Center Program" initiated
 2533 by the Division of Children's Medical Services ~~Prevention and~~
 2534 ~~Intervention~~ of the Department of Health shall be permitted to
 2535 list such facility as a poison information center, poison
 2536 control center, or poison center. Those centers under a
 2537 developmental phase-in plan shall be given 2 years from the date
 2538 of initial 24-hour service implementation to comply with the
 2539 aforementioned criteria and, as such, will be permitted to be
 2540 listed as a poison information center, poison control center, or
 2541 poison center during that allotted time period.

2542 Section 66. Subsection (4) of section 401.243, Florida
 2543 Statutes, is amended to read:

2544 401.243 Injury prevention.—The department shall establish
 2545 an injury-prevention program with responsibility for the
 2546 statewide coordination and expansion of injury-prevention
 2547 activities. The duties of the department under the program may
 2548 include, but are not limited to, data collection, surveillance,
 2549 education, and the promotion of interventions. In addition, the
 2550 department may:

2551 ~~(4) Adopt rules governing the implementation of grant~~
 2552 ~~programs. The rules may include, but need not be limited to,~~

588-03554A-12 20121824c1

2553 ~~criteria regarding the application process, the selection of~~
 2554 ~~grantees, the implementation of injury prevention activities,~~
 2555 ~~data collection, surveillance, education, and the promotion of~~
 2556 ~~interventions.~~

2557 Section 67. Subsection (6) of section 401.245, Florida
 2558 Statutes, is renumbered as subsection (5), and present
 2559 subsection (5) of that section is amended to read:

2560 401.245 Emergency Medical Services Advisory Council.—

2561 ~~(5) The department shall adopt rules to implement this~~
 2562 ~~section, which rules shall serve as formal operating procedures~~
 2563 ~~for the Emergency Medical Services Advisory Council.~~

2564 Section 68. Section 401.271, Florida Statutes, is amended
 2565 to read:

2566 401.271 Certification of emergency medical technicians and
 2567 paramedics who are on active duty with the Armed Forces of the
 2568 United States; spouses of members of the Armed Forces.—

2569 ~~(1) Any member of the Armed Forces of the United States on~~
 2570 ~~active duty who, at the time he or she became a member, was in~~
 2571 ~~good standing with the department and was entitled to practice~~
 2572 ~~as an emergency medical technician or paramedic in the state~~
 2573 ~~remains in good standing without registering, paying dues or~~
 2574 ~~fees, or performing any other act, as long as he or she is a~~
 2575 ~~member of the Armed Forces of the United States on active duty~~
 2576 ~~and for a period of 6 months after his or her discharge from~~
 2577 ~~active duty as a member of the Armed Forces of the United~~
 2578 ~~States.~~

2579 ~~(2) The department may adopt rules exempting the spouse of~~
 2580 ~~a member of the Armed Forces of the United States on active duty~~
 2581 ~~from certification renewal provisions while the spouse is absent~~

588-03554A-12 20121824c1

2582 ~~from the state because of the member's active duty with the~~
 2583 ~~Armed Forces.~~

2584 Section 69. Section 402.45, Florida Statutes, is repealed.

2585 Section 70. Subsection (1) of section 400.914, Florida
 2586 Statutes, is amended to read:

2587 400.914 Rules establishing standards.—

2588 (1) Pursuant to the intention of the Legislature to provide
 2589 safe and sanitary facilities and healthful programs, the agency
 2590 in conjunction with the Division of Children's Medical Services
 2591 ~~Prevention and Intervention~~ of the Department of Health shall
 2592 adopt and publish rules to implement the provisions of this part
 2593 and part II of chapter 408, which shall include reasonable and
 2594 fair standards. Any conflict between these standards and those
 2595 that may be set forth in local, county, or city ordinances shall
 2596 be resolved in favor of those having statewide effect. Such
 2597 standards shall relate to:

2598 (a) The assurance that PPEC services are family centered
 2599 and provide individualized medical, developmental, and family
 2600 training services.

2601 (b) The maintenance of PPEC centers, not in conflict with
 2602 the provisions of chapter 553 and based upon the size of the
 2603 structure and number of children, relating to plumbing, heating,
 2604 lighting, ventilation, and other building conditions, including
 2605 adequate space, which will ensure the health, safety, comfort,
 2606 and protection from fire of the children served.

2607 (c) The appropriate provisions of the most recent edition
 2608 of the "Life Safety Code" (NFPA-101) shall be applied.

2609 (d) The number and qualifications of all personnel who have
 2610 responsibility for the care of the children served.

588-03554A-12

20121824c1

2611 (e) All sanitary conditions within the PPEC center and its
 2612 surroundings, including water supply, sewage disposal, food
 2613 handling, and general hygiene, and maintenance thereof, which
 2614 will ensure the health and comfort of children served.

2615 (f) Programs and basic services promoting and maintaining
 2616 the health and development of the children served and meeting
 2617 the training needs of the children's legal guardians.

2618 (g) Supportive, contracted, other operational, and
 2619 transportation services.

2620 (h) Maintenance of appropriate medical records, data, and
 2621 information relative to the children and programs. Such records
 2622 shall be maintained in the facility for inspection by the
 2623 agency.

2624 Section 71. Paragraph (d) of subsection (11) of section
 2625 409.256, Florida Statutes, is amended to read:

2626 409.256 Administrative proceeding to establish paternity or
 2627 paternity and child support; order to appear for genetic
 2628 testing.—

2629 (11) FINAL ORDER ESTABLISHING PATERNITY OR PATERNITY AND
 2630 CHILD SUPPORT; CONSENT ORDER; NOTICE TO OFFICE OF VITAL
 2631 STATISTICS.—

2632 (d) Upon rendering a final order of paternity or a final
 2633 order of paternity and child support, the department shall
 2634 notify the ~~Office Division~~ of Vital Statistics of the Department
 2635 of Health that the paternity of the child has been established.

2636 Section 72. Section 458.346, Florida Statutes, is repealed.

2637 Section 73. Subsection (3) of section 462.19, Florida
 2638 Statutes, is renumbered as subsection (2), and present
 2639 subsection (2) of that section is amended to read:

588-03554A-12

20121824c1

2640 462.19 Renewal of license; inactive status.—

2641 ~~(2) The department shall adopt rules establishing a~~
 2642 ~~procedure for the biennial renewal of licenses.~~

2643 Section 74. Section 464.0197, Florida Statutes, is
 2644 repealed.

2645 Section 75. Subsection (4) of section 464.208, Florida
 2646 Statutes, is amended to read:

2647 464.208 Background screening information; rulemaking
 2648 authority.—

2649 ~~(4) The board shall adopt rules to administer this part.~~

2650 Section 76. Subsections (1) and (2) of section 633.115,
 2651 Florida Statutes, are amended to read:

2652 633.115 Fire and Emergency Incident Information Reporting
 2653 Program; duties; fire reports.—

2654 (1) (a) The Fire and Emergency Incident Information
 2655 Reporting Program is created within the Division of State Fire
 2656 Marshal. The program shall:

2657 1. Establish and maintain an electronic communication
 2658 system capable of transmitting fire and emergency incident
 2659 information to and between fire protection agencies.

