Senate Committee On

APPROPRIATIONS

Ken Pruitt, Chair
Daniel Webster, Vice Chair

Meeting Packet
Tuesday, April 20, 2004
3:30 p.m. – 5:30 p.m.

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

E X P A N D E D A G E N D A

COMMITTEE ON APPROPRIATIONS

Senator Pruitt, CHAIR
Senator Webster, VICE-CHAIR

DATE: Tuesday, April 20, 2004
TIME: 3:30 p.m. -- 5:30 p.m.
PLACE: The *Pat Thomas Committee Room,* 412 Knott Building

(MEMBERS: Senators Carlton, Clary, Crist, Dawson, Diaz de la Portilla, Dockery, Hill, Jones, Klein, Lawson, Lee, Miller, Peaden, Smith, Villalobos and Wasserman Schultz)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 0096 Agriculture / Alexander (Similar H 0225) IF RECEIVED	Citrus Dept./Fla. Citrus Commission; requires commission to establish executive committee from among its members; provides for selection of executive committee members & for terms of office; requires that meetings of executive committee be open to public & governed by specified provision re to public meetings & records; prohibits dept. from expending any remaining amount of excise tax moneys for advertising, marketing, or public-relations activities, etc. Amends 601.04,.155. AG 03/10/04 CS JU 03/30/04 FAVORABLE WITH AMEND 1 FT 04/13/04 FAVORABLE AGG 04/16/04 WITHDRAWN AP 04/20/04	
2	~~CS/SB 0244~~ ~~Finance and~~ ~~Taxation / -- Cowin~~ ~~et al~~ IF RECEIVED	~~Fla. Sales Tax Relief Act~~	Withdrawn from committee by floor action
3	CS/SB 0174 Education / Clary et al (Compare H 0037, H 0055, S 0190, S 0270, S 0320, S 0592, S 0628) IF RECEIVED	Lottery/Unclaimed Prize Money; provides for deposit of percentage of unclaimed prize money in Educational Enhancement Trust Fund; revises provisions re allocation of revenues for public education; conforms provisions. Amends 24.115,.121, 1010.70. ED 03/17/04 Not considered ED 03/24/04 CS FT 04/13/04 FAVORABLE AGG 04/16/04 WITHDRAWN AP 04/20/04	

E X P A N D E D A G E N D A

COMMITTEE ON APPROPRIATIONS

DATE: Tuesday, April 20, 2004 TIME: 3:30 p.m. -- 5:30 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 0602 Children and Families / Smith et al (Linked CS/S 0606, Similar H 0515, Compare H 0517)	Children's Advocacy Centers/Funding; imposes additional court cost against persons who plead guilty or nolo contendere to, or who are found guilty of, certain crimes against minors; requires clerk of court to deposit proceeds of court cost into State Treasury for deposit into specified trust fund to be used to fund children's advocacy centers; requires compliance with specified statutory provisions in order for such center to receive certain funding, etc. Creates 938.10; amends 39.3035. CJ 03/02/04 WITHDRAWN CF 03/02/04 WITHDRAWN FT 03/02/04 WITHDRAWN AAV 03/02/04 WITHDRAWN AP 03/02/04 WITHDRAWN CF 03/10/04 CS CJ 03/24/04 FAVORABLE FT 04/01/04 FAVORABLE AAV 04/13/04 FAVORABLE AP 04/20/04	
5	CS/CS/CS/SB 0700 Criminal Justice / Peaden et al (Similar H 0463)	Mental Health; defines & redefines terms used in "the Baker Act"; amends provision re guardian advocates; amends provision re confidentiality of clinical records; revises criteria for involuntary examination; provides for involuntary outpatient placement; provides for voluntary examination for outpatient placement; provides for petition for involuntary outpatient placement, etc. Amends Ch. 394. CF 02/18/04 CS JU 03/09/04 CS/CS CJ 03/31/04 CS/CS/CS AAV 04/13/04 FAVORABLE WITH AMEND 7 AP 04/20/04	
6	CS/SB 1172 Transportation / Peaden (Identical H 0201) IF RECEIVED	License Plates/Service Charges; increases certain service charges for certificates of title & license plates, certain stickers, or registration certificates. Amends 319.32, 320.04. TR 03/30/04 CS FT 04/13/04 FAVORABLE ATD 04/16/04 WITHDRAWN AP 04/20/04	

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/CS/SB 1178 Appropriations Subcommittee on Health and Human Services / Miller et al (Similar H 0645)	Florida Healthy People 2010 Program; provides for DOH to monitor & report on Florida's status re Healthy People 2010 goals & objectives currently tracked by dept.; requires dept. to work with various groups to educate health care professionals on racial & ethnic issues in health, to recruit & train health care professionals from minority backgrounds, & to promote certain research; defines term "minority physician network", etc. Creates 381.736; amends 409.901,.912. HC 01/21/04 CS AHS 04/13/04 CS/CS AP 04/20/04	
8	CS/SB 1228 & SB 2080 Education / Wilson et al (Similar H 0119, S 2068, S 2080, Compare 1ST ENG/H 1725, CS/CS/CS/S 1622) IF RECEIVED	Tuition/Resident Status; (THIS BILL COMBINES S1228,2080) classifies as residents for tuition purposes certain active duty members of foreign nation's military, dependent children of certain active duty members of U.S. Armed Services, & certain employees of international multilateral organizations; provides exemption from payment of nonresident tuition at community colleges & state universities for certain students meeting eligibility criteria, etc. Amends Ch. 1009. ED 03/31/04 CS MS MS 04/16/04 FAVORABLE WITH AMEND 1 AED 04/16/04 WITHDRAWN AP 04/20/04 RC	
9	CS/SB 1458 Education / Wasserman Schultz et al (Similar H 1429)	Florida Virtual School; authorizes board of trustees of such school to enter into franchise agreements with Florida-based virtual schools that are accredited by Southern Assoc. of Colleges & Schools; defines term "Florida-based"; prohibits accredited & approved Florida-based virtual schools from charging parents of student a fee if student received services & was counted as full-time student by Florida-based virtual school, etc. Amends 1002.37. ED 03/03/04 Temporarily postponed ED 03/31/04 Not considered ED 04/13/04 CS AED 04/16/04 WITHDRAWN AP 04/20/04	

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COMMITTEE ON APPROPRIATIONS

DATE: Tuesday, April 20, 2004 TIME: 3:30 p.m. -- 5:30 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 1900 Klein et al (Identical H 1019) IF RECEIVED	Centers of Excellence; provides for terms of members appointed to Emerging Technology Commission; provides for filling any vacancy that occurs during term of member of commission; delays expiration of Florida Technology Development Act; requires Florida Research Consortium, Inc., to report to Emerging Technology Commission within specified timeframe re criteria for reviewing proposals for center of excellence, etc. Amends 1004.225. ED 03/03/04 Temporarily postponed ED 03/10/04 FAVORABLE CM 03/16/04 FAVORABLE AED 04/16/04 WITHDRAWN AP 04/20/04	
11	CS/SB 1280 Children and Families / Peaden et al (Compare H 1903, CS/S 1248, CS/S 2808) IF RECEIVED	Children & Family Services Dept.; removes developmental disabilities program from said dept.; establishes Agency for Persons with Disabilities for purpose of providing services to persons with developmental disabilities, including institutional services; amends legislative intent to add said agency & Elderly Affairs Dept. as agencies that AHCA must enter into interagency agreement re persons with special needs, etc. Amends FS. AHS 03/16/04 WITHDRAWN RC 03/16/04 WITHDRAWN AP 03/31/04 WITHDRAWN CF 04/13/04 CS AHS 04/16/04 WITHDRAWN AP 04/20/04	
12	CS/CS/SB 1982 Finance and Taxation / Posey et al (Similar H 0689, Compare H 1521) IF RECEIVED	Electric Transmission Line Siting; changes short title to "Fla. Electric Transmission Line Siting Act"; revises provisions for applicability, certification, & exemptions under act; requires that application contain starting point & ending point of transmission line specifically defined by applicant & verified by commission; subjects hydrogen fueling stations to fire safety regulations, etc. Amends Ch. 403, 373.441, 633.022. CU 03/09/04 CS CP 03/23/04 FAVORABLE NR 03/30/04 FAVORABLE FT 04/13/04 CS/CS AP 04/20/04 If received AP 04/20/04	

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	CS/SB 2184 Education / Miller et al (Similar H 1301) IF RECEIVED	Student Achievement; cites act as "Fla. Partnership for Minority & Underrepresented Student Achievement"; provides legislative intent; creates Fla. Partnership for Minority & Underrepresented Student Achievement; provides purposes & duties of partnership; provides duties of DOE & The College Board; requires partnership to protect confidentiality of information; provides for funding partnership, etc. Creates 1007.35. *(A proposed committee substitute is expected to be filed prior to the amendment deadline.)* ED 03/31/04 CS AED 04/15/04 WITHDRAWN AP 04/20/04	
14	CS/CS/CS/SB 2488 Finance and Taxation / Alexander et al IF RECEIVED	Florida Hurricane Catastrophe Fund; redefines & defines terms; provides for State Board of Administration to specify interest due on delinquent remittances; revises conditions of, amounts of, & procedures re reimbursement contracts; revises maximum rates of, procedures relating to, & types of insurance subject to emergency assessments; revises provisions re reinsurance; deletes expired provisions. Amends 215.555. BI 03/24/04 CS GO 04/13/04 CS/CS FT 04/15/04 CS/CS/CS AGG 04/16/04 WITHDRAWN AP 04/20/04	
15	CS/SB 2722 Governmental Oversight and Productivity / Atwater (Similar H 1891, Compare CS/S 1248) IF RECEIVED	Public Property/DMS; provides that DMS, rather than agencies acting on their own behalf, can lease space for agencies; authorizes dept. to participate in large-scale leases; changes requirement for competitive bidding for leases of real property for agencies to requirement for competitive solicitation; increases bond requirement for protests of lease solicitation; provides criteria for leasing space financed by local government obligations, etc. Amends FS. GO 03/30/04 Not considered GO 04/13/04 CS RI 04/15/04 WITHDRAWN AGG 04/15/04 WITHDRAWN AP 04/20/04 RC	

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	CS/CS/SB 2676 Commerce, Economic Opportunities, and Consumer Services / Haridopolos et al (Similar H 1459, Compare H 0405, S 2112) IF RECEIVED	Cigarettes/Transportation & Sale; provides stamp requirements for cigarettes in transport; revises requirements for & limitations on affixation of stamps; requires manufacturers, importers, distributing agents, dealers, & retail dealers to hold current, valid permit to sell, distribute, or receive cigarettes; authorizes certain law enforcement officials to inspect certain shipping vehicles; authorizes destruction of certain cigarettes, etc. Amends Ch. 210. RI 03/17/04 CS CM 03/30/04 CS/CS FT 04/02/04 WITHDRAWN AGG 04/15/04 WITHDRAWN AP 04/20/04	
17	CS/CS/CS/SB 2910 Appropriations Subcommittee on Health and Human Services / Peaden et al (Linked CS/S 0702, Similar H 1629, Compare H 0701, H 1885, H 1887, CS/CS/S 1066, CS/S 1092, CS/CS/S 1464, CS/S 1744, CS/S 2022, S 3018)	Affordable Health Care; requires certain licensed facilities to provide public Internet access to certain financial information; includes participation by health care providers, small businesses, & health insurers in Healthy Communities, Healthy People Program; creates Florida Health Insurance Plan for certain purposes; creates Small Employers Access Program; provides for insurance rebates for healthy lifestyles, etc. Amends FS. HC 03/23/04 CS BI 03/31/04 CS/CS AHS 04/13/04 CS/CS/CS AP 04/20/04	
18	CS/CS/SB 2820 Governmental Oversight and Productivity / Argenziano et al (Similar H 1799) IF RECEIVED	Fish & Wildlife Conservation Comm.; reorganizes commission; provides responsibilities & duties of executive director; revises administrative structure of commission; authorizes DMS & Executive Office of Governor to establish & approve new sections, subsections, & offices as initiated by commission; provides for employee bonds at request of commission; requires commission to publish Florida Wildlife Magazine, etc. Amends Chs. 20, 370, 372, 403. NR 03/30/04 CS GO 04/13/04 CS/CS AGG 04/16/04 WITHDRAWN AP 04/20/04	

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	CS/CS/SB 2884 Appropriations Subcommittee on Education / Carlton et al (Compare H 1781, CS/2ND ENG/S 1176)	State Universities; revises eligibility criteria for Florida Bright Futures Scholarship Program; awards incentive funds to state universities; requires Board of Governors to allocate incentive awards to university boards of trustees; requires university boards of trustees to provide students with billing statement that reflects true cost of student's education; amends Trust Fund for University Major Gifts, etc. Amends Ch. 1009, 1011, ED 03/31/04 CS AED 04/13/04 CS/CS AP 04/20/04	
20	CS/SB 2842 Health, Aging, and Long-Term Care / Atwater (Compare H 1911, H 1927, CS/S 1496, CS/S 1762, CS/S 1818, CS/S 2448)	Trauma Care Center Care Services; requires hospitals & trauma centers to provide data on moderate-to-severe brain or spinal cord injuries to DOH; revises requirements for DOH to review trauma service areas; revises requirements for DOH's development of state trauma system plan; directs HSMV to assess specified annual surcharges against motor vehicle licensee who accumulates seven or more points against his or her license within previous 36 months, etc. Amends FS. HC 03/30/04 CS JU 04/12/04 AHS 04/13/04 If received AHS 04/13/04 FAVORABLE AP 04/20/04	
21	CS/SB 2994 Banking and Insurance / Posey (Similar H 1695) IF RECEIVED	Financial Services Department; provides that office of Chief Financial Officer may have official seal; authorizes said officer to use reverse repurchase agreements in investment transactions; provides that Financial Services Dept., rather than Insurance Reg. Office, is responsible for regulation of insurance adjusters; authorizes financing of guaranteed energy performance savings contract pursuant to master equipment financing agreement, etc. Amends FS. BI 04/13/04 CS AGG 04/15/04 WITHDRAWN AP 04/20/04	

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 96

SPONSOR: Committee on Agriculture and Senator Alexander

SUBJECT: Department of Citrus/Equalizing Excise Tax

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Favorable/CS
2.	Cibula	Lang	JU	Fav/1 amendment
3.	Fournier	Johansen	FT	Favorable
4.			AGG	Withdrawn
5.	Blizzard	Coburn	AP	
6.				

I. Summary:

The Florida Department of Citrus (department) has regulatory responsibility for all aspects of the citrus industry. The department is funded by the "box tax" and the equalizing excise tax. The box tax is an excise tax levied on each standard field box of fruit grown and placed into the primary channel of trade in Florida. The equalizing excise tax is assessed on processed citrus products imported into the state at a rate equal to the box tax. The majority of the proceeds of these taxes must be used by the department to advertise Florida citrus products.

This bill allows persons liable for payment of the equalizing excise tax under the Florida Citrus Code to elect not to pay two-thirds of that tax each year. It codifies into law the "opt out" provision contained in the settlement agreement of Consolidated Case No. 2002-CA-4686 in the Circuit Court of the Tenth Judicial Circuit in Polk County. The bill also codifies the portion of the settlement agreement providing for future payments totaling $2 million. In exchange for the two provisions, the plaintiffs will dismiss their foreign commerce clause claim.

The bill also directs the Florida Citrus Commission (commission) to establish an executive committee from among its members. It requires that matters to be considered by the commission or executive director of the department be submitted in advance to the executive committee for approval, rejection or modification. The bill requires all meetings of the executive committee to be open to the public and governed by chapter 286, F.S. The bill also requires the commission to include a report by the internal auditor of the department as an agenda item at each regularly scheduled meeting.

This bill amends sections 601.04 and 601.155 of the Florida Statutes.

II. Present Situation:

Today, there are more than 12,000 citrus growers cultivating a record 107 million citrus trees on more than 858,000 acres of land in Florida. However, for years, the citrus industry was disorganized and suffered many losses due to freezes, droughts and infestations. In the early 1930s, a new product called orange concentrate was marketed to drug stores and bakeries. The industry did not anticipate much success from the new product.

Florida Department of Citrus

The Florida Department of Citrus (department) was established by the 1935 Legislature at the request of the citrus industry. The act, called the Florida Citrus Code, states that the purpose of the department is to protect and enhance the quality and reputation of Florida citrus in both domestic and foreign markets. The department is charged with the regulation and supervision of the quality and purity of Florida citrus products. By protecting and stabilizing Florida's citrus industry, the department helps to promote the general welfare and social and political economy of the state.

The Florida Citrus Commission (commission) is the head of the department.[1] The commission is a 12-member board comprising individuals who have been: "actively engaged in growing, growing and shipping, or growing and processing citrus fruits in this state" for 5 years.[2] The commission oversees and guides the activities of the department and must approve all department budgets and actions. It is responsible for setting the annual amount of the excise tax, as well as quality standards for all citrus grown, packed or processed in Florida. (The Florida Department of Agriculture and Consumer Services and the U.S. Department of Agriculture enforce those standards.) In addition, the commission adopts rules regulating packaging and labeling of Florida citrus products and licensing requirements for packers, shippers and processors.

The Box Tax and Equalizing Excise Tax

Activities of the department are funded by revenues generated from the box tax, an excise tax levied on each standard field box grown and placed into the primary channel of trade in Florida. The equalizing tax is levied on citrus products, mainly frozen concentrated orange juice imported into the state to be blended with Florida juice. Brazil is the source of the largest amount of juice imported, but other Central American countries, such as Costa Rica, also export frozen concentrate to the state. Until 2002, non-Florida domestic juices, primarily from California, Texas, and Arizona, were exempt from the equalization tax.

According to the department, the equalizing tax is an excise tax imposed not upon property, but rather upon the activities of processing, reprocessing, blending, mixing, packaging, or repackaging processed orange or grapefruit product of foreign citrus juices or upon the removal of any portion of such products from the original container in which it arrives in Florida. Proceeds from the tax help finance the department's advertising programs for the sale and

[1] S. 20.29, F.S.
[2] S. 601.04, F.S.

consumption of Florida citrus fruit and juices. The fee is called the "equalizing excise tax" because it equals the tax on Florida oranges processed for juice.

Both the box tax and the equalizing excise tax are calculated annually based upon the budget of the department, the amount of Florida fruit projected to be harvested and the amount of frozen concentrated orange juice expected to be imported.

Litigation

In October 1999, five companies sued the State of Florida and the Florida Department of Citrus challenging the legality of the equalization tax. Plaintiffs' legal counsel argued that according to the United States Constitution, only Congress has the authority to levy tax amounts on a tariff on foreign goods. The suit alleged that the law, or application of the law, resulted in violations of the Commerce Clause, Equal Protection Clause, Import/Export Clause and the First Amendment of the United States Constitution.

In March 2002, Judge Dennis Maloney of the Circuit Court in and for Polk County, Florida ruled that s. 601.155, F.S., is unconstitutional because it violates the Commerce Clause. No remedy was given. Subsequent to the ruling, s. 601.155, F.S., was amended to remove the exemption for domestically grown citrus products imported into Florida.[3]

In July 2003, Judge Maloney issued an Order Approving Settlement in *Tampa Juice Service, Inc., v. State of Florida Department of Citrus*, Consolidated Case No. 2002-CA-4686, which dismissed all claims with the exception of the claim pertaining to the Foreign Commerce Clause. According to the settlement agreement, importers of processed citrus products may opt out of the payment of two-thirds of the equalization tax. The settlement agreement also directed the department to pay the plaintiffs $1,500,000 by August 10, 2003, and $500,000 per year for four years beginning July 1, 2004. The $1,500,000 payment has already been made.

Unconstitutional Taxes

In *Department of Revenue v. Kuhnlein*, 646 So. 2d 717 (Fla. 1994), the court found that an impact fee assessed on cars purchased or titled in other states was an unconstitutional tax and void from its inception. According to the court: "The only clear and certain remedy is a full refund to all who have paid this illegal tax."[4]

Audit Report

A November 2003 audit report by the Auditor General made numerous negative findings regarding the operations of the Department of Citrus.[5] These findings include:

> Finding No. 1: The Department could have avoided legal challenges to a recent single source procurement decision relating to its Citrus Peeling Machine and

[3] Section 2, ch. 2006-26, L.O.F.
[4] *Department of Revenue v. Kuhnlein*, 646 So. 2d 717, 726 (Fla. 1994).
[5] Auditor General, *Department of Citrus Operational Audit*, Report No. 2004-029 (August 2003).

potentially increased its receipt of associated royalty fees had it followed established guidelines for competitive procurement.

Finding No. 2: Significant deficiencies in the department's procurement and oversight processes limited assurances that the $1.8 million paid for the Mobile Marketing Exhibit and Tour provided reasonable value in support of the advertising and promotional goals of the commission.

Department contract management processes, as implemented, did not provide the necessary assurance that contract payments were only for authorized goods or services that had been actually provided and met performance standards. Absent such assurance, it is not clear that the contracted work assisted in achieving the advertising and promotional goals of the commission.

Finding No. 3: Cost estimates prepared by advertising and promotional contract agencies and approved by the department did not include sufficient information to allow proper monitoring of planned work as it progressed.

Finding No. 4: The department and its advertising and promotional contract agencies did not comply with policies established to ensure the competitive procurement of substantive goods and services.

Finding No. 5: The department does not routinely monitor services provided by affiliated (assumed name) companies of its advertising and promotional contract agencies to provide assurance that such services are obtained in the best interest of the department.

Finding No. 6: The department had not implemented effective controls for reviewing the propriety of disbursements made relating to advertising and promotional contracts.

Finding No. 7: The department could enhance procedures associated with documentation of its employee selection processes to provide assurance that new hires have met the required educational background and employment experience requirements of the position.

Finding No. 8: The department paid $25,000 to settle a claim of a former employee without obtaining proper approvals from the commission and the State Comptroller. Further, department records did not clearly demonstrate the transactions or events that created the claim, the validity of the claim, or the public purpose served by paying the claim.

Finding No. 9: The department can improve accountability over its tangible personal property by properly documenting transfers of accountability between custodians and by amending its accountability threshold to reflect current law.

Finding No. 10: The department could lower annual travel costs by improving approval, documentation and review processes to ensure compliance with the expense limitations included in applicable travel laws and department fiscal policies.

Finding No. 11: The department could reduce expenditures associated with cellular telephone usage by improving its monitoring for cellular telephone invoices, establishing procedures to provide for the reimbursement for all personal charges, and by periodically reviewing billing options to determine that the most economical option is being utilized.[6]

III. Effect of Proposed Changes:

Executive Committee

The bill directs the Florida Citrus Commission (commission) to establish an executive committee, consisting of the chair of the commission and two additional commission members elected by a majority vote of the members of the commission. Members of the executive committee serve for a 1 year term. Matters considered by the commission or the executive director of the Department of Citrus must be submitted to the executive committee for approval, rejection, or modification. Meetings of the executive committee are to be open to the public and governed by chapter 286, F.S.

Codification of Settlement Agreement

The bill codifies the portion of the settlement agreement in *Tampa Juice Service, Inc., v. State of Florida Department of Citrus*, Consolidated Case No. 2002-CA-4686 which authorizes any person liable for the equalizing excise tax to opt out of the payment of two-thirds of the tax. Additionally, the bill prohibits the use of the remaining one-third of the tax to be used for marketing activities, but allows the proceeds to be used for research, administrative, and regulatory activities. The bill also incorporates the portion of the settlement agreement which provides that the plaintiffs will dismiss their Foreign Commerce Clause claim upon a legislative appropriation of amounts due under the agreement. The settlement agreement directed the department to pay the plaintiffs $1,500,000 lump sum by August 10, 2003, and $500,000 per year for four years beginning on July 1, 2004. The $1,500,000 lump sum has been paid.

Audit Report

The bill also requires the commission to include a report by the internal auditor of the department as an agenda item at each regularly scheduled meeting.

The bill takes effect July 1, 2004.

[6] *Id.* at 1 and 2.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

	FY 2004-05	FY 2005-06	FY 2006-07
Revenues:			
Recurring – Citrus Advertising Trust Fund (CATF)	($2,600,000)	*see fiscal comments	
Expenditures:			
Recurring **	$500,000	$500,000	$500,000

The estimated revenue reduction to the CATF is based on the average number of gallons of juice imported over the past five years. The amount of imported juice is usually inverse to the Florida crop size. The reduction is based on an assumption by the department that anyone currently paying the equalization tax will "opt out" each year.

* The recurring revenue impact will vary from year to year based on the domestic crop size. The estimate for 2004-2005 is based on an average of the last five years. Based on the range of those five years, the impact could be $1.6 to $3.6 million.

** Under the settlement agreement, the department agreed to pay plaintiffs $500,000 per year for the next four years, pursuant to legislative approval. The department has requested a recurring expenditure of $500,000 in its 2004-2005 Legislative Budget Request. This amount will remain a recurring expense through the 2007-2008 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:
Deletes a provision of the bill which would have required the Florida Citrus Commission to establish an executive committee to review, approve, or modify any matter to be considered by the Executive Director of the Department of Citrus or the Florida Citrus Commission.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 96

Amendment No. 1 431686

CHAMBER ACTION

Senate | House

The Committee on Judiciary recommended the following amendment:

Senate Amendment (with title amendment)

On page 2, line 1, through page 5, line 14, delete section 1 and renumber subsequent sections.

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

And the title is amended as follows:

On page 1, lines 3-16, delete those lines.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 174

SPONSOR: Education Committee and Senator Clary

SUBJECT: Lottery/Unclaimed Prize Money

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodruff	O'Farrell	ED	Favorable/CS
2.	Keating	Johansen	FT	Favorable
3.			AGG	Withdrawn
4.	Makofske	Coburn	AP	
5.				
6.				

I. Summary:

The committee substitute directs that eighty percent of lottery unclaimed prize money shall be deposited in the Educational Enhancement Trust Fund. The remaining twenty percent of the unclaimed prize money shall be added to the pool from which future prizes are to be awarded or used for special prize promotions. Currently all unclaimed prize money is added to the pool from which future prizes are awarded or is used for special prize promotions.

The committee substitute allows the Department of the Lottery to pay variable percentages to the public in the form of prizes and to transfer variable percentages to the Educational Enhancement Trust Fund from both instant and on-line lottery tickets. The committee substitute deletes current language which requires a specific percentage be returned to the public as prizes and a specific percentage be deposited in the Educational Enhancement Trust Fund.

This committee substitute substantially amends the following sections of the Florida Statutes: 24.115, 24.121, and 1010.70.

II. Present Situation:

The Florida Lottery was established by the Legislature in 1987 (codified as Chapter 24, F.S.) in order to implement Article X, Section 15 of the State Constitution.

The state lottery offers two styles of games: on-line games, which entail picking numbers that are randomly drawn and include such games as Lotto, Mega Money, Fantasy 5, Play 4, and Cash 3; and instant games, which include various scratch-off tickets.

Section 24.115 (1) (f), F. S., states that holders of tickets shall have the right to claim prizes for 180 days after the drawing or the end of the lottery game or play in which the prize was won; except that with respect to any game in which the player may determine instantly if he or she has won or lost, such right shall exist for 60 days after the end of the lottery game. If a valid claim is not made for a prize within the applicable period, the prize shall constitute an unclaimed prize for purposes of subsection (2), which provides that all unclaimed prize money shall be added to the pool from which future prizes are to be awarded or used for special prize promotions.

Section 24.121, F.S., identifies how the lottery revenue shall be allocated. As nearly as practical, at least 50 percent of the gross revenue from the sale of on-line lottery tickets and variable percentages, as determined by the department, of the gross revenue from the sale of instant lottery tickets shall be returned to the public in the form of prizes. At least 39 percent of the gross revenue from the sale of on-line lottery tickets and variable percentages, as determined by the department, of the gross revenue from the sale of instant lottery tickets shall be deposited in the Educational Enhancement Trust Fund (EETF) to be administered by the Department of Education. The funds remaining (about 11 percent) shall be used for payment of administrative expenses of the Department of the Lottery (department). At the end of each fiscal year any unencumbered funds in the Administrative Trust Fund must be transferred to the EETF. The funds in the EETF are required to be used to the benefit of public education in accordance with the provisions of Chapter 24.

Lottery revenues transferred to the EETF must be reserved as needed and pledged to the payment of debt service on bonds issued by the state on behalf of the Classrooms First Program, the School Capital Outlay Bond Program or the Class Size Reduction Lottery Revenue Bond Program[1].

Lottery revenue has been obligated to fund several major public education initiatives, such as the Bright Futures Scholarship Program. Funds in the EETF are allocated annually to the Bright Futures Scholarship Program prior to equitable distribution to public schools, community colleges, or state universities.

Currently, all unclaimed prize money must be added back into the pool for future prizes or used for special prize promotions. Historically, unclaimed prize money has primarily been used to increase the prize payout on instant tickets. Over the years, unclaimed prize money has also been used to guarantee holiday or other special jackpots for Lotto, operate the "Lotto Mobile" and other special promotions.

The method by which the department commits unclaimed prize money to the scratch-off prize pool in advance creates a liability that must be deducted before unclaimed prize money can be committed to the on-line prize pool. The department estimates the amount of prize money expected to go unclaimed and commits this amount in advance to the prize structure of scratch-off games. The estimated amount of unclaimed prize money generated by on-line games is revised monthly to reflect the actual amount generated. For scratch-off games, the revision is done when a game is closed.

[1] s. 1013.68, 1013.70, 1013.737, F.S

The department estimates that each year roughly $35 - $40 million in prize money goes unclaimed. In addition to increasing prize payouts, unclaimed prize money is also used to increase the jackpot pool for Florida Lotto and Mega Money. In the event the cash available in the Florida Lotto or Mega Money jackpot pool is insufficient to yield the announced estimated jackpot value, the department may add unclaimed prize money to the jackpot pool to render it sufficient to yield the announced jackpot. The department states this is most likely to occur when there is a sudden unexpected drop in interest rates.

The 2002 Legislature, through HB 2011, implemented similar changes to the state lottery's allocation of revenue. The legislation authorized the department to vary prize payout percentages for its instant games, therefore, eliminating the statutory requirement to transfer a set percentage of lottery revenues to the EETF. According to the department, this change significantly increased instant game sales by $411 million and transfers to education by $26.9 million in fiscal year 2002 – 03.

The department states that research has indicated that if the department were given the same flexibility to vary prize payout percentages on its on-line games, it would be able to increase revenue to education based on projected increase in on-line sales due to higher payouts.

During the 2003 Legislative Special Session E, HB 43E transferred $30 million, a one time unclaimed Lotto Jackpot, into the EETF and appropriated these funds to community colleges and state universities to match private donations received under the provisions of s. 1011.85 and 1011.94, F.S.

Section 1010.70, Florida Statutes, requires that each fiscal year, at least 39 percent of the gross revenue from the sale of lottery tickets, variable percentages of the gross revenue from the sale of instant lottery tickets, as determined by the department, and other earned revenue, excluding application processing fees, shall be deposited in the EETF.

III. Effect of Proposed Changes:

Section 1 amends s. 24.115(2), F.S., to distribute eighty percent of the unclaimed prize money to the Educational Enhancement Trust Fund. The remaining twenty percent shall be added to the pool from which future prizes are to be awarded or used for special prize promotions.

Section 2 amends s. 24.121(1) and (2), F.S., to allow the Department of the Lottery to pay variable percentages of revenue from the sale of both on-line and instant lottery tickets to the public in the form of prizes and variable percentages of revenue to the Educational Enhancement Trust Fund.

Section 3 amends s. 1010.70, F.S., providing that variable percentages of gross revenue from the sale of on-line and instant tickets will be deposited into the Educational Enhancement Trust Fund.

Section 4 provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimated the fiscal impact of the committee substitute to be a positive indeterminate increase to the Educational Enhancement Trust Fund in fiscal year 2004-05. This positive indeterminate increase is a result of a gain in overall sales of on-line lottery tickets paired with the simultaneous slowdown of unclaimed prize monies because the Department of the Lottery expects to stop the practice of advance commitment of unclaimed prizes.

The 2005-06 fiscal impact is estimated to be a $61.4 million recurring fiscal impact to the Educational Enhancement Trust Fund.

B. Private Sector Impact:

The committee substitute is expected to increase on-line ticket sales and increase payouts to on-line lottery game winners.

To the extent additional revenue goes to education, parents and students will benefit from the additional financial resources.

C. Government Sector Impact:

The committee substitute will give the Department of the Lottery the same flexibility to vary prize payout percentages for its on-line games as it does for its instant games, thereby, enabling the department to maximize revenues for education.

Increasing transfers to the Educational Enhancement Trust Fund will enable programs for school bond funding to be sustained at the current level and may increase funding for such programs or other educational funding, thereby, creating a potential positive impact on local revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 602

SPONSOR: Children and Families Committee and Senators Smith and Lynn

SUBJECT: Crimes Against Children

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	Fav/CS
2.	Dugger	Cannon	CJ	Favorable
3.	Fournier	Johansen	FT	Favorable
4.	Martin	Martin	AAV	Favorable
5.	Martin	Kynoch	AP	
6.				

I. Summary:

The Committee Substitute for Senate Bill 602 proposes that additional court costs be imposed in cases of certain crimes against children. These crimes include battery of a child, kidnapping or false imprisonment, sexual battery, procuring persons under the age of 18 for prostitution, lewd or lascivious offenses on or in the presence of persons less than sixteen years of age, abuse of children, buying or selling of minors, and sexual misconduct of Juvenile Justice employees. An additional court cost of $101 would be imposed against each offender pleading guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any of the specified offenses against a minor.

The committee substitute also directs the Clerk of the Court to transfer $100 from each court cost collected to the State Treasury for deposit into the Child Advocacy Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc., for the purpose of funding children's advocacy centers that are members of the network. One dollar from each court cost collected is to be retained by the Clerk of the Court as a service charge.

At the end of the fiscal year each Children's Advocacy Center must provide the network's board of directors a report reflecting expenditures, sources of revenue, and standardized outputs that include the number of clients served, client demographic information, and the number and types of services provided. The report must also provide verification that the center is in compliance with s. 39.3035, F.S. The Florida Network of Children's Advocacy Centers must compile the reports obtained from the centers and provide a report to the Legislature no later than August of each year, beginning in 2005.

The committee substitute amends s. 39.3035(3), F.S., prohibiting a CAC from receiving any state revenue or federal funds through a state agency unless the statutorily required standards are met. The Florida Network of Children's Advocacy Centers is required to document this compliance.

This bill creates section 938.10, F.S., and amends section 39.3035, F.S.

II. Present Situation:

Children's Advocacy Centers (CAC) are primarily designed and governed at the local level to provide support to the child protective investigations process. These centers work to coordinate the activities of the several agencies involved in the child abuse investigation to reduce the number of times the child must be interviewed, thereby reducing trauma to the child, to facilitate joint investigations, and to provide for prompt access to mental health and other appropriate services.

While the services offered by child advocacy centers vary based upon their funding and needs of the community, each center offers some combination of the following services:

- a neutral, child-friendly setting where all the agencies can interview and examine the child;
- medical evaluations of the child;
- coordination of multi-discipline team meeting of all of the agencies involved in a case;
- on-site victim advocacy; and
- mental health services.

The CACs have local governing boards to address organizational issues such as fiscal policies and public relations and are composed of volunteers from the community. Although they are locally governed, CACs operate under the auspices of the National Children's Alliance (NCA). The alliance is a not-for-profit organization that provides training, technical assistance, and networking opportunities to CACs operating nationwide. The NCA establishes standards for CAC accreditation and offers full membership and non-competitive grant funding to those CACs meeting 10 standards. Centers that do not meet all of the standards for full membership are designated as associate members and are eligible to apply for competitive grants. Seventeen of the 21 CACs in Florida are full members of the NCA.

The Florida Network of Children's Advocacy Centers, Inc., is a state chapter of the National Children's Alliance. All 21 of Florida's children advocacy centers participate in this network. Membership is voluntary, and the organization provides guidance and technical assistance to the CACs. The network is staffed with an Executive Director and one half-time assistant. A board of directors organizes activities.

Minimum standards for membership in the Florida Network are established in ch. 39.3035, F.S., and are similar to those for membership in the National Children's Alliance. These criteria require that a center:

- be a private, not-for-profit incorporated agency or governmental entity;

- be a Child Protection Team (CPT) or have a written agreement that incorporates the participation and service of the CPT;
- have a neutral, child-focused facility;
- have staff that is supervised and approved by a local board of directors or governmental agency;
- have a multi-disciplinary case review team that minimally consists of representation from the State Attorney's office, Department of Children and Family Services (DCF), the CPT, mental health services, law enforcement, and the child advocacy center staff;
- track the cases seen through the child advocacy center with minimum requirements on the data to be collected identified;
- provide referrals for medical exams and mental health services;
- provide training in the community; and
- have interagency agreements for the multidisciplinary approach to handling child sexual abuse and serious child abuse.

Child advocacy centers in Florida are required to meet these standards and be full members of the Florida Network of Children's Advocacy Centers in order to be eligible to receive state funds appropriated by the Legislature [s. 39.3035(3), F.S.].

Funding for CACs is received from a variety of sources including local donations, grants from local governments, private foundations and contracts with state agencies such as the Department of Children and Families, Department of Juvenile Justice, and the Department of Health. Since FY 1999-2000, the Legislature has appropriated funds ranging from $400,000 to $750,000 annually for up to five of the children's advocacy centers. Funds were appropriated by the Legislature for three CACs for FY 2002-2003. Currently, no CACs directly receive legislative funding. Since May, 2003, the Florida Network has received funding from a grant provided by the Children's Justice Act that is managed by the Department of Children and Families. According to DCF, this grant provides $150,000 to be used to collect data regarding existing centers and to provide staff training and technical assistance. This funding is due to expire on June 30, 2005.

The Florida Network of Children's Advocacy Centers reports that the budgets of the 21 advocacy centers vary based upon the types of services that are provided to local communities. The funding is primarily used for salaries and benefits, with staffing patterns ranging from one-half of a full time position to 25 positions. Specific funding sources vary across centers as well as the degree to which these centers rely on a single funding source.

The Joint Legislative Auditing Committee directed the Office of Program Policy Analysis and Government Accountability to review CACs. Their report, released in August 2002, reflects that local stakeholders are highly supportive of the centers and indicates that the centers improve the coordination of child abuse investigations and their outcomes. The child welfare literature supports the benefits of CACs, particularly in reducing trauma experienced by the child during investigations.

However, Children's Advocacy Centers are primarily responsible to their boards and do not have a comprehensive accountability system which reports their inputs, outputs, and outcomes. The

seventeen centers that are full members and accredited by the NCA must maintain client information in a case tracking system and report caseloads, client demographics, and case disposition biannually. The four Florida associate members do not have the same reporting requirements. Neither the state nor the NCA requires the CACs to report accountability data such as cost per case or whether services are provided in a timely manner. However, one of the requirements of receiving funding from the Children's Justice Act grant is that the network develop the capacity to collect certain data and provide information regarding the CACs in Florida.

Prevalence of Specified Crimes Against Minors

The prevalence of the crimes against children specified in this bill is unclear. In calendar year 2001, The Office of the State Courts Administrator estimated the following prevalence for felonies listed in SB 602:

Violation	Number of Charges
s. 784.085, F.S., Battery of a child	0
ch. 787, F.S., Kidnapping, false imprisonment	1,108
ch. 794, F.S., Sexual battery	1,190
s. 796.03, F.S., Procuring person under age 18 for prostitution	11
s. 800.04, F.S., Lewd or lascivious offenses	2,403
ch. 827, F.S., Abuse of children	3,614
s. 847.0145, F.S., Buying or selling of minors	0
s. 985.4045, F.S., Sexual misconduct of Juvenile Justice employees	2
Total	**8,328**

The Florida Department of Law Enforcement (FDLE) collects information on crime. However, the definitions used for reporting, while compatible with other law enforcement systems, are not inclusive of all crimes against children that are specified by this legislation. The January - December 2002 Crime in Florida report indicates that in the category of domestic violence, more than 9,000 victims of crimes such as manslaughter, homicide, forcible sex offenses, or assault were children.

Current Court Costs

Persons who are convicted of crimes against minors specified by this bill currently may incur fines ranging from $500 to $15,000 depending upon the type of conviction. Counties may also adopt ordinances to impose additional fines of $50 for felony offenses or $20 for misdemeanor offenses. The county fines are not contingent on conviction.