2660 2. Initiate a Fire and Emergency Incident Information
 2661 Reporting System that shall be responsible for:

2662 a. Receiving fire and emergency incident information from
 2663 fire protection agencies.

2664 b. Preparing and disseminating annual reports to the
 2665 Governor, the President of the Senate, the Speaker of the House
 2666 of Representatives, fire protection agencies, and, upon request,
 2667 the public. Each report shall include, but not be limited to,
 2668 the information listed in the National Fire Incident Reporting

588-03554A-12 20121824c1

2669 System.

2670 c. Upon request, providing other states and federal
2671 agencies with fire and emergency incident data of this state.2672 3. Adopt rules to effectively and efficiently implement,
2673 administer, manage, maintain, and use the Fire and Emergency
2674 Incident Information Reporting Program. The rules shall be
2675 considered minimum requirements and shall not preclude a fire
2676 protection agency from implementing its own requirements which
2677 shall not conflict with the rules of the Division of State Fire
2678 Marshal.2679 4. By rule, establish procedures and a format for each fire
2680 protection agency to voluntarily monitor its records and submit
2681 reports to the program.2682 5. Establish an electronic information database which is
2683 accessible and searchable by fire protection agencies.2684 (b) The Division of State Fire Marshal shall consult with
2685 the Division of Forestry of the Department of Agriculture and
2686 Consumer Services and the Bureau of Emergency Preparedness and
2687 Community Support ~~Medical Services~~ of the Department of Health
2688 to coordinate data, ensure accuracy of the data, and limit
2689 duplication of efforts in data collection, analysis, and
2690 reporting.2691 (2) The Fire and Emergency Incident Information System
2692 Technical Advisory Panel is created within the Division of State
2693 Fire Marshal. The panel shall advise, review, and recommend to
2694 the State Fire Marshal with respect to the requirements of this
2695 section. The membership of the panel shall consist of the
2696 following 15 members:

2697 (a) The current 13 members of the Firefighters Employment,

588-03554A-12 20121824c1

2698 Standards, and Training Council as established in s. 633.31.

2699 (b) One member from the Division of Forestry of the
2700 Department of Agriculture and Consumer Services, appointed by
2701 the division director.2702 (c) One member from the Bureau of Emergency Preparedness
2703 and Community Support ~~Medical Services~~ of the Department of
2704 Health, appointed by the bureau chief.2705 Section 77. Paragraph (b) of subsection (9) and paragraph
2706 (c) of subsection (10) of section 768.28, Florida Statutes, are
2707 amended to read:2708 768.28 Waiver of sovereign immunity in tort actions;
2709 recovery limits; limitation on attorney fees; statute of
2710 limitations; exclusions; indemnification; risk management
2711 programs.—

2712 (9)

2713 (b) As used in this subsection, the term:

2714 1. "Employee" includes any volunteer firefighter.

2715 2. "Officer, employee, or agent" includes, but is not
2716 limited to, any health care provider when providing services
2717 pursuant to s. 766.1115; ~~any member of the Florida Health~~
2718 ~~Services Corps, as defined in s. 381.0302, who provides~~
2719 ~~uncompensated care to medically indigent persons referred by the~~
2720 ~~Department of Health;~~ any nonprofit independent college or
2721 university located and chartered in this state which owns or
2722 operates an accredited medical school, and its employees or
2723 agents, when providing patient services pursuant to paragraph
2724 (10)(f); and any public defender or her or his employee or
2725 agent, including, among others, an assistant public defender and
2726 an investigator.

588-03554A-12 20121824c1

2727 (10)
 2728 (c) For purposes of this section, regional poison control
 2729 centers created in accordance with s. 395.1027 and coordinated
 2730 and supervised under the Division of Children's Medical Services
 2731 ~~Prevention and Intervention~~ of the Department of Health, or any
 2732 of their employees or agents, shall be considered agents of the
 2733 State of Florida, Department of Health. Any contracts with
 2734 poison control centers must provide, to the extent permitted by
 2735 law, for the indemnification of the state by the agency for any
 2736 liabilities incurred up to the limits set out in this chapter.

2737 Section 78. Subsections (4), (5), (6), (8), (9), (10),
 2738 (11), and (12) of section 1009.66, Florida Statutes, are amended
 2739 to read:

2740 1009.66 Nursing Student Loan Forgiveness Program.—

2741 (4) From the funds available, the Department of Education
 2742 ~~Health~~ may make loan principal repayments of up to \$4,000 a year
 2743 for up to 4 years on behalf of selected graduates of an
 2744 accredited or approved nursing program. All repayments shall be
 2745 contingent upon continued proof of employment in the designated
 2746 facilities in this state and shall be made directly to the
 2747 holder of the loan. The state shall bear no responsibility for
 2748 the collection of any interest charges or other remaining
 2749 balance. In the event that the designated facilities are
 2750 changed, a nurse shall continue to be eligible for loan
 2751 forgiveness as long as he or she continues to work in the
 2752 facility for which the original loan repayment was made and
 2753 otherwise meets all conditions of eligibility.

2754 (5) There is created the Nursing Student Loan Forgiveness
 2755 Trust Fund to be administered by the Department of Education

588-03554A-12 20121824c1

2756 ~~Health~~ pursuant to this section and s. 1009.67 and department
 2757 rules. The Chief Financial Officer shall authorize expenditures
 2758 from the trust fund upon receipt of vouchers approved by the
 2759 Department of Education Health. All moneys collected from the
 2760 private health care industry and other private sources for the
 2761 purposes of this section shall be deposited into the Nursing
 2762 Student Loan Forgiveness Trust Fund. Any balance in the trust
 2763 fund at the end of any fiscal year shall remain therein and
 2764 shall be available for carrying out the purposes of this section
 2765 and s. 1009.67.

2766 (6) In addition to licensing fees imposed under part I of
 2767 chapter 464, there is hereby levied and imposed an additional
 2768 fee of \$5, which fee shall be paid upon licensure or renewal of
 2769 nursing licensure. Revenues collected from the fee imposed in
 2770 this subsection shall be deposited in the Nursing Student Loan
 2771 Forgiveness Trust Fund of the Department of Education Health and
 2772 will be used solely for the purpose of carrying out the
 2773 provisions of this section and s. 1009.67. Up to 50 percent of
 2774 the revenues appropriated to implement this subsection may be
 2775 used for the nursing scholarship program established pursuant to
 2776 s. 1009.67.

2777 ~~(8) The Department of Health may solicit technical~~
 2778 ~~assistance relating to the conduct of this program from the~~
 2779 ~~Department of Education.~~

2780 ~~(8)(9)~~ The Department of Education Health is authorized to
 2781 recover from the Nursing Student Loan Forgiveness Trust Fund its
 2782 costs for administering the Nursing Student Loan Forgiveness
 2783 Program.

2784 ~~(9)(10)~~ The Department of Education Health may adopt rules

588-03554A-12 20121824c1

2785 necessary to administer this program.

2786 ~~(10)(11)~~ This section shall be implemented only as
2787 specifically funded.

2788 ~~(11)(12)~~ Students receiving a nursing scholarship pursuant
2789 to s. 1009.67 are not eligible to participate in the Nursing
2790 Student Loan Forgiveness Program.

2791 Section 79. Section 1009.67, Florida Statutes, is amended
2792 to read:

2793 1009.67 Nursing scholarship program.—

2794 (1) There is established within the Department of Education
2795 ~~Health~~ a scholarship program for the purpose of attracting
2796 capable and promising students to the nursing profession.

2797 (2) A scholarship applicant shall be enrolled in an
2798 approved nursing program leading to the award of an associate
2799 degree, a baccalaureate degree, or a graduate degree in nursing.

2800 (3) A scholarship may be awarded for no more than 2 years,
2801 in an amount not to exceed \$8,000 per year. However, registered
2802 nurses pursuing a graduate degree for a faculty position or to
2803 practice as an advanced registered nurse practitioner may
2804 receive up to \$12,000 per year. These amounts shall be adjusted
2805 by the amount of increase or decrease in the consumer price
2806 index for urban consumers published by the United States
2807 Department of Commerce.

2808 (4) Credit for repayment of a scholarship shall be as
2809 follows:

2810 (a) For each full year of scholarship assistance, the
2811 recipient agrees to work for 12 months in a faculty position in
2812 a college of nursing or Florida College System institution
2813 nursing program in this state or at a health care facility in a

588-03554A-12 20121824c1

2814 medically underserved area as designated ~~approved~~ by the
2815 Department of Health. Scholarship recipients who attend school
2816 on a part-time basis shall have their employment service
2817 obligation prorated in proportion to the amount of scholarship
2818 payments received.

2819 (b) Eligible health care facilities include nursing homes
2820 and hospitals in this state, state-operated medical or health
2821 care facilities, public schools, county health departments,
2822 federally sponsored community health centers, colleges of
2823 nursing in universities in this state, and Florida College
2824 System institution nursing programs in this state, family
2825 practice teaching hospitals as defined in s. 395.805, or
2826 specialty children's hospitals as described in s. 409.9119. The
2827 recipient shall be encouraged to complete the service obligation
2828 at a single employment site. If continuous employment at the
2829 same site is not feasible, the recipient may apply to the
2830 department for a transfer to another approved health care
2831 facility.

2832 (c) Any recipient who does not complete an appropriate
2833 program of studies, who does not become licensed, who does not
2834 accept employment as a nurse at an approved health care
2835 facility, or who does not complete 12 months of approved
2836 employment for each year of scholarship assistance received
2837 shall repay to the Department of Education ~~Health~~, on a schedule
2838 to be determined by the department, the entire amount of the
2839 scholarship plus 18 percent interest accruing from the date of
2840 the scholarship payment. Moneys repaid shall be deposited into
2841 the Nursing Student Loan Forgiveness Trust Fund established in
2842 s. 1009.66. However, the department may provide additional time

588-03554A-12 20121824c1

2843 for repayment if the department finds that circumstances beyond
2844 the control of the recipient caused or contributed to the
2845 default.

2846 (5) Scholarship payments shall be transmitted to the
2847 recipient upon receipt of documentation that the recipient is
2848 enrolled in an approved nursing program. The Department of
2849 ~~Education Health~~ shall develop a formula to prorate payments to
2850 scholarship recipients so as not to exceed the maximum amount
2851 per academic year.

2852 (6) The Department of ~~Education Health~~ shall adopt rules,
2853 including rules to address extraordinary circumstances that may
2854 cause a recipient to default on either the school enrollment or
2855 employment contractual agreement, to implement this section.

2856 (7) The Department of ~~Education Health~~ may recover from the
2857 Nursing Student Loan Forgiveness Trust Fund its costs for
2858 administering the nursing scholarship program.

2859 Section 80. ~~Department of Health; type two transfer.-~~

2860 (1) All powers, duties, functions, records, offices,
2861 personnel, associated administrative support positions,
2862 property, pending issues, existing contracts, administrative
2863 authority, administrative rules, and unexpended balances of
2864 appropriations, allocations, and other funds relating to the
2865 Nursing Student Loan Forgiveness Program and the nursing
2866 scholarship program in the Department of Health are transferred
2867 by a type two transfer, as defined in s. 20.06(2), Florida
2868 Statutes, to the Department of Education.

2869 (2) The Nursing Student Loan Forgiveness Trust Fund is
2870 transferred from the Department of Health to the Department of
2871 Education.

588-03554A-12 20121824c1

2872 (3) Any binding contract or interagency agreement related
2873 to the Nursing Student Loan Forgiveness Program existing before
2874 July 1, 2012, between the Department of Health, or an entity or
2875 agent of the agency, and any other agency, entity, or person
2876 shall continue as a binding contract or agreement for the
2877 remainder of the term of such contract or agreement on the
2878 successor department, agency, or entity responsible for the
2879 program, activity, or functions relative to the contract or
2880 agreement.

2881 (4) Notwithstanding s. 216.292, Florida Statutes, and
2882 pursuant to s. 216.351, Florida Statutes, upon approval by the
2883 Legislative Budget Commission, the Executive Office of the
2884 Governor may transfer funds and positions between agencies to
2885 implement this act.

2886 (5) The transfer of any program, activity, duty, or
2887 function under this act includes the transfer of any records and
2888 unexpended balances of appropriations, allocations, or other
2889 funds related to such program, activity, duty, or function.
2890 Unless otherwise provided, the successor organization to any
2891 program, activity, duty, or function transferred under this act
2892 shall become the custodian of any property of the organization
2893 that was responsible for the program, activity, duty, or
2894 function immediately before the transfer.

2895 Section 81. The Division of Medical Quality Assurance shall
2896 develop a plan to improve the efficiency of its functions.
2897 Specifically, the plan shall delineate methods to: reduce the
2898 average length of time for a qualified applicant to receive
2899 initial and renewal licensure, certification, or registration,
2900 by one-third; improve the agenda process for board meetings to

588-03554A-12 20121824c1

2901 increase transparency, timeliness, and usefulness for board
 2902 decisionmaking; and improve the cost-effectiveness and
 2903 efficiency of the joint functions of the division and the
 2904 regulatory boards. In developing the plan, the division shall
 2905 identify and analyze best practices found within the division
 2906 and other state agencies that have similar functions, options
 2907 for information technology improvements, options for contracting
 2908 with outside entities, and any other option the division deems
 2909 useful. The division shall consult with and solicit
 2910 recommendations from the regulatory boards in developing the
 2911 plan. The division shall submit the plan to the Governor, the
 2912 Speaker of the House of Representatives, and the President of
 2913 the Senate by November 1, 2012. All executive branch agencies
 2914 are instructed, and all other state agencies are requested, to
 2915 assist the division in accomplishing its purposes under this
 2916 section.