In addition to potential fines, costs are assessed against a defendant. There are mandatory court costs in all cases (ss. 938.01 – 938.06, F.S.), mandatory costs in specific types of cases (ss. 938.07, 938.13, F.S.), mandatory costs authorized by local government entities (ss. 938.15-938.19, F.S.), and discretionary costs in specific types of cases (ss. 938.21-938.301, F.S.).

III. Effect of Proposed Changes:

The committee substitute for Senate Bill 602 proposes that additional court costs of $101 be imposed in cases of certain crimes against children. These crimes include battery of a child, kidnapping or false imprisonment, sexual battery, procuring persons under the age of 18 years for prostitution, lewd or lascivious offenses on or in the presence of persons less than 16 years of age, abuse of children, buying or selling of minors, and sexual misconduct of Department of Juvenile Justice employees. The additional court cost would be imposed against each offender pleading guilty or nolo contendere to, or found guilty of, regardless of adjudication, any of the specified offenses against a minor.

The committee substitute also directs the Clerk of the Court to transfer $100 from each court cost collected to the State Treasury for deposit into the Child Advocacy Trust Fund. The funds are to be disbursed to the Florida Network of Children's Advocacy Centers, Inc., for the purpose of funding child advocacy centers that are members of the network. One dollar from each court cost collected is to be retained by the Clerk of the Court as a service charge.

This committee substitute provides the opportunity for Children's Advocacy Centers to replace and, possibly, expand upon diminishing state funding. Some of the centers under the current funding configuration report having problems funding the services provided by the center. Providing the funding to the network for distribution to the children's advocacy centers will allow the network to develop an allocation methodology that is sensitive to community needs.

Court costs will be assessed and collected statewide to fund the CACs. Based upon the estimated prevalence of crimes against children in 2002 using the FDLE report, the fees collected may exceed $900,000 annually. Another estimate may be derived using the numbers obtained from the court data system, which is more than $800,000 annually.

While there appear to be many benefits to Children's Advocacy Centers, it is not always clear how local centers supplement the child protective investigative workload, whether some of the duties overlap, or whether a distinctly different population is served. Given the current variability in service arrays and funding streams across the individual centers, the specific needs and outcomes this funding will be used to support is unclear. Requiring annual reports to the Legislature verifying compliance with s. 39.3035, F.S., and of expenditures, sources of revenue, and outputs such as the number of clients served, client demographic information, and number and types of services provided will help ensure the non-duplication of funding and improve the consistency of information gathered across the centers. It will also help ensure that the centers are in compliance with required standards.

The committee substitute also amends s. 39.3035(3), F.S., to prohibit a child advocacy center from receiving funds administered by a state agency or appropriated by the Legislature unless all of the standards in ss. 39.3035(1) and (2), F.S., are met. The committee substitute further specifies that the Florida Network of Children's Advocacy Centers, Inc., is responsible for tracking and documenting that any child advocacy center receiving funds through the network is in compliance with these provisions. These changes will ensure that any child advocacy center receiving state funding will be in compliance with the statutorily required criteria and that all

employees and volunteers working at the center have received appropriate background screenings.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The trust fund created by CS/SB 606, linked to this bill, restricts the disbursement of funds to the Florida Network of Children's Advocacy Centers, Inc. As with all disbursements from the State Treasury, these funds can only be disbursed to the network through legislative appropriations to the Department of Children and Families in general law.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Persons who are found guilty or plead nolo contendere to crimes against children that are specified in this committee substitute are subject to an additional $101 in court costs.

B. Private Sector Impact:

The funds collected and placed in the Child Advocacy Trust Fund would benefit local child advocacy centers to the extent such funds are appropriated by law.

C. Government Sector Impact:

Data from the Office of the State Courts Administrator and the Florida Department of Law Enforcement indicate that the additional court costs imposed by this bill would generate between $800,000 and $900,000 for the Child Advocacy Trust Fund in the Department of Children and Families, and between $8,000 and $9,000 in service charges for the Clerks of the Circuit Court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 602 is linked to CS/SB 606, a trust fund bill.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/CS/SB 700

SPONSOR: Criminal Justice Committee, Judiciary Committee, Children and Families Committee, Senators Peaden, Fasano, Campbell, and others

SUBJECT: Mental Health

DATE: April 20, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	Fav/CS
2.	Matthews	Lang	JU	Fav/CS
3.	Cellon	Cannon	CJ	Fav/CS
4.	Martin	Martin	AAV	Fav/7am
5.	Martin	Coburn	AP	
6.				

I. Summary:

The CS for CS for CS substantially amends Florida's involuntary civil commitment law also known as the Baker Act under ch. 394, Part I, F.S., as follows:

- Establishes a process for long-term involuntary placement for outpatient services for persons 18 years of age or older who meet other statutory criteria but only if services or programs, space therein or funding are available in the person's local community;
- Provides the option for a person to agree voluntarily to submit to involuntary outpatient services;
- Adds a process for continued involuntary placement for outpatient services based on maximum 6-month intervals;
- Revises the criteria for involuntary examination under the Baker Act;
- Makes other conforming changes to the Baker Act to distinguish between the procedures for involuntary placement for inpatient treatment versus involuntary outpatient placement; and
- Provides rulemaking authority to the Department of Children and Family Services.

This CS for CS for CS substantially amends s. 394.455, s. 394.4598, s. 394.463, and s. 394.467, of the Florida Statutes and creates s. 394.4655, of the Florida Statutes.

II. Present Situation:

Baker Act

Florida's Baker Act is a civil commitment law which provides a process for the *involuntary examination* and subsequent *involuntary placement* (admission) of a person for inpatient treatment of a mental, emotional or behavioral disorder.[1] For purposes of the Baker Act, *mental illness* is defined as *an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology*. The term does not include retardation or developmental disability as defined in chapter 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.[2]

Involuntary Examination

Specifically, a person may be brought in for an *involuntary examination* at a receiving facility for evaluation including short-term emergency service and treatment for no longer than 72 hours. The process for *involuntary examination* is initiated in one of three ways:[3]

a. *Ex parte court order*: A judge may enter an ex parte order stating that the person meets the statutory criteria for emergency admission. The order must include findings and must direct the law enforcement officer to take the person to the nearest receiving facility for examination and treatment. A copy of the order must be sent to the Agency for Health Care Administration (AHCA).[4] The order is valid for 7 days or some other timeframe specified in the order.

b. *Law enforcement officer report*: A law enforcement officer may take into custody a person who appears to meet the statutory criteria for involuntary examination and deliver that person to the nearest receiving facility. The law enforcement officer must provide a written report detailing the underlying basis for taking the person into custody. The receiving facility must forward a copy of the report to AHCA.

c. *Mental health professional certificate*: A physician, clinical psychologist, psychiatric nurse or clinical social worker may execute a certificate stating that the person has been examined within the preceding 48 hours and that the person appears to meet the statutory criteria for involuntary examination. The certificate must include the observations underlying the determination. A law enforcement officer must take into custody and deliver the person to the nearest receiving facility for involuntary examination. The law

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[1] *See* Part I, s. 394.451- s. 394.4789, F.S. The Act was first enacted in 1971. In Florida, 84,162 Baker Act examinations were conducted during the 2001-2002 year of which 12,186 constituted multiple examinations of the same people. This represents an increase from 61,906 examinations conducted in 2000. *See* Special Report of Baker Act Data, February 12, 2003.

[2] *See* s. 394.455(18), F.S.

[3] *See The Florida Mental Health Act (The Baker Act) 2002 Annual Report*, Florida Agency for Health Care Administration (revised 11/25/03). Mental health professionals initiated fifty-one percent of the Baker Act initiations, followed by law enforcement officials (45 percent), and judges (4 percent). The average age of a person subjected to the Baker Act is 37 years old.

[4] The Policy and Services Research Data Center at the Louis de la Parte Florida Mental Health Institute in agreement with the AHCA serves as the repository for these forms, and carries out the data entry and analytic functions for the AHCA. During the calendar year 2001, the Center received and entered data from 95,990 Baker Act Initiation Forms. See *The Florida Mental Health Act (The Baker Act) 2001 Annual Report*, Florida Agency for Health Care Administration.

enforcement officer must execute a written report. A copy of the certificate must be sent to AHCA.

The statutory criteria for bringing someone to a receiving facility for *involuntary examination* are based on whether there is reasonable cause to believe that the person is mentally ill and due to such illness:

(1) The person refuses voluntary examination after conscientious explanation and disclosure, or
(2) The person is unable to make a determination as to whether the examination is needed

and

(3)(a) The person is likely to suffer from neglect without care or treatment which poses a threat of substantial harm to the person and is unavoidable even with family or friends' assistance, or
(3)(b) There is substantial likelihood that the person will cause serious harm to self or others without care or treatment.[5]

There are circumstances in which a patient may be evaluated or treated at a hospital for an emergency medical condition prior to transfer for the involuntary examination at a receiving facility. Within 12 hours after an attending physician documents that the patient's medical condition is stable or does not exist, the patient must be transferred to a receiving facility if the hospital is not a receiving facility.

At the receiving facility, the patient must be examined by a physician or clinical psychologist. A physician can order emergency treatment if necessary for the safety of the patient or others. The patient cannot be detained longer than 72 hours[6] by the end of which the patient must be either:

- Released unless charged with a crime and subsequently delivered to law enforcement;
- Released for outpatient treatment;[7]
- Asked for express and informed consent to voluntary placement and treatment;[8] or
- Detained upon recommendation of the receiving facility pending transfer to a treatment facility and if at the treatment facility, until the disposition of the hearing on the petition for involuntary inpatient placement.[9]

[5] *See* s. 394.463(1), F.S.
[6] For a patient who is being evaluated or treated at a hospital for an emergency medical condition prior to transfer for an examination at a receiving facility, the 72-hour period of detention begins from the time the patient arrives at the hospital to the time the attending physician documents the patient's emergency medical condition. *See* s. 394.463(2)(g), F.S.
[7] There are currently options in the Baker Act that permit involuntary outpatient placement. *See* s. 394.467, F.S.
[8] *See* s. 394.463(2)(i), F.S.
[9] *See* s. 394.467, F.S.

Only a qualified clinical psychologist[10] or a psychiatrist[11] or a hospital emergency department physician with diagnostic and treatment experience in mental and nervous disorders, provided the patient has undergone a medical screening and the hospital is designated as a receiving facility, can approve the release of a patient from a receiving facility.[12] A receiving facility is statutorily defined as a public[13] or private facility[14]specifically designated by the Department of Children and Families[15] to receive and hold patients involuntarily under emergency conditions or for psychiatric evaluation and to provide short-term treatment.[16] There are currently 112 receiving facilities in Florida.

Involuntary Placement for Inpatient Treatment

Petition: After the examination, if the patient is not released and will not voluntarily consent or otherwise refuses to be admitted for treatment, the patient may be involuntarily placed for treatment (admitted to) at a receiving facility pending transfer to a treatment facility or involuntarily placed for treatment in a treatment facility upon the filing of a petition by the receiving facility's administrator.[17] The petition must be supported by a psychiatrist's opinion and a second opinion from a clinical psychologist or psychiatrist. In counties populated by less than 50,000, the second opinion can be provided by a physician with special mental health training. Florida has 27 counties with less than 50,000 in population as of the 2000 U.S. Census.[18]

Appointment of counsel: If a person does not already have counsel, a public defender must be appointed within one day of the filing of the petition for involuntary placement for inpatient treatment. Most persons subject to the Baker Act do not have private counsel. The state attorney for the circuit appears at the hearing as a representative of the State.

Hearing; Determination of Competence and Appointment of Guardian Advocate, and Independent Expert Examination: The hearing on the petition must be held within five days. The court may appoint a general master to preside at the hearing. A general master does not have the authority to issue orders but only has authority to issue a recommendation to the court which in turn may approve, modify or reject the recommendation. One of the professionals who executed the involuntary placement certificate must also be a witness at the hearing. The individual who is the subject of the hearing has a right to an independent expert examination. If the individual cannot afford the examination, the court is directed to provide for one.

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[10] Under the law, a "clinical psychologist" is qualified as one who has 3 years of postdoctoral experience in clinical psychology including licensure experience, or one who is a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility. *See* s. 394.455(2), F.S.

[11] A "psychiatrist" is qualified as a licensed medical practitioner who has primarily diagnosed and treated mental and nervous disorders for at least 3 years inclusive of a psychiatric residency. *See* s. 394.455(24), F.S. Current law does not allow a physician to authorize the release of a patient. Under chapter 394, F.S., a physician is defined as a licensed medical practitioner *who has experience* in the diagnosis and treatment of mental and nervous disorders, or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility.

[12] *See* s. 394.463(2)(g), F.S.

[13] A public facility is any facility that has contracted with the department to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose. *See* s. 394.455(25), F.S.

[14]A private facility is any hospital or facility operated by a for-profit or not-for profit corporation or association that provides mental health services. *See* s. 394.455(22), F.S.

[15] Criteria for designation as a receiving facility is set forth in s. 394.461, F.S.

[16] *See* s. 394.455(26), F.S.

[17] *See* s. 394.467, F.S.

[18] The following Florida counties have populations totaling less than 50,000 based on the 2000 official U.S. census: Baker, Bradford, Calhoun, Desoto, Dixie, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardy, Hendry, Holmes, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Suwannee, Taylor, Wakulla, Walton, and Washington.

At the hearing for involuntary placement, the court must determine if the person is competent to consent to treatment. If the person is not competent to consent and a guardian has not yet been appointed to consent on behalf of the person, the court must appoint a guardian advocate who will have that authority.[19] The guardian advocate has that authority for as long as the person is deemed incompetent to consent or is discharged from a facility or transferred from involuntary to voluntary status.[20] The court can grant additional powers to the guardian advocate as provided in this part. Upon sufficient evidence, the court can (or the hearing officer can recommend to) restore the person's competence. The patient and the guardian advocate must be given a copy of the order restoring competence, or the certificate of discharge containing the restoration of competence.[21] At that point the guardian advocate is discharged.

Criteria for Involuntary Inpatient Placement: In order for someone to be placed (i.e., admitted) involuntarily for inpatient treatment, the court must find by clear and convincing evidence that the person meets the following criteria:

(a) The patient is mentally ill and due to the illness, refuses to be involuntarily placed for treatment after sufficient and conscientious explanation and disclosure, and less restrictive treatment alternatives are inappropriate;

or

(b) The patient is mentally ill and due to the illness is unable to determine whether placement is necessary, and the patient:

1. *Is manifestly incapable of surviving alone or even with the help of family, friends, or services is likely to suffer from neglect or refuse to care for himself or herself and such neglect poses a real and present threat of substantial harm to the patient,* or
2. *Will inflict serious bodily harm on himself or herself or another as evidenced by recent behavior of actual, attempted or threatened harm;* and
3. *Less restrictive treatment alternatives are inappropriate.*[22]

If at any time during the hearing, the court determines that the patient otherwise meets the criteria for involuntary assessment, protective custody, or admission under the Marchman Act (chapter 397, F.S., relating to substance abuse), the court can order the person to be assessed involuntarily for 5 days as provided in s. 397.6811, F.S., for purposes of treatment under the Marchman Act.[23]

If the court determines that the patient does meet the criteria for involuntary placement for inpatient treatment under the Baker Act, the court must order the patient to be transferred for treatment to a treatment facility, if the patient is not already there, or alternatively, that the patient receive services on an involuntary basis from a receiving or treatment facility for up to 6 months.[24] The order must specify the nature and extent of the patient's mental illness. From that point, the patient may be detained until the facility determines that the patient no longer meets

[19] *See* s. 394.4598, F.S.
[20] *See* s. 394.455(12), F.S.
[21] *See* s. 394.4598(7), F.S.
[22] *See* s. 394.467(1)(a), F.S.
[23] *See* s. 394.467(6)(c), F.S. & s. 397.675, F.S.
[24] *See* s. 394.467(6)(b), F.S.

the criteria for involuntary placement and must be released. Alternatively, the patient can be transferred to voluntary status. Once released, a person may be referred for follow-up *outpatient* services and treatment. Such follow-up services are typically provided by local community mental health treatment centers that actually own the receiving facility.

Continued Involuntary Placement for Inpatient Treatment
If a patient continues to meet the criteria for continued involuntary placement, the facility's administrator must file a petition for continued involuntary placement before the period of treatment in the order expires. The petition must include an attachment that contains the patient's physician or clinical psychologist's statement justifying the continuance, describing the patient's treatment, and specifying the individualized plan to be followed.

Hearings for continued involuntary placement are conducted by administrative law judges in the Division of Administrative Hearings. The hearings are not judicial. The patient must be represented by the public defender if the patient is not otherwise represented by private counsel. If the administrative law judge finds that the patient meets the criteria for continued placement, then he or she may order continued placement for a maximum of 6 additional months. This process is repeated prior to the expiration of each ordered period.

At all times during a person's involuntary inpatient placement, a patient (or guardian or guardian advocate on behalf of the patient) retains the right to request transfer from one facility to another, provided the other facility accepts the patient or the availability of appropriate facility resources in the case of transfer between public facilities.

Confidentiality of Clinical Records
All information about a person in a mental health facility is maintained as confidential in accordance with s. 394.4615, F.S., and only released with the consent of the person or a legally authorized representative. However, certain information can be released without consent to the person's attorney, in response to a court order, if there has been a threat of harm to parents, next-of-kin, or others. Persons in mental health facilities have the right to access their own clinical records under the patient's bill of rights.[25]

State's Mental Health Agency
The Department of Children and Families is designated as the State's Mental Health Authority. The department and the Agency for Health Care Administration (AHCA) exercise executive and administrative supervision over all mental health facilities, programs, and services.[26] The department is responsible for reporting any violations of the rights or privileges of patients and procedure provided by any facility or professional licensed or regulated by the AHCA. The AHCA is authorized to impose sanctions for such violations. The Florida Local Advocacy Council also has statutory responsibility to oversee the proper implementation of the Baker Act.[27] Any designated receiving and treatment facility must allow the council access to a patient and the clinical and legal records. The council is also required to receive notice of any person admitted as an involuntary patient.[28]

Recent Trends and Efforts in Mental Health Systems

[25] *See* s. 394.459, F.S.
[26] *See* s. 394.457, F.S.
[27] *See* s. 394.459, F.S.
[28] *See* s. 394.4599(2)(b), F.S.

Mental health advocates and professionals believe that early interventions and appropriate treatment services prior to a person's acute or chronic mental illness episode could avoid many hospitalizations. In addition, the issue of unaddressed mental illness is compounded by other issues such as homelessness, incarceration, suicide attempts, victimization, and violent episodes.

Judges and other professionals in Florida's criminal justice system and mental health system find that many persons with mental illness who commit misdemeanors cycle in and out of the county jails because they do not have access to the appropriate mental health treatment and support services.[29] Reportedly, one of the more indirect consequences of the deinstitutionalization of persons with mental illness from the state mental health hospitals has been their re-institutionalization in the criminal justice system.[30] It is believed that persons with mental illness continue to commit misdemeanors for the following reasons:

- many persons are not diagnosed and treated in jail immediately after arrest;
- many persons who are stabilized in jail or in a mental health facility decompensate quickly when returned to their home because the appropriate psychiatric medications or other treatment modalities that help maintain mental stability are discontinued; and
- there is a lack of available community management and monitoring services for the client to ensure that service needs are being met.[31]

Florida, like many other states in the nation, has drastically reduced the number of inpatient beds as mental health treatment has moved from the state hospitals to the community. In 1979, there were 4,743 individuals in Florida's civil mental health facilities. Today, the three civil treatment facilities have a combined operating bed capacity of 1,369. The three state-operated civil treatment facilities exist in Gadsden, Broward, and Baker counties. Approximately 388, or 28 percent, of these beds are used for forensic step-down care and are not accessible for civil commitments. In 2001, the legislatively established Florida Commission on Mental Health and Substance Abuse recommended a significant increase in the number of crisis stabilization unit (CSU) beds for critical 24 hour psychiatric emergency and stabilization services.

Laws on Involuntary Outpatient Placement

Many states have adopted new treatment standards for commitment that are not based solely on a person's danger to self or others but are based on a person's well established medical and treatment history and other factors such as self-neglect, violence, or arrest for criminal behavior. Forty-one states and the District of Columbia have provisions for some process for involuntary *outpatient* treatment commensurate with increased funding.[32] Involuntary *outpatient* treatment is a form of civil commitment in which the court orders an individual to comply with specific mental health treatment(s) on an outpatient basis. Theoretically, this practice can allow the person with mental illness increased autonomy while extending the state's supervisory control beyond the hospital and into the community. Law enforcement in Florida are supportive of this concept subsequent to a 1998 incident involving the killing of a Florida sheriff by a person with a history of schizophrenia. Law enforcement agencies report that these types of cases, particularly those involving severe or violent mental illness impose a significant public safety

[29] *Jail Diversion Strategies for Misdemeanor Offenders with Mental Illness: Preliminary Report*, Department of Mental Health Law & Policy, Florida Mental Health Institute, University of South Florida, 1999.
[30] *Emerging Judicial Strategies for the Mentally Ill*, Bureau of Justice Assistance, April 2000.
[31] *Id.* to fnt. 28.
[32] *Briefing Paper*, Treatment Advocacy Center, Arlington, Virginia, March 2003. *See also* www.psychlaws.org.

issue and burden the criminal justice system, particularly as officers are not equipped or trained to handle these types of cases.

However, ongoing controversy surrounds involuntary outpatient treatment laws. Both philosophical and operational concerns have been expressed regarding the practice of involuntary outpatient commitment. Experts disagree about both the appropriateness and the effectiveness of involuntary *outpatient* commitment, and there are mixed results from states that have implemented these procedures. Recent evidence-based review was conducted by researchers of the empirical literature on involuntary outpatient treatment.[33] They found that only two randomized clinical trials of involuntary outpatient treatment have been conducted, one in New York City and one by Duke University investigators in North Carolina, and those studies produced conflicting conclusions. The New York City study found no statistically significant differences in rates of re-hospitalization, arrests, quality of life, psychiatric symptoms, homelessness or other outcomes between the involuntary outpatient treatment group and those who receive intensive services but without a commitment order. The researchers point out that the New York study included a small sample size, non-equivalent comparison groups, and a lack of enforcement of court orders that may have affected the findings making it difficult to draw definitive conclusions. The Duke study suggests that a sustained outpatient commitment order (180 + days), when combined with intensive mental health services, may increase treatment adherence and reduce the risk of negative outcomes such as relapse, violent behavior, victimization, and arrest. According to the Duke investigators, two factors associated with reduced recidivism and improved outcomes among people with severe mental illness appear to be intensive mental health treatment and enhanced monitoring for a sustained period of time. In the Duke study, outcomes were only improved for those under court order who received intensive mental health services. The researchers could not conclude if court orders without intensive treatment make a difference in client outcomes. The Rand report identified three essential requirements for the successful implementation of a law implementing any system of involuntary outpatient placement: 1) the provision of a substantial legal infrastructure and treatment service system, 2) adequate funding, and 3) consistent enforcement.[34]

III. Effect of Proposed Changes:

The CS for CS for CS amends chapter 394, Part I, F.S., (the Baker Act) to include criteria and a process for involuntary outpatient placement that will allow individuals with mental illness who meet certain criteria to be ordered by the court to participate in community-based mental health treatment. In order for the court to order such services, the responsible service provider must certify to the court that the appropriate mental health services are available in the community. The court orders must address specific treatments that are to be provided to the individual and must be issued contingent upon the availability of treatment services in the community. Non-

[33] *The Effectiveness of Involuntary Outpatient Treatment: Empirical Evidence and the Experience of Eight States*, M. Susan Ridgely, Randy Borum, John Petrila, Santa Monica, CA, RAND, MR-1340-CSCR, 2001. *See* <www.rand.org/publications/MR/MR1340>.

[34] *See The Effectiveness of Involuntary Outpatient Treatment: Empirical Evidence and the Experience of Eight States*, M. Susan Ridgely, Randy Borum, John Petrila, 2001. The study included but was not limited to a review of literature, interviews with prosecuting and defense attorneys, psychiatrists and local behavioral health officials, an examination of ongoing clinical studies comparing differences between persons mandated to treatment and those who voluntarily received treatment - a well-known Duke study regarding outpatient treatment.

compliance with court-ordered outpatient treatment may result in the individual being evaluated for involuntary inpatient treatment if he or she is believed to meet the criteria.

Section 1: Amends s. 394.455, F.S., providing definitions for "service provider," "involuntary examination" and "involuntary placement."

Section 2: Amends s. 394.4598, F.S., to reference involuntary placement, as described in newly created s. 394.4655, F.S., specifying that the guardian advocate shall be discharged from an order for involuntary outpatient placement or involuntary inpatient placement when the patient is transferred from involuntary to voluntary status.

Section 3: Amends s. 394.4615(3), F.S., providing for the release of the patient's clinical record with consent from the patient or the patient's guardian advocate, if one has been appointed, in a manner that is consistent with applicable state and federal law. It should be noted that this provision will only apply to "facility" records, not the outpatient records that are governed by chapter 456, F.S. It also allows for the release to specified persons of a person's clinical record for determining where someone meets the criteria for involuntary outpatient placement or for preparing a proposed treatment plan.

It also allows for the release to specified persons of a person's clinical record for determining where someone meets the criteria for involuntary outpatient placement or for preparing a proposed treatment plan.

Section 4: Amends s. 394.463, F.S., to permit the person's current reported or observed behavior to be considered in implementing an involuntary examination. It is unclear how the report on behavior is to be verified and determined to be credible. Current law requires that a mental health professional personally conduct an examination to support the conclusion that the individual meets criteria for involuntary placement (s. 394.463(2), F.S.).

This section also directs that both involuntary inpatient placement orders as well as involuntary outpatient placement orders be provided to and maintained by the Agency for Health Care Administration (AHCA).

Section 5: Creates s. 394.4655, F.S., to provide criteria for involuntary outpatient placement, a process for initiating involuntary outpatient placement, mechanisms for filing a petition for involuntary outpatient placement, the appointment of counsel, continuance of hearing, the hearing for involuntary outpatient placement and makes provisions for continued involuntary outpatient placement.

Criteria for Involuntary Outpatient Placement
In subsection (1) of s. 394.4655, F.S., the CS for CS for CS provides criteria that must be met for an individual to be court ordered for involuntary outpatient placement. The individual must, by clear and convincing evidence:

- Be 18 years old or older;
- Have a mental illness, along with a clinical determination that the person is unlikely to survive safely in the community;
- Have a history of non-compliance with mental health treatment;

- Have been involuntarily admitted to a receiving or treatment facility at least two times during the immediately preceding 36 months, not including any time the person was admitted or incarcerated, or have engaged in one or more acts of serious violent behavior or attempts at such acts within the preceding 36 months;
- Be unlikely to voluntarily participate in treatment as a result of mental illness;
- Based upon the individual's treatment history and current behavior, be in need of involuntary outpatient placement to prevent a relapse or deterioration that is considered likely to result in harm; and
- Be likely to benefit from involuntary outpatient placement.

All less restrictive alternatives must first have been deemed inappropriate.

The CS for CS for CS provides broader criteria for determining the need for involuntary outpatient placement than is currently provided for inpatient placement. Some of the additional criteria include involuntary admission to a treatment or receiving facility within the preceding 36 months; in light of the person's treatment history, the likelihood of relapse or deterioration that would cause serious bodily harm to self or others or substantial harm to his or her well being; the consideration of violent acts by the individual; and, as a result of his or her mental illness, the unlikelihood that the person would voluntarily cooperate with a treatment plan.[35]

Involuntary Outpatient Placement
In subsection (2), the CS for CS for CS specifies three areas from which an involuntary outpatient placement may be made: from a receiving facility, based upon a voluntary examination for outpatient placement or from a treatment facility. Recommendations for involuntary outpatient placement are made by the administrator of a receiving or treatment facility or the patient.

Recommendations for involuntary outpatient placement must be supported by the opinion of a psychiatrist or clinical psychologist and a second opinion by a clinical psychologist or another psychiatrist. Both of these experts must have examined the individual within the preceding 72 hours. In counties with populations of fewer than 50,000 residents, the second opinion may be provided by a licensed physician who has post graduate training and experience in diagnosis and treatment of mental disorders.

Recommendations for involuntary outpatient placement from a receiving facility must be made on an involuntary outpatient placement certificate. This certificate must authorize the receiving facility to retain the patient pending transfer to an involuntary outpatient placement or completion of the hearing. If the person becomes stabilized and no longer meets the criteria for involuntary examination provided in s. 394.463(1), F.S., the person must be released from the receiving facility while awaiting the hearing for involuntary outpatient placement.

Recommendations for involuntary outpatient placement that are made from a treatment facility must be made on the involuntary outpatient placement certificate. However, it is not specified that the individual must be released from the treatment facility while awaiting the involuntary

[35] Some of the criteria are unclear; for example, it is unclear how incidents of "serious violence" or "serious bodily harm" will be determined. Additionally, the information needed to be obtained comes from a variety of sources that may be difficult to access in a timely manner. Finally, there is no way to know if an individual obtained mental health services in the past with or without consent from the individual.

outpatient placement hearing. (It is not clear if individuals from treatment facilities who are recommended for involuntary outpatient treatment await the hearing at the treatment facility or if they are discharged and await the hearing in the community.)

Under the condition when a patient chooses to be examined on a voluntary basis for involuntary outpatient placement, the required examinations must have been completed by the two experts within the preceding 7 calendar days.

Petition for Involuntary Outpatient Placement
This CS for CS for CS specifies that a petition for involuntary outpatient placement may be filed by the administrator of a receiving facility, one of the qualified professionals conducting a voluntary examination or by the administrator of a treatment facility. The petition for involuntary outpatient placement must address each of the criteria required for outpatient placement and must be accompanied by the certificate recommending involuntary outpatient placement. This CS for CS for CS requires that a copy of the patient's treatment plan be attached to the petition at the time the petition is filed. Further, the service provider must also certify that the services proposed in the treatment plan are available. The petition may not be filed if the necessary services are not available in the community. A copy of the petition must be provided to the administrator of the designated receiving or treatment facility and must be filed in the county where the patient is located. When the petition is filed, the clerk of the court is required to provide copies of the petition and the proposed treatment plan to the Department of Children and Family Services, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.

Appointment of Counsel and Hearings
The CS for CS for CS requires the court to appoint a public defender to represent the person under petition for involuntary outpatient placement unless the person is otherwise represented by counsel. The public defender must represent the person until the petition is dismissed, the court order expires, or the person is discharged from involuntary outpatient placement. The attorney representing the individual is specified to have access to the individual, witnesses, and records relevant to the presentation of the individual's case.

Public defenders currently represent persons who are being petitioned for inpatient treatment until the resolution of the case. The requirements specified in this CS for CS for CS will likely result in additional persons requiring representation by the public defender especially in counties where state mental health hospitals are located, and may also result in cases being held open for longer periods of time than they are currently.

The individual under petition is entitled to at least one continuance of hearing for four weeks with concurrence by counsel. Otherwise, the court must conduct the hearing on involuntary outpatient placement within five days. Hearings are required to be held in the county where the individual is located. If the court finds that the individual's presence at the hearing is not within the individual's best interests and counsel agrees, the court may waive the individual's presence from all or any portion of the hearing. The state attorney in the judicial circuit the individual is located in must represent the state in these proceedings.

During the hearings, individuals who executed the involuntary outpatient placement certificate must serve as a witness. Additionally, the individual has the right to an independent evaluation, and if the individual is unable to pay for an evaluation, the court must provide for one. The court

must allow testimony from individuals, including family members, if deemed by the court to be relevant, regarding the person's prior history and how that history relates to the person's present condition.

The CS for CS for CS authorizes the court to order involuntary outpatient placement for up to six months if the individual meets the criteria. The CS for CS for CS authorizes the service provider to discharge the individual when he or she no longer meets the criteria for involuntary outpatient placement.[36]

When an individual is ordered for involuntary outpatient placement, the administrator of the receiving facility or a designated department representative must identify the service provider that will have primary responsibility for providing court-ordered services. Prior to the hearing, the service provider is required to prepare a proposed treatment plan and submit it for the court's consideration for inclusion in the involuntary outpatient placement order. The treatment plan must specify the nature and extent of the individual's mental illness and may include provisions for certain treatment services. The plan may also require the individual to make use of the designated service provider to supply other services as well. This CS for CS for CS requires the service provider to certify to the court in the proposed treatment plan whether sufficient services for improvement and stabilization are available and whether the service provider agrees to provide those services. If services are unavailable in the community, the petition must be withdrawn. The court may not order services that are unavailable. Copies of court orders must be sent to the Agency for Health Care Administration by the service provider within one working day after it is received from the court.

Modifications may be made to the treatment plan by the service provider with agreement by the patient or the patient's guardian advocate. Notification of modifications must be provided to the court. If modifications are contested by either the patient or the patient's guardian advocate, they must be submitted in writing by the service provider to the court and approved by the court. If the patient fails to comply with the treatment ordered by the court and it is thought that the patient meets the criteria for involuntary examination, the patient made be brought to a receiving facility and evaluated. If the person does not meet the criteria for involuntary inpatient treatment, the person must be discharged from the receiving facility. If at any time prior to the initial hearing the individual meets the criteria for involuntary inpatient treatment, the court may order the person to involuntary inpatient placement.

The court is required to consider testimony and evidence regarding the individual's competence to consent to treatment. If the court finds the person incompetent to consent to treatment, a guardian advocate must be appointed for the person. The guardian advocate may be discharged if the person's competency to consent to treatment has been restored.

Procedure for Continued Involuntary Outpatient Placement
If an individual continues to meet the criteria for involuntary outpatient placement beyond the initial six months order, prior to the expiration of that order, the service provider must file a continued involuntary outpatient placement certificate along with justification of the request, a brief description of the individual's treatment during the six months, and an individualized plan of continued treatment. Hearings for continued involuntary outpatient placement must be held before the circuit court and follow the same process as the initial hearing. The outpatient and his

[36] It is unusual to allow the modification of court orders by someone other than the court.

or her attorney can agree to a period of continued outpatient placement without a court hearing. A public defender must be appointed if the person is not otherwise represented by counsel.

Section 6: Amends current language to be consistent with s. 394.4655, F.S.

Section 7: Provides the Department of Children and Family Services with rule making authority to implement the act. This CS for CS for CS directs that the rules developed for the implementation of this act are for the purpose of protecting the health, safety, and well-being of persons examined, treated, or placed under this act.

Section 8: Provides for the severability of sections.

Section 9: Provides an effective date of January 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent that political subdivisions, including cities and counties are obligated to pay for certain services or processes attendant with the new statutory framework for involuntary examination, involuntary placement and continued involuntary placement for outpatient services, the CS for CS for CS could constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution for which no funding source is provided to such political subdivisions[37]:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 … and the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature…

For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on the 2000 census, a bill that would have a statewide fiscal impact on counties and municipalities in aggregate or in excess of $1,598,238 would be characterized as a mandate.

It is indeterminate at this time how much counties and cities would be required to spend to effectuate parts of this Act. The provisions of the CS for CS for CS will affect counties differently depending on whether outpatient services are available based on existence, space or funding at the time a person is subject to involuntary examination and

[37] Under current law, no filing fees may be assessed for Baker Act proceedings.

involuntary placement for outpatient services. If it is determined that the Act does constitute a mandate, it does not include constitutionally required language that provides that the Legislature has determined that this legislation fulfills an important state interest, in accordance with Article VII, Section 18 of the Florida Constitution.

See also discussion under Constitutional Issues.

B. Public Records/Open Meetings Issues:

This CS for CS for CS may implicate the public records law. Under current law, a clinical record is confidential and exempt from disclosure. *See* s. 394.4615, F.S. However, as currently defined under s. 394.455(3), F.S., clinical records only refer to all records collected or maintained by the facility as pertains to involuntarily placed inpatients, and as additionally provided under s. 394.463(2)(e), F.S., to all documentation of ex parte orders, mental health professional certificates, and law enforcement officers reports that are used as a basis to initiate involuntary examination. Some of the clinical records for involuntarily placed outpatients may not be confidential since the definition of clinical records is not revised. Second, any change to the definition of clinical records to include additional records would constitute an implicit expansion of the existing provisions for confidentiality and exemption from disclosure. Such expansion would constitute a new exemption and necessitates a separate public records bill. [See page 6, lines 1-14. The CS for CS for CS adds that involuntary outpatient placement orders and involuntary inpatient placement orders which are to be maintained by AHCA are to be considered a part of the clinical record.]

Every person has the constitutional right to access public records and meetings in connection with official business of any public body, officer, or employee of the state, or persons acting on their behalf. *See* Art. I, s. 24, Fla. Const. The term "public records" has been defined by the Legislature in s. 119.011(1), F.S., to include: . . . 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. This definition of "public records" has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980). Unless these public records are exempted by the Legislature, they are open for public inspection, regardless of their final form. *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979). The State Constitution permits exemptions to open government requirements and states that these exemptions can be established by general law, provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.[38]

[38] In addition, the general law provides for a limited exemption period. The Open Government Sunset Review Act of 1995 establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3) (a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of five years. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption. Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if: (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;

C. Trust Funds Restrictions:

None.

D. Others Constitutional Issues:

- Provisions of the CS for CS for CS implicate implementation of Revision 7 to Article V of the Florida Constitution which shifts major costs of Florida's judicial system from the counties to the state. *See* Art. V, s. 14, Fla. Const. The Legislature is still in the process of identifying and determining the substantive and financial responsibilities of the state court system, the offices of the public defender, the offices of the state attorney, the counties, the clerks of the court and other interested stakeholders by the constitutional deadline of July 1, 2004.[39] At a minimum, the following costs incurred by provisions of the CS for CS for CS will be have to be borne or absorbed by the state or local government: 1) the cost of an independent expert examination in a hearing for involuntary outpatient placement if an indigent person exercises the right to an independent expert examination, 2) the cost of required recordings of proceedings on initial and continued involuntary outpatient placement, 3) the cost of *available* services or treatment under a proposed treatment plan recommended by a service provider which may run the gamut of intensive case management, periodic urinalysis, therapy, counseling, period drug or alcohol testing, 4) the cost of an appointed guardian advocate if the person is determined to be incompetent and without a guardian to make mental health decisions,[40] 5) the cost of legal representation (public defender if private counsel not otherwise available) required for petitions for initial involuntary placement who must then be retained for the duration of a person's court-ordered involuntary placement for outpatient services, 6) the cost of state attorneys representing the state at judicial hearings for the initial and continued involuntary placement for outpatient services, 7) the cost of evaluations of individuals, preparation of necessary reports, proposed treatment plans and the provision of witnesses and expert testimony for proceedings including a determination of competence, and 8) the court costs associated with taking testimony and evidence regarding a patient's competence including court reporting, disability accommodations, and court interpreting which are just some of the state due process services to be assumed by the state.

- The CS for CS for CS implicates substantive and procedural due process affecting a person's liberty. For example:

  - A person subject to a petition for involuntary *outpatient* placement is not accorded the same opportunity or right to participate as a person subject to involuntary *inpatient* placement in the development of a treatment and discharge plan or to choose the service provider from whom they may receive treatment or services as

(b) The exemption is necessary for the effective and efficient administration of a governmental program; or
(c) The exemption affects confidential information concerning an entity.

[39] *See* e.g., chapter 2003-402, L.O.F.

[40] Issues pertaining to guardianship were of such concern that in June, 2003, the Governor established by Executive Order a Joint Work Group on Guardianship for the Developmentally Disabled. Some of the key findings of this work group reflect that there are an insufficient number of people willing to serve as guardians or guardian advocates and that there is a significant fiscal impact associated with increasing the availability of these services. Aside from the issue of availability, guardian advocates are required to submit to minimum educational and training requirements in order to serve.

a person subject to involuntary *inpatient* placement. The administrator of a facility or a designated department representative selects the service provider who unilaterally develops the treatment plan. The first opportunity the involuntarily placed person has to provide input or seek modification of an outpatient service plan is *after* the proposed recommended treatment plan is court-approved and incorporated into the involuntary *outpatient* placement order.

- No requisite hearing or established process exists for how an outpatient or appointed guardian advocate or other legally delegated authorized person may either refuse to consent or otherwise contest any material modification to a court-ordered treatment plan. Although the court must be notified of any material modification (which is undefined in the CS for CS for CS) to which the service provider and patient must agree, actual court approval of a material modification is not required unless the outpatient contests the material modification. [*See* page 16, lines 17-21.] It is not clear whether the court even has discretion to disapprove a contested material modification as the contested material modification must be in writing and "prepared for approval by the court." Additionally, if those material modifications are not reflected in the court order which incorporates the original treatment plan, there could be unintended consequences for someone who is subsequently alleged to be non-compliant with a court-ordered treatment plan which is one of the criteria for seeking re-examination and continued involuntary placement. [*See* page 16, line 22 through page 17, line 9.]