2917 Section 82. Subsection (1), paragraph (c) of subsection
 2918 (3), and subsection (9) of section 381.0041, Florida Statutes,
 2919 are amended to read:

2920 381.0041 Donation and transfer of human tissue; testing
 2921 requirements.—

2922 (1) Every donation of blood, plasma, organs, skin, or other
 2923 human tissue for transfusion or transplantation to another shall
 2924 be tested prior to transfusion or other use for human
 2925 immunodeficiency virus infection and other communicable diseases
 2926 specified by rule of the Department of Health. Tests for the
 2927 human immunodeficiency virus infection shall be performed only
 2928 after obtaining written, informed consent from the potential
 2929 donor or the donor's legal representative. Such consent may be

Page 101 of 105

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588-03554A-12 20121824c1

2930 given by a minor pursuant to s. 743.06. Obtaining consent shall
 2931 include a fair explanation of the procedures to be followed and
 2932 the meaning and use of the test results. Such explanation shall
 2933 include a description of the confidential nature of the test as
 2934 described in s. 381.004(2) ~~381.004(3)~~. If consent for testing is
 2935 not given, then the person shall not be accepted as a donor
 2936 except as otherwise provided in subsection (3).

2937 (3) No person shall collect any blood, organ, skin, or
 2938 other human tissue from one human being and hold it for, or
 2939 actually perform, any implantation, transplantation,
 2940 transfusion, grafting, or any other method of transfer to
 2941 another human being without first testing such tissue for the
 2942 human immunodeficiency virus and other communicable diseases
 2943 specified by rule of the Department of Health, or without
 2944 performing another process approved by rule of the Department of
 2945 Health capable of killing the causative agent of those diseases
 2946 specified by rule. Such testing shall not be required:

2947 (c) When there is insufficient time to obtain the results
 2948 of a confirmatory test for any tissue or organ which is to be
 2949 transplanted, notwithstanding the provisions of s. 381.004(2)(d)
 2950 ~~381.004(3)(d)~~. In such circumstances, the results of preliminary
 2951 screening tests may be released to the potential recipient's
 2952 treating physician for use in determining organ or tissue
 2953 suitability.

2954 (9) All blood banks shall be governed by the
 2955 confidentiality provisions of s. 381.004(2) ~~381.004(3)~~.

2956 Section 83. Paragraph (b) of subsection (3) of section
 2957 384.25, Florida Statutes, is amended to read:

2958 384.25 Reporting required.—

Page 102 of 105

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588-03554A-12

20121824c1

2959 (3) To ensure the confidentiality of persons infected with
 2960 the human immunodeficiency virus (HIV), reporting of HIV
 2961 infection and AIDS must be conducted using a system developed by
 2962 the Centers for Disease Control and Prevention of the United
 2963 States Public Health Service or an equivalent system.

2964 (b) The reporting may not affect or relate to anonymous HIV
 2965 testing programs conducted pursuant to s. 381.004(3) ~~381.004(4)~~.

2966 Section 84. Subsection (5) of section 392.56, Florida
 2967 Statutes, is amended to read:

2968 392.56 Hospitalization, placement, and residential
 2969 isolation.-

2970 (5) If the department petitions the circuit court to order
 2971 that a person who has active tuberculosis be hospitalized in a
 2972 facility operated under s. 392.62~~(2)~~, the department shall
 2973 notify the facility of the potential court order.

2974 Section 85. Subsection (2) of section 456.032, Florida
 2975 Statutes, is amended to read:

2976 456.032 Hepatitis B or HIV carriers.-

2977 (2) Any person licensed by the department and any other
 2978 person employed by a health care facility who contracts a blood-
 2979 borne infection shall have a rebuttable presumption that the
 2980 illness was contracted in the course and scope of his or her
 2981 employment, provided that the person, as soon as practicable,
 2982 reports to the person's supervisor or the facility's risk
 2983 manager any significant exposure, as that term is defined in s.
 2984 381.004(1)(c) ~~381.004(2)(c)~~, to blood or body fluids. The
 2985 employer may test the blood or body fluid to determine if it is
 2986 infected with the same disease contracted by the employee. The
 2987 employer may rebut the presumption by the preponderance of the

Page 103 of 105

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588-03554A-12

20121824c1

2988 evidence. Except as expressly provided in this subsection, there
 2989 shall be no presumption that a blood-borne infection is a job-
 2990 related injury or illness.

2991

2992 Section 86. Subsection (1) of section 775.0877, Florida
 2993 Statutes, is amended to read:

2994 775.0877 Criminal transmission of HIV; procedures;
 2995 penalties.-

2996 (1) In any case in which a person has been convicted of or
 2997 has pled nolo contendere or guilty to, regardless of whether
 2998 adjudication is withheld, any of the following offenses, or the
 2999 attempt thereof, which offense or attempted offense involves the
 3000 transmission of body fluids from one person to another:

3001 (a) Section 794.011, relating to sexual battery;

3002 (b) Section 826.04, relating to incest;

3003 (c) Section 800.04, relating to lewd or lascivious offenses
 3004 committed upon or in the presence of persons less than 16 years
 3005 of age;

3006 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
 3007 relating to assault;

3008 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
 3009 relating to aggravated assault;

3010 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
 3011 relating to battery;

3012 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
 3013 relating to aggravated battery;

3014 (h) Section 827.03(1), relating to child abuse;

3015 (i) Section 827.03(2), relating to aggravated child abuse;

3016 (j) Section 825.102(1), relating to abuse of an elderly

Page 104 of 105

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588-03554A-12

20121824c1

3017 person or disabled adult;

3018 (k) Section 825.102(2), relating to aggravated abuse of an
3019 elderly person or disabled adult;

3020 (l) Section 827.071, relating to sexual performance by
3021 person less than 18 years of age;

3022 (m) Sections 796.03, 796.07, and 796.08, relating to
3023 prostitution; or

3024 (n) Section 381.0041(11)(b), relating to donation of blood,
3025 plasma, organs, skin, or other human tissue,

3026

3027 the court shall order the offender to undergo HIV testing, to be
3028 performed under the direction of the Department of Health in
3029 accordance with s. 381.004, unless the offender has undergone
3030 HIV testing voluntarily or pursuant to procedures established in
3031 s. 381.004(2)(h)6. ~~381.004(3)(h)6.~~ or s. 951.27, or any other
3032 applicable law or rule providing for HIV testing of criminal
3033 offenders or inmates, subsequent to her or his arrest for an
3034 offense enumerated in paragraphs (a)-(n) for which she or he was
3035 convicted or to which she or he pled nolo contendere or guilty.
3036 The results of an HIV test performed on an offender pursuant to
3037 this subsection are not admissible in any criminal proceeding
3038 arising out of the alleged offense.

3039 Section 87. Except as otherwise expressly provided in this
3040 act, this act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 2076

INTRODUCER: Military Affairs Committee

SUBJECT: Florida Defense Support Task Force

DATE: February 17, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carter	Carter	MS	Favorable
2.	Jenkins	Roberts	GO	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill transfers the Florida Council on Military Base and Mission Support (council) to the Florida Defense Support Task Force (task force), including the council’s statutory public records exemption. It repeals the statute that creates the council (s. 288.984, F.S.)

This bill substantially amends sections 163.3175, 288.985, and 288.987, and repeals section 288.984 of the Florida Statutes.

II. Present Situation:

Military and defense spending is one of the top contributors to Florida’s overall economy at \$64 billion statewide.¹ The state is home to 21 military bases and missions, making defense Florida’s third-largest job producer.² The Legislature established the council and task force to deal with recruiting, improving, and sustaining the significant military presence in Florida.