- The CS for CS for CS provides an expansive gamut of treatment options which could substantively affect a person's liberty interest and privacy interest, particularly as the person may not have input into the services or treatment options and those service or treatment options are incorporated into a court order which empowers a service provider to enforce compliance. The services or treatment options include, but are not limited to, periodic urinalysis to confirm compliance with treatment (presumably medications), periodic testing of drugs and alcohol, and supervision of living arrangements, and any other services as part of the treatment plan, all of which could constitute a substantial restriction of liberty without the other attendant procedural safeguards which are accorded persons who are involuntarily physically confined. No probable cause is required. Potential violations of search and seizure may be triggered. [*See* page 15, lines 8-29.]

- A person subject to a petition for *continued* involuntary *outpatient* placement is not accorded the same right as a person subject to continued involuntary *inpatient* placement to receive advance notice of a service provider's intent to petition the court for continued involuntary *outpatient* placement which could result in an additional 6-month restriction. [*See* page 18, lines 10-19. Compare with s. 394.467(7)(b), F.S., as revised by s. 124 of chapter 96-410, Laws of Florida.]

- The CS for CS for CS revises the criteria for bringing someone in for an involuntary examination to include a criterion that it may be based in part on the current *reported or observed behavior of the person, considering any mental health history*. No specific timeframe is offered, and no regard is given to the time, nature or scope of treatment associated with the mental health history.

Moreover, no process is provided for verifying these alleged reports or observed behavior. [*See* page 5, lines 7-31.]

- Although the court is required to take testimony and evidence regarding the patient's competence prior to appointing a guardian advocate, it does not appear to require that the court find out if a guardian or other legally delegated person is available to consent (or refuse to consent) on behalf of the person. [*See* page 17, lines 23-29.]

- A provision which allows a person to *voluntarily* agree to be examined for purposes of *involuntary outpatient* placement may raise due process concerns about whether such person has actually given express and informed consent. No requirement exists to determine whether the person was competent to consent. At what point this process evolves from voluntary to involuntary implicates a person's rights under this chapter and may have unintended consequences for such person, particularly if the person is competent and believes that he or she is acting voluntarily and retains the right to refuse to consent and not bound by any subsequent court-ordered obligation to comply with an involuntary outpatient placement order. [*See* page 10, lines 10-25.]

- The CS for CS for CS requires a service provider to prepare and submit a treatment plan with the petition [see page 12, lines 17-23] to the court to be included in an involuntary placement order for outpatient services. The availability of this proposed treatment plan prior to the hearing may unduly influence the court's findings before testimony and evidence have been taken at the hearing.

- Unlike a hearing on involuntary placement for *inpatient* treatment under s. 394.467(6), F.S., the CS for CS for CS requires that a hearing on involuntary placement for *outpatient* treatment include testimony from individuals such as family members, deemed by the court to be relevant under state law, regarding the person's prior history, and how that prior history relates to the person's current condition. This may raise issues regarding the scope of permissible testimony allowed under the Evidence Code including hearsay exceptions if the person refuses to testify or the court deems it is not in the person's best interest to be at hearing. It may also raise issues of whether the person would actually be entitled to receive notice of potential witnesses and have an opportunity to confront and cross-examine such witnesses. [*See* page 14, lines 14-20.]

- The CS for CS for CS allows the court at any time before conclusion of a hearing on involuntary *outpatient* placement to alternatively order someone for involuntary *inpatient* examination under s. 394.463, F.S., or involuntary assessment for admission under the Marchman Act, respectively, if its finds that the person meets the criteria thereunder. Although a court has the same authority under s. 394.467(6)(c), F.S., to alternatively order someone to an assessment under the Marchman act in hearings on involuntary *inpatient* placement, a person subject to involuntary *outpatient* placement would not necessarily expect the same loss of liberty as a person who is the subject of an involuntary placement for *inpatient* treatment. Therefore, the person would have been denied fair notice and

opportunity for representation at the hearing. [*See* page 17, lines 10-22.] Additionally, this provision appears to establish a circular path in which the person who is the subject of a pending petition for involuntary outpatient placement must undergo another involuntary examination to determine whether he or she meets the criteria for a petition for involuntary outpatient or involuntary inpatient placement.

- The CS for CS for CS implicates right of privacy issues particularly as it affects the confidentiality of patient records protected under federal and state laws. The CS for CS for CS expands substantially the amount of detailed information that may be included in an order and the accompanying treatment plan. It also expands the list of persons to whom copies of the petition as well as the proposed treatment may or must be released. Some of these provisions may conflict with confidentiality laws governing patient records and the process for obtaining consent and the scope of the information to be released. For example, a receiving facility administrator or designated department representative must provide a copy of the court order for outpatient placement and adequate documentation of a patient's mental illness to the service provider. [*See* page 17, line 30 through page 18, line 3.] Another example is that the clinical record may be released to the state attorney, the public defender or the patient's private counsel, the court, and to the appropriate mental health professionals including the service provider in accordance with state and federal law. Another example is that the CS for CS for CS expands the group of persons to whom a patient's clinical records may be released for the purposes of determining whether someone satisfies the criteria for involuntary outpatient placement or for preparing a proposed outpatient treatment plan. [*See* page 4, line 27 through page 5, line 3.] No requirement exists to define the scope of the information to be released or to obtain the patient's or the patient's guardian or advocate's consent. Without expressly expanding the confidentiality and public records exemption for such records as pertains to a person subject to involuntary outpatient placement, concern arises that this information is not protected from disclosure.

  Section 459.059, F.S., governs the confidentiality of a psychiatrist's records but only pertains to communications between a person and a *psychiatrist.* Moreover, unlike persons in mental health facilities who have the right to access their own clinical records, it is not clear that involuntarily placed outpatients have that right.[41] There is also concern that therapy or other mental health communications between an involuntarily placed outpatient and a mental health personnel may not be protected depending on the qualifications of the mental health personnel. For example, communications between a psychiatric nurse and a person, which results in his or her recommendation for involuntary outpatient placement, may not be protected under the psychotherapist-patient privilege under The Evidence Code, since that person may not be recognized as one of the persons to whom the privilege would apply. The Evidence Code recognizes a psychotherapist-patient privilege under prescribed circumstances. but pertains primarily to persons who are engaged by the nature of

[41] *See* s. 394.4615(10), F.S.

their profession primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.[42]

- The CS for CS for CS raises potential equal protection issues. Since many provisions of the CS for CS for CS do not apply if services or programs are not available, accessible, or adequately funded in the local community, the Baker Act will not be applied equally to similarly situated persons in other counties resulting in disparate treatment among such persons who by virtue of their geographic location may not be targeted for involuntary outpatient treatment and attendant consequences including the receipt of outpatient services.

- The CS for CS for CS does not amend the patients' bill of rights under s. 394.459, F.S., in the Baker Act to reflect that these rights should equally apply to the rights of persons subject to involuntary placement for *outpatient* services. Unless otherwise stated, it is possible that involuntarily placed *outpatients* would not be accorded the same rights as an inpatient, including but not limited to a right to individual dignity, right to treatment, right to express and informed patient consent (or refusal to consent), right to transfer from one service provider to another if unsatisfied with the care received, and right to participate in the development of a treatment plan and discharge plan, the right to services individualized to a person's needs, and the right to skillful, safe and humane administration of services and treatment. Additionally, extensive provisions governing communication, reports of abuse and visits, care and custody of personal effects of patients, voting in public elections, and habeas corpus relief may not apply to persons involuntarily placed for outpatient services.

- The right to consent (or refuse to consent) to health care treatment under the right of privacy is implicated. The criteria for involuntary outpatient placement does not include a provision analogous to that found for requisite involuntary inpatient placement which requires expressed and informed consent. Under s. 394.467(1)(a)1., F.S., one of the criteria is that the person has refused voluntary placement treatment *after sufficient and conscientious explanation and disclosure of the purpose of placement or treatment; or that the person has been determined to be unable to determine for himself or herself whether placement is necessary*. Similarly the rights of involuntarily placed inpatients requires certain disclosures to be made prior to

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[42] See s. 90.503, F.S. A psychotherapist is a *person authorized to practice medicine* in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; 2. A person licensed or certified as a *psychologist* under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; 3. A person licensed or certified as a *clinical social worker, marriage and family therapist, or mental health counselor* under the laws of this state, who is engaged *primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction*; or 4. *Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397,* of facilities designated by the Department of Children and Family Services pursuant to chapter 394, F.S., as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), F.S., who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

obtaining express and informed consent.[43] Under current law, a person is presumed to be capable of making health care decisions including consent and refusal to consent for herself or himself unless she or he is determined to be incapacitated and incapacity may not be inferred from a person's voluntary or involuntary hospitalization for *mental illness*. [*See* s. 765.204, F.S.] However, a physician can evaluate the person's capacity if it is in question whether the person can provide informed consent and if the person does lack capacity then the evaluation is entered in the person's medical record. Otherwise, the right to consent (or refuse to consent) may be made by a health care surrogate or other person with delegated authority to make such health care decisions.[*See* page 8, lines 9-31 through page 9, lines 1-14].

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who may be subject to the Baker Act may benefit from the changes attendant in this CS for CS for CS provided that the existing judicial system can handle the influx of persons resulting from the additional requirements of the Baker Act, and provided there is an appropriate community-based infrastructure which makes appropriate and affordable mental health services and other related services available and accessible to those who need them. The benefit to this targeted population is dependent on the extent to which such persons are more likely to comply under a court-order versus under voluntary participation. Involuntary outpatient placement has been found to have increased effectiveness when the sufficient community resources are present. Involuntary outpatient placement is also associated with reduced lengths of stay in subsequent hospitalizations. This may ultimately reduce recidivism, incarceration and homelessness. Many of the provisions of the CS for CS for CS, however, do not apply if there are no mental health services available or accessible in the county. The CS for CS for CS does not provide additional funding sources or revenues.

The CS for CS for CS provides an expansive gamut of treatment options that a service provider may recommend for involuntary placement for outpatient treatment. The CS for CS for CS is not entirely clear whether an involuntarily placed person who has full or partial ability to pay for outpatient services which are available would be financially responsible for paying for those services. For involuntarily placed persons for inpatient treatment, the current law requires "every reasonable effort to collect appropriate reimbursement for the cost of providing mental health services to persons able to pay for services, including insurance or third-party payments," although treatment shall not be

[43] *See* s. 394.458(3), F.S. The following information must be provided: the reason for admission, the proposed treatment, the purpose of the treatment to be provided, the common side effects thereof, alternative treatment modalities, the approximate length of care, and that any consent given may be revoked orally or in writing prior to or during the treatment period by the patient, the guardian advocate, or the guardian. Specifically in cases involving medical procedures requiring the use of a general anesthetic or electroconvulsive treatment, express and informed consent must again be obtained. Additionally, if the department is the legal guardian of the patient, and the physician is unwilling to perform such medical procedure, a hearing must be held.

otherwise denied or delayed because of inability to pay.[44] Additionally, under the implementing law to Revision 7 to Article V, court costs, fines, and other dispositional assessments that may arise directly or indirectly from the proceedings under the Baker Act are no longer deemed waived for persons determined to be indigent but rather are considered deferred and may be enforced by the courts, and collected by the clerk of the circuit court. The cost to such involuntarily placed persons could be substantial.

Emergency room physicians and other clinical psychology staff will require reeducation regarding the new criteria for involuntary examination for a determination of involuntary placement for outpatient services.

C. Government Sector Impact:

LOCAL GOVERNMENT

The impact of this bill on local law enforcement is expected to be a positive savings as persons who are provided outpatient services are stabilized in the community and avoid future law enforcement intervention. During the 2003 legislative session, this impact was estimated by the Florida Sheriff's Association (FSA) to be a $54 million savings (for SB 2748) calculated on the basis of 666 disorderly conduct arrests per year and 15,000 other Baker Act law enforcement cases generated by 7,500 persons. However, most recently, in an analysis provided on April 7, 2004, the FSA assumes that the current version of this bill restricts significantly the criteria for invoking outpatient commitments such that only 736 persons would be affected per year. (The estimate of 736 persons is based on the number of annual petitions filed in the state of New York during that state's first year of outpatient services implementation ("Kendra's Law"), adjusted for Florida population.) According to representatives of the Treatment Advocacy Center, (TAC) based in Arlington, Virginia, who have provided technical assistance to the FSA, these 736 persons would be involved in an estimated 5,388 Baker Act cases per year. Using a cost factor of $3,150 per law enforcement case,[45] the projected maximum local law enforcement savings is approximately **$17 million** per year. However, the TAC also suggests that the provision of outpatient treatment will reduce the number of cases by only 57 percent, or 3, 071 of the 5,388 cases, generating a local law enforcement savings of **$9.7 million**.

The FSA analysis assumes that the CS for CS for CS does not expand the "net" for Baker Act eligibility. However, it is unknown how many persons may meet the criteria for outpatient placement by virtue of having engaged in one or more acts of serious violent behavior or attempts at such acts within the preceding 36 months.

The Florida Association of Counties reports that there will be an undetermined fiscal impact to counties due to the required 25 percent matching funds that must be provided

[44] *See* s. 394.459(2), F.S.
[45] The $3,150 cost of arrest is taken from Lewin Group, The Economic Costs of Mental Illness, 1992, National Institute of Mental Health 5-26 (July 2000).

for mental health services.[46] During the 2003 legislative session, the estimate for this cost to counties (pursuant to SB 2748) totaled $5.4 million, based on the estimate of 7,500 persons. Assuming the FSA estimate of 736 persons, this estimate of county costs for matching funds would be, at a minimum, over **$500,000** per year.

STATE GOVERNMENT

Courts: The CS for CS for CS will affect the courts' workload. The Office of the State Courts Administrator projects a workload increase for judges, state attorneys, public defenders, and clerks of court. The CS for CS for CS expands the class of persons who may be subject to involuntary examination and placement under the Baker Act, makes the process lengthier and more complex, increases the number of judicial reviews, and requires the preparation of more detailed orders. These changes will increase costs and substantially impact the workloads of the court, state attorneys, public defenders, and clerks of court. Implementation will require additional court system staff including judges, general masters, supplemental case management staff, staff attorneys, and other court staff. Additionally, the expedited hearing requirements for these cases will require priority attention from the courts, thereby potentially backlogging family, dependency, and other civil cases. Applying the legislatively required Weighted Caseload System judicial workload methodology, the State Courts System estimates it will require the equivalent of two to three full-time circuit judges to implement the proposal at the trial court level, at a conservative estimate of an initial recurring cost in the range of **$636,608 to $954,912**. Additionally there will be modest non-recurring effects in FY 2004-05 for education programs to prepare the judiciary for implementation of the CS for CS for CS.

Based on revised estimates from public defenders submitted on April 1, 2004 that they would file approximately 500 appeals in the first year of implementation, and using the 350 filings-per-DCA-judge workload standard, it is estimated that two full-time district court of appeal judges plus support staff and expenses would require approximately **$840,000** annually to implement at the district courts of appeal level.

Court rules will also have to be revised to reflect statutory changes initiated by the CS for CS for CS.

Public Defenders: The CS for CS for CS requires the appointment of a public defender for a person subject to its provisions who must be retained to represent the person until the person is officially discharged from involuntary outpatient services. Whether appointed or re-appointed, once appointed a public defender may be required to represent an involuntarily placed outpatient until he or she is discharged from involuntary outpatient services, which could be in perpetuity as a service provider may petition indefinitely for a person's continued involuntary placement. This requirement and others will have a potentially significant fiscal impact on the offices of public defenders.

[46] The Florida Association of Counties recommends that a detailed evaluation of involuntary outpatient placement be conducted prior to its implementation statewide to assure the proper community infrastructure is in place. The Association recommends the use of a pilot program in order to better prepare for specific changes that need to be made to help divert mentally ill persons from jails, and cites the New York State Legislature's enabling legislation providing for a 3-year pilot program to test the process 5 years prior to passage of final legislation governing involuntary outpatient commitment orders.

Moreover, provisions in chapter 2003-402, L.O.F., relating to the implementation of Revision 7 to Article V will have to be revised to reflect the new duties of public defenders to appear in involuntary placement for outpatient services and continued involuntary placement. The Florida Public Defenders Coordination Office reports that the fiscal impact for all 20 public defenders annually is approximately **$2.2 million** for 34 new staff.

State Attorneys: The CS for CS for CS requires state attorneys to represent the state in the hearings for involuntary outpatient placement although they do not appear required to appear in the circuit court hearings for the continued involuntary placement for outpatient services. The State Attorneys have submitted a supplemental budget request for FY 2004-05, due to the expected impact of this bill, for 28 additional attorneys that will be needed in the 20 judicial circuits at an annual cost of **$1.7 million**. Similarly to the public defenders, provisions in chapter 27, F.S., relating to the implementation of Revision 7 to Article V will have to be revised to reflect the new duties of state attorneys to appear in involuntary placement for outpatient services and continued involuntary placement.

Department of Children and Families: The department has provided a fiscal analysis as follows. According to the 2002 Florida Mental Health Institute Baker Act Report, there were 84,133 involuntary examinations of adults.

According to the Mental Health data warehouse, it is estimated that 9 percent of the 84,133 would be eligible for involuntary outpatient placement in a fiscal year.

Nine percent of the 84,133 equals 7,572 persons examined in crisis stabilization units. Of those, an estimated 10 percent, or 757, persons would be ordered to involuntary outpatient placement in the first year. The 10 percent estimate is conservative for the first year of implementation, and the percent of persons ordered to involuntary outpatient placement is likely to increase in subsequent years.

There are 642 persons discharged from civil state facilities in a fiscal year. It is estimated that 3 percent are recidivists, which equals 19 persons per year. Of those it is anticipated that 10 percent, or two additional persons, would be discharged from civil state facilities (CSUs) into involuntary outpatient placement within a year.

The combined total of the 757 persons from CSUs and the two persons from civil state facilities equals 759 total persons estimated to be ordered for involuntary outpatient placement per year.

The estimated cost of services for these individuals per year is $4,500 per person. This estimate represents the cost of the Community Living Teams that District 8 has been implementing effectively to promote recovery of persons living in their communities.

Based on the estimated 759 total persons to be ordered to involuntary outpatient placement at a cost of $4,500 each for community mental health services, the total cost is estimated to be $3,415,500. The Department anticipates that it will be able to provide these involuntary outpatient services within existing service capacity and funds.

Agency for Health Care Administration: No fiscal impact statement has been provided to date. Some increase in workload, if not fiscal impact, will be incurred as the CS for CS for CS requires the AHCA to also receive copies of involuntary outpatient placement orders including continued placement orders and involuntary inpatient placement orders. [*See* page 6, lines 1-5.]

VI. Technical Deficiencies:

On page 11, lines 28-30, and page 12, lines 9-11, a person is referred to as someone who may be "involuntarily committed." Although the Baker Act is a civil commitment law, this terminology is not used anywhere in the statute, and may need to be reworded to avoid any other unintended connotation.

On page 17, lines 15-16, the CS for CS for CS erroneously refers to the involuntary examination under s. 394.463, F.S., as the involuntary *inpatient* examination. The examination is not directed towards one specific type of outcome but is an evaluation tool for determining the appropriate least restrictive one consistent with the optimum improvement of the patient's condition.

VII. Related Issues:

- Clarity is needed regarding whether the court is ordering placement or ordering treatment. If the latter, the CS for CS for CS significantly changes the court's role in Baker Act proceedings from one of appointing a person to make treatment decisions for or on behalf of an individual who has been found incompetent to consent to his or her own treatment to one of issuing orders for a specific mental health treatment and appointing someone to monitor the provision of that treatment. If the court is placed in this role, the court will need more information and guidance obtained through evaluations of the person, written reports to the court, certification of expert witnesses, testimony, advanced directives, express and informed consent, comprehensive treatment plans, and other invasive treatment modalities, and disclosure regarding side effects, benefits and alternatives to recommended services particularly if they involve the administration of psychotropic medications.

- The term "service provider" is defined to mean any public or private receiving facility, an entity under contract with the department to provide mental health services, or a clinical psychologist, clinical social worker, physician, psychiatric nurse, community mental health center, or clinic, as defined in this part. Other than those facilities designated by the department as receiving facilities and those entities under contract with the department, there are no provisions for licensure, uniform standards, or other background checks for community mental health centers or clinics as is found in part II of chapter 397, F.S., governing service providers of substance abuse services. The enumerated listing of service providers suggests that all these terms are already defined in part I of chapter 394, F.S., which they are not. [*See* page 2, lines 13-19.]

- The CS for CS for CS changes the law governing the discharge of a guardian advocate to add that such advocate is to be released when a person is discharged from involuntary placement for inpatient services. However, this provision does not account for the possibility that a person may be transferred from involuntary *inpatient* placement to involuntary *outpatient* placement services in which case the issue of a person's competency may still be at issue and the guardian advocate needs to remain appointed in order to continue to make mental health

decisions on behalf of the person. It should be clarified whether this will necessitate the appointment of a different guardian advocate or whether the intent is to retain the same guardian advocate through the inpatient or outpatient treatment time provided the person's competency has not been restored. [*See* page 3, lines 26-29.]

- The provisions governing the release of confidential clinical records as revised in s. 394.4615, F.S., may be in conflict with existing subsections. The CS for CS for CS revises subsection (3) of s. 394.4615, F.S., to authorize the release of clinical records to the state attorney, the public defender or private counsel or the patient's private legal counsel, the service provider, the court and other appropriate mental health professional but this appears somewhat in conflict with the existing provision of subsection (2), governing when clinical records shall or may be released. [*See* page 4, line 27 through page 5, line 3.]

- The CS for CS for CS requires a petition for involuntary placement to be filed if a person, subsequent to an involuntary examination, *fails to consent* to voluntary inpatient or outpatient treatment which is deemed necessary, and that the petition must seek involuntary placement of the patient in the least restrictive treatment consistent with the optimum improvement of the patient's condition. First, the provision does not allow for the possibility that the person has *the right to refuse* to consent which is implied in the right to consent unless the person has been determined to be incompetent to consent. Second, the provision does not cross-reference s. 94.4655(1), F.S., regarding the criteria for involuntary outpatient placement and which is required to be alleged and substantiated as provided under s. 394.4655(1)F.S. The criterion provided herein does not state that it must be alleged that all available less restrictive alternatives that would offer an opportunity for improvement is not appropriate or is unavailable. Additionally, this provision does not note that a petition cannot be filed in the first place if outpatient services are not available. [*See* page 7, line 23 through page 8, line 6, page 9, lines 10-14, page 12, lines 1-23.]

- Liability issues for the state and local governments arise under a provision that allows a patient who is stabilized and no longer meets the criteria for involuntary examination to be released from a receiving facility while awaiting a hearing for involuntary outpatient placement. It is not known to what extent facilities are currently held liable or accountable for release of persons who are repeatedly brought back under the Baker Act. This provision also raises the issue of whether the patient even qualifies for involuntary outpatient placement at that point. [*See* page 10, lines 1-9.]

- The CS for CS for CS allows a person to *voluntarily* submit to be examined for *involuntary outpatient* placement if such arrangement can be made. It is unclear why a person who is capable of voluntarily seeking help would submit to involuntary conditions of treatment when he or she is not precluded from seeking voluntary outpatient treatment without a restriction or loss of liberty. A prior examination within the last 7 days constitutes a significant lapse of time particularly if a person suffers from periodic episodes of mental illness, compared to the 72-hour (3-day) prior examination period for involuntary outpatient placement from a receiving facility.[*See* page 10, lines 10-22.]

- A conflict exists between provisions governing the time to submit a proposed treatment plan for involuntary outpatient service. The new s. 394.4655(3)(b), F.S., requires that the treatment plan, including a certification that the services are available, be submitted at the same time the petition for involuntary placement for outpatient treatment is filed. [*See* page

12, lines 12-23.] However, the new s. 394.4655(6)(b), F.S., relating to the hearing, states that the service provider is to provide the court with a copy of a treatment plan just *before* the hearing which presumes that the treatment plan is not being submitted at the time the petition is filed. At this juncture, the service provider is required to provide a copy of the treatment plan to the petitioner which could be the administrator of a receiving or treatment facility, or any one of the professionals who examined a person on a voluntary outpatient basis. It is unclear why the petitioner would be entitled to a copy of the treatment plan as the person subject to the hearing would no longer necessarily be within their oversight. Moreover, no mention is made of providing a copy to the patient or other authorized legal representative as discussed earlier. [*See* page 14, line 31 through page 15, line 3.]

- Unlike an order for involuntary placement of *inpatient* treatment under s. 394.467(6)(b), F.S., the CS for CS for CS does not require that an order for involuntary placement for *outpatient* treatment specify the nature and extent of the person's mental illness but that it be included as a part of the treatment plan which is to be made a part of the order. [*See* page 15, lines 1-10.]

- A conflict exists between two provisions governing the filing of a petition for involuntary placement for outpatient services. The first provision prohibits the filing of a petition for involuntary placement for outpatient services if the services are not available. [See page 12, line 12-23.] A second provision allows for the withdrawal of such petition if the services are not available. This appears to imply the petition was filed without the certification that the services were available. [*See* page 16, lines1-5.]

- Confusion surrounds the enforcement provision for noncompliance which provides that if a physician or clinical psychologist (based on his or her clinical judgment) finds that a patient has failed or refused to comply with the court-ordered treatment plan and that efforts were made to solicit compliance, such person may be brought to a receiving facility for an involuntary examination provided the person may meet the criteria for involuntary examination. [See page 16, lines 22-28.] First, this provision does not harmonize with other law (s. 394.363(2)(a)3., F.S.), that provides that other mental health professionals such as a clinical psychologist, a clinical social worker or psychiatric nurse may execute a certificate to find that a person appears to meet the criteria for involuntary examination. Second, this provision does not require a certificate to be executed as is required under current law, and without a certificate it is unclear upon what basis a law enforcement officer may rely for authority to bring an outpatient into a receiving facility. Without specific legislative authority given to anyone else, this will represent a workload issue for law enforcement. Four, it is unclear what the involuntary *outpatient* status is subsequent to an involuntary re-examination in which it is determined that the *outpatient* does not meet the criteria for involuntary *inpatient* placement or if it were determined that the *outpatient* no longer met the criteria for involuntary outpatient placement. The option is not available. The process presumes that the *outpatient* remains incompetent and that the *outpatient* therefore does not have the opportunity to provide express and informed consent to being a voluntary patient.

- The CS for CS for CS requires the court to take testimony and evidence to determine a person's competence to consent to treatment and subsequent appointment of a guardian advocate. This provision does not consider the possibility that a guardian or other legally authorized representative such as a surrogate may already be available to make medical

decisions including mental health decisions on behalf of the person. [*See* page 17, lines 23-29.]

- The CS for CS for CS requires the hearings on petitions for *continued* involuntary placement for *outpatient* services to be held in circuit court. This is in contrast to the hearings for *continued* placement for *inpatient* services under s. 394.467(7), F.S., which are conducted as administrative hearings in the Division of Administrative Hearings. Moreover, although a public defender (or other counsel) must be present to represent the patient, the CS for CS for CS does not require the state attorney to be present in the circuit court hearing although the state represents the state as the real party (petitioner) in interest. This may have ramifications for the state's ability to appeal any orders. [*See* page 18, line 8 through page23.]

- A conflict exists between provisions governing representation by the public defender for persons subject to a petition for initial and continued involuntary *outpatient* placement. One provision requires the court to appoint a public defender to represent a person subject to a petition for involuntary outpatient placement if the person does not already have other counsel. The public defender must continue to represent the person until the petition is discharged, the applicable court order expires, or the person is discharged from involuntary outpatient services. [*See* page 13, lines 3-16 and page 18, line 20 through page 19, line 2.] However, another provision requires the public defender to be appointed if counsel is not available for continued involuntary placement for outpatient services which presumes that a public defender was not appointed and retained as required under the earlier provision. Whether appointed or re-appointed, the public defender shall continue to represent the person until the continued involuntary placement petition is dismissed, the court order expires or the person is discharged from involuntary outpatient services which could be in perpetuity. Moreover, provisions in chapter 2003-402, L.O.F., relating to the implementation of Revision 7 to Article V will have to be revised to reflect the new duties of public defenders and state attorneys to appear in involuntary placement for outpatient services and continued involuntary placement.

- There may be a conflict of interest between service providers and the receiving or treatment facilities. There are no limitations regarding whether the service provider has some financial or ownership interest between the facility and the service provider. The service provider who makes the determination to continue the treatment may have a financial interest in retaining a person for continued treatment.

- Clarification is needed as to whether the *continued* involuntary *outpatient* placement certificate which contains a psychiatrist's, clinical psychologist's or physician's or specified nurse's opinion for continued treatment serves as the petition for continued placement or whether the certificate is a separate document which must accompany a petition, as is the case with petitions for involuntary *outpatient* placement. [*See* page 18, lines 10-19.]

- The CS for CS for CS allows a receiving facility to detain a person unless he or she is stabilized and no longer meets the criteria for involuntary examination. Once the person is stabilized and no longer meets the criteria for involuntary examination, the person can be released pending the hearing for involuntary outpatient placement. It is uncertain whether the state or the county would bear responsibility for any consequential actions taken by a person who is not under any mental health care monitoring or treatment pending the outcome of a

hearing based on a petition that the person meets the criteria for involuntary outpatient treatment. [*See* page 9, line 16 through page 10, line 9.]

- The CS for CS for CS requires a petition for involuntary outpatient placement to be filed and a subsequent hearing to be held in the county where the person is located, not in the county where the person resides. This presents more of an issue for a person who is not going to be residing involuntarily in a facility and receiving treatment therein. In contrast, a patient who is involuntary placed for outpatient treatment may be inconveniently subjected to receiving services or attending a hearing in a county where he or she does not reside. This may also impede a person's ability or efforts to comply. [*See* page 12, line 9 through page 13, line 15.]

- The CS for CS for CS requires that copies of the petition for involuntary outpatient placement be forwarded to the public defender. However, it does not provide for the circumstance in which the person may be represented by private counsel in lieu of a public defender. [*See* page 12, lines 24-30.]

- Although notice of a hearing for continued involuntary outpatient placement is required, no mention is made of whether the clerk of the court should forward copies of the petition and continued treatment plan to the outpatient, and outpatient's guardian or representative, the department, public defender, and state attorney as is required for an initial petition for involuntary outpatient placement. [*See* page 12, lines 12-23 and contrast with page 18, lines 20-31.]

- The process needs to be clarified as to how the court acknowledges or receives a certificate of completion or compliance that someone is no longer obligated to comply or has completed a treatment plan underlying an involuntary outpatient placement order or is otherwise discharged from a treatment program. A discharge may occur outside the realm of a court order if it is found by the facility that the person is competent to consent or refuse to consent to treatment and no longer satisfies the criteria for involuntary examination or placement. [*See e.g.,* page 3, line 26 through page 4, line 8, and page 19, lines 18-23.]

- The CS for CS for CS is ambiguous regarding the extent to which the Legislature intends for the court to impose civil and indirect criminal contempt for a person's failure or refusal to comply with court-ordered involuntary outpatient treatment. Typically a person held in contempt for failure to comply with a court order can be fined $500 and incarcerated for up to one year. *See* s. 775.02, F.S.

VIII. Amendments:

#1 by Appropriations Subcommittee on Article V Implementation and Judiciary:
Provides that the opinion of a licensed clinical psychologist (as well as from a psychiatrist) that a patient is incompetent to consent to treatment may be used by the administrator of a mental health receiving or treatment facility as the basis for a petition to the court to appoint a guardian advocate. Previously the opinion could be obtained only from a psychiatrist.

#2 by Appropriations Subcommittee on Article V Implementation and Judiciary:
Provides that the first opinion of a licensed clinical psychologist (as well as from a psychiatrist) that a patient meets the criteria for involuntary outpatient placement may be used by the administrator of a mental health receiving facility as the basis for a recommendation that a

patient be retained by the facility pending completion of a court hearing. Previously the first opinion had to be obtained only from a psychiatrist. Also provides that the second opinion must be obtained from a *licensed* clinical psychologist, whereas previously the law was silent on licensure status.

#3 by Appropriations Subcommittee on Article V Implementation and Judiciary:
Provides that the first opinion of a licensed clinical psychologist (as well as from a psychiatrist) that a patient examined voluntarily meets the criteria for outpatient placement may be used as the basis for an involuntary outpatient placement certificate. Previously the first opinion had to be obtained only from a psychiatrist.

#4 by Appropriations Subcommittee on Article V Implementation and Judiciary:
Provides that the first opinion of a licensed clinical psychologist (as well as from a psychiatrist) that a patient meets the criteria for outpatient placement may be used by the administrator of a mental health inpatient treatment facility as the basis for a recommendation for involuntary outpatient placement of an inpatient subsequent to release from the inpatient facility. Previously the first opinion had to be obtained only from a psychiatrist.

#5 by Appropriations Subcommittee on Article V Implementation and Judiciary:
Provides that the clinical judgment of a licensed clinical psychologist (as well as from a physician) that a patient has failed or has refused to comply with court-ordered treatment may be used as the basis for bringing the patient to a receiving facility for involuntary examination. Previously, only the clinical judgment of a physician could be used.

#6 by Appropriations Subcommittee on Article V Implementation and Judiciary:
Provides that the clinical judgment of a *licensed* clinical psychologist (as well as from a physician) that efforts were made to solicit a patient's compliance with court-ordered treatment may be used as the basis for bringing the patient to a receiving facility for involuntary examination. Previously, the clinical judgment of a physician *or* a clinical psychologist with a Ph.D., a Psy.D., or an Ed.D. could be used.

#7 by Appropriations Subcommittee on Article V Implementation and Judiciary:
Provides that the first opinion of a *licensed* clinical psychologist (as well as from a psychiatrist) that a patient meets the criteria for involuntary inpatient placement may be used by the administrator of a mental health treatment facility as the basis for a recommendation that a patient be retained by or involuntarily placed in the facility. Previously the first opinion had to be obtained from a psychiatrist or a clinical psychologist with a Ph.D., a Psy.D., or an Ed.D. Also provides that the second opinion must be obtained from a *licensed* clinical psychologist, whereas previously the law was silent on licensure status.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for CS for CS for SB 700

Amendment No. 1 903142

CHAMBER ACTION

Senate		House

The Committee on Appropriations Subcommittee on Article V Implementation and Judiciary recommended the following amendment:

Senate Amendment

On page 3, line 3, delete that line

and insert: psychiatrist or a licensed clinical psychologist that the patient is incompetent to consent to

Bill No. CS for CS for CS for SB 700

Amendment No. 2 105220

CHAMBER ACTION

Senate | House

The Committee on Appropriations Subcommittee on Article V Implementation and Judiciary recommended the following amendment:

Senate Amendment

On page 9, lines 21-22, delete those lines

and insert: supported by the opinion of a psychiatrist or licensed clinical psychologist and the second opinion of another licensed clinical psychologist or another psychiatrist,

Bill No. CS for CS for CS for SB 700

Amendment No. 3 911100

CHAMBER ACTION

Senate | House

The Committee on Appropriations Subcommittee on Article V Implementation and Judiciary recommended the following amendment:

Senate Amendment

On page 10, lines 14-15, delete those lines

and insert: must be supported by the opinion of a psychiatrist or licensed clinical psychologist and the second opinion of another licensed clinical psychologist or another

Bill No. CS for CS for CS for SB 700

Amendment No. 4 512912

CHAMBER ACTION

Senate | House

The Committee on Appropriations Subcommittee on Article V Implementation and Judiciary recommended the following amendment:

Senate Amendment

On page 11, line 2, delete that line

and insert: psychiatrist or licensed clinical psychologist and the second opinion of another licensed clinical psychologist

Bill No. CS for CS for CS for SB 700

Amendment No. 5 022314

CHAMBER ACTION

Senate | House

The Committee on Appropriations Subcommittee on Article V Implementation and Judiciary recommended the following amendment:

Senate Amendment

On page 16, line 20, delete that line

and insert:

3. If, in the clinical judgment of a physician or licensed clinical psychologist, the

Bill No. CS for CS for CS for SB 700

Amendment No. 6 635308

CHAMBER ACTION

Senate | House

The Committee on Appropriations Subcommittee on Article V Implementation and Judiciary recommended the following amendment:

Senate Amendment

On page 16, lines 23-24, delete those lines

and insert: physician or clinical psychologist, efforts were made to solicit compliance and the patient

Bill No. CS for CS for CS for SB 700

Amendment No. 7 150996

CHAMBER ACTION

Senate | House

The Committee on Appropriations Subcommittee on Article V Implementation and Judiciary recommended the following amendment:

Senate Amendment

On page 20, lines 26-28, delete those lines

and insert: supported by the opinion of a psychiatrist or a licensed clinical psychologist and the second opinion of another licensed a clinical psychologist or another psychiatrist,

Bill No. CS for CS for CS for SB 700

Amendment No. 8 763050

CHAMBER ACTION

Senate | House

Senator Diaz de la Portilla moved the following amendment:

Senate Amendment

On page 16, lines 23 and 24, delete the phrase "or clinical psychologist with a Ph.D., Psy.D., or Ed.D."

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1172

SPONSOR: Transportation Committee and Senator Peaden

SUBJECT: Service Charge/Increases

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.	Keating	Johansen	FT	Favorable
3.			ATD	Withdrawn
4.	Weaver	Coburn DKC	AP	
5.				
6.				

I. Summary:

CS for SB 1172 increases the service charge for processing an application for the issuance, duplication, or transfer of a title certificate from $4.25 to $7.00. The CS also increases the service charge for processing an application for original issuance, duplicate issuance, or transfer of any license plate, mobile home sticker, or validation sticker or with transfer or duplicate issuance of any registration certificate from $2.50 to $3.00.

This CS substantially amends ss. 319.32 and 320.04 of the Florida Statutes.

II. Present Situation:

Local tax collectors act as agents of the Department of Highway Safety and Motor Vehicles (DHSMV) for the purposes of handling applications for the issuance, duplication or transfer of certificates of motor vehicle title, license plates, mobile home stickers, and registration stickers. Although the DHSMV handles a small number of these transactions, the majority are handled locally by the tax collectors. The law provides for a service charge to be retained by the entity handling these transactions. The assessment of a service charge is authorized in the following sections of the Florida Statutes:

Section 319.32(2)(a), F.S., establishes a service charge of $4.25 for each application handled in connection with the issuance, duplication, or transfer of any certificate of title.

Section 320.04(1)(a), F.S., establishes a service charge of $2.50 for each application handled in connection with original issuance, duplicate issuance, or transfer of any license plate, mobile home sticker, or validation sticker or with transfer or duplicate issuance of any registration certificate.

These service charges have not been raised since 1985, and according to representatives of the tax collectors office, employee, equipment and administrative costs have increased substantially over the last nineteen years. These cost increases result from locally mandated salary increases, increases in the costs of providing benefits, worker's compensation and liability costs, increased costs of leasing office space, and increased postage costs. In addition, new duties are required of tax collectors, including anti-terrorism initiatives to combat fraud, which require additional steps in each title or registration transaction. Where the service charges are insufficient to cover the tax collector's administrative costs of acting as the state's agent, local resources must be used. These amounts have not been adjusted to reflect the actual administrative cost of the work since 1985 (See ss. 1 and 2, 85-324 L.O.F.).

III. Effect of Proposed Changes:

Section 1 amends s. 319.32(2)(a), F.S., to increase the $4.25 service charge for applications handled in connection with the issuance, duplication, or transfer of a title certificate to $7.00.

Section 2 amends s. 320.04(1)(a), F.S., to increase the $2.50 service charge for applications handled in connection with original issuance, duplicate issuance, or transfer of license plates, mobile home stickers, or validation stickers or with transfer or duplicate issuance of registration certificates to $3.00.

Section 3 provides a July 1, 2004 effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates the increase in service charges will generate the following amounts on a recurring basis: $24.1 million for the local tax collectors; $0.1 million for the General Revenue Fund; and $0.1 million for the Highway Safety Operating Trust Fund.

B. Private Sector Impact:

Persons requesting motor vehicle title, license and registration transactions will pay more for this service. The service charge for a title transaction will increase by $2.75 and the service charge for a registration transaction will increase by $.50.