¹ 2010 Florida Defense Industry Economic Impact Analysis. Final Report. Volume 1, Prepared by the Haas Center for Business and Economic Development at the University of West Florida. Published January 2010. Available at: http://webcache.googleusercontent.com/search?hl=en&gbv=2&gs_sm=c&gs_upl=410911160910114281126124101101012501247110.8.611410&q=cache:-ADbCDD8pAkJ:http://www.floridadefense.org/documents/HAAS%20Study%202011/FLdefense_Volume_1.pdf+florida+defense+industry+economic+impact+analysis&ct=clnk

² Association of Defense Communities, Defense Communities 360, November 8, 2011 <http://www.defensecommunities.org/headlines/florida-task-force-to-defend-local-missions-embrace-military-families/#>

The federal base realignment and closure (BRAC) is a law that establishes the process which the Department of Defense (DoD) will use when determining which military installations will be closed and or realigned.³

The BRAC process reflects a desire to eliminate excess capacity, experience the savings from that reduction, and fund higher priority weapon platforms and troop training.⁴ The last round of BRAC was in 2005.

Defense Secretary Leon Panetta has announced that as part of the 2013 budget, the Pentagon will ask Congress for legislation that would establish a new BRAC.⁵

The Florida Council on Military Base and Mission Support

The Florida Council on Military Base and Mission Support (council) was created in 2009.⁶ The council provides oversight of the initiatives, claims, and actions taken on behalf of the state relating to future (BRAC) activities.

The mission of the council is to:

- Support and strengthen all United States Department of Defense missions and bases located in this state;
- Know the capabilities of all state military installations in order to understand and be supportive of future military growth opportunities in this state;
- Support local community efforts relating to mission support of a military base by acting as a liaison between the local communities and the Legislature; and
- Enhance Florida's defense economy.⁷

The council consists of 9 members that are appointed as follows:

- The President of the Senate shall appoint one member of the Senate, one community representative from a community-based defense support organization, and one member who is a retired military general or flag-rank officer residing in this state or an executive officer of a defense contracting firm doing significant business in this state.
- The Speaker of the House of Representatives shall appoint one member of the House of Representatives, one community representative from a community-based defense support organization, and one member who is a retired military general or flag-rank officer residing in this state or an executive officer of a defense contracting firm doing significant business in this state.
- The Governor shall appoint the executive director of the Department of Economic Opportunities (department) or the director's designee, a board member of Enterprise Florida, Inc., and one at-large member.⁸

³ The Defense Base Closure and Realignment of 1990 (1990 Base Closure Act), Public Law 101-510 established the process by which Department of Defense (DOD) installations would be closed and/or realigned.

<http://www.globalsecurity.org/military/facility/brac.htm>

⁴ Bill Analysis for CS/CS/SB 2322 by the Senate Ways and Means Committee, April 17, 2009, p2

⁵ *DoD, Capital Hill Square off for BRAC Fight*, Federal Times, 2/17/2012; available at <http://www.federaltimes.com/article/20120213/FACILITIES02/202130301/> (last visited 2/17/2012).

⁶ Section 288.984, F.S.

⁷ Section 288.984(1) (a)-(d), F.S.

The council received administrative support from the Governor's Office of Tourism, Trade, and Economic Development (OTTED) but has not received any specific funding since its inception. Each January, the council is required to submit a report to the Governor and the Legislature on its activities and provide recommendations. In the 2010 Annual Report of the council recommended the following:

- Dedicated funding for specific staffing for the council; and
- Funding request for \$50,000 to fund its operations, travel, and other necessities to accomplish its mission.⁹

The Florida Defense Support Task Force

The Legislature also created the Florida Defense Support Task Force.¹⁰ The purpose of the Florida Defense Support Task Force (task force) is to protect Florida's current military bases and commands and continue the state's long standing relationship with the Department of Defense by making Florida more military friendly. The task force received \$5 million in funding for last fiscal year.

The mission of the task force is to make recommendations to prepare the state to effectively compete in any federal base realignment and closure action, to support the state's position in research and development related to or arising out of military missions and contracting, and to improve the state's military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.¹¹

The composition of the task force of 13 members is as follows:

- The Governor or his or her designee;
- Four members appointed by the Governor;
- Four members appointed by the President of the Senate; and
- Four members appointed by the Speaker of the House of Representatives.

Appointed members must represent defense-related industries or communities that host military bases and installations. All appointments must be made by August 1, 2011. Members serve for a term of 4 years, with the first term ending July 1, 2015. However, if members of the Legislature are appointed to the task force, those members serve until the expiration of their legislative term and may be reappointed once. A vacancy must be filled for the remainder of the unexpired term in the same manner as the initial appointment. All members of the council are eligible for reappointment. A member who serves in the Legislature may participate in all task force activities but may only vote on matters that are advisory.

The President of the Senate and the Speaker of the House of Representatives each designate one of their appointees to serve as chair of the task force. The chair must rotate each July 1. The appointee designated by the President of the Senate serves as initial chair. If the Governor,

⁸ Section 288.984(2) (a) 1-3, F.S.

⁹ Florida Council on Military Base and Mission Support, 2010 Annual Report, Recommendations Section

¹⁰ Section 288.987(1) F.S.

instead of his or her designee, participates in the activities of the task force, then the Governor shall serve as chair.

Method of Reorganization for the Executive Branch

Pursuant to s. 20.06, F.S., the executive branch of state government must be reorganized by transferring the specified agencies, programs, and functions to other specified departments, commissions, or offices. Such a transfer does not affect the validity of any judicial or administrative proceeding pending on the day of the transfer, and any agency or department to which are transferred the powers, duties, and functions relating to the pending proceeding must be substituted as a party in interest for the proceeding.

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.¹² Any agency or department or a program, activity, or function transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided.¹³ Unless otherwise provided, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions.¹⁴ Unless otherwise provided, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.¹⁵

III. Effect of Proposed Changes:

Section 1 of the bill creates a type two transfer of the authority, rights, responsibilities, rules and all other resources of the Florida Council on Military Base and Mission Support to the Florida Defense Support Task Force.

Section 2 of the bill amends s. 163.3175, F.S., to transfer the authority of the council to the task force to recommend to the Legislature changes to the military installations and local governments based upon a military base's potential for impacts from encroachment, and incompatible land uses and development.

Section 3 of the bill repeals s. 288.984, F.S., which established the council.

¹² Section 20.06(2), F.S.

¹³ Section 20.06(2)(a), F.S.

¹⁴ Section 20.06(2)(b), F.S.

¹⁵ Section 20.06(2)(c), F.S.

Section 4 of the bill amends s. 288.985, F.S., to transfer the public records and public meetings exemption from the council to the task force.

Section 5 of the bill amends s. 288.987, F.S., to give the executive director of the Department of Economic Opportunities, or his designee, status as a nonvoting ex officio executive director of the task force. It also provides for the Department of Economic Opportunities to contract with the task force for expenditure of appropriated funds to carry out its mission.

Section 6 of 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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By the Committee on Military Affairs, Space, and Domestic Security

583-02471-12

20122076__

1 A bill to be entitled
 2 An act relating to the Florida Defense Support Task
 3 Force; transferring the functions of the Florida
 4 Council on Military Base and Mission Support to the
 5 Florida Defense Support Task Force; amending s.
 6 163.3175, F.S.; conforming references; repealing s.
 7 288.984, F.S., relating to the Florida Council on
 8 Military Base and Mission Support; amending s.
 9 288.985, F.S.; conforming references; amending s.
 10 288.987, F.S.; revising references to the Department
 11 of Economic Opportunity rather than the Office of
 12 Tourism, Trade, and Economic Development within the
 13 Executive Office of the Governor; providing an
 14 effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. The powers, duties, functions, records,
 19 personnel, property, pending issues, existing contracts,
 20 administrative authority, administrative rules, and unexpended
 21 balances of appropriations, allocations, and other funds of the
 22 Florida Council on Military Base and Mission Support within the
 23 Department of Economic Opportunity are transferred by a type two
 24 transfer, as defined in s. 20.06(2), Florida Statutes, to the
 25 Florida Defense Support Task Force within the Department of
 26 Economic Opportunity.

27 Section 2. Subsection (3) of section 163.3175, Florida
 28 Statutes, is amended to read:

29 163.3175 Legislative findings on compatibility of

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

583-02471-12

20122076__

30 development with military installations; exchange of information
 31 between local governments and military installations.-

32 (3) The Florida Defense Support Task Force ~~Florida Council~~
 33 ~~on Military Base and Mission Support~~ may recommend to the
 34 Legislature changes to the military installations and local
 35 governments specified in subsection (2) based on a military
 36 base's potential for impacts from encroachment, and incompatible
 37 land uses and development.

38 Section 3. Section 288.984, Florida Statutes, is repealed.

39 Section 4. Subsections (1) and (2) of section 288.985,
 40 Florida Statutes, are amended to read:

41 288.985 Exemptions from public records and public meetings
 42 requirements.-

43 (1) The following records held by the Florida Defense
 44 Support Task Force ~~Florida Council on Military Base and Mission~~
 45 ~~Support~~ are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 46 State Constitution:

47 (a) That portion of a record which relates to strengths and
 48 weaknesses of military installations or military missions in
 49 this state relative to the selection criteria for the
 50 realignment and closure of military bases and missions under any
 51 United States Department of Defense base realignment and closure
 52 process.

53 (b) That portion of a record which relates to strengths and
 54 weaknesses of military installations or military missions in
 55 other states or territories and the vulnerability of such
 56 installations or missions to base realignment or closure under
 57 the United States Department of Defense base realignment and
 58 closure process, and any agreements or proposals to relocate or

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

583-02471-12 20122076__

59 realign military units and missions from other states or
60 territories.

61 (c) That portion of a record which relates to the state's
62 strategy to retain its military bases during any United States
63 Department of Defense base realignment and closure process and
64 any agreements or proposals to relocate or realign military
65 units and missions.

66 (2) Meetings or portions of meetings of the Florida Defense
67 Support Task Force ~~Florida Council on Military Base and Mission~~
68 ~~Support~~, or a workgroup of the task force ~~council~~, at which
69 records are presented or discussed which are exempt under
70 subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I
71 of the State Constitution.

72 Section 5. Subsections (5) and (7) of section 288.987,
73 Florida Statutes, are amended to read:

74 288.987 Florida Defense Support Task Force.—

75 (5) The executive director of the Department of Economic
76 Opportunity Office of Tourism, Trade, and Economic Development
77 ~~within the Executive Office of the Governor~~, or his or her
78 designee, shall serve as the ex officio, nonvoting executive
79 director of the task force.

80 (7) The ~~department Office of Tourism, Trade, and Economic~~
81 ~~Development~~ shall contract with the task force for expenditure
82 of appropriated funds, which may be used by the task force for
83 economic and product research and development, joint planning
84 with host communities to accommodate military missions and
85 prevent base encroachment, advocacy on the state's behalf with
86 federal civilian and military officials, assistance to school
87 districts in providing a smooth transition for large numbers of

583-02471-12 20122076__

88 additional military-related students, job training and placement
89 for military spouses in communities with high proportions of
90 active duty military personnel, and promotion of the state to
91 military and related contractors and employers. The task force
92 may annually spend up to \$200,000 of funds appropriated to the
93 ~~department~~ Executive Office of the Governor, Office of Tourism,
94 Trade, and Economic Development, for the task force for staffing
95 and administrative expenses of the task force, including travel
96 and per diem costs incurred by task force members who are not
97 otherwise eligible for state reimbursement.

98 Section 6. This act shall take effect July 1, 2012.

1280

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

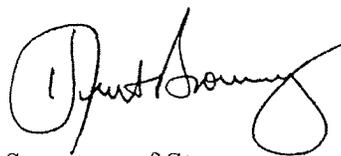
I, Kurt S. Browning, Secretary of State,
do hereby certify that

Michael F. Price

is duly appointed a member of the
Investment Advisory Council

for a term beginning on the
Fifteenth day of November, A.D., 2011,
until the Twelfth day of December, A.D., 2014
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Thirteenth day of February, A.D., 2012.*



Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.

4

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF ~~FLORIDA~~ New York (SS)
County of Nassau

2012 FEB 10 PM 4:22

STATE OF FLORIDA
DEPARTMENT OF ELECTORAL
ADMINISTRATION

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Investment Advisory Council Member

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]
Signature

Sworn to and subscribed before me this 9th day of February, 2012

[Signature]
Signature of Officer Administering Oath or of Notary Public

SAMIA M. BALI
Notary Public, State of New York

No. 01BA8240348
Print, Type or Stamp Commissioned Name of Notary Public
Qualified in Nassau County

Commission Expires May 2, 2015
Personally Known OR Produced Identification

Type of Identification Produced Driver License

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

MFP Investors LLC, 667 Madison Ave, 25th Fl

Street or Post Office Box

New York, NY 10065

City, State, Zip Code

Michael F. Price

Print name as you desire commission issued

[Signature]
Signature

HAND DELIVERED



STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308

(850) 488-4406
POST OFFICE BOX 13300
32317-3300

RICK SCOTT
GOVERNOR
AS CHAIRMAN
JEFF ATWATER
CHIEF FINANCIAL OFFICER
AS TREASURER
PAM BONDI
ATTORNEY GENERAL
AS SECRETARY
ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

February 10, 2012

Inez Williams
Division of Elections
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399

RE: Investment Advisory Council Appointment – Michael Price – **REVISED**

Dear Ms. Williams:

Mr. Michael Price has been appointed by Governor Scott to serve on the Investment Advisory Council for the State Board of Administration. Attached please find a copy of the Questionnaire for Senate Confirmation with a **revised Certification and Oath of Office/Acceptance pages only**. This complete package was originally sent to you on February 3, 2012, by Dennis MacKee, however, these pages had information missing. Therefore, I am also attaching the November 15, 2011, Cabinet transcript reflecting approval of his appointment (see page 46 of the transcript) and the Governor's appointment letter so you will have a complete package. His term will be November 15, 2011, through December 12, 2014, as he will be succeeding Mr. Robert Konrad.

I apologize for the mix-up with the pages that were not notarized completely. Please let me know if additional information is required.

Sincerely,

A handwritten signature in cursive script that reads "Diane Bruce".