C. Government Sector Impact:

Implementation of the provisions in this CS will require revisions to DHSMV forms and procedures, and computer programming modifications which would be absorbed with in existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1178

SPONSOR: Appropriations Subcommittee on Health and Human Services; Health, Aging, and Long-Term Care Committee and Senator Miller

SUBJECT: Minority Health Care

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parham	Wilson	HC	Favorable/CS
2.	Belcher	Belcher	AHS	Favorable/CS
3.			AP	
4.				
5.				
6.				

I. Summary:

This bill requires the Department of Health (DOH) to monitor and report, within existing resources on Florida's status on the Florida Healthy People 2010 Program goals and objectives. The federal Healthy People 2010 Program goals are to help individuals of all ages increase life expectancy and improve their quality of life; and eliminate health disparities among different segments of the population. The department is required to:

- Report to the Legislature by December 31 of each year on the status of the disparities in health among minorities and nonminorities, using health indicators that are identified in the federal program;
- Work with minority physician networks to develop programs to educate health care professionals about the importance of culture in health status;
- Work with and promote the establishment of public and private partnerships with charitable organizations, hospitals, and minority physician networks to increase the proportion of health care professionals from minority backgrounds; and
- Work with and promote research on methods by which to reduce disparities in health care at colleges and universities that have historically large minority enrollments, including centers of excellence in the state identified by the National Center on Minority Health and Health Disparities, by working with colleges, universities, and community representatives to encourage minority college students to pursue professions in health care.

The bill requires the Agency for Health Care Administration (AHCA) to contract with a minority physician network that provides services to historically underserved minority patients. The network must:

- Provide cost-effective Medicaid services;
- Comply with the requirements to be a MediPass provider; and
- Provide its primary care physicians with access to data and other management tools necessary to assist them in ensuring the appropriate use of services, including inpatient hospital services and pharmaceuticals.

The bill requires AHCA to provide for the development and expansion of minority physician networks in each service area to provide services to Medicaid recipients who are eligible to participate under federal law and rules. Any savings shall be split equally between AHCA and the minority physician network. Medicaid recipients enrolled in MediPass must be assigned to a minority physician network based on specified statutory ratios.

The bill amends ss. 409.901 and 409.912, F.S.

The bill creates s. 381.736, F.S.

II. Present Situation:

The Federal Healthy People 2010 Initiative

The Healthy People 2010 initiative is a set of health objectives for the U.S. to achieve over the first decade of the new century. The Healthy People 2010 initiative builds on initiatives pursued over the past two decades. The 1979 Surgeon General's Report, Healthy People, and Healthy People 2000: National Health Promotion and Disease Prevention Objectives both established national health objectives and served as the basis for the development of state and community plans. Like its predecessors, Healthy People 2010 was developed through a broad consultation process, built on the best scientific knowledge, and designed to measure programs over time.

Healthy People 2010 was designed to achieve two overarching goals:

- Help individuals of all ages increase life expectancy and improve their quality of life; and
- Eliminate health disparities among different segments of the population.

The 28 focus areas of Healthy People 2010 (ranging from environmental health to maternal, infant, and child health) were developed by leading federal agencies with the most relevant scientific expertise. The development process was informed by the Healthy People Consortium—an alliance of more than 350 national membership organizations and 250 State health, mental health, substance abuse, and environmental agencies. Additionally, through a series of regional and national meetings and an interactive web site, more than 11,000 public comments on the draft objectives were received. The Secretary's Council on National Health Promotion and Disease Prevention Objectives for 2010 also provided leadership and advice in the development of national health objectives.

A set of health indicators was developed under the initiative to measure the health of the nation over the next ten years. Each of the ten Leading Health Indicators has one or more objectives from Healthy People 2010 associated with it. As a group, the Leading Health Indicators reflect the major health concerns in the U.S. at the beginning of the 21st century. The Leading Health

Indicators were selected on the basis of their ability to motivate action, the availability of data to measure progress, and their importance as public health issues. The ten Leading Health Indicators include:

- Physical Activity
- Overweight and Obesity
- Tobacco Use
- Substance Abuse
- Responsible Sexual Behavior
- Mental Health
- Injury and Violence
- Environmental Quality
- Immunization
- Access to Health Care

National Center on Minority Health and Health Disparities

In April 2000, the Office of Research on Minority Health (ORMH) within the National Institutes of Health (NIH) convened the conference entitled *Challenges in Health Disparity in the New Millennium: A Call to Action*. The conference commemorated the 10th anniversary of the ORMH. Among the recommendations that emerged from the conference was a call for the creation of an Institute or Center at NIH to conduct minority health and health disparities research.

The Minority Health and Health Disparities Research and Education Act was passed in November 2000, and established the National Center on Minority Health and Health Disparities (NCMHD). While the ORMH's focus was on minority health, the NCMHD's constituency was broadened to include other health disparity populations such as the rural and urban poor who live in medically underserved areas. There were other new developments as well. The NCMHD was authorized to fund grants. The law also required other agencies of the U.S. Department of Health and Human Services (HHS), such as the Agency for Healthcare Research Quality, to support NCMHD's work to eliminate health disparities.

The mission of NCMHD is to promote minority health and to lead, coordinate, support, and assess NIH's effort to reduce and ultimately eliminate health disparities. NCMHD conducts and supports basic, clinical, social, and behavioral research, promotes research infrastructure and training, fosters emerging programs, disseminates information, and reaches out to minority and other communities with health disparities.

Centers of Excellence
The purpose of the NCMHD Centers of Excellence Program is to support the training of researchers representative of minority and health disparity populations and facilities construction for health disparities research at designated institutions. Public Law 106-525 gives the Director of the National Center on Minority Health and Health Disparities the authority to designate institutions as Centers of Excellence and award funding to assist the institutions in supporting programs of excellence in biomedical and behavioral research training for individuals who are

members of minority health disparity populations or other health disparity populations. Eligibility to compete for these funds is determined by an institution's minority health disparity student population and its demonstrated commitment to and effectiveness in recruiting, retaining, and graduating these students from the institution's educational programs. In 2003, the Florida A&M University and the Florida International University were designated as Centers of Excellence under the NCMHD program.

Florida A&M University, in partnership with the Harvard School of Public Health, also received a $6 million grant from NIH to help eliminate health disparities in rural and urban communities. The four-year grant will establish the Center for Healthy Options and Innovative Community Empowerment (CHOICE), which will capitalize on the strengths of a well-respected historically black university and an Ivy League school. Through CHOICE, individuals in rural communities in Gadsden County, Florida, and in the urban Boston neighborhood of Roxbury will participate in this research effort to address major causes of excess mortality in minority communities.

Institute of Medicine Report on Health Disparities

In 1999, the U.S. Congress requested that the Institute of Medicine (IOM) perform a study to assess differences in the kinds and quality of healthcare received by U.S. racial and ethnic minorities and non-minorities. Specifically, Congress requested that the IOM:

- Assess the extent of racial and ethnic differences in healthcare that are not otherwise attributable to known factors such as access to care (e.g., ability to pay or insurance coverage);
- Evaluate potential sources of racial and ethnic disparities in healthcare, including the role of bias, discrimination, and stereotyping at the individual (provider and patient), institutional, and health system levels; and
- Provide recommendations regarding interventions to eliminate healthcare disparities.

The IOM study found that:

- Racial and ethnic disparities in health care exist and are associated with worse outcomes in many cases;
- Racial and ethnic disparities in health care occur in the context of broader historic and contemporary social and economic inequality, and evidence of persistent racial and ethnic discrimination in many sectors of American life;
- Many sources including health systems, health care providers, patients, and utilization managers may contribute to racial and ethnic disparities in health care;
- Bias, stereotyping, prejudice, and clinical uncertainty on the part of health care providers may contribute to racial and ethnic disparities in health care. While indirect evidence from several lines of research supports this statement, a greater understanding of the prevalence and influence of these processes is needed and should be sought through research; and
- A small number of studies suggest that racial and ethnic minority patients are more likely than white patients to refuse treatment. These studies find that differences in refusal rates are generally small and that minority patient refusal does not fully explain health care disparities.

The report made numerous recommendations related to legal, regulatory, and policy interventions, health systems development, patient education, cross-cultural education, and data collection and monitoring.

U.S. Department of Health and Human Services Department of Minority Health

The Office of Minority Health responded to the IOM study by contracting for a study to analyze the status and the perceptions of state laws and actual practices of selected health plans, health insurers, and governing entities regarding collection and reporting of racial and ethnic data by health insurers and managed care plans.

The study found that racial and ethnic data are not routinely collected by many health service delivery systems or insurers, most likely stemming in part from their confusion about whether relevant laws and regulations prohibit or allow such data collection. The lack of data on enrollees' race and ethnicity is a major barrier to performance measurement and clinical quality improvement efforts.

Health Disparities in Florida

In September 1998, the Office of Minority Health, Office of Public Health and Science, U.S. Department of Health and Human Services, contracted with COSMOS Corporation to assess the minority health infrastructure in selected states and territories and to examine the capacity of these jurisdictions to address health disparities by race and ethnicity. The office expressed particular interest in states' efforts to eliminate health disparities in the following health areas: 1) cancer; 2) diabetes; 3) cardiovascular disease; 4) infant mortality; 5) substance abuse; 6) HIV/AIDS; and 7) suicide, homicide, and unintentional injuries. In addition, the office asked that the study include an assessment of four cross-cutting issues: 1) data collection and analysis; 2) cultural competence; 3) access to health care; and 4) health professions development.

Florida was one of nine study states. Findings from the study in Florida include:

- Blacks are five times more likely to die of HIV infection;
- Infant mortality rates are at least twice as high for black infants compared to white infants;
- Blacks were almost three times as likely to have diabetes;
- Twenty-one percent of Florida counties had shortages of mental health and primary care professionals and twelve of these counties had percentages of minorities that exceeded the state average; and
- Data on Hispanics and Native Americans was limited in Florida as it was in the other study states.

The study found a lack of state data across the nine states studied on certain racial and ethnic minority populations. If a state fails to collect data on its minority populations' health conditions, there is no accurate way to determine public health priorities for those populations. Also, without collection of health information on minority groups, states have difficulty determining how successful their efforts to eliminate health disparities have been.

Florida Department of Health Office of Equal Opportunity and Minority Health

In 1993, Florida's Minority Health Improvement Act authorized a two-year time-limited Minority Health Commission. The charge of the Commission was to provide recommendations to the Governor and the Legislature regarding the health status of Florida's minority population; increasing access to health care; increasing minority participation in the health professions industry; and establishing a center or an Office of Minority Health. The Commission faced legislative sunset in 1995. Effective November 12, 1998, a new office was created in the Office of the Secretary called the Office of Equal Opportunity and Minority Health.

The mission of the Office of Equal Opportunity and Minority Health within DOH includes ensuring nondiscrimination and equal opportunity in service delivery in accordance with state and federal laws; and eliminating health disparities in ethnic and minority populations. DOH has a variety of programs that directly, and indirectly, impact on minority health outcomes and is working on ways to better address minority health care needs.

"Closing the Gap" Grant Program

On June 8, 2000, Governor Bush signed HB 2339, the Patient Protection Act, into law. The 1999-2000 Legislature appropriated $5 million to DOH to implement and administer the Reducing Racial and Ethnic Health Disparities: Closing the Gap grant program. The program targets six priority health areas - Cardiovascular Disease, Cancer, Diabetes, HIV/AIDS, Adult and Child Immunizations, and Maternal and Infant Mortality - in which racial and ethnic groups experience serious disparities in access to care and health outcomes. The Closing the Gap Act created an initiative that works to eliminate racial and ethnic health disparities in Florida. It provides grants to local counties and organizations with the intent to increase community-based health promotion and disease prevention activities. In fiscal year 2000-2001, Closing the Gap funded 69 projects in 37 counties.

An evaluation of Florida's "Closing the Gap" initiative was conducted for the period January 2001 through June 2002. This evaluation discussed the impact of Closing the Gap activities in the areas of prevention, intervention, and education services for the six health disparities. Since the inception of the Closing the Gap initiative, over 248,154 individuals have been screened, tested, and referred for diagnosis and treatment; participated in weight and diabetes management classes; referred for prenatal care; received immunizations; or referred for HIV counseling and testing. Numerous individuals were identified with abnormal cancer screenings, hypertension, high cholesterol, high blood pressure, diabetes, and in need of weight and diabetes management classes. Individuals served through the project were African-American (64 percent); Hispanic (15 percent); Haitian (4 percent); and Asian (4 percent).

Racial and Ethnic Health Disparities Advisory Committee

Section 381.7353(3), F.S., gives the Secretary of Health authority to appoint an ad hoc advisory committee on Racial and Ethnic Health Disparities. The committee was appointed 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 status disparities; and
- Make recommendations for closing the gaps in health outcomes and increasing the public's awareness and understanding of health disparities that exist between racial and ethnic populations.

The Medicaid Provider Access System

The Medicaid Provider Access System (MediPass) was designed as a managed care alternative for Florida Medicaid recipients under a federal 1915(b) waiver. MediPass provides health care services to Medicaid eligibles under a primary care case management model. The goals of MediPass are to:

- Assure access to care;
- Provide continuity of services;
- Strengthen the provider/patient relationship;
- Promote educational and preventive aspects of health care;
- Reduce unnecessary service utilization; and
- Control Medicaid expenditures.

The state submitted the original MediPass 1915(b) waiver application to the Health Care Financing Administration in March 1989; it was approved in January 1990. MediPass has evolved into a comprehensive program since its inception. The original MediPass program served a relatively healthy population of recipients eligible for aid under Temporary Assistance for Needy Families. Enrollment into MediPass was expanded to include those recipients receiving Supplemental Security Income (without Medicare) in October 1992. The program became operational throughout the state and enrolled all eligible recipients by June 30, 1996.

The MediPass program is a primary care case management program developed by Florida Medicaid for the purpose of securing access for Medicaid recipients to adequate primary care, decreasing inappropriate utilization, and controlling program costs for individuals receiving services. Medicaid eligible persons either select or are assigned to a Primary Care Provider (PCP). The PCP is currently paid a fee of $3.00 per month per enrolled person to manage and coordinate the enrollee's care in addition to the customary reimbursement for Medicaid services. The goal of the MediPass program was to incorporate some of the advantages of managed care into Medicaid program administration by providing access to high quality care, ensuring that clients receive appropriate care in the proper setting, and fostering development of strong doctor-patient relationships.

Florida statutes currently mandate individuals in specific Medicaid eligibility categories, Temporary Assistance to Needy Families and Supplemental Security Income without Medicare, to enroll in managed care; individuals dually eligible for Medicaid and Medicare are not included in these eligibility categories. All eligible Medicaid enrollees now participate in either MediPass or in a health maintenance organization (HMO). Enrollees who do not choose either MediPass or an HMO are assigned using a formula designed to balance the number of enrollees between these programs.

Minority Physician Network MediPass Pilot Project

In May 2001, AHCA was authorized by the General Appropriations Act to establish pilot projects for improving the quality of care and the cost effectiveness of the MediPass program. AHCA was authorized to contract with physician-owned and operated organizations with experience managing care for Medicaid and Medicare programs, utilizing at least one predominantly minority, physician network. Three entities applied to operate under the pilot program. Two minority physician networks were awarded contracts: Florida Netpass and PhyTrust. These two minority networks of primary care physicians began operating in South Florida, Medicaid Areas 10 and 11, in 2001. In 2003, the networks expanded to the Tampa and St. Petersburg areas covering Medicaid Areas 5 and 6 under a two-year contract with AHCA. The current contracts expire in 2005. The providers in the network are reimbursed on a fee-for-service basis and receive a $3.00 case management fee per member per month. AHCA pays the networks a $12.00 administrative fee. The networks share any cost savings through the program with AHCA (50/50). Presently, the minority physician networks are not required to partner with a public college or university or a tax-exempt charitable organization. An evaluation of the pilot project will be completed by the end of January 2004.

III. Effect of Proposed Changes:

Section 1. Creates s. 381.736, F.S., to establish the federal Florida Healthy People 2010 Program.

Subsection (1) provides that DOH shall monitor and report, within existing resources, on Florida's status on the Healthy People 2010 Program.

Subsection (2) provides that DOH shall report to the Legislature by December 31 of each year regarding the status of the disparities in health among minorities and nonminorities, using health indicators that are identified in the federal program.

Subsection (3) requires DOH to work with minority physician networks to develop programs to educate health care professionals about the importance of culture in health status. These programs shall include but not be limited to:

- The education of health care providers about the prevalence of specific health conditions among certain minority groups;
- The training of clinicians to be sensitive to cultural diversity among patients and to recognize that inherent biases can lead to disparate treatments;
- The creation of initiatives that educate private-sector health care and managed care organizations about the importance of cross-cultural training of health care professionals and the effect of such training on the professional-patient relationship; and
- The fostering of increased use of interpreter services in health care settings.

Subsection (4) requires DOH to work with and promote the establishment of public and private partnerships with charitable organizations, hospitals, and minority physician networks to increase the proportion of health care professionals from minority backgrounds.

Subsection (5) requires DOH to work with and promote research on methods by which to reduce disparities in health care at colleges and universities that have historically large minority enrollments, including centers of excellence in the state identified by the National Center on Minority Health and Health Disparities, by working with colleges, universities, and community representatives to encourage minority students to pursue professions in health care.

Section 2. Amends s. 409.901, F.S., by adding subsection (23), to define, for the purposes of this section, a *minority physician network* as a network of primary care physicians with experience managing Medicaid or Medicare recipients that is predominantly minority-owned, as defined in s. 288.703, which has a collaborative partnership with a public college or university and a tax-exempt charitable corporation.

Section 3. Amends s. 409.912, F.S., relating to cost-effective purchasing of health care by the Florida Medicaid Program, by adding subsection (45), to require AHCA to contract with an established minority physician network that provides services to historically underserved minority patients. The network must:

- Provide cost-effective Medicaid services;
- Comply with the requirements of the MediPass program; and
- Provide its primary care physicians with access to data and other management tools necessary to assist them in ensuring the appropriate use of services, including inpatient hospital services and pharmaceuticals.
- Be composed of providers enrolled in the MediPass program.

This section also requires AHCA to:

- Provide for the development and expansion of minority physician networks in each service area to provide services to Medicaid recipients who are eligible to participate under federal law and rules;
- Reimburse the minority physician network as a fee-for-service provider for Medicaid services; and
- Pay a case-management fee for primary care.

Any savings shall be split equally between AHCA and the minority physician network.

Medicaid recipients enrolled in MediPass shall be assigned to a minority physician network pursuant to the assignment ratios provided in s. 409.9122, F.S.

Provides authority for AHCA to apply for federal waivers.

Section 4. Provides that the act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expansion of the Healthy People 2010 initiative at the state level could help communities with health disparities.

Minority physician networks are allowed to have collaborative partnerships with public colleges and universities or tax-exempt charitable corporations.

C. Government Sector Impact:

Agency for Health Care Administration

The bill provides that the savings to MediPass achieved from using the minority physician network will be divided equally between the minority physician network and AHCA. Presently, the portion of the savings achieved by the minority physician networks that is eligible for distribution outside of the Medicaid program is shared with the minority physician networks to offset their operational expenses. At this point, according to AHCA, it is not possible to estimate the savings to the program that will occur in FY 2004-2005 and FY 2005-2006, due to the unavailability of baseline data used to determine the upper payment limits.

Department of Health

DOH is only responsible for developing a working relationship with the minority physician networks. These networks will provide information and support to DOH on health disparity issues. There should be no fiscal impact on DOH.

VI. Technical Deficiencies:

If the intent of the bill was to define minority physician network specifically for the MediPass program, language will have to be added. As currently written, the definition only applies to the definitions section of the bill.

VII. Related Issues:

Healthy People 2010

Healthy People 2010 is a comprehensive, nation-wide health promotion and disease prevention agenda. It is designed to serve as a roadmap for improving the health of all people in the U.S. The bill is designed to achieve the two main goals stated in Healthy People 2010: increase quality and years of healthy life and eliminate health disparities. The Healthy People 2010 Objectives reflect a broad agenda and not an agency-specific program. Many of the Healthy People 2010 objectives cannot be tracked because data is not systematically available or collected in Florida.

DOH is currently addressing some of the Healthy People 2010 objectives, and has developed several data collection systems to report on life expectancies, health quality, and health disparities. Although DOH is working on a number of indicators from the Healthy People 2010 blueprint, if the intent of this bill is to develop, implement, and report annually to the Legislature regarding all Florida Healthy People 2010 objectives, it will require that DOH be provided with additional resources and time to build reporting systems to capture the data and coordinate with other departments and public and private agencies responsible for objectives outside DOH's control.

Minority Physician Networks

Section 2 of the bill defines a minority physician network as a network of primary care physicians that is predominantly minority-owned, as defined in s. 288.703, F.S., which may have collaborative partnership with a public college or university and a tax-exempt charitable corporation. A collaborative partnership is not clearly defined. A collaborative partnership could be difficult to prove or disprove.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for CS for SB 1178

Amendment No. 1 065878

CHAMBER ACTION

Senate | House

Senator Miller moved the following amendment:

Senate Amendment (with title amendment)

On page 5, line 10, delete that line

and insert:

(d) For purposes of this subsection, the term "cost-effective" means that a network's per-member, per-month costs to the state, including, but not limited to, fee-for-service costs, administrative costs, and case-management fees, must be no greater than the state's costs associated with contracts for Medicaid services established under subsection (3), as applicable, by service area. The agency shall conduct actuarially sound audits to ensure such cost-effectiveness and shall publish the audit results on its website and submit the audit results annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 31. Contracts established pursuant to this subsection which are not cost-effective may not be renewed.

(e) The agency may apply for any federal waivers

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 1, line 19, after the semicolon,
4
5 insert:
6 defining the term "cost-effective"; requiring
7 the agency to conduct actuarially sound audits;
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SBs 1228 and 2080

SPONSOR: Education Committee and Senators Wilson and Diaz de la Portilla

SUBJECT: Resident Status/Tuition

DATE: April 20, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dormady	O'Farrell	ED	Favorable/CS
2.	Vickers	Krasovsky	MS	Fav/1 amendment
3.			AED	Withdrawn
4.	Bryant RGB	Coburn DRC	AP	
5.				
6.				

I. Summary:

CS/SBs 1228 and 2080 would classify the following persons as residents for purposes of assessing tuition in community colleges and state universities:

- Certain active duty members of a foreign nation's military and their spouses and dependent children, at schools within 50 miles of the military establishment where they are stationed;
- Full-time employees of recognized international multilateral organizations based in Florida and their spouses and dependent children; and
- Dependent children of U.S. Armed Services members who are stationed in counties contiguous to Florida, at Florida schools within 50 miles of the military establishment where they are stationed.

The bill would also exempt any student from paying nonresident tuition, provided that she or he had:

- resided in Florida for 3 consecutive years
  - with a parent,
  - while attending a Florida high school,
  - immediately prior to receiving a high school diploma or its equivalent, and
- provided an affidavit stating that they will file an application to become a permanent U.S. resident at the earliest opportunity.

The bill excludes nonresident aliens, as defined in 8 U.S.C. 1001(a)(15), from qualifying for residency for tuition purposes under this new criterion.

This bill amends section 1009.21 of the Florida Statutes.

The bill will be effective upon becoming law.

II. Present Situation:

Section 1009.21, F.S., requires students to be classified as residents or nonresidents for the purposes of assessing tuition in the community colleges and state universities. Classification of a student as a resident for tuition purposes is a threshold eligibility criteria for participation in certain financial assistance programs such as the Florida Bright Futures Scholarship Program, the Florida Student Assistance Grant Program, the Florida Resident Access Grant Program, and other state-funded scholarships.

Residency requirements; service members in Alabama and Georgia and foreign nationals

A student may qualify as a resident for tuition purposes if the student, or his or her parents if the student is a dependent child, has established and maintained legal residence in the state for at least 12 months immediately prior to qualification. Section 1009.21(10)(b), F.S., currently provides that active duty members of the U.S. Armed Services and their spouses who are stationed at a base in a county contiguous to Florida may pay resident tuition at a community college or university, provided that the school is within 50 miles of the military establishment where they are stationed. The section also provides additional methods for qualifying for residency for tuition purposes, but these methods, for the most part, require legal residence of some duration in the state.

Undocumented aliens, with certain exceptions as provided in federal law, may not establish legal residence in the state for tuition purposes because their residency in the state is in violation of federal law, as they have not been properly admitted into the United States. Undocumented aliens are accordingly classified as nonresidents for tuition purposes. Many of these undocumented aliens attend Florida high schools and obtain a high school diploma or the equivalent, as the state may not bar these individuals from attending elementary, middle, or secondary schools. See Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). Due to the increased cost of attending a public postsecondary institution as a nonresident, these aliens are more likely not to obtain needed postsecondary skills or credentials to obtain higher paying jobs.

The undocumented status of these individuals leaves the state unable to reliably estimate their numbers. Moreover, the school districts, pursuant to a consent decree, are precluded from collecting data on undocumented aliens that are attending public schools. See League of United Latin American Citizens v. Florida Board of Education, Case No. 90-1913, (S.D. Fla. 1990).

8 U.S.C. s. 1623 prohibits any alien who is unlawfully present in the United States from receiving any postsecondary education benefit on the basis of residence in a state unless a U.S. citizen or national is eligible for such benefit in the same amount, duration, and scope. Certain other states, such as Texas, California, and Utah, have enacted varying laws authorizing some undocumented aliens to qualify for certain financial aid programs.

Nonimmigrant aliens, as defined in 8 U.S.C. s. 1101(a)(15), are aliens lawfully admitted into the U.S. but whose duration of stay is set forth in the applicable visa under which admittance is granted. Most nonimmigrant visas, but not all, require the holder of the visa to intend to return to the nonimmigrant's country of residence upon termination of the visa. Students under an F visa or an M visa are required to intend to return to their country of residence. If a nonimmigrant stays beyond the limitations of the visa, the nonimmigrant is no longer lawfully within the U.S. and may be subject to deportation.

Resident tuition for Canadian military

Section 1009.21(10)(j), F.S., authorizes active duty members of the Canadian military residing or stationed in the state, and their spouses and dependent children, to pay in-state tuition at state universities and community colleges within 50 miles of where they are stationed.

U.S. military establishments in Florida and contiguous states

There are three U.S. military commands in the state that have liaison officers from foreign nations of their staffs: (1) Joint Interagency Task Force East (Key West), (2) United States Central Command (Tampa), and (3) United States Southern Command (Miami). Currently, 12 foreign liaison officers are assigned to the Joint Interagency Task Force East. These officers serve two to three years and nearly all bring their dependents to the state. There are 345 liaison officers assigned to the United States Central Command. Most of the liaison officers serve a shorter tour ranging from 90 days to one year. Six liaison officers are assigned to the United States Southern Command. The liaison officers serve two to three year tours and are generally accompanied by their families. The liaison officers do not qualify as residents for tuition purposes unless they otherwise meet residence criteria. Under current law, with the exception of Canadian military personnel and their families, foreign nation's military personnel, their spouses and dependent children are classified as out-of-state residents for tuition purposes at Florida's public postsecondary institutions.

A liaison officer may serve in the United States for varying lengths of time. A spokesperson with the Joint Interagency Task Force South indicated there might be some 20 foreign military liaison officers who may qualify under the bill's provisions and whose assignment length of time might allow the pursuit of postsecondary education. Those persons are located at the Key West, Miami or Tampa bases/commands.

A spokesperson from the Joint Interagency Task Force South command in Key West indicated that there are 11 liaison officers at the Key West Command. All eleven are married. He thought there would be less than five dependents that would be of college-age.

Both Georgia and Alabama have military bases in counties contiguous to Florida. Of these, at least one – a base located in south Georgia – has certain members who attend classes at colleges and universities in north Florida.

Approved international multilateral organizations based in Florida

The United States Department of State develops and implements U.S. policy in the United Nations (UN), the UN's specialized agencies, and other international organizations. The Department of State works to advance U.S. policies and interests through multilateral diplomacy, which sometimes entails the implementation of multilateral agreements by specifically designated organizations. Most of these organizations are based overseas, in Geneva or Brussels. Information received from staff at the Department of State indicates that no Department of State-approved international multilateral organizations are based in Florida at this time.

III. Effect of Proposed Changes:

Exemption for high school graduates, including undocumented aliens, from paying nonresident tuition

The bill exempts a student from paying nonresident tuition if the student has resided in the state with a parent for at least three consecutive years immediately preceding the date the student received a Florida high school degree or the equivalent, has attended a Florida high school for at least three consecutive years during such time, and has provided an affidavit to a community college or a state university that the student will file an application for permanent residency at the earliest opportunity the student is eligible. The bill specifically excludes nonimmigrant aliens, as defined in 8 U.S.C. s. 1101(a)(15), from meeting this new eligibility criterion for in-state tuition.

As noted above, the bill authorizes any student, other than nonimmigrant students, to classify as a resident for tuition purposes if the student meets the bill's criteria. Accordingly, residents of other states could qualify for residency for tuition purposes if they otherwise meet the eligibility criteria.

The affidavit requirement should not create a substantial burden for a student to qualify for residency for tuition purposes. Most undocumented aliens, absent a change in federal law or a grant of amnesty, would not qualify for permanent residency.

Residency for foreign liaison officers and dependents

The bill classifies active duty members of a foreign nation's military serving as liaison officers and residing or stationed in this state, together with their spouses and dependent children, as residents for tuition purposes when attending a public postsecondary institution within 50 miles of the military establishment where they are stationed. The change in the proposed legislation would provide the same residency status for tuition purposes to a foreign nation's liaison officers as is currently extended to Canadian military personnel and their families stationed in Florida.

Residency for employees of international multilateral organizations based in Florida

The bill also provides that full-time employees of international multilateral organizations based in Florida that are recognized by the United State Department of State, together with their spouses and dependent children, will qualify as residents for tuition purposes. Information provided by staff at the U.S. Department of State suggests that no such organizations are based in Florida at this time.

Addition of dependents of active duty members of U.S. Armed Services

The committee substitute amends s. 1009.21(10)(b), F.S., which currently provides that active duty members of the U.S. Armed Services and their spouses residing in counties contiguous to Florida may pay resident tuition if they attend a Florida public community college or university within 50 miles of the military establishment where they are stationed. The bill permits dependents of these U.S. Armed Services members to receive resident status for tuition purposes under the same circumstances.

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 U.S. Constitution provides the Federal Government with preeminent power over the regulation of aliens within the U.S. See Takahaski v. Fish & Game Commission, 334 U.S. 410, 418-420, 68 S.Ct. 1138, 1142-1143, 92 L.Ed. 1478 (1948). Any state action that imposes discriminatory burdens upon the entrance or residence of aliens lawfully admitted into the U.S. conflicts with the Supremacy Clause of the U.S. Constitution. See id. The bill specifically excludes certain nonimmigrant aliens from meeting eligibility requirements for establishing residency for tuition purposes. In Toll v. Moreno, 458 U.S. 1, 17, 102 S.Ct. 2977, 2986, 73 L.Ed.2d 563 (1982), a Maryland statute was struck down on Supremacy Clause concerns when the law categorically prohibited G-4 nonimmigrant aliens from acquiring in-state status for tuition purposes. G-4 nonimmigrant visa holders are not required to have intent to return to their country of residence. Unlike the Maryland law, the bill does not categorically prohibit a nonimmigrant alien from qualifying for residency; it provides only that a nonimmigrant may not qualify under the new criteria. There still remains a concern that the bill may be challenged because of the limitation on the ability of lawfully admitted nonimmigrant aliens to obtain in-state tuition status.

The bill authorizes any student to qualify for residency for tuition purposes if the student meets specified criteria. Accordingly, 8 U.S.C. s. 1623, which bars any alien who is unlawfully present in the United States from receiving any postsecondary education benefit on the basis of residence in the state unless a U.S. citizen or national is eligible for such benefit in the same amount, duration, and scope, would not be applicable.

It may be alleged that the bill discriminates against nonresident U.S. citizens in favor of non-U.S. citizens. However, nonresidency has not been determined to be a suspect class for purposes of the Equal Protection clause of the U.S. Constitution, and the state would likely only be required to demonstrate that the bill bears a rational relationship to the goal of providing greater access to postsecondary education within the state. Moreover, education is not a fundamental right for purposes of the Privileges and Immunities Clause of the U.S. Constitution, and a state would therefore be much less restricted in its actions with respect to nonresidents.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is anticipated that certain individuals would qualify for subsidized tuition as state residents; however, the precise fiscal impact of these qualifications is indeterminable. This bill would save the affected individuals the difference in cost between in-state and out-of-state tuition at certain Florida public postsecondary institutions. Non-resident undergraduate students pay 100 percent of the cost of their education. Students reclassified as in-state residents would pay approximately 25 percent of the cost of their education and the state would pay the remaining 75 percent to the educational institution. Based on the university tuition established in the 2003-2004 General Appropriations Act, an out-of-state undergraduate student pays tuition of $328.74 per credit hour. A Florida resident undergraduate student pays tuition of $63.41 per credit hour. Certain costs may be incurred by aliens attendant to meeting the bill's affidavit requirements.

It is not known how many liaison officers and members of their families would be affected by this provision, although the number should be relatively small.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate, as the state does not possess any reliable figures indicating the number of students that would qualify for the subsidized tuition as state residents. The Florida Immigrant Advocacy Center estimates that the number of students could be as high as 1,045 for the state universities and 1,780 for the public community colleges.

Given the indeterminate number of eligible students, the fiscal impact and additional regulatory burden on community colleges and state universities in collecting and

processing the affidavits and confirming other eligibility requirements is not readily ascertainable.

The bill's inclusion of foreign liaison officers and employees of multilateral organizations creates an indeterminate fiscal impact. There are approximately 363 liaison officers currently serving in the state. Additionally, the number of their dependents is not known at this time. The liaison officers serve anywhere from 90 days to three years.

Because no international multilateral organizations approved by the Department of State appear to be based in Florida at this time, this aspect of the bill would have no fiscal impact, although it could have an undetermined impact at a later date.

There are an indeterminate number of dependents of U.S. Armed Services personnel stationed in south Georgia and south Alabama who could qualify to attend the few colleges and universities in north Florida that would be close enough to meet the 50-mile limit established in the bill for attendance with resident status.

The number of affected individuals currently or potentially taking courses at Florida community colleges and state universities is unknown. The change would result in the state paying for approximately 75 percent of the cost of courses these individuals might take, instead of that amount being paid by a student classified as an out-of-state resident.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Military and Veterans' Affairs, Base Protection, and Spaceports:
Provides that students who meet the requirements for resident tuition status under the provisions of this bill are not eligible for state-sponsored financial assistance.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB's 1228 & 2080

Amendment No. 1 752862

CHAMBER ACTION

Senate House

The Committee on Military and Veterans' Affairs, Base Protection, and Spaceports recommended the following amendment:

Senate Amendment (with title amendment)

On page 8, line 15, through
page 9, line 12, delete those lines

and insert:

Section 2. Paragraph (a) of subsection (1) of section 1009.40, Florida Statutes, is amended to read:

1009.40 General requirements for student eligibility for state financial aid.--

(1)(a) The general requirements for eligibility of students for state financial aid awards consist of the following:

1. Achievement of the academic requirements of and acceptance at a state university or community college; a nursing diploma school approved by the Florida Board of Nursing; a Florida college, university, or community college which is accredited by an accrediting agency recognized by the

State Board of Education; any Florida institution the credits of which are acceptable for transfer to state universities; any technical center; or any private technical institution accredited by an accrediting agency recognized by the State Board of Education.

2. Residency in this state for no less than 1 year preceding the award of aid for a program established pursuant to s. 1009.50, s. 1009.51, s. 1009.52, s. 1009.53, s. 1009.54, s. 1009.56, s. 1009.57, s. 1009.60, s. 1009.62, s. 1009.63, s. 1009.68, s. 1009.72, s. 1009.73, s. 1009.76, s. 1009.77, or s. 1009.89. Residency in this state must be for purposes other than to obtain an education. Resident status for purposes of receiving state financial aid awards shall be determined in the same manner as resident status for tuition purposes pursuant to s.1009.21(1)-(10) ~~s.-1009.21~~ and rules of the State Board of

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

And the title is amended as follows:

On page 1, lines, 13-17, delete those lines

and insert:

eligibility criteria; amending s. 1009.40, F.S., relating to general requirements for eligibility for state financial aid; specifying procedures for determining residential status for purposes of receiving such awards; providing an

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1458

SPONSOR: Education Committee and Senator Wasserman-Schultz

SUBJECT: Florida Virtual School Franchise Agreements

DATE: April 13, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dormady	O'Farrell	ED	Fav/CS
2.			AED	Withdrawn
3.	Armstrong	Coburn	AP	
4.				
5.				
6.				

I. Summary:

CS/SB 1458 authorizes the board of trustees of the Florida Virtual School (FVS) to enter into franchise agreements with Florida-based virtual schools, public or private, that are accredited by the Southern Association of Colleges and Schools, and it requires the board of trustees of the FVS to establish the terms and conditions of such agreements. The board of trustees must establish performance and accountability measures and report the performance of each such franchisee to the Commissioner of Education.

The bill permits approved Florida-based virtual school franchisees, including private schools, to receive state funding in the same manner as the Florida Virtual School. Affected private schools with franchises will be able to report full-time equivalent (FTE) students for funding through the Florida Education Finance Program. Florida-based virtual schools with approved franchises are prohibited under the bill from charging the parent of a student a fee for services provided by the school if the school received funding for those services from the state.

In addition, certain establishment clause issues under the federal constitution may be raised by the bill.

This bill amends section 1002.37 of the Florida Statutes.

The bill will take effect upon becoming law.

II. Present Situation:

Current statutory framework

Section 1002.37(2)(i), F.S., provides that the board of trustees of the FVS must establish criteria defining the elements of an approved franchise. The board of trustees is permitted under current law to enter into franchise agreements with Florida district school boards and to establish the terms and conditions of such agreements. The section also provides that the board of trustees must establish performance and accountability measures for franchisees and that they must report the performance of each school district franchise to the Commissioner of Education.

Generally, students who take classes through the FVS take only a few of their required classes through the virtual curriculum; most of their required classes are taken at their brick-and-mortar school. Funding provided to the FVS for serving these students accommodates this part-time enrollment concept. Under s. 1002.37(3)(a), F.S., a "full-time equivalent student" for the FVS is defined as one student who has successfully completed six credits that count toward the student's credits required for high school graduation. A student who completes less than six credits is counted as a fraction of a full-time equivalent (FTE) student.[1] Credit completed by a student in excess of the minimum required for high school graduation is not, however, eligible for state funding. FTE student credits completed through the FVS are reported by the FVS to the Department of Education and are funded through the Florida Education Finance Program (FEFP).

FVS use of franchise agreements and license agreements

Currently, the FVS has "franchise agreements" in place with five Florida school districts, pursuant to which course content and some services are licensed to the school districts. The FVS also enters into "license agreements" with non-public schools, most of which are located outside of Florida, pursuant to which it licenses content and some services to these schools. While the franchise agreements entered into with Florida school districts are priced on a cost-recovery basis only, the licensing agreements in place with private schools are a for-profit aspect of the FVS's business, and are priced accordingly.[2]

Southern Association of Colleges and Schools

The Southern Association of Colleges and Schools (SACS) is one of six regional accreditation organizations in the country; it accredits both public and private elementary and secondary schools, as well as public and private colleges, universities and graduate schools. SACS accredits more than 12,000 public and private educational institutions in 11 states in the Southeastern United States and Latin America. It conducts site visits of schools and applies a consistent set of accrediting standards to the schools it accredits.[3]

III. Effect of Proposed Changes:

This bill authorizes – but does not require – the board of trustees of the FVS to enter into franchise agreements with Florida-based[4] virtual schools that are accredited by SACS. Under current law, the FVS may only enter into franchise agreements with Florida district school

[1] Half-credit completions are also permitted to be counted toward funding amounts.
[2] Source: Florida Virtual School personnel.
[3] Source: http://www.sacs.org/.
[4] The bill defines "Florida-based" schools as those that conduct operations solely or primarily in the state of Florida.

boards. CS/SB 1458 effectively extends that authority and permits the FVS to enter into franchise agreements with a category of private schools – Florida-based accredited virtual schools – as well. The bill also requires the FVS board of trustees to establish the terms and conditions of the franchise agreements.[5] The board of trustees must establish performance and accountability measures for franchisees and must report the performance of each such franchisee to the Commissioner of Education.