Diane Bruce
Executive Assistant

Attachments

cc: Ash Williams w/o Attachments
Mr. Ron Poppell w/o Attachments

HAND DELIVERED



RICK SCOTT
GOVERNOR

RECEIVED
JAN 19 2012
2012 FEB 10 PM 4:23
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

January 19, 2012

Mr. Kurt S. Browning, Secretary
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following appointment under the provisions of Section 215.444, Florida Statutes:

Mr. Michael F. Price
MFP Investors, LLC
667 Madison Avenue
New York, NY 10065

as a member of the Investment Advisory Council, succeeding Robert L. Konrad, subject to confirmation by the Senate. This appointment is effective November 15, 2011, for a term ending December 12, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

HAND DELIVERED

RS/lm

THE CABINET
STATE OF FLORIDA

RECEIVED
2012 FEB 10 PM 4:23
DEPARTMENT OF STATE
DIVISION OF ELECTRONICS

Representing:

STATE BOARD OF ADMINISTRATION
DEPARTMENT OF LAW ENFORCEMENT
BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND

The above agencies came to be heard before
THE FLORIDA CABINET, Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03,
The Capitol, Tallahassee, Florida, on Tuesday,
November 15, 2011, commencing at 9:05 a.m.

Reported by:
JO LANGSTON
Registered Professional Reporter
Notary Public

ACCURATE STENOTYPE REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
(850) 878-2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

ADAM H. PUTNAM
Commissioner of Agriculture

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

* * *

1 6 is withdrawn without objection.

2 MR. WILLIAMS: Thank you. Item 7, request
3 approval of the appointment of Mr. Michael Price to
4 the Investment Advisory Council.

5 GOVERNOR SCOTT: Is there a motion to approve
6 Item 7?

7 ATTORNEY GENERAL BONDI: Move to approve.

8 CFO ATWATER: Second.

9 GOVERNOR SCOTT: Moved and seconded. Item 7 is
10 approved without objection.

11 MR. WILLIAMS: Thank you. Item 8, request
12 approval of the appointment of Gary Wendt, Mr. Gary
13 Wendt, to the Investment Advisory Council.

14 GOVERNOR SCOTT: Is there a motion?

15 ATTORNEY GENERAL BONDI: Move to approve.

16 GOVERNOR SCOTT: Is there a second?

17 CFO ATWATER: Second.

18 GOVERNOR SCOTT: Moved and seconded. Item 8 is
19 approved without objection.

20 MR. WILLIAMS: Thank you.

21 GOVERNOR SCOTT: Thank you very much.

22

23

24

25

RECEIVED
2012 FEB 10 PM 4:22

QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS STATE DIVISION OF ELECTIONS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in black ink.

NOVEMBER 10, 2011
Date Completed

1. Name: PRICE, MICHAEL F.
MR/MRS/MS LAST FIRST MIDDLE/MAIDEN

2. Business Address: MFP INVESTORS LLC, 667 MADISON AVE, 25TH FL
STREET OFFICE # CITY
NEW YORK NY 10065 (212) 752-7280
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 20 EAST 78TH STREET
STREET CITY COUNTRY
NEW YORK, NY 10075 (212) 794-1239
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business Residence Fax # (212) 752-7265
(optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
<u>450 + 452 WORTH AVE</u>	<u>PALM BEACH FL</u>	<u>1992</u>	<u>PRESENT</u>
<u>20 E 78TH ST</u>	<u>NEW YORK NY 10075</u>	<u>1996</u>	<u>PRESENT</u>
<u>35 BAXTER RD</u>	<u>SIASCONSET MA 02564</u>	<u>2005</u>	<u>PRESENT</u>
<u>2291 DAYBREAK RIDGE AVON</u>	<u>CO 81620</u>	<u>1996</u>	<u>PRESENT</u>

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
<u>20 E 78TH ST</u>	<u>NEW YORK NY 10075</u>	<u>1996</u>	<u>PRESENT</u>
<u>35 BAXTER RD</u>	<u>SIASCONSET MA</u>	<u>2005</u>	<u>PRESENT</u>
<u>2291 DAYBREAK RIDGE AVON</u>	<u>CO 81620</u>	<u>1996</u>	<u>PRESENT</u>
<u>1180 LARBER CROSS RD</u>	<u>PAR HILLS NJ 07931</u>	<u>1994</u>	<u>PRESENT</u>

5. Date of Birth: 07/03/51 Place of Birth: ROSLYN, NY

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: NEW YORK

8. Have you ever used or been known by any other legal name? Yes No If "Yes" Explain _____

9. Are you a United States citizen? Yes No If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? N/A

11. Are you a registered Florida voter? Yes No If "Yes" list:

A. County of registration: _____ B. Current party affiliation: _____

12. Education

A. High School: Roslyn H.S. Year Graduated: 1969
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

<small>NAME & LOCATION</small>	<small>DATES ATTENDED</small>	<small>CERTIFICATES/DEGREES RECEIVED</small>
<u>Univ of OKLA</u>	<u>1969-1973</u>	<u>BBA</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes No If "Yes" list:

A. Dates of service: _____

B. Branch or component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

<small>DATE</small>	<small>PLACE</small>	<small>NATURE</small>	<small>DISPOSITION</small>
<u>N/A</u>			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<small>EMPLOYER'S NAME & ADDRESS</small>	<small>TYPE OF BUSINESS</small>	<small>OCCUPATION/JOB TITLE</small>	<small>PERIOD OF EMPLOYMENT</small>
<u>MPP INVESTORS LLC 667 MADISON AVE NEW YORK, NY 10065</u>	<u>- MANAGING</u>	<u>MEMBER</u>	<u>1998 - PRESENT</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes No If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<small>POSITION</small>	<small>EMPLOYING AGENCY</small>	<small>PERIOD OF EMPLOYMENT</small>

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

MONEY MANAGER SINCE 1975.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes No If "Yes", list:

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes No If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

N/A

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes No If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes No If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE DATE OF ELECTION OR APPOINTMENT TERM OF OFFICE LEVEL OF GOVERNMENT

B. If your service was on an appointed board(s), committee(s), or council(s):

- (1) How frequently were meetings scheduled: _____
- (2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes No If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes No If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated Removed Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes No If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes No If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes No If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE

25. A. Have you, or businesses of which you have been an owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS RELATIONSHIP TO AGENCY

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes No

A. Did you receive any compensation other than reimbursement for expenses? Yes No

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
LESLIE DANIELS			
EMMANUEL GEBILO			
MARIO GABELLI			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE HELD & TERM	DATE(S) OF MEMBERSHIP
JOHN'S HOPKINS MEDICINE	BALTIMORE, MD		2002 - PRESENT
ALBERT EINSTEIN COLLEGE OF MEDICINE	BRONX, NY		2000 - PRESENT

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes No If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes No

RECEIVED
2012 FEB 10 PM 4:22
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0158

CERTIFICATION

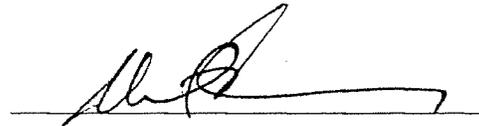
New York (SB)

2012 FEB 10 PM 4:22

STATE OF FLORIDA, COUNTY OF Nassau

Before me, the undersigned Notary Public of Florida, personally appeared MICHAEL F. PRICE who, after being duty sworn, say: (1) that

he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.