The bill also permits Florida-based virtual schools that are franchisees of the FVS to count FTE students for purposes of receiving state funding on the same basis that FTE funding is provided to the FVS under current law. As noted above, under current law applicable to the FVS, each full credit completed by a student in the FVS is counted as 1/6 of an FTE credit for receiving funding under the FEFP. The FVS reports FTE student credit completions to the Florida Department of Education in a manner prescribed by the department and receives funding for the credit completions through the FEFP. This mechanism would be applicable for the virtual school franchises as well.

The bill also provides, however, that virtual schools approved as franchisees are *not* permitted to charge the parent of a student a fee for services provided by the school if the student received services and was counted as a full-time equivalent student by the franchisee virtual school. It appears that this provision is designed to prohibit double-funding for virtual-school courses taken by students (i.e., when a student's parent pays for a course and the course is also counted, and funded, by the state under the FEFP.)

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 First Amendment of the U. S. Constitution provides that "Congress shall make no law respecting an establishment of religion." This section of the First Amendment, known as the Establishment Clause, is applicable to state action by incorporation through the Fourteenth Amendment to the U.S. Constitution. As a result, state programs must not violate Establishment Clause principles. Certain Establishment Clause issues under the

[5] Under current law, the board of trustees is merely authorized, and not required, to establish the terms and conditions of franchise agreements.

federal Constitution may be raised by the structure proposed by CS/SB 1458, pursuant to which state funding will flow directly to private schools.[6]

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Data are not available to determine the private sector impact of CS/SB 1458 at this time, as the bill merely authorizes, and does not require, that new franchise agreements be entered into by the FVS. If the FVS were to enter into numerous franchise agreements with private Florida-based virtual schools, access to this course content as well as a public funding source could enhance the enrollment and profits of these schools.

C. Government Sector Impact:

Data are not available to determine whether the bill would have any fiscal impact on the government sector. In particular, it is not possible to determine whether the FVS will enter into franchise agreements with any accredited Florida-based virtual schools pursuant to the bill's provisions. If many such agreements were entered into, and numerous additional student course completion credits were funded under such arrangements, the state could experience a material fiscal impact.

VI. Technical Deficiencies:

It may be helpful to stipulate in the bill whether "franchise agreements" with Florida-based accredited virtual schools would have to be identical in terms to the "franchise agreements" entered into with Florida district school boards. Nothing in the bill or current law provides guidance with respect to this issue. It may be natural to assume that the "franchise agreements" would be the same for all parties; however, the board of trustees of the FVS is specifically authorized under current law to establish the terms and conditions governing such agreements, and this authority could be interpreted to mean that the board of trustees may establish new and different terms and conditions for each such agreement. This possibility, in combination with the FVS's current practice of entering into for-profit licensing agreements with private schools, could contribute to confusion on this point. Accordingly, it would be helpful to clarify whether the franchise agreements contemplated for Florida-based accredited virtual schools under the bill would have to mirror those of the non-profit franchise agreements the FVS enters into with public school boards, or whether these agreements could be constructed on a for-profit basis.

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[6] *See, e.g., Witters v. Washington Department of Services for the Blind,* 474 U.S. 481 (1986), *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993), and *Zelman v. Simmons-Harris et al.*, 536 U.S. 639 (2002), drawing a distinction between funding provided directly to private schools and state funding that is provided to an individual who, in turn, makes the decision to direct that money to a religious institution.

VII. Related Issues:

Possible accountability issues attendant to the proposed franchise arrangement

The inclusion of private virtual schools in a state funding structure raises certain enforcement and accountability questions with respect to the participating private schools. For example, the approved franchisee schools would be prohibited from charging both the state and the parent for courses taken through the virtual school franchise arrangement. Some oversight mechanism could be necessary for enforcement of this and other statutory prohibitions.

Direct state funding for private schools

The bill's provisions read in conjunction with current law suggest that private school franchisees will be reporting FTE to the state and receiving funding from the state directly through the FEFP. This direct reporting/funding framework is in use by the five current FVS franchisees. While private schools have previously received public funds through state scholarship programs, direct FEFP funding of private schools has no precedent in Florida. The franchisee private schools that will result from CS/SB 1458 will be delivering state-developed course content to students, reporting course completions to the state as FTE students, and receiving state education funding through the FEFP.

Logistical difficulties in the proposed funding structure

Under current law, all Florida students – including public, private, and home education students – are permitted to take courses through the FVS. The FVS in turn receives FTE funding for course completions for all of these students through the FEFP without regard to whether the students are enrolled in public schools or not. Effectively, course completions by these students who are not otherwise enrolled in public schools adds unforeseen FTE to the FEFP, but because the FVS has a limited capacity, the impact of this additional FTE funding is minimal for the state.[7]

It appears that very few schools would qualify to enter into franchise agreements with the FVS under the bill's provisions at this time. In the event, however, that the availability of course content through the FVS, together with a new state funding source, were to attract additional virtual schools to Florida or were to encourage existing accredited Florida schools to add a virtual school component, additional unforeseen FTE could be incurred relative to these new schools, without the capacity limitations that operate currently to minimize this problem for the state. Aside from the fact that the addition of a number of new FVS franchisees could add a significant amount of FTE that is not currently funded, it would also be difficult for the state to forecast this FTE, as it would be generated primarily by students that are not otherwise enrolled in public schools.

[7] FTE funding for course completions by public school students reported by the FVS is subtracted from the FTE received from the school district where that public school student is enrolled, so FTE funding of public school student course completions through the FVS does not impact FTE amounts overall.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 1458

Amendment No. 1 301846

CHAMBER ACTION

Senate | House

Senator Wasserman Schultz moved the following amendment:

Senate Amendment (with title amendment)

On page 5, line 24, delete that line

and insert: Schools and whose teachers are certified in the State of Florida. For purposes of this section, the term

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

And the title is amended as follows:

On page 1, line 9, before the semicolon

insert:

and whose teachers are certified by the State of Florida

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1900

SPONSOR: Senators Klein and Atwater

SUBJECT: Centers of Excellence

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	O'Farrell	ED	Favorable
2.	Maclure	Maclure	CM	Favorable
3.			AED	Withdrawn
4.	Newman	Coburn	AP	
5.				
6.				

I. Summary:

This bill provides authority, procedures, and funding for the establishment of additional centers of excellence or the expansion of existing centers designated through a similar process completed in 2003.

In particular, the bill calls for the Florida Research Consortium, Inc., to review and revise, if necessary, the factors it previously identified as contributing to success of a center of excellence. In turn, the Emerging Technology Commission is required to approve evaluation criteria, review university proposals, and submit, by January 1, 2005, a recommended plan to the State Board of Education for establishing or expanding one or more centers of excellence. The State Board of Education must develop and approve a final plan by February 15, 2005, along with authorizing expenditures for implementing the plan. The final plan must be submitted to the Governor and the Legislature and must contain performance and accountability measures to assess plan implementation and each center's progress.

The bill appropriates $100 million from the General Revenue Fund to the Department of Education for the purpose of implementing the final plan, with a requirement that each center of excellence approved under the plan receive, at a minimum, $10 million. The bill also appropriates $50,000 from the General Revenue Fund to the Executive Office of the Governor for staff and administrative support for the Emerging Technology Commission.

Lastly, the bill revises the Florida Technology Development Act, which was the authority for the centers of excellence designated in 2003, to impose a term limit of 4 years on certain members of the Emerging Technology Commission, to specify that a commission vacancy shall be filled in the same manner as the original appointment, and to delay the scheduled expiration of the statute to June 30, 2006, from July 1, 2004.

This bill substantially amends section 1004.225, Florida Statutes.

II. Present Situation:

Florida Technology Development Act

In 2002, the Legislature enacted the Florida Technology Development Act, s. 1004.225, F.S., which was designed to help foster technology transfer, a complex commercialization process through which an entity that develops a new technology, but does not have the means or desire to bring it to market, transfers the new technology to another entity that does. The act facilitated the technology transfer process by establishing authority and procedures for the designation and creation of centers of excellence, for which the Legislature appropriated $30 million for fiscal year 2002-2003. In March 2003, three centers of excellence were designated: Florida Atlantic University's proposal for a Center of Excellence for Biomedical and Marine Biotechnology at $10 million; the University of Central Florida's proposal for a Photonics Center of Excellence at $10 million; and the University of Florida's proposal for a Center of Excellence in Regenerative Health Biotechnology at $10 million.

Centers of Excellence

As defined in the Florida Technology Development Act (act), a center of excellence is an organization of personnel, facilities, and equipment established at or in collaboration with one or more universities in the state which:

- Facilitates the identification of collaborative research opportunities between universities and businesses;
- Facilitates the acquisition of public and private funding for collaborative research opportunities and maximizes the leveraging of such funds;
- Creates partnerships between industrial and governmental entities to advance knowledge and research and to move technologies from academic laboratories and research centers to commercial sectors;
- Stimulates and supports new venture creation through partnerships with venture capital firms and other business, governmental, and educational entities;
- Assists in the enhancement of advanced academic curricula through improved communication between academia and businesses;
- Increases the number of graduates and faculty researchers in advanced technology programs while ensuring that a larger percentage of these graduates pursue careers in Florida industries;
- Recruits and retains eminent scholars in advanced technology disciplines; and
- Provides capital facilities necessary to support research and development.[1]

[1] Section 1004.225(2), F.S.

Emerging Technology Commission

Under the act, the Emerging Technology Commission was created within the Executive Office of the Governor and given principal responsibility for the designation of the centers of excellence. The commission consists of:

- Nine regular members who must be recognized business leaders, industrial researchers, academic researchers, scientists, or engineers. The regular members include four members and the chair appointed by the Governor; two members appointed by the President of the Senate; and two members appointed by the Speaker of the House of Representatives;
- The Commissioner of Education as an ex officio nonvoting member; and
- The state senator and state representative who serve as members of the Florida Research Consortium, Inc.,[2] as ex officio nonvoting members.

Commission members serve without compensation but are entitled to receive certain per diem and travel expenses while performing their duties. The statute does not prescribe terms for the members of the commission or provide for the filling of vacancies on the commission. The Executive Office of the Governor provides staff support for the commission and per diem and travel expenses for commission members.

Evaluation Criteria

The act directed the Florida Research Consortium, Inc., to provide a report to the Emerging Technology Commission, which described and prioritized factors that contribute to the success of the creation of centers of excellence. At a minimum, the factors had to include:

- The maturity of existing university programs relating to a proposed center of excellence;
- The existing amount of university resources dedicated to activities relating to a proposed center of excellence;
- The comprehensiveness and effectiveness of site plans relating to a proposed center of excellence;
- The regional economic structure and climate;
- The degree to which a university that proposes to house a center of excellence identifies and seizes opportunities to collaborate with other public or private entities for research purposes;
- The presence of a comprehensive performance and accountability measurement system;
- The use of an integrated research and development strategy using multiple levels of the educational system;
- The ability of a university that proposes to house a center of excellence to raise research funds and leverage public and private investment dollars to support advanced and emerging technological research and development projects;

[2] The Florida Research Consortium, Inc., is a private, not-for-profit advisory board to ITFlorida.com, Inc. It is composed of volunteer university heads and industry leaders whose goal is to establish progressive research programs at Florida's universities. (See http://www.itflorida.com/tech/consort_about.asp.)

- The degree to which a university that proposes to house a center of excellence transfers advanced and emerging technologies from its laboratories to the commercial sector;
- The degree to which a university that proposes to house a center of excellence stimulates and supports new venture creation;
- The existence of a plan to enhance academic curricula by improving communication between academia and industry;
- The existence of a plan to increase the number, quality, and retention rate of faculty, graduate students, and eminent scholars in advanced and emerging technology-based disciplines;
- The existence of a plan to increase the likelihood of faculty, graduate students, and eminent scholars pursuing private-sector careers in the state; and
- The ability to provide capital facilities necessary to support research and development.[3]

The Florida Research Consortium, Inc., issued a report to the Emerging Technology Commission outlining the following factors contributing to the success of a center of excellence (in order of priority):

- Clear and integrated vision to develop commercially promising, advanced, and innovative technologies and to transfer those technologies to the commercial sector;
- National and prominent technology-centric research focus;
- Positive economic impact on the state and the nation;
- Ability to acquire and leverage public and private-sector resources to support the operations and research of the center, including funding, personnel, facilities, and equipment;
- Promotes collaboration among university scholars, research center scientists, and engineers, public schools, and private businesses; and
- Fosters the development of a highly skilled, high-wage workforce.

Following public hearings and consideration of the report of Florida Research Consortium, Inc., the Emerging Technology Commission developed criteria for evaluating university-submitted proposals for creating centers of excellence. The commission forwarded the criteria to the universities in the state and to the State Technology Office for publishing on the Internet. The commission directed the universities to submit their proposals in a specific format addressing each of the adopted criteria. The adopted criteria along with the weight of the criteria as part of a proposal were as follows:

- Vision for technology transfer – The proposal must demonstrate a clear and integrated vision to develop commercially promising, advanced, and innovative technologies and to transfer those technologies to the commercial sector (25 percent).
- Research Focus – The proposal must demonstrate national and prominent technology-centric research focus (25 percent).
- Economic Impact Potential – The proposal must demonstrate the potential for positive economic impact on the state and the nation (20 percent).

[3] Section 1004.225(4), F.S.

- Leadership and Management – The proposal must clearly outline its leadership and management plan to assure success if the center is funded. The plan must show lines of authority and responsibility of the proposed center's organization. The plan must also clearly identify a Program Manager who is the single point of contact for information regarding program management, execution, and reporting for the proposed center (10 percent).
- Leveraging Resources – The proposal must demonstrate the ability and plans to acquire and leverage public and private-sector resources to support the operations and research of the center, including funding, personnel, facilities, and equipment (10 percent).
- Center Collaboration with Other Entities – The proposal must demonstrate how the center promotes collaboration among university scholars, research center scientists and engineers, public schools, and private businesses (5 percent).
- Workforce Development – The proposal must clearly describe how the center of excellence will foster the development of a highly skilled, high-wage workforce (5 percent).

Review of Proposals and Designation of Centers

The Emerging Technology Commission received 16 proposals for a center of excellence from the following universities:

- Florida Atlantic University's Proposal for a Center for Intermodal Transportation, Safety and Security.
- Florida Gulf Coast University's Proposal for a Florida Gulf Coast University Triad.
- Florida International University's Proposal for a Florida Information Security Center.
- The University of Central Florida's Proposal for a Modeling and Simulation Center of Excellence.
- The University of North Florida's Proposal for a Center for Innovation in Information Technology.
- Florida Agricultural and Mechanical University's Proposal for a Center of Excellence for Atomic, Molecular, and Plasma Physics.
- The Florida Space Research Institute's Proposal for a Center for Spaceport Technology, Biotechnology, Remote Sensing, and Telecommunications.
- The Florida Solar Energy Center's Proposal for a Center of Excellence for Hydrogen Research.
- Florida State University's Proposal for Securing Florida and the Nation's Electrical Energy Systems.
- The University of Central Florida's Proposal for a Florida Photonics Center of Excellence.
- Florida Atlantic University's Proposal for a Center for Biomedical and Marine Biotechnology.
- Florida State University's Proposal for the Bio-Nanotechnology Nexus.
- The University of Florida's Proposal for a Center of Excellence in Regenerative Health and Biotechnology.
- The University of Florida's Proposal for a NanoBio Science and Engineering Center of Excellence.

- The University of Miami's Proposal for a Center for Biotechnology Development in Cellular Therapies, Tissue Engineering, and Reparative Medicine.
- The University of South Florida's Proposal for a Center of Excellence in Bioengineering and Life Science.

Following three public hearings with access to public policy and technology experts, the Emerging Technology Commission recommended the following centers of excellence to the State Board of Education along with its rationale:

- *Florida Atlantic University's proposal for a Center of Excellence for Biomedical and Marine Biotechnology* at $10 million. This center would focus on the discovery and development of compounds and medicines capable of treating various diseases including cancer, cardiovascular disease, and arthritis. Collaborative efforts with industry and other universities would be used in a long-term commercialization strategy, and the center would house faculty capable of attracting research funds at levels necessary for continued research.
- *The University of Central Florida's proposal for a Photonics Center of Excellence* at $10 million. This center would build upon efforts already under way at the university to make Florida the world leader in optics, lasers, and photonics research and education. The center would also expand its research into the areas of nanophotonics and biophotonics. The center would work closely with existing industry, the High Tech Corridor Council, and the University of Central Florida Technology Incubator to commercialize new applications.
- *The University of Florida's proposal for a Center of Excellence in Regenerative Health Biotechnology* at $10 million. The center would house two facilities for microbial fermentation and vector production. Both facilities would be used for developing probiotics and gene therapies for treating cancer and genetic diseases. It would also provide technological advances in gene therapy and adult stem cell transplantation. The very nature of the research and production being performed at the center would have immediate and long-term economic impact and would serve as a magnet for future state and federal funds.

On March 18, 2003, the State Board of Education accepted the recommendations of the Emerging Technology Commission for the creation of the centers of excellence.[4]

Performance and Accountability Measures

As part of its approval of a plan for the centers of excellence, the State Board of Education adopted the Emerging Technology Commission's recommendations with respect to performance and accountability measures. The commission's recommendations are based on general measurement standards and site specific assessments to measure progress and success. The accountability measures are as follows:

[4] In the fiscal year 2002-2003 General Appropriations Act, the Legislature made release of the funds contingent upon approval of an expenditure plan by the Legislative Budget Commission. See proviso accompanying line item 173A, s. 2, ch. 2002-394, L.O.F.

General Measurement Standards

- Full financial disclosure of expenditures related to the cost proposal of the center.
- Report on the effectiveness and success of the research being performed within the center.
- Report on the state of research collaboration with other universities or research entities as well as private industry.
- Report generally on the state of personnel additions relative to the center and the core research being performed therein.
- Report on the integration of the mission of the center with all levels of the K-20 education system.
- Report on the number of industry internships granted to graduate and post-doctorate students as a result of interaction with the center.
- Report on the overall economic impact of the center's existence, including number of inventions, number of patents, number of licensed technologies, and amount of revenue generated from royalties and licenses.
- Report on the development of start-up businesses as a result of technology research being performed in the center.
- Report on the impact of the center's relationship with out-of-state businesses.
- Report on the leveraging of financial resources, including the obtaining of public and private matching funds as well as direct federal grants or contracts.
- Report on any interest of direct collaboration with Venture Capital entities.

Florida Atlantic University Center of Excellence Specific Standards

- Report on the status of the construction of a core facility for research.
- Report on the establishment of an analytical lab at Harbor Branch.
- Report on the status and effectiveness of the graduate student and post-doctorate workforce training programs.
- Report on the status and effectiveness of the seminar programs.
- Report on the use of submersibles and other ocean exploration equipment.
- Report on the status of the Marine Biotechnology Executive Education program.

University of Central Florida Specific Standards

- Report on the development of a state of the art nano-fabrication facility for greater photonics and optics research.
- Report on improvements in a more high quality graduate education in optical science and engineering.
- Report on the enhancement of optics education at all levels including the 2+2 Community College partnership.
- Report on making the center's research topics part of existing courses in photonics and optics.
- Report on the status of the effort to win a National Science Foundation Engineering Research Center in association with the center.

- Report on the number of publications of scientific research results.

University of Florida Specific Standards

- Report on the status of the purchase of the buildings to house the center.
- Report on the status of the construction of the Vector Production facility, the microbial fermentation facility, and the cell culture facility.
- Report on the status of the joint program with Santa Fe Community College related to the Biotech training program, the High-Tech training program, and the Regulatory Affairs training program.
- Report on the status of the joint program with the Florida Community College in Jacksonville in a course study in bioinformatics.
- Report on the status of the development of an IDP track in biotechnology in the university's College of Medicine.
- Report on whether new companies have begun to initiate plans to move into the new center.

The Emerging Technology Commission is directed to report quarterly to the Commissioner of Education on the progress of the implementation of the final plan and the success of the centers of excellence established under that plan.

Expiration of the Act

The Florida Technology Development Act, under s. 1004.225(10), F.S., expires on July 1, 2004.

III. Effect of Proposed Changes:

This bill provides authority and a process for the establishment of additional centers of excellence or the expansion of existing centers, subject to appropriation by the Legislature. The bill appropriates $100 million from the General Revenue Fund to the Department of Education for fiscal year 2004-2005 to establish or expand centers of excellence. At least $10 million must be allocated to each approved center of excellence, meaning that no more than 10 centers could be created or expanded under the legislation.

In particular, the bill calls for Florida Research Consortium, Inc., to review and revise, if necessary, the factors contributing to success of a center of excellence which were developed in 2002 under the Florida Technology Development Act, s. 1004.225, F.S. In turn, the Emerging Technology Commission is required to approve criteria for evaluating proposals for establishing or expanding a center of excellence. In addition, the Emerging Technology Commission must inform each university in the state concerning the proposal criteria.

A university desiring to submit a proposal must do so by November 1, 2004. The bill specifies that a university at which a center of excellence was established under the legislation enacted in 2002 may submit a proposal for an entirely new center or to expand its existing center.

Following at least two public hearings, the commission must submit, by January 1, 2005, a recommended plan for establishing or expanding one or more centers of excellence. By February

15, 2005, the State Board of Education must develop and approve a final plan for establishing or expanding centers of excellence along with authorizing expenditures for implementing the plan. The final plan must contain performance and accountability measures to assess plan implementation and each center's progress and must be submitted to the Governor and the Legislature.

The bill appropriates $50,000 from the General Revenue Fund to the Executive Office of the Governor for staff and administrative support for the Emerging Technology Commission.

The bill also revises the Florida Technology Development Act to specify that regular members of the Emerging Technology Commission may serve for no more than four years and to provide that vacancies shall be filled in the same manner as the original appointment. The bill extends the expiration of s. 1004.225, F.S., to June 30, 2006, from July 1, 2004, and makes technical revisions to the statute, including deleting historical dates.

This bill takes 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. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the centers of excellence approved under this bill increase the amount of technology transfer occurring in the state, businesses and individuals could benefit in an indeterminate amount. As the current three centers of excellence were approved in March 2003, and research is a methodical endeavor, it is too early to determine what impact the centers are having on technology transfer.

C. Government Sector Impact:

The bill appropriates $100 million from the General Revenue Fund to the Department of Education for the establishment or expansion of centers of excellence. In addition, the bill

appropriates $50,000 to the Executive Officer of the Governor to provide staff and administrative support to the Emerging Technology Commission and to compensate commission members for per diem and travel expenses.

Technology transfer and licensing may provide a source of revenue for universities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 1900

Amendment No. 1

882028

CHAMBER ACTION

Senate | House

Senator Carlton moved the following amendment:

Senate Amendment

On page 10, lines 23-24, delete all of those lines

and insert: The sum of $50,000 is appropriated from nonrecurring general revenue to the Executive Office of the Governor

Bill No. SB 1900

Amendment No. 2 172086

CHAMBER ACTION

Senate | House

Senator Carlton moved the following amendment:

Senate Amendment (with title amendment)

On page 10 line 29 through page 11 line 7, delete all of said lines.

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

And the title is amended as follows:

On page 1, line 25, delete appropriations

and insert:

an appropriation

Bill No. SB 1900

Amendment No. 3

392808

CHAMBER ACTION

Senate | House

Senator Klein moved the following amendment:

Senate Amendment (with title amendment)

On page 11, between lines 7 and 8,

insert:

Section 5. Subsections (1) and (3) of section 1004.55, Florida Statutes, are amended to read:

1004.55 Regional autism centers.--

(1) Seven ~~Six~~ regional autism centers are established to provide nonresidential resource and training services for persons of all ages and of all levels of intellectual functioning who have autism, as defined in s. 393.063; who have a pervasive developmental disorder that is not otherwise specified; who have an autistic-like disability; who have a dual sensory impairment; or who have a sensory impairment with other handicapping conditions. Each center shall be operationally and fiscally independent and shall provide services within its geographical region of the state. Each center shall coordinate services within and between state and local agencies and school districts but may not duplicate

1 services provided by those agencies or school districts. The
2 respective locations and service areas of the centers are:
3 (a) The Department of Communication Disorders at
4 Florida State University, which serves Bay, Calhoun, Escambia,
5 Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon,
6 Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla,
7 Walton, and Washington Counties.
8 (b) The College of Medicine at the University of
9 Florida, which serves Alachua, Bradford, Citrus, Columbia,
10 Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion,
11 Putnam, Suwannee, and Union Counties.
12 (c) The University of Florida Health Science Center at
13 Jacksonville, which serves Baker, Clay, Duval, Flagler,
14 Nassau, and St. Johns Counties.
15 (d) The Louis de la Parte Florida Mental Health
16 Institute at the University of South Florida, which serves
17 Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands,
18 Hillsborough, ~~Indian River,~~ Lee, Manatee, ~~Martin, Okeechobee,~~
19 Pasco, Pinellas, Polk, ~~St. Lucie,~~ and Sarasota Counties.
20 (e) The Mailman Center for Child Development at the
21 University of Miami, which serves Broward, Dade and~~,~~ Monroe~~,~~
22 ~~and Palm Beach~~ Counties.
23 (f) The College of Health and Public Affairs at the
24 University of Central Florida, which serves Brevard, Lake,
25 Orange, Osceola, Seminole, Sumter, and Volusia Counties.
26 (g) The Department of Exceptional Student Education at
27 Florida Atlantic University, which serves Palm Beach, Martin,
28 St. Lucie, Okeechobee, and Indian River Counties.
29 (3) To promote statewide planning and coordination, a
30 conference must be held annually for staff from each of the
31 seven ~~five~~ centers and representatives from each center's

1 constituency board. The purpose of the conference is to
2 facilitate coordination, networking, cross-training, and
3 feedback among the staffs and constituency boards of the
4 centers.
5
6 (Redesignate subsequent sections.)
7
8
9 ========== T I T L E A M E N D M E N T ==========
10 And the title is amended as follows:
11 On page 1, lines 2-25, delete those lines
12
13 and insert:
14 An act relating to public postsecondary
15 education and state universities; amending s.
16 1004.225, F.S.; deleting obsolete provisions;
17 providing for terms of members appointed to the
18 Emerging Technology Commission; providing for
19 filling any vacancy that occurs during the term
20 of a member of the commission; delaying the
21 expiration of the Florida Technology
22 Development Act; requiring Florida Research
23 Consortium, Inc., to report to the Emerging
24 Technology Commission within a specified
25 timeframe with respect to criteria for
26 reviewing proposals for a center of excellence;
27 requiring the commission to notify state
28 universities and the State Technology Office of
29 approved criteria for submitting a proposal for
30 a center of excellence by a specified date;
31 requiring the Emerging Technology Commission to

1 submit, by a specified date, a recommended plan
2 to the State Board of Education for
3 establishing or expanding one or more centers
4 of excellence; providing a timeframe for the
5 State Board of Education to approve a final
6 plan and report to the Governor and the
7 Legislature; providing appropriations; amending
8 s. 1004.55, F.S.; relocating regional autism
9 centers for certain counties;
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1280

SPONSOR: Children and Families Committee and Senator Peaden

SUBJECT: The Medicaid Program

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	Fav/CS
2.			AHS	Withdrawn
3.	Fabricant	Coburn	AP	
4.				
5.				
6.				

I. Summary:

This bill removes the developmental disabilities program from the Department of Children and Family Services (the department or DCF) and establishes the Agency for Persons with Disabilities (the agency or APD). The new agency is to be administratively housed within the department but established as a separate budget entity not subject to the control, supervision, or the direction of the department.

The director of the agency is to be appointed by the Governor to administer the affairs of the agency and is authorized to hire staff within available resources.

The agency has responsibility for the provision of all services for persons with developmental disabilities pursuant to chapter 393 of the Florida Statutes. However, fiscal management of the home and community-based waiver services will be managed by the Agency for Health Care Administration (AHCA). The new agency will retain the fiscal and programmatic management of the developmental disabilities institutions and those community-based services currently funded by general revenue.

Effective October 1, 2004, the developmental disabilities program and the developmental disabilities institutions programs in the department are to be transferred to the Agency for Persons with Disabilities by a Type 2 transfer. Prior to this date, the agency and the department in consultation with the Department of Management Services are to determine the number of positions and the resources within the department dedicated to the program to be transferred to the agency and which staff persons from the department are to provide administrative support.

The Director of the Agency for Persons with Disabilities is directed to work in consultation with the Secretaries of DCF and AHCA or their designees to develop a transition plan. This plan is to be submitted to the Executive Office of the Governor and the Legislature by September 1, 2004.

The agency is directed to enter into inter-agency agreements with AHCA and DCF to delineate the responsibilities of each organization. These agreements must also address the operational support of the new agency as well as reimbursement mechanisms. The bill also directs APD, AHCA, and DCF to work together to develop a plan to ensure all necessary electronic and paper-based data are accessible to the Medicaid program. Electronic records are to be moved to a new system compatible with the Florida Medicaid Management Information System.

A plan is to be developed by APD and AHCA for the relocation of the local APD staff to the AHCA area offices. Provisions of the plan are to address leases, reimbursement of collocation costs, office space, and other operating expenses. Further, effective October 1, 2004, APD is to enter into an agreement with DCF for the provision of day-to-day administrative and operational needs.

The Office of Program Policy and Government Accountability must identify and evaluate statewide entities receiving state funding to provide services for persons with disabilities. A report from OPPAGA is due to the Governor and the Legislature by December 2005.

This bill authorizes the department to conduct its eligibility determination functions with either department staff or through a contractual agreement. These functions are currently being provided by the economic self-sufficiency program office.

This committee substitute amends sections 20.19, 393.063, 393.064, 393.0655, 393.066, 393.0661, 393.068, 393.0695, 393.11, 393.13, 393.17, 393.22, 393.502, 408.301, 408.302, and 409.906 of the Florida Statutes. This committee substitute creates section 20.197 of the Florida Statutes. Sections 393.068 (8), 393.14, 393.165, 393.166, and 393.505 of the Florida Statutes are repealed.

This bill takes effect July 1, 2004.

II. Present Situation:

The Department of Children and Family Services

The mission of the Department of Children and Family Services is to work in partnership with local communities to help people be self sufficient and live in stable families and communities, and to deliver or provide for the delivery of all family services. The developmental disabilities program currently resides within the department.

The department is responsible for the delivery of diverse programs throughout the state of Florida. Program service areas include adult services, child care services, developmental disabilities, economic self-sufficiency services, family safety, mental health, refugee services, and substance abuse. These programs are directed by the Secretary at the headquarters level and administered in 14 separate districts or regions that are managed by a district administrator.

The Developmental Disabilities Program

Within the department, the developmental disabilities program provides support services to enable persons with developmental disabilities to live productive lives and achieve personal outcomes. The program has two main parts, developmental disabilities institutions[1] and community-based care. The program is administered through a central program office in Tallahassee, four state developmental disabilities institutions, and 14 district/regional developmental disabilities offices.

Most client services are provided contractually by community-based care providers and are paid for through the use of federal waivers (that are managed by the Agency for Health Care Administration) and general revenue. These services may include medical care, therapy, vocational training and employment, case management, residential and basic care, daily living assistance, transportation, and recreation.

In spite of significant appropriation increases, the program has a long list of clients who are waiting for services. At the Legislature's request, a program review conducted by the Office of Program Policy Analysis and Government Accountability (OPPAGA)[2] focused on the rising costs of the developmental disabilities program. An analysis of program expenditure data for FY 1996-97 through FY 2000-2001 found errors making it impossible for the department to accurately assess the number of services a client received or the average rate paid for the different units of service. Since this study, and at the direction of the Legislature, the department has redesigned the home and community-base waiver program and developed a methodology for standardized service rates. These initiatives were conducted to help the program contain expenditures and reduce the number of persons who were waiting to receive services.

Following the implementation of the standardized rate payment in July 2004, the department conducted a fiscal analysis of expenditures. Budget projections indicated the rate of spending would exceed the annual appropriation for the program. Based upon this analysis, the department implemented rate reductions.

Administration of Public Assistance Eligibility

The economic self-sufficiency (ESS) program of the department is responsible for determining eligibility for food stamps, Temporary Assistance for Needy Families (TANF), Medicaid, and refugee cash assistance. More than 7,367 individuals are employed by the ESS program who, during FY 2002-2003, processed more than 1.4 million eligibility applications and assisted more

[1] There are four state institutions operated by the developmental disabilities program. They include Sunland, in Jackson County, Tacachale, in Alachua County, Gulf Coast, in Lee County, and Landmark in Miami-Dade County. The developmental disabilities program also operates the Mentally Retarded Defendants Program that is located on the grounds of Florida State Hospital in Gadsden County. More than 3000 staff are employed at these sites.

[2] Legislative Options to Control Rising Developmental Disabilities Costs, Report No. 02-09, February 2002, Office of Program Policy Analysis and Government Accountability.

than 2.7 million clients.[3] The Florida Legislature has provided direction to the department in both 1997 and in 2003 to examine and begin pursuing the option of outsourcing the eligibility determination function for Medicaid, food stamps, and TANF.

In response to the 2003 legislative directive in the General Appropriations Act for 2003-2004 proviso language, the department has embarked upon a modernization initiative for the ESS program. This modernization initiative has focused on soliciting bids for most of the ESS eligibility determination functions with the goal of simplifying the ESS process and utilizing other innovations to create more efficiencies in the program such as a call/change center and internet innovations. The department has released the request for information to receive comments on the program requirements and the draft solicitation document. The anticipated contract execution date is July 2004. At this time, the department estimates a 5-year contract for approximately $1.2 billion (or $220 to $250 million per year). The department's plan for outsourcing eligibility determination includes the option of awarding a contract to a single vendor for statewide implementation. However the possibility using a single vendor may shift too much power to the vendor from the state, creating a disadvantage when negotiating future contracts. Also if the vendor failed, the state would be left with no capacity to provide the functions.

The employees of the department have been developing an employee plan for achieving the required efficiencies. The employees' plan will be compared with the selected private sector plan after the competitive procurement process and a decision will be made as to whether to contract with the private sector vendor or utilize the employees' plan.

III. Effect of Proposed Changes:

The bill moves the developmental disabilities program from the department by a Type 2 transfer and establishes the Agency for Persons with Disabilities (APD). This agency is to be administratively housed within the Department of Children and Family Services but established as a separate budget entity not subject to the control, supervision, or the direction of the department. A director for this agency is to be appointed by the Governor and is authorized to hire staff within appropriated resources.

The agency is to be responsible for the provision of all services for persons with developmental disabilities pursuant to chapter 393 of the Florida Statutes. The agency is to retain programmatic responsibilities for all programs and the fiscal management of the developmental disabilities institutions. However, fiscal management for the provision of waiver services will be in the Agency for Health Care Administration.

The Agency for Persons with Disabilities is directed to enter into inter-agency agreements with AHCA and DCF delineating certain specified responsibilities of each organization. These agreements will address the provision of operational support for the new agency as well as reimbursement mechanisms.

[3] *Economic Self-Sufficiency Eligibility Process: A Study in Conjunction with DCF Reengineering Initiatives,* Internal Audit of the Office of Inspector General of the Department of Children and Families, November 26, 2003.

Level 2 screening is required for certain positions and volunteers and must additionally include local criminal checks through local law enforcement agencies. Exceptions to these screening requirements are identified.

The bill provides clarifying language in certain sections, revises definitions, and repeals obsolete language.

The bill directs the Agency for Persons with Disabilities, AHCA, and DCF to work together to develop a plan ensuring all necessary electronic and paper-based data are accessible to the Medicaid Program. An agreement is to be developed with the department to provide the administrative and day-to-day operational support for the agency.

The Office of Program Policy and Government Accountability must identify and evaluate statewide entities receiving state funding to provide services for persons with developmental disabilities. A report from OPPAGA is due to the Governor and the Legislature by December 2005.

Section 1: Amends s. 20.19, F.S., removing the Developmental Disabilities program from the Department of Children and Families.

Section 2: Creates s. 20.197, F.S., establishing the Agency for Persons with Disabilities to be administratively housed within DCF. The agency is to be a separate budget entity not subject to the control, supervision, or direction of the department in any manner.

The director of the agency is to be appointed by and serve at the pleasure of the Governor. The director is required to administer the affairs of the agency and establish administrative units as needed. The director is also authorized to employ assistants, professional staff, and other employees, within appropriated resources, needed to discharge the powers and duties of the agency. The agency is responsible for the provision of all services pursuant to chapter 393, F.S., for persons with developmental disabilities. These responsibilities include the operation of all state institutional programs and the programmatic management of the Medicaid waiver programs. The agency is further directed to engage in other administrative activities deemed necessary to effectively and efficiently address the needs of clients who are served by the Agency for Persons with Disabilities.

The agency is directed to enter into an interagency agreement delineating the responsibilities of the Agency for Health Care Administration for:

- The terms and execution of contracts with Medicaid providers for the provision of services through Medicaid, including federally approved waiver programs,
- The billing, payment, and reconciliation of claims for Medicaid services to be reimbursed by the agency,
- The implementation of utilization management measures, including the prior authorization of services plans and the streamlining and consolidation of waivers services, to ensure the cost effective provision of needed Medicaid services, and

- A system of approving each client's plan of care to ensure that the services provided are necessary to prevent the client requiring services of an intermediate care facility for the developmentally disabled.

Section 3: Amends s. 393.063, F.S., *Definitions.* Deleting terms that are no longer used in the chapter: "active treatment," "developmental training facility," "rehabilitation workshop facility," and "supported employee." This section also establishes new definitions for the terms "agency," "day habilitation service," and "residential rehabilitation." Certain other definitions are clarified and updated.

Section 4: Amends s. 393.064(1), F.S., *prevention.* Deletes the requirement that the department identify prevention funding needs in its annual legislative budget request. The department reports this change will reduce the duplication of program services provided by children's medical services (responsible for early intervention program for persons 0 – 3 years of age) and the Developmental Disabilities Council (responsible for prevention/awareness programs).

Section 5: Amends s. 393.0655, F.S., *screening of direct service providers.* This section continues the requirement direct service providers receive a level 2 employment screening. The bill specifies identified positions and volunteers must receive this screening. Background screening must include local criminal checks through local law enforcement agencies. Exceptions to these screening requirements include:

- Volunteers assisting on an intermittent basis for fewer than 40 hours a month if the person is under the direct and constant supervision of persons meeting the screening requirements of this section;
- Physicians, nurses, or other professionals licensed and regulated by the Department of Health (DOH) who are providing services within their scope of licensed practice;
- Persons providing supports or services to an individual with developmental disabilities who are selected and paid by the individual or the individual's family; and
- Persons living with the direct services provider who are between the ages and 12 and 18 years who are only required to be screened for delinquency records.

Section 6: Amends s. 393.066, F.S., *community services and treatment for persons who are developmentally disabled.* This section:

- Deletes language requiring programs to be administered through the districts to serve all clients regardless of the setting in which they live.
- Specifies all elements of the community based services are to be made available and be provided consistently statewide rather than by district.
- Deletes language reflecting the intent of the Legislature for the department to prioritize appropriations for community-based services and the requirement the department's five year plan reflect this prioritization of individualized, community-based supports and services for consumers and their families.
- Directs the agency to provide supports and services, within available resources, to assist Medicaid waiver clients who pursue gainful employment.
- Deletes language authorizing the department to permit construction of a residential facility.
- Deletes language allowing the department to adopt rules to ensure compliance with federal laws or regulations that apply to services provided in s. 393.066, F.S.

Section 7: Amends s. 393.0661, F.S., *home and community-based services delivery and comprehensive redesign*. Removes directions to the department to include certain elements in the plan for system redesign. These tasks have been finalized.

The agency is directed to utilize a valid and reliable assessment instrument to identify the support needs of clients. The agency is authorized to contract with an external vendor or to use support coordinators to complete the client assessment if the proper safeguards and training have been developed to ensure inter-rater reliability. The agency may, with the concurrence of AHCA, contract for services to determine the medical necessity of services and to establish individualized budgets for clients.

Section 8: Amends subsections (1) and (2) of section 393.068, F.S., relating to the family care program. This section:

- Deletes language recognizing the importance of family support in the long range success of deinstitutionalization and that core elements of caring for an individual who is developmentally disabled is support and flexibility of coordinating support and services.
- Specifies the services and supports authorized under this program are to be contingent upon the availability of resources, strikes a redundant reference to parent training and respite care and adds supported employment to the list of authorized services.
- Deletes language prioritizing appropriations for family-based services and supports for persons with developmental disabilities and the requirement for this priority to be reflected in the department's five year plan. The department reports that five year plans are no longer developed.

Section 9: Amends s. 393.0695, F.S., *provision of in-home subsidies*. This section deletes obsolete provisions and changes references from the department to the agency.

Section 10: Amends s. 393.11, F.S., *involuntary admission to residential services.* This section deletes obsolete provisions and changes references from the department to the agency.

Section 11: Amends s. 393.13, F.S., *personal treatment of persons who are developmentally disabled.* It is legislative intent for persons with disabilities to receive services based on normalization principles. Therefore the bill reduces the use of sheltered workshops and other non-competitive employment activities and promote opportunities for gainful employment for persons who seek such employment. The bill also deletes the requirement to develop a plan for implementation of meaningful treatment programs.

Section 12: Amends s. 393.17, F.S., *behavioral programs; certification of behavior analysts; fees.* Current language requiring the department to implement and manage a behavior analyst certification program and reflecting the minimum requirements for certification is deleted. The proposed language authorizes the agency to recognize certification of behavior analysts awarded by a non-profit corporation if the corporation's work has the support of the Association for Behavior Analysis International. This change may result in persons becoming a certified behavior analyst, who do not meet the requirements currently established in rule which are to ensure that qualified persons oversee the design and implementation of programs for persons with developmental disabilities.

Section 13: Amends s. 393.22, F.S., *transfer of appropriations; barriers to services; financial commitment to programs*. This legislation deletes:

- Provisions prohibiting the transferring of funding from the developmental services program if the Secretary determines such a transfer will not adversely effect treatment programs; and
- Provisions prohibiting the reduction of an ongoing commitment of funding to services for persons with mental retardation, cerebral palsy, autism, or spina bifida because of the development of programs for other disabilities.

Section 14: Amends s. 393.502, F.S., *family care councils*. This section:

- Specifies a family care council will be established in each service area of the agency rather than each district.
- Deletes the provisions for appointments to the council, when the Governor does not act on a recommendation for membership within a specified time period and deletes the terms of membership.

Section 15: Amends s. 408.301, F.S., *legislative findings.* This section deletes obsolete provisions and changes references from the department to the agency. The Department of Elder Affairs (DOEA) is included in this section as an example of clients with special needs. The bill further directs AHCA to include DOEA in the development of plans to assure that the needs of special clients are met.

Section 16: Amends s. 408.302, F.S., *interagency agreement.* This section deletes obsolete provisions requiring AHCA to enter into interagency agreements with APD and DOEA, to assure coordination and to provide for these agencies' prior approval of AHCA rules impacting their respective missions.

Section 17: Amends s. 409.906, F.S., and deletes language no longer used relating to the Project AIDS Care Waiver.

Section 18: Repeals ss. 393.068(8), 393.14, 393.165, and 393.505, of the Florida Statutes:

- Subsection 393.068(8), F.S., a receiver may be held personally liable only for the receiver's own gross negligence, intentional acts, or breach of fiduciary duty;
- Section 393.14, F.S., specifies the requirements of a multiyear plan;
- Section 393.165, F.S., non-institutional home and community-based services are cost effective and an appropriate alternative to institutional care; and
- Section 393.505, F.S., authorizes the department to initiate projects to demonstrate the effectiveness of day treatment services.

Section 19: Effective October 1, 2004, the developmental disabilities program and the developmental disabilities institutions programs in the department are transferred to the Agency for Persons with Disabilities by a Type 2 transfer pursuant to s. 20.06, F.S. Prior to this date, the agency and the department in consultation with the Department of Management Services are to determine the number of positions and the resources of the developmental disabilities program to be transferred to the new agency and determine who within the department will provide administrative support.

The director of APD is directed to consult with the Secretaries for DCF and AHCA or their designees to prepare a transition plan to address at a minimum: building leases, information support systems, cash ownership and transfer, administrative support functions, inventory, expenditure transfers, budget authority and positions, and certifications forward. This plan is to be submitted by September 1, 2004, to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This bill directs APD and DCF to work with AHCA to develop a plan ensuring all of the necessary electronic and paper-based data of the developmental disabilities program are accessible to the Medicaid program. All electronic records are to be moved to a new data system compatible with the Florida Medicaid Management Information System.

The Agency for Persons with Disabilities and AHCA are directed to develop a plan for the orderly relocation of the non-central office staff of APD to the area offices of AHCA. This plan is to include a schedule taking into consideration the availability of space, the expiration of current leases and the initiation of new leases to accommodate the relocated staff as well as appropriate reimbursement for collation costs, office space, and other operating expenses.

Effective October 1, 2004, the Agency for Persons with Disabilities is to enter into an interagency agreement with DCF for the provision of day-to-day administrative and operational needs until the agency no longer requires the provision of services through such an agreement. These administrative and operational services include, but are not limited to, personnel, purchasing, information technology support, legal support, and other related services.

Any pending judicial or administrative proceedings on October 30, 2004, are not affected by this act. The Agency for Persons with Disabilities is to be substituted as the real party of interest in respect to any pending proceedings.

Section 20: Directs OPPAGA to identify and evaluate statewide entities receiving state funding to address the interests of, but not directly serve persons with disabilities. This analysis is to provide findings and recommendations relating to:

- The extent to which the activities of these entities are coordinated;
- The similarities and differences in the organizational missions of these entities; and
- The amount of state funds provided to these entities for the purpose of addressing the interests of persons with disabilities, the uses of these funds, and whether they duplicate the efforts of other private or federally funded entities.

A report is to be completed and provided to the Governor and the Legislature by December 2005.

Section 21-46: Changes references from department to agency.

Section 47: Authorizes the department to provide its eligibility determination functions with either department staff or through a contractual agreement with one or more private vendors. These functions are currently provided by the economic self-sufficiency services program office. The following restrictions apply:

- A contract may not include a geographic area larger than a combined seven districts or a combined three zones without the prior approval of the Legislative Budget Commission (with the exception of information technology).
- Jobs made available through any contract must be located within the United States and preference must be given to contractors providing jobs to residents of this state; and
- Department employees are to provide the eligibility determination functions in at least two districts or one zone.

This section is to take effect upon becoming law.

Section 48: Establishes an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The Governor and the Department of Children and Family Services report this bill will have no fiscal impact. However, the organizational structure proposed for the new agency includes the positions of deputy director of staff, general counsel, senior attorney, inspector general, and a deputy director of operations and their staffs. Offices for legislative affairs, communications, administrative services, and information technology are also proposed. These offices and positions are not currently established in the developmental disabilities program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In the FY 2004-05 Governor's budget request (Issue #33G0110) includes a reduction of $2,225,097 ($1,435,963 GR) for zone administration efficiencies. If this bill becomes law, APD will not benefit from the zone administration efficiencies.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 1280

Amendment No. 1 974302

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 4, lines 22 through 27, delete those lines

and insert:

3. Domestic Violence ~~Developmental Disabilities~~.
4. Economic Self-Sufficiency Services.
5. Family Safety.
6. Mental Health.
7. Refugee Services.
8. Substance Abuse.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1982

SPONSOR: Finance and Taxation Committee, Communications & Public Utilities Committee and Senator Posey

SUBJECT: Electric Transmission Line Siting

DATE: April 20, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	Herrin	Yeatman	CP	Favorable
3.	Branning	Kiger	NR	Favorable
4.	Fournier	Johansen	FT	Fav/CS
5.			AGG	Withdrawn
6.	Deloach	Coburn	AP	

I. Summary:

The Committee Substitute for Committee Substitute for Senate Bill 1982:

- Changes the maximum width of the corridor within which a transmission line right-of-way is to be located from one mile to one-half mile, and provides that this includes maintenance and access roads.
- Includes in the definition of "electric utility" those entities created and approved pursuant to the Federal Energy Regulatory Commission's Order 2000, e.g., Regional Transmission Organizations, Independent System Operators, or similar entities.
- Revises the definitions of "completeness" to include the current definition of "sufficiency" to reflect that the Department of Environmental Protection will now be determining sufficiency of filings at the time of determining their completeness.
- Revises the exemption standard of "established rights-of-way."
- Revises and shortens the certification process.
- Creates a mechanism for cancellation of the certification hearing if all parties stipulate that there are no disputed issues of fact.
- Increases the amount of the application fee and revises the percentages allocable to the Department of Environmental Protection and the Division of Administrative Hearings.
- Imposes fire safety standards on hydrogen fueling stations, and instructs the State Fire Marshal to adopt appropriate national standards

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 403.52, 403.521, 403.522, 403.523, 403.524, 403.525, 403.5251, 403.5252, 403.5253, 403.526, 403.527, 403.5271, 403.5272, 403.5275, 403.529, 403.531, 403.5312, 403.5317, 403.5363, 303.5365, 403.537, 373.441, 403.061, 403.0876, 403.809, and 633.022.

II. Present Situation:

The Transmission Line Siting Act (TLSA), administered by the Department of Environmental Protection (DEP), provides for the determination of the location of electric power lines which are 230 kilovolts or greater, and are 15 miles or more in length, or cross a county line. Currently, applicants under the TLSA may request that corridors of up to a mile wide be approved, rather than designating a precise right-of-way corridor. Specific location of right-of-way and intermediate substations are determined in the post-certification process.

The TLSA is a highly procedural act. The process includes a determination of need by the Public Service Commission (PSC), a mandatory certification hearing by an administrative law judge, with ultimate approval or denial authority vested in the Siting Board (Governor and Cabinet). The DEP coordinates this process. Since an administrative law judge is involved from the beginning, the process is handled as though in litigation and requires the exchange of most documents as legal filings. Generally, persons wishing to become formally involved in the process must become parties to the proceeding. Opportunities exist for public comment, but those opportunities are largely dependent upon the degree of involvement by a particular local government.

According to DEP, the number of persons and agencies that may be affected by one of these project certification reviews can be very large. A minimal project, assuming the corridor applied for is one mile wide and 15 miles in length, could cover 15 square miles. Moreover, much longer projects are the norm. The TLSA includes a process where parties may propose alternate corridors to the one proposed by the applicant. Subsequently, more persons may become affected and have the right to be parties to the proceeding. The scope of possible routes to be evaluated roughly tripled in one previous case because of alternate proposals that entailed the review of nearly 800 miles of corridors. As a result, public participation is an important feature of the TLSA.

Currently, an administrative hearing, called a "certification hearing," is held as a mandatory feature of the TLSA. This hearing is held whether or not there are any controversial issues or interveners in the case. This procedure requires the expenditure of significant resources by the applicants and the state. Also, the TLSA has several provisions that unnecessarily add time to the process, which includes a bifurcated completeness and sufficiency review of the application.

Application fees under the TLSA are designed to cover the cost of reviews by the large number of agencies that may be involved. According to DEP, this presents bookkeeping challenges in reimbursing the affected agencies. Additionally, DEP states that if the application is withdrawn, the unexpended portion of the fee is refundable. The later in the process the refund occurs, the more bookkeeping is involved. DEP states that in other programs, permitting-type fees are not refundable. In addition, no fees are received for the review of alternate corridors, although the alternates may be the routes ultimately certified. Finally, the application fee was last increased in 1993.

According to the commission, the Federal Energy Regulatory Commission (FERC) has issued orders relating to "Regional Transmission Organizations" (RTOs), Independent System Operators (ISOs), or their counterparts. These orders provide for the consolidation of utility management of transmission systems into large networks. The TLSA does not appear to allow applications submitted by RTOs, ISOs, or their counterparts.

Section 633.022, F.S., provides that certain buildings or structures should be subject to fire safety standards, and directs the State Fire Marshal to establish these standards.

III. Effect of Proposed Changes:

Section 1 amends s. 403.52, F.S., to change the short title of the act, the Transmission Line Siting Act, to the Florida Electric Transmission Line Siting Act.

Section 2 amends s. 403.521, F.S., to clarify that the act applies to electric transmission lines, not to transmission pipelines for natural gas, gasoline, oil, or other substances. It creates a legislative recognition that electric transmission lines have an effect on electric power system reliability.

Section 3 amends s. 403.522, F.S., which provides definitions relating to the act. The most significant changes include:

- Changing the maximum width of the corridor within which a transmission line right-of-way is to be located from one mile to one-half mile, and providing that this includes maintenance and access roads.
- Including in the definition of "electric utility" those entities created and approved pursuant to the Federal Energy Regulatory Commission's Order 2000, e.g., Regional Transmission Organizations, Independent System Operators, or similar entities.
- Revising the definitions of "completeness" to include the current definition of "sufficiency" to reflect that DEP will now be determining sufficiency of filings at the time of determining their completeness.

Section 4 amends s. 403.523, F.S., relating to DEP powers and duties, to allow DEP to administer and manage the terms and conditions of the certification order for the life of the facility. The bill also provides that DEP will act as the clerk of the Siting Board.

Section 5 amends s. 403.524, F.S., relating to applicability and exemptions. Transmission line development in which all construction is limited to "established rights-of-ways" is exempt from the act. For rights-of-way other than for transmission lines, the term includes rights-of-way created both before and after October 1, 1983. For transmission rights-of-way, the term includes only those rights-of-way created before that date. The bill changes this, so that "established rights-of-way" includes rights-of-way created for roads, highways, railroads, gas, water, oil, electricity, sewage, or any other public purpose which were established at any time. However, for transmission line rights-of-way, established rights-of-way must have been established at least five years prior to construction of the new line. Also, if an established transmission line right-of-way is relocated to accommodate a public project, the date of establishment of the original transmission right-of-way continues to apply to the relocation project for purposes of the exemption.

Section 6 amends s. 403.525, F.S., relating to administrative law judges, moving the provision on the administrative law judge's powers and duties from s. 403.527(6), F.S., to this section.

Section 7 amends s. 403.5251, F.S., relating to distribution of the application and schedules. The bill establishes the formal date of application filing and revises related process deadlines. This date marks the commencement of the certification review process and other deadlines are determined

based upon this established date. The bill establishes notice requirements and also provides for electronic filing of the application.

Section 8 amends s. 403.5252, F.S., relating to the determination of completeness. The bill consolidates the sufficiency provisions that determine whether adequate information to review the application with the completeness review provisions that determine whether the application contains all the required information. This finishes these two determinations at least one week earlier than under current law. (Current law is 15 days after DEP receives an application, DEP determines the completeness; 7 days after this determination, the applicant must make distribution; and 45 days after distribution, DEP must determine sufficiency; a total of 67 days. Under the bill, 15 days after filing the application, the applicant must distribute copies; and 45 days after distribution DEP must determine completeness, which now includes sufficiency; a total of 60 days.)

Section 9 repeals s. 403.5253, F.S. relating to the sufficiency determination. This is made a part of the determination of completeness discussed in Section 8 above.

Section 10 amends s. 403.526, F.S., relating to preliminary statements, reports and project impact analyses. The bill adds the Department of Transportation (DOT) to the list of agencies that must file reports as to the impact of the proposed transmission line. The bill also authorizes any other agency within the jurisdiction of which the proposed transmission line and corridor would be located to prepare a report on the impact on matters within that agency's jurisdiction.

Section 11 amends s. 403.527, F.S., relating to certification hearings, notice, and parties. The bill moves all public notice requirements, as revised, to newly created s. 403.5363, F.S., section 19 of the bill. Such notice must be published at least 65 days before the date set for the certification hearing.

The bill creates an order of presentation of arguments and evidence at the hearing, unless changed by the administrative law judge (ALJ). The bill provides that when appropriate any person may be given an opportunity to present oral or written communication to the ALJ. If the ALJ proposes to consider such a communication, all parties shall be given an opportunity to cross-examine, challenge, or rebut such communications.

The bill shortens the time within which the ALJ must issue a recommended order by 15 days.

The bill adds a mechanism for cancellation of the certification hearing if all parties stipulate that there are no disputed issues of fact. By this cancellation, the ALJ would relinquish jurisdiction to DEP and it would prepare the recommended order for consideration by the Siting Board. DEP states that this option shortens the process time by a month or more and saves money for the applicant and the agencies.

Section 12 amends s. 403.5271, F.S., relating to alternate corridors to conform with changes to other statutes. It also provides that the party proposing an alternative corridor has the burden of proof on that corridor.

Section 13 amends s. 403.5272, F.S., relating to informational public meetings. Existing statutory language limits the authority to conduct early public meetings to local governments. The bill authorizes regional planning councils to conduct these public meetings.

Section 14 amends s. 403.5275, F. S., relating to application amendments. The bill clarifies that amendments must be made prior to certification.

Section 15 amends s. 403.529, F.S., relating to final disposition of the application. The bill amends references to the recommended order to clarify that it may come from the DEP. This conforms to section 11 of the bill that amends s. 403.527, F.S., allowing the ALJ to relinquish jurisdiction to the DEP to make the recommended order.

Section 16 amends s. 403.531, F.S., relating to effect of certification. The bill conforms the section to changes made elsewhere in the bill.

Section 17 amends s. 403.5312, F.S., relating to filing of notice of certified corridor. The bill requires that after a transmission line route is certified, the applicant must file notice of the certified route for a transmission line with DEP.

Section 18 creates s. 403.5317, F.S., to provide for post-certification amendments. If, subsequent to certification by the board, a licensee proposes any material change to the application as certified, the licensee must submit to the DEP a written request for amendment and description of the proposed change to the application. If the DEP concludes that the change would not require a modification of the conditions of certification, it is to notify, in writing, the licensee, all agencies, and all parties of the approval of the proposed amendment. If the DEP concludes that the change would require a modification of the conditions of certification, it is to notify the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.5315, F.S.

Section 19 creates s. 403.5363, F.S., relating to public notices and requirements. The bill moves these provisions from s. 403.527, F.S., to this section, with modifications. Most importantly, current law requires a reminder notice no more than 10 days before the certification hearing, requires that published notices be of specified size, and requires specified content. The department is authorized to adopt rules specifying the content of the notices required in this section, but this provision is in current law in addition to specific content requirements.

Section 20 amends s. 403.5365, F.S., relating to fees. The bill increases the amount of the application fee from $100,000 to $150,000. The bill also changes the allocation of the application fee. Currently DEP retains 60 percent of the fee to cover the costs of review and monitoring construction and operation of the line. The bill reduces this to 50 percent. Currently, the Division of Administrative Hearings (DOAH) receives 20 percent. The bill reduces the percentage for DOAH and directs five percent for initial expenses and an additional 10 percent if an administrative certification hearing is held. Agencies that participated in the certification process may request to have their expenses reimbursed, with the process being clarified. The bill also revises provisions on refund upon withdrawal of a certification application. Current law provides that upon withdrawal, any remaining sums are to be refunded. The bill provides that if the withdrawal is made before the initial determination of completeness, one-half of the fee will be refunded.

Section 21 repeals s. 403.5369, F.S. relating to applicability. This section is not part of the TLSA, but is worded as if it were. Moreover, it contains outdated references.

Section 22 amends s. 403.537, F.S., relating to determination of need for a transmission line. The bill changes the deadline for publication of notice of the PSC hearing to determine the need for the proposed transmission line to 21 days before the date set for the hearing, from 45 days.

Sections 23, 24, 25, and 26 amend ss. 373.411(3), 403.061(30), 403.0876(3)(a), and 403.809(3)(b), F.S., to conform references to the re-named Florida Electric Transmission Line Siting Act.

Section 27 adds hydrogen fueling stations to the list of buildings and structures that are subject to fire safety standards reflecting their special needs, and directs the State Fire Marshall to adopt standards established by the National Fire Protection Association for these facilities.

Section 28 provides that the bill takes 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. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill increases the application fee by $50,000.

B. Private Sector Impact:

The bill increases the application fee to be paid by electric utilities by $50,000.

C. Government Sector Impact:

Although the bill decreases the percentages of the application fee that DEP and DOAH will receive, the total amount each agency will receive will increase due to the fee increase. According to DEP, the fee increase will also provide more resources to reimburse other agencies and local governments for their expenses.

The Division of State Fire Marshal estimates that the costs for rulemaking, development of fire safety standards and training related to hydrogen fueling stations is estimated to be $150,000. It is estimated the cost may be absorbed within existing resources.

VI. Technical Deficiencies:

The bill moves the current provisions on public notice of matters relating to the certification of transmission lines from s. 403.527, F.S., to newly-created s. 403.5363, F.S. The bill also modifies these provisions, most notably by deleting current requirements: that a reminder notice be published no more than 10 days before the certification hearing, that published notices be of specified size, and that published notices contain specified content. While the bill does authorize DEP to adopt rules specifying the content of the notices, this provision is in current law in addition to specific content requirements. Given that DEP states that public participation is an important feature of the TLSA, thought should be given to retaining these current requirements.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: PCS/CS/SB 2184

SPONSOR: Appropriations Subcommittee on Education, Education Committee, and Senator Miller

SUBJECT: Student Achievement

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	O'Farrell	ED	Favorable/CS
2.	Armstrong	Coburn	AP	
3.				
4.				
5.				
6.				

I. Summary:

The proposed committee substitute creates the Florida Partnership for Minority and Underrepresented Student Achievement Act to allow the Department of Education (DOE) to contract for the operation of the partnership. The mission of the partnership will be to prepare students for postsecondary success and opportunity, with particular emphasis on minority and underrepresented students. The bill provides legislative intent, PSAT/NMSQT and Preliminary ACT (PLAN) mandatory 10th grade testing, funding for the testing to be contingent upon an appropriation, and the purposes and duties of the Partnership and the DOE, which include the provision of teacher training and professional development for advanced placement or other advanced courses. The bill requires evaluation reports by the Partnership to the DOE and indicates that funding for the Partnership will also be contingent upon an appropriation. The bill requires the DOE to provide the Partnership with access to specific data, including teacher professional development information and student-level data on student progress. The bill also requires the Partnership to protect the confidentiality of information.

This bill creates s. 1007.35, Florida Statutes.

The effective date of the act is July 1, 2004.

II. Present Situation:

The state, through proviso in the General Appropriations Act (GAA), provides funding for all 10th grade students to take the College Board's PSAT or the American College Testing Program's Preliminary ACT (PLAN).[1] Proviso language states that test results will provide

[1] See Chapter 2003-397, Specific Appropriation 109.

each high school with a database of student assessment data for use by guidance counselors to identify students who are ready or who need additional work to be prepared to enroll and be successful in advanced placement and other higher level college preparatory courses. Proviso also directs school districts to submit documentation of the number of students taking examinations to the Commissioner of Education.

According to the American College Testing Program:[2]

- the Preliminary ACT (PLAN®) is a comprehensive guidance resource that helps students measure their current academic development, explore career/training options, and make plans for the remaining years of high school and post-graduation years.

According to the College Board:

- the PSAT/NMSQT (Preliminary SAT®/National Merit Scholarship Qualifying Test) contains actual SAT questions and gives the student a chance to qualify for scholarship and recognition programs.

	Number of Grade 10 Students	**Number taking PSAT**	**Percentage of 10th Graders taking PSAT**	**Number taking PLAN**	**Percentage of 10th Graders taking PLAN**
Fall 1999	177,234	36,682	20.7	6,725	3.8
Fall 2000	170,385	77,773	45.6	24,020	14.1
Fall 2001	172,870	87,684	50.7	17,831	10.3
Fall 2002	184,264	99,922	54.2	15,561	8.4

Number of Grade 10 Students Taking the PSAT and/or the Preliminary ACT (PLAN) in Florida Public Schools

According to DOE, almost all 10th graders (187,737 students) took either the PSAT or Preliminary ACT (PLAN) in the fall of 2003.

College Board

The College Board is a non-profit membership association. The Advanced Placement Program® is a cooperative educational endeavor between secondary schools, colleges, and universities that provides high school students with the opportunity to take college-level courses in a high school setting.

The College Board has formed a partnership with the State of Florida (the Florida Partnership) that is part of the Governor's One Florida Plan and includes the following goals:[3]

- Raising student achievement in middle schools through high schools.
- Improving college readiness by reaching out to the middle schools to start early college preparation, improve academic skills, and familiarize students with college admission tests.
- Building rigorous academic curriculum, including more access for all students to AP® classes and other challenging courses.
- Providing training in concept knowledge and instructional skills to teachers and administrators.

[2] American College Testing is a private, not-for-profit organization governed by educators.
[3] See http://www.collegeboard.com/about/association/florida.html

- Encouraging parental involvement to inspire more students to challenge themselves academically, and prepare for college and careers.
- Measuring and evaluating results, encouraging feedback and dialogue among educators to continue improving the quality of education for all students in schools in Florida.

The partnership's components include tutoring, professional development for teachers, SAT® preparation, early identification of potential Advanced Placement students, and information for families to help prepare their students for college. The Florida Partnership also offers workshops to Florida public school educators. AP® Summer Institutes provide teachers with an overview of the curriculum, structure, and content of specific AP courses. AP® Summer Institutes are open to all educators.[4]

The National Merit Scholarship Corporation (NMSC)
The NMSC is a not-for-profit organization that conducts two academic competitions for recognition and undergraduate scholarships, the National Merit® Scholarship Program and the National Achievement℠ Scholarship Program. Each year about 55,000 high school students are honored in NMSC programs and more than 10,500 participants receive scholarships worth a total of $50 million for college undergraduate study.[5] Although NMSC underwrites more than a quarter of the scholarships with its own funds, most awards are provided by hundreds of independent sponsor organizations.[6]

Florida Students/Advanced Placement (AP)
According to the DOE:

- Increasing numbers of Florida's high school students are taking and passing AP exams.
- Individual Florida students are also taking exams in more subject areas.
- Although the estimated number of Florida public high school graduates increased by only 3 percent in 2003, the number of AP test takers increased by 19 percent. Nationwide the number of AP test takers increased by 10 percent.
- Increases in minority students were even higher: the number of Hispanic and African-American test takers jumped by more than 25 percent; the number of Hispanic test takers in the U.S. increased by 16 percent, and the number of African-American test takers increased by 13 percent.[7]

According to the DOE, the agency provides incentive funds to schools for AP scores at levels 3-5 and most public high schools currently offer AP courses to some extent.

III. Effect of Proposed Changes:

The bill creates s.1007.35, F.S., the Florida Partnership for Minority and Underrepresented Student Achievement Act to allow the DOE to contract with an entity for the operation of the Florida Partnership for Minority and Underrepresented Student Achievement (partnership). The partnership's mission is to prepare, inspire, and connect students to postsecondary success and opportunity, with a particular focus on minority students and students who are underrepresented in postsecondary education.

[4] See http://www.collegeboard.com/prod_downloads/floridapartnership/workshops/workshops_springsum04.pdf
[5] See http://www.nationalmerit.org/
[6] Ibid.
[7] *"SAT Trends, Florida and the Nation,"* Florida Department of Education, August 2003.

Partnership
The partnership's duties include the following:

- Providing teacher training and professional development to enable teachers of AP or other advanced courses to have the necessary content knowledge and instructional skills to prepare students for success on AP or other advanced course examinations and mastery of postsecondary course content.
- Providing middle school teachers and administrators professional development to enable them to educate middle school students at the level necessary to prepare the students to enter high school ready to participate in advanced courses.
- Providing teacher training and materials aligned with the Sunshine State Standards and consistent with best theory and practice regarding multiple learning styles and research.
- Providing assessment of individual strengths and weaknesses on potential success in AP or other advanced courses and readiness for college.
- Providing college entrance exam preparation through a variety of means.
- Providing a plan that includes communication and coordination of efforts with the Florida Virtual School's on-line AP or other advanced courses.

Curriculum materials must be based on current, accepted, and essential academic knowledge. Materials for prerequisite courses should at least address the skills assessed on the FCAT. The bill also requires the Partnership to protect the confidentiality of student information in a manner that comports with 20 U.S.C. s. 1232g and s. 1002.22, F.S. The DOE, in providing access to the partnership for teacher and student data, must comply with the provisions of ss. 119.0721, F.S., to maintain the confidentiality of social security numbers.[8]

The partnership must annually submit to DOE a report evaluating the effectiveness of the services and activities, based on the following:

- effectiveness at raising student achievement;
- increasing the number of AP or other advanced course examinations in low-performing middle and high schools;
- number of middle and high school teachers trained;
- effectiveness of the teacher training;
- measures of postsecondary readiness of the students affected by the program;
- levels of participation in 10th-grade PSAT/NMSQT or Preliminary ACT (PLAN) testing; and
- measures of student, parent, and teacher satisfaction with the partnership's services.

Department of Education (DOE)/State Board of Education
The DOE responsibilities include the following:

- contributing to the evaluation process by providing access to student and teacher information necessary to match against databases containing teacher professional

[8] Section 119.0721, F.S., establishes a public records exemption for social security numbers in the possession of state agencies, its agents, employees, or contractors. Social security numbers may be disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors must maintain the confidential and exempt status of such numbers.

development data and databases containing assessment data for the PSAT/NMSQT, SAT, and AP and other appropriate measures;
- providing available student-level data on student progress from middle school through high school and into college and the workforce, in order to support longitudinal studies;
- helping the partnership in communicating opportunities and priorities to administrators, teachers, and counselors whenever possible; and
- approving an annual plan of delivery of services for the next academic year.

The bill provides rulemaking authority to the State Board of Education.

Public High Schools
Each high public school, including Department of Juvenile Justice schools, alternative sites, and centers, must provide for administering the PSAT/NMSQT or Preliminary ACT (PLAN) to all enrolled 10th-grade students. The bill requires written notice to parents that provides an opportunity to exempt students from the tests.

School Districts
Districts must select either the PSAT/NMSQT or Preliminary ACT (PLAN) for district-wide administration.

The bill also provides that the act does not prohibit any organization from serving as a partner with the state to improve college readiness for students.

Section 2. The effective date of the act is July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires the participating partner to match at least one-third of the allocation provided to the partnership in the GAA in materials and services to the program. The

DOE indicated that many of the professional development activities contained in the bill are already a part of the College Board's services.

C. Government Sector Impact:

Annual funding for the PSAT/NMSQT or Preliminary ACT (PLAN) for all 10th-grade students and for the partnership is contingent upon funds provided in the General Appropriations Act (GAA). Also, the bill allows DOE to contract for the operation of the Florida Partnership for Minority and Underrepresented Student Achievement.

For 2003-2004, the General Appropriations Act provided $5.5 million for the Florida Partnership.[9] $1.6 million was also provided for the statewide administration to all 10th grade students of the preliminary SAT or ACT college entrance examinations. Proviso directs each school district to choose either the PSAT or ACT and requires the Department of Education to pay the cost of the preliminary college entrance examinations directly to the providers.[10] DOE indicates that the agency's current legislative budget request for 2004-2005 for assessment includes $1.7 million for statewide administration of the college entrance exams; this amount is sufficient for the testing of all 10th grade students. According to the DOE, the current administration of these exams includes 98 percent of the students.

The DOE noted that some local school boards will need to support training and testing activities beyond their current commitment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

[9] Specific Appropriation 70, Chapter 2003-397, L.O.F. According to DOE, these funds are a part of the agency's assessment budget.
[10] According to DOE, 29 school districts currently choose the PLAN.

A bill to be entitled

An act relating to student achievement; creating s. 1007.35, F.S.; providing a popular name; providing legislative intent; creating the Florida Partnership for Minority and Underrepresented Student Achievement; providing purposes and duties of the partnership; providing duties of the Department of Education and the participating partner; requiring the partnership to submit an annual evaluation report to the department; providing for funding the partnership; authorizing the State Board of Education to adopt rules; providing an effective date.

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

Section 1. Section 1007.35, Florida Statutes, is created to read:

<u>1007.35 Florida Partnership for Minority and Underrepresented Student Achievement.--</u>

<u>(1) This section may be referred to by the popular name the "Florida Partnership for Minority and Underrepresented Student Achievement Act."</u>

<u>(2)(a) The Legislature recognizes the importance of not only access to college but also success in college for all students. It is the intent of the Legislature that every student enrolled in a public secondary school has access to high-quality, rigorous academics, with a particular focus on access to advanced courses.</u>

1 (b) It is the intent of the Legislature to provide
2 assistance to all public secondary schools, with a primary
3 focus on low-performing middle and high schools.
4 (c) It is the intent of the Legislature that the
5 partnership created in this section accomplish its mission
6 primarily through strengthening the content knowledge of
7 teachers and providing instructional resources, including
8 materials and strategies, which enable teachers to provide
9 instruction to students who have diverse learning styles.
10 (3) There is created the Florida Partnership for
11 Minority and Underrepresented Student Achievement. The
12 Department of Education may contract for operation of the
13 partnership.
14 (4) The mission of the partnership is to prepare,
15 inspire, and connect students to postsecondary success and
16 opportunity, with a particular focus on minority students and
17 students who are underrepresented in postsecondary education.
18 (5) Each public high school, including, but not
19 limited to, schools and alternative sites and centers of the
20 Department of Juvenile Justice, shall provide for the
21 administration of the Preliminary SAT/National Merit
22 Scholarship Qualifying Test (PSAT/NMSQT), or Preliminary ACT
23 (PLAN) to all enrolled 10th-grade students. However, a written
24 notice shall be provided to each parent that shall include the
25 opportunity to exempt his or her child from taking the
26 PSAT/NMSQT or PLAN.
27 (a) Test results will provide each high school with a
28 database of student assessment data which guidance counselors
29 will use to identify students who are prepared or who need
30 additional work to be prepared to enroll and be successful in
31 AP courses or other advanced high school courses.

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

1 (b) Funding for the PSAT/NMSQT or PLAN for all
2 10th-grade students shall be contingent upon annual funding in
3 the General Appropriations Act.
4 (c) Public school districts must choose either the
5 PSAT/NMSQT or PLAN for district-wide administration.
6 (6) The partnership shall:
7 (a) Provide teacher training and professional
8 development to enable teachers of AP or other advanced courses
9 to have the necessary content knowledge and instructional
10 skills to prepare students for success on AP or other advanced
11 course examinations and mastery of postsecondary course
12 content.
13 (b) Provide to middle school teachers and
14 administrators professional development that will enable them
15 to educate middle school students at the level necessary to
16 prepare the students to enter high school ready to participate
17 in advanced courses.
18 (c) Provide teacher training and materials that are
19 aligned with the Sunshine State Standards and are consistent
20 with best theory and practice regarding multiple learning
21 styles and research on learning, instructional strategies,
22 instructional design, and classroom assessment. Curriculum
23 materials must be based on current, accepted, and essential
24 academic knowledge. Materials for prerequisite courses should,
25 at a minimum, address the skills assessed on the Florida
26 Comprehensive Assessment Test (FCAT).
27 (d) Provide assessment of individual strengths and
28 weaknesses as related to potential success in AP or other
29 advanced courses and readiness for college.
30 (e) Provide college entrance exam preparation through
31 a variety of means that may include, but are not limited to,

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

1 training teachers to provide courses at schools; training
2 community organizations to provide courses at community
3 centers, faith-based organizations, and businesses; and
4 providing on-line courses.
5 (f) Consider ways to incorporate community colleges in
6 the mission of preparing all students for postsecondary
7 success.
8 (g) Provide a plan for communication and coordination
9 of efforts with the Florida Virtual School's provision of
10 on-line AP or other advanced courses.
11 (h) Provide a plan of communication which includes,
12 but need not be limited to, disseminating to parents materials
13 that emphasize the importance of AP or other advanced courses
14 to a student's ability to gain access to and to succeed in
15 postsecondary education and materials that emphasize the
16 importance of the PSAT/NMSQT or PLAN, which provide diagnostic
17 feedback on skills and relate student scores to the
18 probability of success on AP or other advanced course
19 examinations, and also the dissemination of such information
20 to students, teachers, counselors, administrators, districts,
21 community colleges, and state universities. The department
22 shall assist the partnership in communicating opportunities
23 and priorities to administrators, teachers, and counselors
24 whenever possible.
25 (7) By May 31 of each year, the Department of
26 Education shall approve a plan of delivery of services for the
27 subsequent academic year.
28 (8)(a) By September 30 of each year, the partnership
29 shall submit to the department a report that contains an
30 evaluation of the effectiveness of the delivered services and
31 activities. Activities and services must be evaluated on their

effectiveness at raising student achievement and increasing the number of AP or other advanced course examinations in low-performing middle and high schools. Other indicators that must be addressed in the evaluation report include the number of middle and high school teachers trained, the effectiveness of the training, measures of postsecondary readiness of the students affected by the program, levels of participation in 10th-grade PSAT/NMSQT or PLAN testing, and measures of student, parent, and teacher awareness of and satisfaction with the services of the partnership.

(b) The department shall contribute to the evaluation process by providing access, consistent with s. 119.0721, to student and teacher information necessary to match against databases containing teacher professional development data and databases containing assessment data for the PSAT/NMSQT, SAT, AP, and other appropriate measures. The department shall also provide student-level data on student progress from middle school through high school and into college and the workforce, if available, in order to support longitudinal studies. The partnership shall analyze and report student performance data in a manner that protects the rights of students and parents as required in 20 U.S.C. s. 1232g and s. 1002.22.

(9)(a) Funding for the partnership shall be contingent upon annual funding in the General Appropriations Act.

(b) The participating partner, if one is chosen, is required to match at least one-third of the allocation provided to the partnership in the General Appropriations Act in materials and services to the program.

(10) The State Board of Education may adopt rules to administer this section.

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

(11) Nothing in this section shall prohibit any organization from partnering with the state to improve the college readiness of students.

Section 2. This act shall take effect July 1, 2004.

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

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/CS/SB 2488

SPONSOR: Finance and Taxation Committee, Governmental Oversight and Productivity Committee, Banking and Insurance Committee, and Senator Alexander

SUBJECT: Florida Hurricane Catastrophe Fund

DATE: April 20, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	Fav/CS
2.	Wilson	Wilson	GO	Fav/CS
3.	Fournier	Johansen	FT	Fav/CS
4.			AGG	Withdrawn
5.	Kynoch	Coburn	AP	
6.				

I. Summary:

The Florida Hurricane Catastrophe Fund (FHCF or fund) was created after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The fund is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage of hurricane losses above the insurer's retention (deductible). The insurer's retention is increased annually by the percentage increase in the fund's exposure (due to increased property value or coverage changes). The fund derives its revenue from actuarially determined "reimbursement premiums" paid by insurers. It also has the ability to levy assessments against all property/casualty insurance premiums (other than workers' compensation) when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations. Annual assessments (which have never been levied) are capped at 4 percent of premium with respect to losses from any one storm season and a maximum of 6 percent of premium to fund multiple storm seasons. Payouts to insurers are capped at $11 billion for losses from any one storm season, with provision for a higher initial season cap after the fund is capable of paying $22 billion to cover losses from two storm seasons. By providing an additional source of reinsurance to what is available in the private market, the law enables insurers to write more residential property insurance in the state than could otherwise be written, and since it is significantly less expensive than private reinsurance, it also acts to lower residential property insurance premiums for consumers.

The bill makes the following changes:

Increases the Capacity of the FHCF to $15 billion for both the initial and subsequent storm seasons, and calls for capacity to be adjusted annually based upon the percentage change in

exposure of the fund from the previous contract year. The capacity cannot grow by an amount greater than the amount of cash received by the fund in the previous year. Effective June 1, 2005.

Lowers the Insurer Retention to $4.5 billion, after which the new retention would be adjusted based upon the reported exposure from the prior contract. Effective June 1, 2005.

Increases the FHCF Assessment Authority against property and casualty insurers from 4 to 6 percent for any single year's storm, and from 6 to 10 percent for multiple storm seasons, in order to fund the extra capacity described above.

Includes surplus lines policies in the FHCF assessment base, to be collected by surplus lines agents and then remitted to the Florida Surplus Lines Service Office.

Excludes medical malpractice premiums from the FHCF assessment base for the purpose of helping to control the costs of medical malpractice insurance premiums for consumers.

Other changes include:

- Allowing insurers to collect a surcharge from policyholders to pay for an emergency assessment without making a rate filing with the Office of Insurance Regulation.
- Clarifying "prior fiscal year" for mitigation funding.
- Permitting insurers to collect assessments from policyholders in the event of an emergency assessment by the FHCF.
- Allowing higher exposure amounts for insurers who are eligible to opt out of the FHCF.
- Allowing the purchase of reinsurance from parties approved by the Office of Insurance Regulation.
- Allowing for interest to be charged on delinquent assessments.
- Excluding excess policies and deductible buy-back policies by rule.
- Clarifying provisions regarding excess recoveries to Citizens Property Insurance Corporation.
- Clarifying and expanding the coverage for additional living expenses.
- Defining "corporation."
- Clarifying provisions regarding the publication of borrowing capacity estimates and notification to insurers.
- Clarifying that "examinations," not "audits," are used to validate the accuracy of exposures and losses reported to the FHCF.
- Deleting language requiring that recoveries from reinsurance and the FHCF are not to exceed 100 percent of the insurer's losses.
- Adding language to clarify that emergency assessments can be used for debt service coverage.