Signature of Applicant-Affiant

Sworn to and subscribed before me

this 9th day of February, 2012



Signature of Notary Public-State of Florida New York

SAMIA M. BALI
Notary Public, State of New York
No. 01BA6240348
Qualified in Nassau County
Commission Expires May 2, 2015

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: May 2, 2015

Personally Known OR Produced Identification

Type of Identification Produced Driver License

(seal)

2260

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Kurt S. Browning, Secretary of State,
do hereby certify that

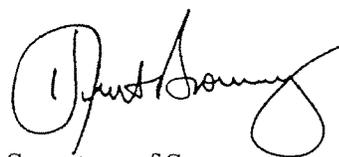
Kenneth W. Detzner

is duly appointed

**Secretary,
Department of State**

for a term beginning on the
Seventeenth day of February, A.D., 2012,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Tenth day of February, A.D., 2012.*



Secretary of State



If photocopied or chemically altered, the word "VOID" will appear

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of LEON

2012 FEB 10 AM 8:50

FLORIDA STATE
DIVISION OF ELECTIONS

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

SECRETARY OF STATE

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

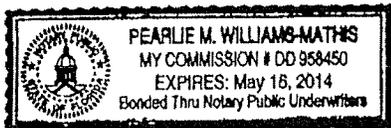
Kenneth W. Detzner

Signature

Sworn to and subscribed before me this 10th day of February, 2012

Pearlie M. Williams Mathis

Signature of Officer Administering Oath or of Notary Public



Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced FLDL

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

1317 WOODGATE WAY
Street or Post Office Box

TALLAHASSEE, FL 32308
City, State, Zip Code

KENNETH W. DETZNER
Print name as you desire commission issued

Kenneth W. Detzner
Signature



RICK SCOTT
GOVERNOR

2012 FEB -8 PM 4:51

DEPT. OF STATE
TALLAHASSEE, FL

February 3, 2012

Mr. Kurt S. Browning, Secretary
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following appointment:

Kenneth W. Detzner

as the Secretary of the Department of State, succeeding Kurt S. Browning, for a term beginning February 17, 2012, and ending at the pleasure of the Governor.

Please prepare the necessary papers and mail to:

Mr. Kenneth W. Detzner
1317 Woodgate Way
Tallahassee, Florida 32308

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/nke

QUESTIONNAIRE FOR SENATE CONFIRMATION

RECEIVED
2012 FEB 10 AM 8:56

The information from this questionnaire will be used by the the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.

Please type or print in blue or black ink.

FLORIDA SENATE
DIVISION OF ELECTIONS

2-7-12

Date Completed

1. Name: MR. DETZNER KENNETH WILLIAM
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: 1317 WOODGATE WAY TALLAHASSEE
STREET OFFICE # CITY
FLORIDA 32308 850.980.6201
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 1317 WOODGATE WAY TALLAHASSEE
STREET CITY COUNTY
FLORIDA 32308 850.980.6201
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business Residence Fax # _____
(optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
<u>SAME AS ABOVE</u>			

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
<u>NONE</u>			

5. Date of Birth: 9.18.1952 Place of Birth: HAMMOND, IN

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: FLORIDA

8. Have you ever used or been known by any other legal name? Yes No If "Yes" Explain

9. Are you a United States citizen? Yes No If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 1971

11. Are you a registered Florida voter? Yes No If "Yes" list:

A. County of Registration: LEON B. Current Party Affiliation: REPUBLICAN

12. Education

A. High School: MUNSTER H.S., MUNSTER, IN Year Graduated: 1971
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
ST. PETERSBURG JR. COLLEGE	08/71 - 05/73	AA
FLORIDA STATE UNIVERSITY	08/73 - 05/75	BA

13. Are you or have you ever been a member of the armed forces of the United States? Yes No If "Yes" list:

A. Dates of Service: _____

B. Branch or Component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes No If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
2/2000	Volusia Co.	Reckless Driving	no contest
(not sure if penalty was more than \$150)			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
KEN DETZNER	Govt. Affairs + Mgmt. Consulting	SOLE PROPRIETOR	2003 - Present

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes No If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
SEC. OF STATE	STATE OF FL / DEPT. OF STATE	01/07/03 - 03/03/03
CHIEF OF STAFF	STATE OF FL / DEPT. OF STATE	03/05/02 - 01/06/03
DIR. LEG + POLICY AFFAIRS	STATE OF FL / OFC. OF ATTORNEY GENERAL	1979 - 1985

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

MY PREVIOUS EXPERIENCE IN THE OFFICE OF ATTORNEY GENERAL AS DIRECTOR OF LEGISLATIVE + POLICY AFFAIRS FOR 6 YEARS. FOLLOWED BY MANY YEARS OF WORKING IN THE PRIVATE SECTOR AND THEN RETURNING TO GOVERNMENT, FIRST AS CHIEF OF STAFF TO SECRETARY OF STATE AND SUBSEQUENT APPOINTMENT BY SEN. JEB BUSH AS SECRETARY OF STATE.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes No If "Yes", list:

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes No If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

NONE

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes No If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes No If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
SEC OF STATE	01/07/03 - 03/03/03		STATE OF FLORIDA

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes No If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes No If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated Removed Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes No If "Yes", list:

A. Title of Office: SECRETARY OF STATE

B. Term of Appointment: 01/07/03 - 03/03/03

C. Confirmation results: TERM EXPIRED PRIOR TO CONFIRMATION

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes No If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes No If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
<u>KERN DETZNER</u>	<u>SOLE PROPRIETOR</u>	<u>CONSULTANT TO DEPT. OF LEGAL AFFAIRS / OIL SPILL</u>

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes No

A. Did you receive any compensation other than reimbursement for expenses? Yes No

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED
FL. LEGISLATURE	WILLIAMS FAMILY INTEREST
"	CAREER EDGE - MANATEE / SARASOTA
"	CHILDREN'S MAGIC INC.

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
JIM SMITH			
TONI JENNINGS			
LEWIS BEAR			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
SEMINOLE RC CLUB	APALACHEE, PKWY,	TALLAHASSEE,	FL

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes No If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes No

REC'D
2012 FEB 10 AM 8:52

MEMORANDUM

FLORIDA STATE
DIVISION OF ELECTIONS

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) _____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

CERTIFICATION

Leon County

2012 FEB 10 AM 8:52 STATE OF FLORIDA, COUNTY OF

DEPARTMENT OF STATE
DIVISION OF ELECTIONS

Before me, the undersigned Notary Public of Florida, personally appeared Kenneth W. Detzner, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

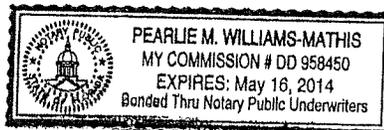
Kenneth W. Detzner

Signature of Applicant-Affiant

Sworn to and subscribed before me
this 10th day of February, 20 12

Pearlie M. Williams Mathis

Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known OR Produced Identification

Type of Identification Produced FLDL

(seal)