This bill amends section 215.555 of the Florida Statutes.

II. Present Situation:

Background and Purpose of the Florida Hurricane Catastrophe Fund

A hurricane falls upon land in Florida once every two years, on average. A severe hurricane (Category 3 or higher with over 110 mile per hour winds) makes landfall in Florida on average once every four years. On August 24, 1992, Hurricane Andrew (a Category 5 storm, the most severe classification for a hurricane) struck South Florida with winds well over 150 mph. The storm killed 39 people, caused $20-$30 billion in damage, and caused the insolvency of 11 insurers in Florida.

In the aftermath of Hurricane Andrew, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF or fund) to provide a mandatory form of reinsurance for residential property insurers in the state. The law was designed to provide additional reinsurance capacity and thus enable insurers to continue to write residential property insurance in Florida. The FCHF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for excess losses due to hurricanes. By providing an additional source of reinsurance to what is available in the private market, the law enables insurers to write more residential property insurance in the state than could otherwise be written, and since it is significantly less expensive than private reinsurance, it also acts to lower residential property insurance premiums for consumers.

Premiums Charged to Insurers for Fund Coverage

The SBA is required to enter into a reimbursement contract with each residential property insurer, and to establish the premiums that insurers must pay for their coverage from the fund. In doing so, the SBA must select an independent consultant to develop a formula for determining the actuarially indicated premium, which must be approved by unanimous vote of the SBA. Hurricane loss projection models found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology must be used by the FHCF in establishing its premiums.[1] The annual premium charged to insurers generally represents the average annual expected hurricane loss to be paid by the fund, plus annual administrative expenses of the SBA in operating the fund, and annual legislative appropriations made from the fund for hurricane loss mitigation purposes, the total of which is then discounted to present value based on anticipated investment income.

The premiums that insurers are required to pay the FHCF are significantly lower than comparable levels of reinsurance in the private market, primarily due to its tax-exempt status, low administrative costs, and lack of any profit or risk-load factor in its rates (which are "pure loss cost" rates, based on model projections, plus operating expenses). The SBA estimates that coverage from the FHCF costs insurers between one-quarter to one-third of what it costs in the private market. As such, the FHCF acts to lower premiums for residential property insurance as well as to expand reinsurance capacity, which enables a greater amount of insurance to be written in the state than could otherwise be written if the fund did not exist.

[1] Section 627.0628(3)(b), F.S.

Emergency Assessments
If the fund balance of the FHCF, derived from its premium and investment income, is insufficient to pay its obligations to insurers in any given year, the fund may issue revenue bonds or incur other debt, supported by emergency assessments against each insurer writing property and casualty business in the state, excluding workers' compensation. The maximum annual assessment is 4 percent of premiums for payments due to hurricanes in any one year.[2] If necessary to meet its obligations for multiple-year hurricanes, an additional 2 percent assessment (plus any unused portion of the 4 percent assessment) may be imposed, so that the total assessment levied in any one year for multiple year storms may not exceed 6 percent of premium. Insurers are permitted to recoup assessments from their policyholders in higher premiums.[3] The assessments are levied against authorized insurers (i.e., insurers that have a certificate of authority issued by the state) and are not levied against surplus lines insurers (insurers that are approved as "eligible" to write business in the state for risks for which coverage cannot be written by an authorized insurer).

Annual Limit on Fund Obligations (1999 changes)
The law has always limited the claims' paying obligation of the FHCF to its claims-paying capacity (i.e., all of its funds plus the maximum amount of revenue bonds that can be generated by emergency assessments). But important changes were enacted in 1999 to further limit the annual payments from the FHCF to $11 billion in any one year. The $11 billion limit is increased once the claims-paying capacity of the fund for a subsequent year reaches $11 billion (i.e., $22 billion for both years combined). At that point one-half of the excess is provided to increase the initial season capacity.[4] The Legislature recognized in 1999 that if the fund capacity was wiped out after a single season, insurers would no longer have a significant level of reinsurance from the fund, putting increasing pressures on insurers to reduce their hurricane exposure in the state by non-renewing policies, just as happened after Hurricane Andrew. By maintaining an affordable source of reinsurance for the year(s) following a major hurricane, the law helps stabilize the property insurance market.

Coverage Provided to Each Insurer
Each insurer must annually elect coverage from the fund to be reimbursed at 45 percent, 75 percent, or 90 percent of the insurer's residential hurricane losses above its retention, or "deductible." Each insurer's retention is based on its percentage share of the total retention for all insurers combined, based on its percentage of the total fund premium. The total retention for all insurers was established by law at $3 billion in 1995. This remained the base until 1999, when the law was changed to increase the retention annually to reflect the percentage growth in exposure to the fund (due primarily to increased property value and coverage changes). This is projected to total about $4.8 billion for all insurers combined for 2004. In addition to the total

[2] Section 215.555(6)(a)3., F.S. The maximum assessment is 2 percent of gross direct written premium for the prior year, except that, if the Governor has declared a state of emergency under s. 252.36, F.S., due to the occurrence of a "covered event" (hurricane), the amount of the assessment for the contract year may be increased to an amount not exceeding 4 percent of such premium.
[3] Section 215.555(6)(a)3., F.S. This provision states that any rate filing or portion of a rate filing reflecting a rate change attributable entirely to the assessment levied shall be deemed approved when made, subject to the authority of the Department of Insurance to require actuarial justification as to the adequacy of any rate at any time.
[4] The claims-paying capacity of the fund increases by the amount of each year's additional premium and investment income, but it also fluctuates due to the change in interest rates that impacts the estimate of the maximum amount of revenue that can be generated by the assessment cap.

$11 billion limit on reimbursement to all insurers combined, each insurer's reimbursement is limited to its percentage share of the $11 billion (or higher) limit, based on the insurer's percentage share of total premiums for fund coverage.

Current Status of the FHCF
The estimated FHCF balance for December 31, 2003 was $5.462 billion. These funds have been generated by insurance company premiums for FHCF coverage. The fund balance is lowered by the administrative expenses of the SBA in operating the fund and minimal reimbursements to insurers ($13.1 million in 1995 due to Hurricanes Erin and Opal). The balance is also lowered by legislative appropriations from the fund for hurricane loss mitigation purposes up to certain maximum amounts, described below. The fund is authorized to buy private reinsurance, but to date, the SBA has elected not to do so. If hurricane losses in 2003 had required the fund to pay the $11 billion limit in annual reimbursement, the $5.46 billion fund balance would have been used, plus a $5.54 billion bond issue would have been required, supported by an estimated 1.66 percent assessment on property and casualty insurers, based on current interest rate assumptions. The fund currently estimates that its total capacity for the current and subsequent season is about $22 billion (if it levied the maximum 6 percent assessment). Therefore, the $11 billion limit for the initial season coverage has begun to increase under the current law. The increase would be based on increased premium and investment income, growth in the assessment base, and, possibly, lower interest rate assumptions for bonding. Alternatively, an increase in interest rates could decrease these estimates, and therefore decrease capacity.

Mitigation Appropriations
The law directs the Legislature each fiscal year, beginning in fiscal year 1997-1998, to appropriate from the investment income of the FHCF at least $10 million, but no more than 35 percent of the investment income from the prior fiscal year for the purpose of funding local governments, state agencies, public and private educational institutions, and nonprofit organizations, to support hurricane loss mitigation programs. Actual annual legislative appropriations have ranged from the minimum $10 million to $30 million for fiscal year 2001-02. The maximum amount that may be appropriated each year for hurricane loss mitigation is 35 percent of the fund's investment income "for the prior fiscal year." A question of statutory interpretation is which year's investment income should be used to establish the 35 percent cap. It may be unclear whether the statutory reference to the investment income from the "prior fiscal year" refers to the year prior to the year for which the appropriation is made, or prior to the year during which the Legislature enacts the appropriation. If read to refer to the year prior to the year for which the appropriation is made, the Legislature must estimate the investment income for the fiscal year before it has ended. And, as 2001-02 demonstrated, it cannot be assumed that the later year will have greater investment income.

III. Effect of Proposed Changes:

Increases the Capacity of the FHCF to $15 Billion
The bill increases the annual limit on capacity (the amount that may be paid by the FHCF in the event of a storm) to $15 billion, effective June 1, 2005. Currently, there is an $11 billion limit respectively on initial and subsequent season coverage. The FCHF has reached the $11 billion limit on both initial and subsequent season coverage. Under current law, the result is that the initial season capacity of the FHCF will begin to grow depending on the level of interest rates

and the growth of the FHCF's assessment base, while subsequent season capacity will remain at $11 billion. Instead, under the bill, the annual limit for both the initial and subsequent seasons is increased to $15 billion dollars each season.

Proponents of the bill say the capacity of the FHCF should be increased to $15 billion because increasing capacity will bring the fund's coverage capacities in line with the rapidly increased amount of potential exposure the fund faces in Florida. State Board of Administration (SBA) representatives indicate that exposure to the FHCF has increased 60 percent (over $400 billion in increased exposure) since fund capacity was frozen at $11 billion dollars in 1999. During the same time period, participating insurer coverage has declined by 10 percent and the FHCF retention (deductibles insurers are responsible for) has increased by over 35 percent. It is hoped that by raising capacity to $15 billion, participating insurer coverage will increase and the FHCF will have a greater capacity to meet the needs of the marketplace following a major hurricane loss.

Increasing the FHCF's capacity to $15 billion will require much greater bonding (SBA representatives place the estimate at $8 to $9 billion) and potentially place higher debt obligations on the state. The state currently has approximately $20.4 billion in outstanding debt. An FHCF $9 billion bond issue in the aftermath of a major hurricane would increase the state's debt by almost 50 percent.[5] In the extremely unlikely event that major hurricanes hit Florida in consecutive years, the total FHCF debt could approach $23 billion.

SBA representatives also state that increasing the FHCF's capacity will help insurers write more business in the state because of lower reinsurance costs. In turn, it is hoped that this will depopulate the residual market—Citizens Property Insurance Corporation. Citizen's has seen a significant increase in its number of policyholders and currently pays the largest premium to the FHCF. Private reinsurers argue that the private market currently is providing sufficient, affordable reinsurance to meet the demands of the Florida marketplace. They argue that the FHCF should be a limited program that is only used in the event of a catastrophic storm, and that the increase of the fund's capacity paired with the lowering of the insurer retention will increase the frequency and amounts of payments made by the fund in the event of a storm, triggering higher debt obligations for the state.

Lowers the Insurer Retention

The insurer retention is the deductible that property and casualty insurers must pay in damages before the FHCF will begin paying for damages. Currently the retention increases each year as claims exposure to the fund grows. As a result, the total retention amount in Florida has grown from $3 billion in 1999 to almost $4.4 billion for contract year 2003-04 and is projected to be $4.8 billion for 2004-05. The bill reduces the total retention amount to $4.5 billion beginning June 1, 2005, after which the new retention would be adjusted for claims exposure in subsequent years.

Reinsurance companies oppose both the increase of FHCF capacity to $15 billion and the lowering of the retention deductible to $4.5 billion. Private reinsurers assert that they are currently providing sufficient, readily available property casualty coverage in Florida to meet

[5] SBA representatives place the probability of such a storm occurring once every 62 years.

market needs, and that the bill will serve as a vehicle for government reinsurance to displace private reinsurance. Reinsurers further argue that the increase in capacity, coupled with an increase in assessment authority will raise costs for all property and casualty lines in Florida, thus offsetting any benefits from the legislation that decrease homeowners premiums. Reinsurers argue that the private market should be allowed to handle smaller events, with the FHCF only used for large hurricanes. However, representatives from the board point out that reinsurance from the fund costs far less than private reinsurance. It is hoped that by making more reinsurance available from the FHCF, the cost of property and casualty insurance in Florida will drop and the number of policies in Citizens will be reduced.

Lowering the retention to $4.5 billion will raise the FCHF reimbursement premiums, which will lower reinsurance costs for insurers that substitute FCHF coverage for private reinsurance. Insurers that do not purchase private reinsurance below the FHCF will not receive any benefit from the lowering of the retention, nor will some insurers with national catastrophic insurance programs who do not get credit for FHCF coverage in Florida because they write a small portion of their business in the state. Also, lowering the retention will cause the FHCF to be triggered more frequently, causing the fund to pay out its cash more quickly, which could then result in an increased likelihood of a bond issue by the fund.

Requires That the Initial and Subsequent Season Capacities Be Adjusted With the Growth of Exposure to Losses

In addition to being raised to $15 billion for the 2005 contract year, both the initial and subsequent season capacities will be adjusted with the growth of the fund's exposure to losses - which is increased primarily due to rising property values and new construction - after the $15 billion mark is reached for the initial and subsequent seasons. However, the dollar growth in the capacity limit may not increase by an amount greater than the dollar growth in the cash balance of the fund during the past year. Under current law, the fund's initial season capacity may grow based upon the fund's assessment base and interest rates while subsequent season capacity is frozen at $11 billion. The result of subsequent season capacity being frozen is that it will become increasingly difficult to recharge capacity after a major hurricane. Representatives from the SBA state that allowing subsequent season capacity to be adjusted should help solve this problem. Additionally, SBA representatives assert that having the capacity adjusted based on property values is a logical step to make and will make it easier for insurance carrier to determine exactly what their reinsurance needs are. Requiring that capacity not grow by an amount greater than the growth in the cash balance will ensure that the bonding requirements of the fund do not increase above the levels established after raising the retention to $15 billion.

Increases the FHCF Assessment Authority

In order to fund the increased capacity of the FHCF, the bill increases the maximum annual amount of emergency assessments against property and casualty insurers, from 4 to 6 percent for any single year's storms and from 6 to 10 percent combined for assessments for multiple storm seasons. Representatives from the SBA state that the new assessment levels are necessary to fund FHCF capacity at its new $15 billion dollar level. Opponents of this provision state that the increased assessment amounts paired with the increase in capacity could raise premiums for all lines of property and casualty insurance including auto insurance and business owners insurance.

Proponents of the bill state the FHCF must help maintain capacity in the residential property insurance marketplace following a covered storm. If there is a large reduction in FHCF capacity following a major hurricane loss, insurers will need to replace FHCF reinsurance coverage at a cost of three to four times the cost of FHCF coverage. The increase in capacity paired with a higher assessment authority is designed to fully recharge capacity following a major storm.

Surplus Lines Added to the Assessment Base
The bill adds surplus lines insurance policies to the fund's assessment base.[6] Surplus lines are currently included in the assessment base for Citizens Property Insurance Corporation (Citizens) the state-created insurer of last resort that is authorized to levy assessments to fund its deficit. Citizens currently may assess surplus lines and the FHCF would use a similar procedure as that created for Citizens in 2002. The Florida Surplus Lines Service Office will collect the assessments from surplus lines agents that are remitted by surplus lines policyholders. Representatives from the SBA state that adding surplus lines, representing about $2.1 billion in premiums, will increase the assessment base of the FHCF by around 10 percent and spread the potential cost of bonding over a broader base and thereby lower the overall assessment percentage. Surplus lines insurer representatives assert that surplus lines should not be included in the assessment base because such companies cannot join the FHCF and do not benefit from it, thus surplus lines policyholders should hot have to pay for coverage they do not benefit from. However, this argument would apply to motor vehicle insurers and other non-residential property and casualty insurers that are subject to the assessment by the fund. Representatives from the SBA note that currently $17.3 billion of the $22 billion assessment base premiums are collected from lines of insurance that do not participate in the FHCF.

Exempts Medical Malpractice Premiums from the FHCF Assessment Base
The bill provides that medical malpractice premiums are exempt for purposes of emergency assessments. Worker's compensation premiums are already exempt from assessments for purposes of preventing a premium increase in the event of a FHCF assessment. By exempting medical malpractice premiums, an assessment by the FHCF will not have the result of increasing medical malpractice premiums in the state.

Other Changes:

- The bill permits insurers who have an emergency assessment levied against them by the FHCF to collect the assessment from their policyholders as a surcharge on direct premiums, at the same time it collects the premium payment from policyholders. Currently, an insurer must remit the emergency assessment to the FHCF first, and then make a rate filing with the Office of Insurance Regulation to recoup the money from its policyholders via a higher rate.
- The bill requires that commercial residential excess policies and deductible buy-back policies that require individual ratemaking to calculate exposure values must be excluded from the FHCF by rule if the actuarial soundness of the fund is not jeopardized. The change is made to prevent insurers from having to pay the high cost of individual

[6] Surplus lines are insurers that are not "admitted" to sell insurance in Florida, but are permitted to offer coverage to parties that are unable to purchase coverage from an admitted insurer.

ratemaking and the sometimes difficult task of separating different types of liability within combined or blanket policies.

- Clarifies the term "prior fiscal year" as related to legislative appropriations from the investment income of the FHCF. Each year the legislature appropriates $10 million from the FHCF and may appropriate up to 35 percent of the FHCF's investment income. The change will clarify that the legislature is to appropriate from the FHCF's investment income for the most recently concluded fiscal year, the advantage of which is that the exact amount of investment income from which appropriations can be made is known.
- The bill increases the de minimis exposure limit whereby insurers are exempted from the FHCF if the actuarial soundness of the fund is not affected. The exemption will apply to insurers writing policies that total $10 million or less in exposure, rather than the current limit of $500,000 or less in total exposure from policies. The change will increase the number of exempt insurers from 6 to 27, and represent a total FHCF premium of $18,000. The change is made to help the facilitation of the FCHF and relieve insurers writing small amounts of residential insurance from participation and reporting requirements under the fund.
- The bill will permit the FCHF to purchase reinsurance from reinsurers acceptable to the Office of Insurance Regulation, regardless of whether the reinsurer is approved under s. 624.610, F.S. The change will broaden the selection of reinsurers from which the FHCF may purchase reinsurance.
- The bill provides rulemaking authority to charge interest on late remittances of funds to the FHCF, including emergency assessments and reimbursement premiums.
- Clarifies that each account within Citizens will receive a pro-rata share of excess recoveries based on losses rather than premiums. Funds from the FHCF are available after all other insurers have received their pro-rata share (based on FHCF premiums) of the FHCF's capacity.
- Defines the term "corporation" to mean the FHCF Finance Corporation.
- Makes clarifying changes regarding additional living expenses and states that 40 percent of the value of a residential structure may be considered "losses" for FHCF purposes. Currently the fund's coverage for additional living expense losses is limited to 20 percent of the insured value of a mobile home or personal residential structure.
- Clarifies language regarding reporting requirements for publication of borrowing capacity estimates and notification to insurers.
- Deletes language in the current statute (sub-paragraph 3 of s. 215.555(4)(b), F.S.) that mandates recoveries from reinsurance and says the FHCF cannot exceed 100 percent of the insurers losses from a covered event (i.e. a hurricane).
- States that the funds from emergency assessments may be used to pay for debt service coverage not met by reimbursement premiums. The FHCF's bond documents require debt service to have a 1.5 times coverage ratio. The purpose of the change is to ensure that if capacity is increased to $15 billion under the bill, the FHCF will have the funds needed to meet the debt coverage provision of the FCHF bond documents.
- Requires an insurer to return any collected assessment attributable to an unearned premium that the insurer is required to return. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances payable to the fund or corporation, but the insurer is not entitled to a refund. When a surplus lines insured has coverage with an unauthorized foreign insurer, the Florida Surplus Lines

Service Office must provide a credit or refund to the agent of such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill will increase the assessment authority of the FHCF, and increase the amount of the fund's liability for reimbursement to insurers in the event of a major storm. The result of these changes may be that the FHCF will have to impose greater assessments on property and casualty insurers in this state, with the costs of the greater fees passed on to policyholder. However, in the event of a major storm, it is arguable that higher costs to the consumer are unavoidable, and would be even greater if the capacity of the FHCF is not increased to provide additional reinsurance that is less expensive than that which is available in the private market. Also, increased coverage by the FHCF will operate to lower assessments that may be imposed by Citizens Property Insurance Corporation (Citizens) after a major storm.

B. Private Sector Impact:

The SBA asserts that the bill will help to stabilize the property insurance market, particularly after a major hurricane, by increasing capacity and providing insurers with a relatively constant layer of reinsurance, which grows by the same amount as exposure to losses grow, and which is more likely to be maintained the year following a storm season that triggers fund losses.

SBA representatives also state that increasing the FHCF's capacity and lowering the retention will help insurers write more business in the state because of lower reinsurance costs. In turn, it is hoped that this will depopulate the residual market—Citizens Property Insurance Corporation. Citizens has seen a significant increase in its number of policyholders and currently pays the largest premium to the FHCF.

Resetting the aggregate industry retention to $4.5 billion and providing for a $15 billion limit starting in 2005 will increase FHCA premiums. However, the SBA asserts that due to the fact that coverage from the fund may be significantly less expensive than private reinsurance for some insurers, overall reinsurance costs may decline. However, no figures have been provided by the SBA that show how much reinsurance rates would decline under the legislation.

Medical Malpractice insurers would be excluded from the emergency assessments, which would help reduce any effect that a major storm would have on premium costs. Surplus lines insurance policyholders would be subject to the emergency assessments, if they are levied.

The growth in exposure that the FHCF faces over the past 5 years is a major reason the bill seeks to increase the capacity of the fund. The following chart shows the growth in FHCF exposure over the last nine contract years. The chart shows that the fund's exposure to damages has increased at a higher rate since the 1998-1999 contract year.

Contract Year	Exposure (billions)
1995-1996	$765.3
1996-1997	$771.3
1997-1998	$775.8
1998-1999	$790.6
1999-2000	$814.9
2000-2001	$885.9
2001-2002	$955.7
2002-2003	$1,098.3
2003-2004	$1,197.3

A result of the rapid increase in exposure that the FHCF has faced since 1999 is that the fund has shown a minor erosion in coverage since 1999, as the following chart shows.

Year	Capacity (billions)	Payout Multiple	Retention (billions)	Retention Multiple
1995	$4.9	11.14	$3.08	6.22
1996	$6.4	15.21	$2.89	6.20
1997	$8.0	17.12	$3.10	6.20
1998	$11	24.72	$2.89	6.20
1999	$11	25.31	$3.06	6.63
2000	$11	25.07	$3.26	7.15
2001	$11	23.02	$3.39	6.95
2002	$11	22.06	$4.06	8.03
2003	$11	22.42	$4.40	8.95

C. Government Sector Impact:

The SBA has not indicated that the legislation would result in any increased costs in its administration of the FHCF.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for CS for CS for SB 2488

Amendment No. 1 794932

CHAMBER ACTION

Senate | House

Senator Dockery moved the following amendment:

Senate Amendment

On page 15, line 27, delete the word "$4"

and insert: $4.5

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2722

SPONSOR: Governmental Oversight and Productivity Committee and Senator Atwater

SUBJECT: Public property and publicly owned buildings

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Wilson	GO	Fav/CS
2.			RI	Withdrawn
3.			AGG	Withdrawn
4.	Kynoch	Coburn	AP	
5.			RC	
6.				

I. Summary:

The bill amends the provisions of ch. 255, F.S., relating to state-owned and state-leased buildings. The overall effect of the amendments is to:

- Provide specific statutory authority for the contract entered into by the Department of Management Services (DMS) in October 2003, with the Staubach Company, North Florida, L.L.C., for the provision of commission-based representation of state agencies in lease negotiations and for assistance in the strategic planning and the sale of state buildings. This authority is repealed by the bill upon termination of the contract on October 15, 2005.
- Eliminate the acquisition of private space leases by individual state agencies and to centralize the authority for and execution of all state private space leasing within the DMS.
- Provide the DMS with authority to consolidate existing executive agency leases into a large-scale lease or leases covering one or more private buildings.
- Provide that the Department of Management Services is responsible for adopting standard methods for determining space allocation in state-owned and state-leased buildings.

This bill substantially amends ss. 255.248, 255.249, 255.25, 255.25001, 255.2501, 255.45, and 633.085 of the Florida Statutes. The bill repeals s. 270.27 of the Florida Statutes.

II. Present Situation:

DMS's responsibilities for state-owned buildings: Pursuant to s. 255.249(1), F.S., the DMS is responsible for the custodial and preventive maintenance and repair of, and allocation of space

within, all buildings and adjacent grounds in the Florida Facilities Pool.[1] Under the Florida Building and Facilities Act, the DMS may:

- Collect reasonable rentals or charges for the use of and services provided for pool facilities exclusively for the purpose of paying the expenses of improving, repairing, maintaining, and operating facilities and paying debt service charges in connection with its obligations.
- Acquire facilities pursuant to s. 11(f), Art. VII of the State Constitution and own, operate, and finance such facilities in accordance with the act.
- Sell, lease, release, or otherwise dispose of pool facilities in accordance with applicable law.
- Engage consultants for professional and technical assistance and engage professionals in connection with the acquisition or financing of any facility or the operation and activities of the Department of Management Services, including attorneys, auditors, consultants, and accountants.
- Lease all or any portion of any facility to an agency or to any political subdivision.[2]

DMS's responsibilities for state-leased buildings: Pursuant to ss. 255.249 and 255.25, F.S., the DMS is required to oversee state agency leasing of buildings, and to adopt rules for uniform leasing procedures for all state agencies, except the Department of Transportation.[3]

Section 255.249(4), F.S., requires the DMS's leasing rules to address:

- Competitive solicitation and evaluation procedures for leased space of 5,000 square feet or more in privately owned buildings and procedures requiring at least three documented quotes for a lease that is not required to be competitively solicited.
- Standard methods for determining measurements used as the basis for lease payments, for the allocation of space in state-owned[4] and state leased buildings based on use, personnel, and office equipment, and for the assessment of rent to state agencies and other authorized occupants of state-owned space.
- Terms and conditions for lease agreements.
- Maximum rental rates, by geographic area, for leases.
- Methods for disclosure of owner names and extent of interest in privately owned buildings leased by the state.
- A method for reporting leases for nominal or no consideration.

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[1] Section 255.249(1), F.S.
[2] Section 255.503, F.S.
[3] Section 255.25(2)(c), F.S.; *See also* Chapters 334 and 337, F.S. (granting leasing authority to and establishing leasing procedures for the Department of Transportation).
[4] The term "state-owned office building" is defined for purposes of ss. 255.249 and 255.25, F.S., to mean, ". . . any building title to which is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions." This term does not include: (a) district or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed; (b) educational facilities and institutions under the supervision of the Department of Education; (c) custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state; (d) buildings or spaces used for legislative activities; and (e) buildings purchased or constructed from agricultural or citrus trust funds. Section 255.248, F.S.

State agency authority to lease private space: If suitable space is not available in a state-owned building,[5] a state agency[6] may lease privately owned building[7] space:

- Less than 5,000 square feet if the agency head or his or her designee has: (a) determined that the lease is in the best interest of the state; and (b) certified agency compliance with lease criteria required by DMS rule.[8]
- Equal to or more than 5,000 square feet if: (a) the DMS approves the need for the lease and for its conditions; (b) the lease is competitively awarded to the lowest and best bidder;[9] and (c) the DMS approves any options to purchase or renew contained in the lease.[10] [11]

Exemptions from competitive solicitation requirements: State leases for private space must be awarded by competitive solicitation, unless the lease is: (a) for the purpose of providing care and living space for persons;[12] (b) necessary for an emergency;[13] or (c) for specialized educational facilities, other than classrooms where the agency head certifies that the space is only available from a sole source.[14]

Extensions of private space leases: An agency may extend an existing lease for 5,000 square feet or more for up to 11 months after receiving approval from the DMS. If the space is needed after the 11th month, a new lease must be procured by competitive bid, except that an agency may negotiate a replacement lease for a term not to exceed the base term of the existing lease if: (a) it determines that it is in its best interest to remain in its current space; (b) an independent comparative market analysis demonstrates that the rates offered are within market rates; and (c) the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs.[15]

Lease-purchase acquisitions: The DMS is permitted to adopt rules that set forth procedures to be followed by state agencies wishing to execute a lease-purchase agreement for a building. State agencies must certify the need for the lease-purchase agreement and the certification must include: (a) current and future programmatic space requirements; (b) time considerations; and (c) an analysis of existing leases affected by the lease-purchase agreement. The evaluation process for such an agreement must include: (a) consideration of the cost of comparable

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[5] Section 255.25(4)(a), F.S. Rule 60H-1.007, F.A.C., requires all lease agreements that exceed one year to contain a right-to-terminate clause permitting the agency to terminate the lease without penalty if a state-owned building becomes available by providing six months advance written notice to the lessor. On January 23, 2004, the DMS published a notice in the FAW proposing to amend this rule to provide that this requirement may be omitted from a lease upon written approval by the Division Director of Facilities Management and Building Construction.
[6] The terms "state agency" is not defined.
[7] Section 255.248, F.S., defines "privately owned building" as any building not owned by a governmental agency. The term "governmental agency" is not defined.
[8] Section 255.25(2)(b), F.S.
[9] A protest to a competitive award may be filed pursuant to s. 120.57(3)(b), F.S. A protest bond in the amount of one percent of the total lease period or $5,000, whichever is greater, must be posted when filing the protest.
[10] Section 255.25(2), (3), (10), F.S.
[11] No more than one lease may be executed by an agency for space in the same privately owned building or complex without competitive solicitation. Section 255.25(8), F.S.
[12] Section 255.249(4)(b), F.S.
[13] Section 255.25(10), F.S.
[14] Section 255.25(9), F.S.
[15] Section 255.25(3)(b), F.S.

operating leases; (b) the appraised value of the facility; (c) a present value analysis of the proposed payment stream; (c) cost of financing the facility to be acquired; (d) cost to repair physical defects and to remove hazardous substances; (e) an energy analysis; and (f) a determination of management and maintenance responsibilities. The DMS must find the lease-purchase agreement to be in the best interest of the state prior to its execution.[16]

Sale of unused public property: Subsection 270.27(1), F.S., provides the DMS with authority to sell any or all detached pieces or parcels of land held by the state for the use of any institution under the supervision and control of the department, whenever the department determines that: (a) such pieces or parcels of land are not suitable for, or necessary and useful in, the operation and maintenance of such institution; and (b) the proceeds from the sale could be used to better advantage than said land in the operation and maintenance of such institution.

Subsection (2) provides that any proceeds from the DMS's sales of land must be deposited in the State Treasury to the account of the Department of Management Services for the use of the particular institution from the sale of whose lands said funds were derived. The proceeds may also be used, " . . . from time to time, by the department for the purpose of acquiring additional lands that may be needed for the particular institution credited with such funds, or for needed buildings or repairs for such institution, in the discretion of the department; and such funds, when obtained, are hereby appropriated for such purposes."

Finally, subsection (3) authorizes the DMS to sell any piece or parcel of land held by the state or the DMS that is located north of Pensacola Street in Tallahassee, and, ". . . to receive as payment or part payment therefore any piece or parcel, or pieces or parcels, of land located within what is known as the Capitol Center at the state capital."

Capitol Center: Sections 272.03 and 272.09, F.S., provide that the DMS has general control and custodianship of, and is responsible for the management, maintenance, and upkeep of, the Capitol Center, defined as all state buildings included in the Capitol Center[17] at the state capital and the grounds and squares contiguous thereto. Title to these buildings is vested in the state.[18]

The DMS is required to develop a comprehensive, long-range plan for development within the Capitol Center, which meets the needs of state government and the various agencies that occupy the Capitol Center.[19] This plan is to be submitted to the Governor and the Legislature every five

[16] Section 255.25001(2), F.S.
[17] Section 272.12(1), F.S., states that the Florida Capitol Center Planning District, ". . . shall extend to and include all lands within the following boundaries of the City of Tallahassee: Commence at the northwest corner of Lot 293 of the Old Plan of the City of Tallahassee as recorded in the office of the Clerk of the Circuit Court, Leon County, Florida; thence east along the south right-of-way line of West College Avenue and East College Avenue to its intersection with the west right-of-way line of Franklin Boulevard; thence south along said right-of-way line of Franklin Boulevard to its intersection with the south right-of-way line of East Jefferson Street; thence east along said right-of-way line of East Jefferson Street and the east prolongation of East Jefferson Street to its intersection with the west right-of-way line of the Seaboard Coastline Railroad; thence southerly and westerly along said Seaboard Coastline Railroad right-of-way line to a point of intersection with the south prolongation of the east right-of-way line of South Martin Luther King, Jr. Boulevard; thence north along said south prolongation of the east right-of-way line of South Martin Luther King, Jr. Boulevard and along the east right-of-way line of South Martin Luther King, Jr. Boulevard to the point of beginning."
[18] Section 272.03(2), F.S.
[19] Section 272.12, F.S.

years.[20] Further, the DMS is authorized to allocate space to house the various departments, agencies, boards, and commissions in the Capitol Center, except that authority for the Supreme Court Building is vested in the Supreme Court justices.[21]

Section 272.124, F.S., authorizes the DMS to make any contract to lease, buy, acquire, construct, hold, or dispose of real and personal property as is necessary to carry out the act; however, no contract may be entered without specific authorization by the Legislature for the project.

2003 Study: The 2002 General Appropriations Act[22] directed the DMS to conduct a justification and utilization assessment of public and private sector office space leases by June 30, 2003. To execute this directive, the DMS contracted with CLW Real Estate Services Group. The CLW report issued June 30, 2003, makes the following recommendations:

- State procurement and management of private sector leased space should be centralized within the DMS.
- The DMS should adopt and enforce new space efficiency standards, should examine each state facility to determine how the existing agency layout compares with the standards, and should perform a cost benefit analysis to determine if renovation of the layout could result in a net reduction of occupancy costs.
- As state leases for private space expire, the DMS should backfill available state owned space.
- The DMS should surplus state owned properties that are no longer functional or that do not meet the state's long term needs.
- The DMS should engage the services of a commercial real estate consultant to be a tenant representative for the state, who will determine market alternatives and negotiate the terms and conditions of each private sector transition.

III. Effect of Proposed Changes:

Section 1. Section 255.248, F.S., that provides definitions for purposes of ss. 255.249 and 255.25, F.S., is amended to:

- Specify that the definitions of "state-owned building" and "privately owned building" refer to real property, rather than buildings as provided in current law.
- Clarify that the exceptions for specified facilities, which are currently provided in s. 255.248(1), F.S., to the definition of "state-owned building" are excepted from the requirements of ss. 255.249 and 255.25, F.S.
- Codify current practice by providing that custodial facilities for inmates and buildings used by the state courts system are excepted from the requirements of ss. 255.249 and 255.25, F.S.
- Add a conforming reference to the Board of Governors, the entity that governs the state university system, as created in 2002 by Art. IX, s. 7(d), Fla. Const.

Section 2. Subsection 255.249(2), F.S., is amended to provide that the DMS is responsible for the procurement and management of all executive agency leases of privately-owned buildings, other than leases for the facilities excepted in s. 255.248, F.S.

[20] *Id.*
[21] Section 272.04, F.S.
[22] Chapter 2002-394, line 2743, L.O.F.

Paragraph (2)(b) is amended to provide that the DMS may competitively procure, pursuant to ch. 287, F.S., one or more real estate brokers, who are licensed under ch. 475, F.S., to assist the DMS in negotiating leases for privately owned buildings on behalf of executive agencies. The bill specifies that broker compensation:

- May only be paid when the DMS demonstrates in writing that the lease results in a cost savings to the state or otherwise provides value that could not have been achieved without the broker; and
- May include a private landlord paid, market-based commission that constitutes a percentage of the lease price. The DMS must document in writing the basis for its determination of the percentage and the percentage must decline as square footage leased increases.

The bill requires that any contract for broker services must include:

- Methodologies for establishing baselines for performance measures and standards.
- Performance measures that include expectations for:
  - The net cost savings to be achieved by the broker;
  - A reduction in the average price per square foot for broker negotiated leases as compared to state negotiated leases;
  - A reduction in the square footage of private space leased by executive agencies;
  - Space per full-time equivalent employee for leases negotiated by the broker compared to state-procured private space;
  - The number of executive agency employees relocated from leased private space into state-owned space; and
  - Executive agency and private building owner satisfaction with broker services and with the price, quality, and location of broker negotiated private space.
- DMS procedures for monitoring and evaluating a broker's performance.
- Processes that require monthly reporting by a broker on its achievement of the performance measures and standards and on the amount and basis of any compensation received or to be received by the broker under the contract.
- Methods for resolving situations in which a broker fails to achieve the performance measures and standards, which include, but are not limited to, withholding compensation and contract termination.

The bill requires all cost savings resulting from broker negotiated or renegotiated leases to be deposited in escrow for tenant improvements or in the General Revenue Fund. Further, the bill specifies that information about the costs and benefits of any broker negotiated or renegotiated lease must be provided to the Legislative Budget Commission if the new or renegotiated lease costs in excess of $1 million and if it represents a greater than ten percent change in the annualized cost of the agency's original lease.

Paragraph (2)(c) is amended to provide that subsection (2) does not apply to the Departments of Legal Affairs, Financial Services, and Agriculture and Consumer Services.

Subsection (3) is amended to provide that the department may assign one or more agencies to move into space vacated by another state agency; however, the head of an agency that requests space may reject the DMS's transfer in writing for the following reasons: excessive cost;

unfavorable lease terms or conditions; negative impact on employee productivity; security concerns; poor location or building quality; insufficient parking; excessive moving costs; or difficult access by persons served by the agency.

Subsection (4) is amended to require the DMS to adopt rules that:

- Specify methods for the DMS to accomplish its duties outlined in subsections 255.249(1) through (3), F.S.
- Specify procedures requiring competitive solicitation of, and procedures for evaluating and accepting, responses to competitive solicitations.
- Provide that an agency that requested space may reject the DMS's selection of space for the agency for the same reasons that an agency may reject a transfer by DMS, and that the DMS upon such rejection is not required to solicit new bids, proposals, or replies; instead, the DMS may renegotiate with landlords or prospective landlords that have previously replied to the solicitation.
- Specify standard methods of determining space allocation, which define appropriate space to be allocated for specified uses and which consider:
  - Accommodation of disabled persons and public visitors;
  - Security;
  - Specials agency needs;
  - Investment in additional space where the cost of additional space is exceeded by gains in employee productivity;
  - Allocation of space for employee wellness programs, childcare, cafeterias, and break areas; and
  - Accommodation of state-owned building space that cannot be efficiently reconfigured because of design and age of the building.
- Adopt the BOMA Metropolitan Base Building Classification, or equivalent, as the standard method for rating the quality of private-owned buildings, and that provide for the utilization of BOMA class A or B space when practical.

Subsection (6) is created by the bill to require the DMS to annually submit a report to the Legislature, which sets forth the DMS's enterprise plan for the next five years for the use of state-owned and state-leased space and for any acquisition, financing, refinancing, or disposition of state real property and improvements that the DMS is permitted by law to execute. The DMS is also required to provide the Legislature with 30 days notice prior to executing a deviation from the report.

Section 3. Section 255.25, F.S., is amended to:

- Remove the requirement that the DMS serve as a mediator in agency lease renegotiations.
- Provide the DMS with authority to competitively negotiate new leases, renegotiate existing leases, or otherwise consolidate existing leases into a large-scale lease or leases covering one or more private buildings.
- Permit the DMS to adopt rules establishing procedures for procuring large scale leases, managing large scale leases, and providing a method for allocating lease costs between agencies.

- Require state agencies to obtain approval from the DMS for any lease or occupancy of a state-owned building or privately-owned building.
- Require the department or agency that is allowed to directly procure a lease or to extend a lease to comply with ss. 216.311, 255.249, 255.2502, and 255.2503, F.S.
- Provide that the DMS may adopt rules that specify uniform leasing procedures and that comply with ss. 255.249, 255.2502, and 255.2503, F.S.
- Remove the 11-month limitation for lease extensions.
- Increase the minimum amount of the bond required for protests to competitive solicitations for leases from $5,000 to $7,500.
- Transfer subsection (5) regarding fire safety and subsection (6) regarding floodplains to s. 255.45, F.S.
- Strike subsection (8) that prohibits an agency from entering into more than one lease in the same privately-owned facility within any 12-month period without a competitive solicitation of bids.
- Strike subsection (9) that exempts specialized educational facilities, other than classrooms, from the section's competitive bid requirements for leasing if such facility is only available from a sole source.

The bill also makes changes throughout s. 255.25, F.S., which permit competitive solicitation, rather than competitive bidding, for leases. The effect of these amendments is to permit the use of requests for proposals and invitations to negotiate in addition to current law's permitted use of invitations to bid.

Sections 4 and 5. Sections 255.25001 and 255.2501, F.S., are amended to make conforming changes with the substitution of the term "competitive solicitation" for "competitive bid" and to clarify that the sections apply to executive agencies, rather than state agencies as is provided in current law.

Section 6. Section 255.45, F.S., is amended to contain the substance of ss. 255.25(5) and (6), F.S., which are stricken in Section 3. of the bill.

Section 7. Section 633.085, F.S., is reenacted to incorporate the bill's amendment to s. 255.45, F.S.

Section 8. Section 270.27, F.S., relating to the sale of unused public lands by the DMS, is repealed. The DMS indicates that this authority is not used.

Section 9. Paragraph s. 255.249(2)(b), F.S., relating to the DMS's authority to contract with real estate brokers for lease negotiating services, is repealed by the bill on October 15, 2005, the termination date of the DMS's contract with Staubach Company, North Florida, L.L.C.

Section 10. The bill provides that the act takes effect on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private vendors that lease space to the state pursuant to a transaction negotiated by The Staubach Company, North Florida, L.L.C. will be required to pay that company a four percent commission.

C. Government Sector Impact:

According to the DMS, the State of Florida owns more than seven million square feet of space and leases ten million square feet from the private sector. In FY 2003-2004, the state spent more than $151 million for private sector leases. The DMS estimates that this bill's centralization of state leasing procurement and management and its authorization for the services of a private sector tenant representative will result in approximately $30 million in annual savings to state agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Overview of Staubach contract: On October 15, 2003, the DMS entered a two–year contract with The Staubach Company, North Florida, L.L.C. (Staubach) for the provision of commission-based representation of state agencies in lease negotiations and for assistance in the strategic planning and the sale of state buildings. Under current law, the DMS and state agencies

are responsible for executing leases[23] and the DMS and the Board of Trustees of the Internal Improvement Fund are responsible for the disposition of state real property and improvements.[24]

This bill would provide specific statutory authority for this outsourcing initiative. Currently, Florida statutes do not specify as a general matter when an executive agency is permitted to or is prohibited from outsourcing or privatizing state functions.[25] [26] In the past, the Legislature has regulated executive branch outsourcing initiatives through its appropriation power; however, in recent years, it is a common practice for executive agencies to execute self-funding contracts, such as the Staubach/DMS contract, for such initiatives. This trend appears to diminish the Legislature's power to make policy decisions regarding which state functions should be outsourced or privatized.

Provisions of the Staubach/DMS contract concerning deliverables and compensation are outlined below. The majority of compensation to be paid to Staubach is based on a fixed percentage of the state's lease price, i.e., four percent, to be paid by private landlords. Staubach's compensation does not require a demonstration of cost savings generated, nor is it structured such that the commission percentage for leases decreases as private space lease volume increases. Further, Staubach may be compensated under the contract for selling state-owned buildings.

The contract does require Staubach to restack state agencies in state-owned space when available; however, Staubach may not be compensated for such efforts during the first year of the contract. Given this fact, the fixed commission compensation structure, and the potential for state building sale commissions, it is unclear what incentive there is, particularly during the first year of the contract, for Staubach to restack agencies in state-owned buildings. Presumably, the DMS will not enter private space leases negotiated by Staubach, which do not result in a savings to the state; however, the contract does not require a demonstration of cost savings prior to execution of such a lease.

State leasing: Staubach is designated the exclusive tenant agent for the state, and is required within the first 90 days of the contract to: (a) conduct market rate reviews to determine where state leases are above/at/below market rates; (b) commence renegotiation activities for leases exceeding 25,000 square feet throughout the state; and (c) complete renegotiations for at least two major deals in Tallahassee. Private landlords are required to pay Staubach four percent of the full service rental obligation for the entire fixed term of a new or renegotiated lease or an amount otherwise agreed upon for any new or renegotiated lease transaction that Staubach negotiates and closes on behalf of the State.

Restacking of state agencies: Staubach must facilitate the restacking of state agencies in state-owned space in accordance with state space standards and must relocate state agencies into

[23] Chapter 255, F.S.
[24] Chapter 253, F.S., s. 270.27, and s. 272.124, F.S.
[25] Some statutes address outsourcing in specific instances. *See, e.g.,* s. 287.057(23), F.S. (providing that the DMS may contract for an eprocurement system). No general parameters, however, for outsourcing or privatization are set forth in statute.
[26] An agency has only such power as is granted by legislative enactment, and when acting outside the scope of its delegated authority, an agency acts illegally. *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (Fla. 5th DCA 1985). Thus, it might be argued that an agency may only outsource or privatize upon specific statutory authority.

state-owned buildings when space is available from functionally obsolete state-owned buildings or from third party leased facilities. Staubach's restacking services are to be provided at no cost for the first year of the contract. Thereafter, the contract authorizes the DMS to pay Staubach for these services.

Privatized state functions: DMS must inform private entities assuming privatized functions that Staubach is the State's exclusive real estate representative and is available to assist them for compensation substantially similar to that provided in the DMS/Staubach contract.

State-owned facility sale/ lease: Staubach may be required by the DMS to provide implementing services for sale/leaseback or lease/leaseback of state-owned facilities, bondable net leases, the structuring of joint ventures, public private partnerships, or other transactions. Staubach is to be paid market-based compensation to be determined when the scope of work is defined. This compensation is to be funded through transaction proceeds, i.e., by private landlords or financing arrangements.

Construction management: Staubach may be required by the DMS to provide construction management services in exchange for market-based compensation to be determined when the scope of work is defined. This compensation may be paid by the State and/or by private landlords.

Disposal of surplus assets: Staubach may be required by the DMS to provide disposition services for surplus state assets, which may include sale, lease, sub-lease, joint venture, public private partnership, or other means. Staubach is to be paid market-based compensation to be determined when the scope of work is defined. This compensation is to be funded through sale proceeds.

Performance Measures: The contract specifies that performance measures, which may be based on a percentage of cost savings realized or on other terms, were to be developed within the first 90 days of the contract's execution, i.e., January 15, 2004, and are to be made an addendum to the contract. Representatives from the DMS have indicated that the addendum is currently being drafted.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 2722

Amendment No. 1 244672

CHAMBER ACTION

Senate | House

Senator Lawson moved the following amendment:

Senate Amendment (with title amendment)

On page 4, line 26, through page 5, line 24, delete those lines

and insert: have been achieved without the broker's services and the written determination is approved by the Chief Financial Officer. The department's written determination required by this sub-subparagraph shall not be considered an intended decision or decision subject to protest under s. 120.57(3), F.S.

b. May include a market-based commission that constitutes a specified percentage of the lease price and that is paid by the owners of privately owned buildings that are leased by the department or other executive agencies. The department must document in writing the basis for its determination of the market-based commission percentage. The market-based commission must provide for a structured schedule wherein the commission percentage declines as the square footage leased increases. Commissions to be paid by owners of

1 privately owned buildings under this sub-subparagraph shall be
2 remitted to the department and paid to a real estate broker
3 under an appropriation made by law.
4 2. Any contract for real estate broker services
5 executed by the department under this paragraph must contain:
6 a. Methodologies for establishing baselines for
7 performance measures and standards;
8 b. Performance measures and standards that must
9 include, but are not limited to, expectations for:
10 (I) The net cost savings to be achieved by a broker
11 for the state;
12 (II) A reduction in the average price per square foot
13 for full service and less than full service private space
14 leases negotiated by the broker compared to state-procured
15 private space leased by executive agencies;
16 (III) A reduction in the square footage of private
17 space leased by executive agencies;
18 (IV) Space per full-time equivalent employee for
19 leases negotiated by the broker compared to state-procured
20 private space leased by executive agencies;
21 (V) The number of executive agency employees relocated
22 from leased private space to state-owned buildings; and
23 (VI) Executive agency
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26 ========== T I T L E A M E N D M E N T ==========
27 And the title is amended as follows:
28 On page 1, line 13, delete that line
29
30 and insert:
31 negotiated by a broker; providing requirements

1 for broker compensation; providing for review
2 by
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Bill No. CS for SB 2722

Amendment No. 2 952234

CHAMBER ACTION

Senate | House

Senator Lawson moved the following amendment:

Senate Amendment (with title amendment)

On page 27, between lines 3 and 4,

insert:

Section 10. Section 255.2502, Florida Statutes, is amended to read:

255.2502 Contracts which require annual appropriation; contingency statement.--

(1) An executive branch department or agency, public officer or employee may not ~~shall~~ enter into any contract on behalf of the state, which contract binds the state or its executive agencies to the lease, rental, lease-purchase, purchase, or sale-leaseback of office space, real property or improvements to real property for a period in excess of 1 fiscal year, including any and all extension and renewal periods and including all leases which constitute a series of leases unless the following statement is included in the contract: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual

appropriation by the Legislature." The foregoing statement shall not be amended, supplemented, or waived, and shall be printed in type at least as large as any other type appearing on the contract. Any contract in violation of this section shall be null and void.

(2) An executive branch department or agency, public officer or employee may not enter into any contract on behalf of the state which binds the state or its executive agencies to the lease, rental, lease-purchase, purchase, or sale-leaseback of office space, real property, or improvements to real property for a period in excess of 60 months for the initial term of the lease, with the option to extend or renew the lease no more than two times with each extension or renewal limited to a period no longer than the initial term of the lease.

Section 11. For the 2004-2005 fiscal year, there is appropriated $2 million from the General Revenue Fund to the Department of Management Services for the reconfiguration of Florida Facilities Pool office space.

Section 12. There is appropriated $1 million for the 2004-2005 fiscal year from the Working Capital Trust Fund in the special appropriation category entitled Real Estate Broker Commissions to the Department of Management Services for payment of real estate broker commissions under section 255.249(2)(b)1.b., Florida Statutes. A payment may not be made until the Chief Financial Officer approves the Department of Management Services' written determination under section 255.249(2)(b)1.a., Florida Statutes.

(Redesignate subsequent sections.)

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 2, line 24, after the semicolon
4
5 insert:
6 amending s. 255.2502, F.S.; specifying
7 permissible lengths for contract terms and
8 renewal and extension periods for certain
9 executive agency contracts relating to office
10 space, real property, or improvements;
11 providing an appropriation for the
12 reconfiguration of Florida Facilities Pool
13 office space; providing an appropriation for
14 real estate broker commissions;
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2676

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee, Regulated Industries Committee, and Senator Haridopolos

SUBJECT: Transportation and Sale of Cigarettes

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable/CS
2.	Gillespie	Maclure	CM	Favorable/CS
3.			FT	Withdrawn
4.			AGG	Withdrawn
5.	Deloach	Coburn	AP	
6.				

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 2676 prohibits a person from transporting from Florida, or causing to be transported, cigarettes for sale in another state without complying with the other state's laws relating to the affixation of stamps to, the payment of excise taxes on, or the sale of the cigarettes. The committee substitute exempts from these requirements a person's transportation of the cigarette brands of participating manufacturers under the Master Settlement Agreement and of nonparticipating manufacturers and importers that comply with the qualifying statute.

The committee substitute requires manufacturers and importers of cigarettes to obtain a cigarette permit from the state's Division of Alcoholic Beverages and Tobacco, prohibits manufacturers and importers from selling or distributing cigarettes other than to a wholesale dealer, specifies that certain sales of cigarettes are exempt from the state excise tax, and clarifies that manufacturers and importers are not wholesale dealers responsible for affixing tax stamps to cigarette packages.

The committee substitute requires wholesale dealers in Florida to affix tax stamps to cigarette packages within 10 days after receipt of the cigarettes and requires out-of-state dealers to affix the stamps before shipment of the cigarettes into Florida. The committee substitute prohibits wholesale dealers from obtaining cigarettes, or affixing tax stamps to cigarettes obtained, from anyone other than a manufacturer or importer or from selling or distributing cigarettes to anyone other than a retail dealer or another wholesale dealer.

The committee substitute prohibits any person from possessing unstamped cigarettes, except under certain circumstances. The committee substitute allows a wholesale dealer to store

unstamped cigarettes, but requires the unstamped cigarettes to be stored separately from stamped cigarettes. The committee substitute also prohibits a retail dealer from obtaining cigarettes from anyone other than a manufacturer or wholesale dealer.

The committee substitute extends the Division of Alcoholic Beverage and Tobacco's authority to seize and forfeit cigarettes without tax stamps. The committee substitute also permits the division, under certain circumstances, to seize and forfeit the fixtures, equipment, and other personal property of a wholesale dealer or retail dealer violating the cigarette tax law (part I of ch. 210, F.S.), but requires the division to destroy confiscated cigarettes.

The committee substitute allows the division or any law enforcement officer to stop and search a vehicle for contraband cigarettes, if reasonable cause exists to believe that the vehicle is illegally transporting cigarettes. The committee substitute also enhances and broadens the application of criminal penalties for violations of the cigarette tax law and authorizes additional civil penalties.

This committee substitute substantially amends the following sections of the Florida Statutes: 210.01, 210.05, 210.06, 210.09, 210.12, 210.15, and 210.18. The committee substitute also creates sections 210.085 and 210.181, Florida Statutes.

II. Present Situation:

Tobacco Settlement Agreements

Beginning in the mid 1990s, more than 40 states and some local governments brought suit against tobacco companies, alleging the industry violated antitrust and consumer protection laws, withheld information about the adverse health effects of tobacco, manipulated nicotine levels to keep smokers addicted, and conspired to hold back less risky and less addictive tobacco products from the market.[1] In February 1995, the State of Florida brought its suit in Palm Beach County against a number of tobacco companies, seeking monetary damages and injunctive relief on behalf of the state.[2] In March 1996, Florida settled its claims with two of those tobacco companies (Brooke and Liggett) as part of a five-state settlement agreement.[3]

In 1997 and 1998, four states (Florida, Minnesota, Mississippi, and Texas) settled their lawsuits by negotiating independent agreements with the tobacco industry. In August 1997, the State of Florida entered into its settlement agreement with the four largest tobacco companies in the United States (Philip Morris, R. J. Reynolds, Brown & Williamson, and Lorillard). As part of the settlement, the companies agreed to make annual payments to the state, based on each company's respective market share of sales of cigarettes for consumption in the United States, among other non-monetary provisions, in exchange for release from past, present, and future

[1] See, e.g., U.S. General Accounting Office, *Tobacco Settlement: States' Use of Master Settlement Agreement Payment* 8 (GAO-01-851, June 2001).
[2] *Complaint, State of Florida v. American Tobacco Co. et al.*, No. 95-1466AO (Fla. 15th Cir. Ct. filed Feb. 21, 1995), *available at* University of California San Francisco, http://www.library.ucsf.edu/tobacco/litigation/fl/1florida.pdf (last visited Apr. 1, 2004).
[3] *Attorneys General Settlement Agreement with Brooke Group Ltd. and Liggett Group, Inc.* (Mar. 15, 1996), *available at* University of California San Francisco, http://www.library.ucsf.edu/tobacco/litigation/fl/agsettlement.pdf (last visited Apr. 1, 2004). (Florida, Louisiana, Massachusetts, Mississippi, and West Virginia were the states that entered into the settlement agreement with Liggett.)

claims brought by the state. According to the Council of State Governments, it is estimated that Florida would receive approximately $13.4 billion in settlement payments through 2025.[4]

In November 1998, after Florida's settlement, the nation's four largest tobacco companies (cited as the "original participating manufacturers" or "OPMs") negotiated an agreement with the attorneys general of the remaining 46 states, thereby settling the lawsuits brought by these states against the tobacco companies. This multi-state agreement (cited as the "Master Settlement Agreement" or "MSA"), like the Florida agreement, released the tobacco companies participating in the settlement from past, present, and future claims brought by the settling states in exchange for annual payments to the states and reimbursement of attorneys fees.[5] Under the Master Settlement Agreement, the tobacco industry was projected to pay the settling states in excess of $200 billion over a 25-year period.[6]

The MSA also imposed restrictions on the marketing and advertising practices of the settling tobacco companies. In addition, to receive its full share of the settlement payments, unlike the Florida agreement, each state was required by the MSA to enact a law that addressed the potential competitive advantage that tobacco companies that were not parties to the settlement might experience. Under the MSA, if the aggregate market share of the tobacco companies that were parties to the agreement fell more than 2 percent below their base level in 1997 and the loss was caused in significant part by the MSA, the MSA payments might be reduced based on a formula that corrects for this loss in market share.

The MSA specified that individual states can avoid this downward adjustment—known as the "non-participating manufacturers" adjustment—to their payments by enacting and enforcing a law intended to prevent a competitive disadvantage for the participating manufacturers.[7] The MSA included a model law that, if enacted and enforced by a state, would protect that state from any adjustment for market share loss, although states were permitted to enact and enforce any law that achieved the same result.[8] The model law includes legislative findings and purpose, which provide, in part:

> It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source

[4] James B. Carroll & David A. Moss, Council of State Governments, *Tobacco Settlement and Declining State Revenues, TrendsAlert* 4 (Mar. 2002).
[5] *Master Settlement Agreement* (Nov. 1998), available at National Association of Attorneys General, http://www.naag.org/upload/1032468605_cigmsa.pdf (last visited Apr. 1, 2004).
[6] National Association of Attorneys General, *NAAG Projects: Tobacco,* at http://www.naag.org/issues/issue-tobacco.php (last visited Apr. 1, 2004).
[7] The Master Settlement Agreement provides that a "'Qualifying Statute' means a Settling State's statute, regulation, law and/or rule (applicable everywhere the Settling State has authority to legislate) that effectively and fully neutralizes the cost disadvantages that the Participating Manufacturers experience vis-à-vis Non-Participating Manufacturers within such Settling State as a result of the provisions of this Agreement." *MSA, supra* note 5, at 60 (page number of the PDF file).
[8] *Exhibit T of the Master Settlement Agreement, supra* note 5, at 279 (page number of the PDF file).

> of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.[9]

To achieve these legislative findings and purpose, the model law requires that every tobacco company in the state must either become a participating manufacturer, who pays its respective share of the settlement payments to the states based on the manufacturer's market share of cigarette sales in the United States, or remain a nonparticipating manufacturer ("NPM"). Under the model law, a NPM must pay funds into an escrow account equivalent to the amount the manufacturer would have paid to the state if it became a participating manufacturer under the MSA. As of December 2002, approximately 37 tobacco companies had joined the MSA.[10]

Because Florida is not a party to the MSA, a NPM may sell cigarettes in this state without making either MSA payments or escrow payments. The tobacco industry claims that, since the MSA was signed in 1998, there has been an increase in the interstate transportation of cigarettes by NPMs from the four states that are not parties to the MSA (Florida, Minnesota, Mississippi, and Texas) into states that are parties to the MSA, in order to avoid making payments in compliance with the laws in those states which implement the MSA's model law.

Florida's Excise Tax on Cigarettes and Reporting Requirements

Under current law, each person, firm, or corporation dealing in cigarettes as a distributing agent, wholesale dealer, or exporter within this state must apply for and obtain a cigarette permit from the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation (s. 210.15(1), F.S.). A person, firm, corporation, or business entity dealing in, selling, storing, or operating as a wholesale dealer in cigarettes, or acting as a cigarette distributing agent or exporter, without a cigarette permit commits a misdemeanor of the first degree, publishable by no more than one year in jail and a $1,000 fine (s. 210.15(8), F.S.). In addition, the division may suspend or revoke the permit of any wholesale dealer for violations relating to the tax on cigarettes (s. 210.16, F.S.).

The State of Florida imposes an excise tax on cigarettes and requires each wholesale dealer, regardless of whether the dealer is located in the state, to affix to each package or container, or cause to be affixed, a stamp evidencing the payment of the excise tax before the cigarettes may be offered for sale or use, consumed, or otherwise disposed of in this state (ss. 210.02 and 210.06(1), F.S.).[11] Current law does not include provisions concerning the affixation of another state's tax stamps on cigarettes for sale in the other state.

Wholesale dealers are required to submit to the Division of Alcoholic Beverages and Tobacco by the 10th day of each month a monthly report of its purchases and sales of cigarettes within or without the state for the preceding month (rule 61A-10.011, F.A.C; s. 210.09(2), F.S.). Sales of cigarettes out-of-state are reported on a wholesale dealer's monthly report as exempt from the

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[9] *Id.* at 279-80 (page numbers of the PDF file).

[10] David J. Adelman et al., Morgan Stanley & Co., Inc., *State of the US Cigarette Industry: Not a Pretty Picture* 2 (Dec. 20, 2002). These tobacco companies are cited as "subsequent participating manufacturers" or "SPMs," which distinguishes these companies from OPMs (original participating manufacturers).

[11] According to the Division of Alcoholic Beverages and Tobacco, the division collected $418.2 million in cigarette excise taxes from stamping wholesale distributors for the 2002-2003 fiscal year.

excise tax because the tax applies only to sales in Florida. The monthly report details the number of cigarette packages, but does not include any information about the quantity of each brand style.[12]

Decline of Tobacco Settlement Payments

In 1997, according to industry estimates, the original participating manufacturers (Philip Morris, R. J. Reynolds, Brown & Williamson, and Lorillard) controlled approximately 97.4 percent of the United States cigarette market, with the remaining smaller companies representing about 2.6 percent of the market.[13] By 2000, the market share of the OPMs had fallen to about 94.5 percent, according to industry estimates.[14]

One of the causes for the OPMs' declining market share, according to industry market analysts, is the interstate sale of cigarettes from one of the four states that are not parties to the Master Settlement Agreement (Florida, Minnesota, Mississippi, and Texas) into states that are parties of the MSA. Because Florida's settlement agreement does not require the state to enact legislation requiring nonparticipating manufacturers to become subsequent participating manufacturers (responsible for payments under the MSA) or make payments into a state escrow account, NPMs have a competitive advantage over the OPMs when transporting cigarettes from Florida for sale into other states that are parties to the MSA. Nonparticipating manufacturers may accordingly sell cigarettes for substantially reduced prices than the OPMs in these other states, thereby contributing to shifts in market share.

Because payments by the OPMs under both Florida's settlement agreement and the MSA are based on each company's respective market share, a reduction in the OPMs' market share vis-à-vis the NPMs may consequently cause a reduction in Florida's settlement payments. A reduction in settlement payments has been observed in the 46 states that are party to the MSA.[15]

III. Effect of Proposed Changes:

Transportation from Florida of Cigarettes for Sale in another State

The committee substitute prohibits a "person"[16] from transporting from Florida, or causing to be transported, cigarettes for sale in another state without first affixing the tax stamp and paying any other excise tax required by that state to be affixed or paid. The committee substitute also prohibits a person from affixing a stamp, or paying any other excise tax, required on cigarettes by another state, if the other state prohibits the stamp from being affixed or the excise tax from being paid, or if the other state prohibits the sale of the cigarettes.

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[12] Florida Dept. of Bus. and Prof'l Regulation, *Cigarette Monthly Report Detail, Form AB&T 4000A-205-3* (Dec. 2003), available at http://www.myflorida.com/dbpr/abt/forms/auditing/acrobat_auditing/4000a-205-3.pdf (last visited Apr. 1, 2004).
[13] See Carroll, *supra* note 4, at 5.
[14] *Id.*
[15] According to the U.S. General Accounting Office, adjustments of settlement payments based, in part, on market share led to a $1.6 billion reduction in the payments from projections between 1999 and 2001. GAO, *supra* note 1, at 11.
[16] The committee substitute defines a "person" as an individual, partnership, committee, association, corporation, or any other organization or group of persons. The committee substitute excludes from this definition a common or contract carrier or public warehouse that is not owned, in whole or in part, directly or indirectly, by the person.

The laws of the 46 signatory states to the Master Settlement Agreement[17] currently require a cigarette manufacturer to become a participating manufacturer who makes settlement payments to the states, based upon the manufacturer's market share of cigarette sales in the United States, or to remain a nonparticipating manufacturer and make escrow payments equivalent to the amount of the settlement payments paid by the participating manufacturers. To enforce these requirements, signatory states currently may prohibit the sale of cigarettes other than cigarettes with tax stamps affixed by manufacturers that meet these requirements.

The committee substitute in effect prohibits a person from transporting from Florida, or causing to be transported, cigarettes for sale in another state without complying with the other state's laws relating to the affixation of stamps to, the payment of excise taxes on, or the sale of the cigarettes. For transportation to the 46 signatory states, the committee substitute would likely require the person to be a participating manufacturer or a nonparticipating manufacturer making escrow payments equivalent to a participating manufacturer's settlement payments.

The committee substitute exempts from these requirements a person's transportation of the cigarette brands[18] of the following manufacturers and importers:

- Participating manufacturers, as defined in the Master Settlement Agreement,[19] which are responsible under the agreement for making settlement payments to the 46 signatory states; and
- Other manufacturers and importers that fully comply with the "qualifying statute," as defined in Master Settlement Agreement,[20] of the state in which the cigarettes are to be sold. (The qualifying statutes require these nonparticpating manufacturers and importers to make escrow payments equivalent to the settlement payments made by participating manufacturers.)

The committee substitute requires a person transporting from Florida, or causing to be transported, cigarettes for sale in another state to submit a monthly report to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation. The report must be submitted on or before the 10th day of each month and must identify, from the preceding calendar month, the quantity of each brand family[21] of the cigarettes and the name

[17] The committee substitute specifies that the Master Settlement Agreement is the settlement agreement (and related documents) entered into in 1998 by 46 states and leading United States tobacco manufacturers; see also *MSA, supra* note 5.
[18] The committee substitute specifies that the exemption applies, for cigarettes of a participating manufacturer, to cigarettes that are "deemed to be [the participating manufacturer's] cigarettes for purposes of calculating its [settlement] payments" and, for cigarettes of other manufacturers and importers, to cigarettes that are "deemed to be [the manufacturer's or importer's] cigarettes for purposes of the applicable qualifying statute" (i.e., for purposes of the escrow payments).
[19] The committee substitute specifies that the exemption applies to "participating manufacturers," as defined in section II(jj) of the Master Settlement Agreement (*MSA, supra* note 5, at 16-17 (page numbers of PDF file) and *supra* note 17).
[20] The committee substitute specifies that the exemption applies to a manufacturer or importer that is in full compliance with the "qualifying statute," as defined in section IX(d)(2)(E) of the Master Settlement Agreement (*MSA, supra* note 5, at 60 (page number of PDF file), *supra* note 7, and *supra* note 17).
[21] The committee substitute defines a "brand family" as all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s." The committee substitute further specifies that this definition includes any brand name used alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

and address of each recipient of the cigarettes. In addition, the committee substitute requires the person to certify under oath, subject to penalties for perjury:[22]

- That tax stamps have been affixed to cigarettes being transported from Florida to another state, as required by that state, and that tax stamps have not been affixed to the cigarettes, if prohibited by that state; or
- That the cigarette brands, which the person is transporting from Florida to another state, are cigarettes of a participating manufacturer or of a nonparticipating manufacturer or importer in full compliance with the other state's qualifying statute.

The committee substitute also specifies that these transportation requirements and exemptions do not authorize a person to possess or transport cigarettes if the person is not otherwise authorized to possess or transport the cigarettes under any other provision of Florida's cigarette tax law (part I of ch. 210, F.S.).

Manufacturers and Importers

Permits

Under current law, each distributing agent,[23] wholesale dealer, and exporter of cigarettes in this state is required to obtain a permit from the Division of Alcoholic Beverages and Tobacco for each place of business (s. 210.15, F.S.). The committee substitute adds cigarette manufacturers[24] and importers[25] to these entities that are required to obtain a permit to engage in business in Florida. The committee substitute clarifies that each of these entities must obtain a permit for each place of business located in Florida,[26] or if none are located in Florida, for wherever the entity's principal place of business is located.

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[22] Chapter 837, F.S., provides various criminal penalties for perjury. These penalties vary based upon the specific offense of perjury. For example, perjury that not in an official proceeding is a misdemeanor of the first degree, punishable by up to 1 year in jail or up to a $1,000 fine (s. 837.012, F.S.). Comparatively, perjury in an official proceeding is a felony of the third degree, punishable by up to 5 years in prison or up to a $5,000 fine, and is subject to the habitual felony offender statute (s. 837.02(1), F.S.). For purposes of perjury, an "official proceeding" includes a proceeding heard, or which may be or is required to be heard, before any administrative or other governmental agency or official authorized to take evidence under oath, including any referee, master in chancery, administrative law judge, hearing officer, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with the proceeding. The committee substitute is unclear whether these certifications under oath constitute "official proceedings" before the Division of Alcoholic Beverages and Tobacco for purposes of determining which penalty for perjury would apply.

[23] Under current law, a "distributing agent" is a person, firm, or corporation in Florida which acts as an agent for a person, firm, or corporation inside or outside of Florida by receiving and storing the cigarettes for distribution or delivery to wholesale dealers or other distributing agents inside or outside of Florida (s. 210.01(14), F.S.).

[24] The committee substitute defines a "manufacturer" as a person with a valid federal cigarette manufacturer's permit under 26 U.S.C. s. 5712 who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

[25] The committee substitute defines an "importer" as a person with a valid federal cigarette importer's permit under 26 U.S.C. s. 5712 who imports into the United States, directly or indirectly, a finished cigarette for sale or distribution.

[26] Under current law, a "place of business" is defined as a place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption or, if cigarettes are sold from a vending machine, the place in which the vending machine is located (s. 210.01(15), F.S.).

The committee substitute prohibits each of these entities from obtaining, maintaining, or renewing a permit if the entity, its officers, or any person owning more than 10 percent of the entity:

- Owes $500 or more in delinquent cigarette taxes;
- Had a cigarette importer's, retail dealer's, or wholesale dealer's permit revoked within the previous 2 years; or
- Has been convicted of selling stolen or counterfeit cigarettes, receiving stolen cigarettes, or being involved in the counterfeiting of cigarettes.

Under current law, a distributing agent, wholesale dealer, or exporter may not be issued a permit if the person (or an officer, if the entity is a corporation) has been convicted within the past 5 years of an offense under the state's cigarette tax law (part I of ch. 210, F.S.) or has been convicted of a felony in Florida, another state, or the United States during the past 5 years (s. 210.15(1)(c), F.S.). The committee substitute clarifies that these entities may not maintain or renew a permit if the person or officer has these convictions. The committee substitute also prohibits manufacturers and importers from obtaining, maintaining, or renewing a permit if the person or officer has these convictions.

Sell or Distribute Cigarettes Only to Wholesale Dealers

The committee substitute prohibits a manufacturer, importer, or distributing agent from selling or distributing cigarettes to a person in Florida unless the person is a wholesale dealer that has a valid and current permit issued by the Division of Alcoholic Beverages and Tobacco.

Prohibition against Manufacturers Stamping Cigarettes

Under current law, Florida's cigarette excise tax is required to be paid by the wholesale dealer "upon the first sale or transaction within the state, whether or not such sale or transfer be to the ultimate purchaser or consumer" (s. 210.02(6), F.S.). The current law is unclear whether cigarette manufactures would be considered "wholesale dealers."

The committee substitute prohibits a Florida cigarette tax stamp from being applied to a cigarette package that is exempt from the federal cigarette excise tax under 26 U.S.C. s. 5704, if the cigarette package is distributed by a manufacturer under federal regulations. According to 26 U.S.C. s. 5704, cigarettes are exempt from the federal tax:

- For consumption or use by a manufacturer's employees for experimental purposes;
- For transfer by a manufacturer or export warehouse proprietor[27] to the bonded premises of another manufacturer or export warehouse proprietor, or for shipment outside of the United States' 50 states;

[27] The committee substitute does not define the term, "export warehouse proprietor"; however, the federal Internal Revenue Code specifies that an export warehouse proprietor is a person who operates an export warehouse (26 U.S.C. s. 5702(i)). The federal code further defines an "export warehouse" as a bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States (26 U.S.C. s. 5702(h)).

- For delivery to an export warehouse or manufacturer upon importation into the United States and release from customs custody; or
- For return to the manufacturer upon release from customs custody, if the cigarettes were previously exported but returned to the United States.

By prohibiting cigarette tax stamps from being affixed to these cigarette packages exempt from the federal excise tax, the committee substitute would extend these federal exemptions for manufacturers to the Florida cigarette excise tax. The committee substitute does not change the requirement that wholesale dealers must affix cigarette tax stamps and pay the excise taxes. Because the committee substitute prohibits manufacturers from selling cigarettes to a person other than a wholesale dealer, the committee substitute is not anticipated to affect the collection of cigarette excise taxes.

Distinguish Manufacturers and Importers from Wholesale Dealers

Under current law, a "wholesale dealer" is a person who sells cigarettes to retail dealers or other persons for purposes of resale only, or a person who operates more than one cigarette vending machine located in more than one place of business (s. 210.01(6), F.S.). The committee substitute clarifies that a wholesale dealer may be located inside or outside of Florida. The committee substitute also specifies that cigarette manufacturers, export warehouse proprietors,[28] and importers are not considered wholesale dealers for purposes of the state's cigarette tax law, if the manufacturer, export warehouse proprietor, or importer:

- Has a valid federal cigarette permit under 26 U.S.C. s. 5712; and
- Sells and distributes cigarettes in Florida only to wholesale dealers, who are agents[29] that hold valid and current permits issued by the Division of Alcoholic Beverages and Tobacco, to an export warehouse proprietor, or to another manufacturer.

Requirements for Wholesale Dealers

The committee substitute requires wholesale dealers in Florida to affix tax stamps[30] to cigarette packages within 10 days after receipt of the cigarettes and requires out-of-state dealers to affix the stamps before shipment of the cigarettes into Florida. These provisions replace requirements in current law specifying that all wholesale dealers, whether inside or outside of Florida, must affix cigarette tax stamps before the cigarettes are offered for sale or use, consumed, or are otherwise disposed of in Florida (s. 210.06(1), F.S.).

[28] See *Export Warehouse Proprietor, supra* note 27.
[29] Under current law, an "agent" is a person authorized by the Division of Alcoholic Beverages and Tobacco to purchase and affix cigarette tax stamps (s. 210.01(9), F.S.).
[30] The committee substitute specifies that "stamps" are the indicia required to be placed on cigarette packages as evidence of payment of the state's excise tax on cigarettes.

The committee substitute prohibits a wholesale dealer from:

- Selling or distributing cigarettes to a person in Florida unless the person is a wholesale dealer or retail dealer with a valid and current retail permit issued by the Division of Alcoholic Beverages and Tobacco;
- Obtaining cigarettes from a manufacturer or importer that does not possess a valid and current federal cigarette manufacturer's or importer's permit under 26 U.S.C. s. 5712; or
- Applying tax stamps to cigarette packages received from anyone other than a manufacturer or importer of cigarettes which possesses a valid and current federal cigarette manufacturer's or importer's permit under 26 U.S.C. s. 5712.

Unstamped Cigarettes

The committee substitute specifies that a tax stamp must be applied to all cigarette packages subject to the cigarette excise tax which are intended for sale to consumers, except as otherwise provided in the committee substitute. The committee substitute prohibits a person from holding or possessing unstamped cigarette packages, except if the person:

- Is a wholesale dealer that receives unstamped cigarette packages directly from a cigarette manufacturer or importer;
- Ships the cigarettes to a wholesale dealer that holds a valid and current permit issued by the Division of Alcoholic Beverages and Tobacco;
- Ships the cigarettes to a person other than a wholesale dealer with a valid and current permit, but first files a notice with the Division of Alcoholic Beverages and Tobacco; or
- Is a common or contract carrier that is transporting cigarettes through Florida to an out-of-state location under a proper bill of lading or freight bill that specifies the quantity, source, and destination of the cigarettes.

The committee substitute requires a person to first file a notice with the Division of Alcoholic Beverages and Tobacco, if the person ships unstamped cigarette packages to a person in Florida other than a wholesale dealer with a valid and current permit issued by the division. The committee substitute specifies that this requirement does not apply to a common or contract carrier that is transporting cigarettes through Florida to an out-of-state location under a proper bill of lading or freight bill that specifies the quantity, source, and destination of the cigarettes.

The committee substitute permits a wholesale dealer to set aside, without affixing tax stamps, that part of the dealer's stock which is identified for sale or distribution outside of Florida. The committee substitute requires a dealer maintaining stocks of unstamped cigarettes to store the unstamped packages separately from stamped packages. The committee substitute also prohibits a wholesale dealer from transferring unstamped cigarette packages to another person or to another facility of the dealer.

Requirements for Retail Dealers

Under current law, a "retail dealer" is a person other than a wholesale dealer which is engaged in the business of selling cigarettes (s. 210.01(7), F.S.). The committee substitute clarifies that a

retail dealer may be located inside or outside of Florida and that retail dealers include persons, firms, associations, or corporations that obtain retail tobacco products dealer permits under s. 569.003, F.S.

The committee substitute prohibits a retail dealer from obtaining cigarettes from a person other than a manufacturer or a wholesale dealer with a valid and current permit issued by the Division of Alcoholic Beverages and Tobacco.

Searches, Seizures, and Forfeitures

Under current law, the Division of Alcoholic Beverages and Tobacco is authorized to seize, confiscate, and forfeit for the use and benefit of the state, any cigarettes for which the state's cigarette excise taxes are unpaid (s. 210.12(1), F.S.). The committee substitute extends the division's authority to seize, confiscate, and forfeit cigarettes to any cigarettes that are held in violation of the state's cigarette tax law.[31]

The committee substitute requires that all fixtures, equipment, and other materials and personal property on the premises of a wholesale dealer or retail dealer be forfeited to the state, if the wholesale dealer or retail dealer:

- Fails to keep or make a required record, return, report, or inventory, with intent to defraud the state;
- Keeps or makes a false or fraudulent record, return, report, or inventory; or
- Attempts to evade or defeat the requirements of the state's cigarette tax law.

The committee substitute prohibits the state from using or benefiting from the seizure, confiscation, and forfeiture of cigarettes and requires the state to destroy these cigarettes.

The committee substitute also permits the Division of Alcoholic Beverages and Tobacco or its authorized agent, or a law enforcement officer, to stop a vehicle and inspect the vehicle for contraband cigarettes, if the official has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of the state's cigarette tax law.

Criminal Penalties

Under current law, a wholesale dealer or retail dealer who violates the cigarette tax law commits a misdemeanor of the first degree, punishable by up to 1 year in prison or up to a $1,000 fine (s. 210.18(2), F.S.). A subsequent conviction is a felony of the third degree, punishable by up to 5 years in prison or up to a $5,000 fine, and is subject to the habitual felony offender statute. The committee substitute extends these criminal penalties to all persons.

Under current law, a person, firm, or corporation, other than a licensee under the cigarette tax law, who possesses 50 or fewer cartons of unstamped cigarettes commits a misdemeanor of the second degree, punishable by up to 60 days in jail or up to a $500 fine, but may pay the unpaid

[31] See, e.g., the discussion on page 10 of this staff analysis about the committee substitute's prohibitions against a person holding or possessing unstamped cigarette packages.

tax plus a penalty to avoid criminal penalties (s. 210.18(6), F.S.). The committee substitute deletes this offense; however, the committee substitute specifies that a person who fails to comply with any requirement of the cigarette tax law, with the intent to defraud the state, commits a felony of the third degree, punishable by up to 5 years in prison or up to a $5,000 fine, and is subject to the habitual felony offender statute.

The committee substitute provides that, notwithstanding any other law, a person, manufacturer, importer, distributing agent, wholesale dealer, or retail dealer who sells or possesses "counterfeit cigarettes"[32] is subject to the following criminal penalties:

- For a first violation involving less than two cartons of cigarettes, punishable by up to 5 years in prison, up to a $1,000 fine or five times the retail value of the cigarettes, whichever is greater, or both.
- For a subsequent violation involving less than two cartons of cigarettes, punishable by up to 5 years in prison, up to a $5,000 fine or five times the retail value of the cigarettes, whichever is greater, or both (violation results in revocation by the Division of Alcoholic Beverages and Tobacco of the manufacturer's, importer's, distributing agent's, wholesale dealer's, or retail dealer's permit).
- For a first violation involving two or more cartons of cigarettes, punishable by up to 5 years in prison, up to a $2,000 fine or five times the retail value of the cigarettes, whichever is greater, or both.
- For a subsequent violation involving two or more cartons of cigarettes, punishable by up to 5 years in prison, a $50,000 fine or five times the retail value of the cigarettes, whichever is greater, or both (violation results in revocation by the Division of Alcoholic Beverages and Tobacco of the manufacturer's, importer's, distributing agent's, wholesale dealer's, or retail dealer's permit).

The committee substitute requires the Division of Alcoholic Beverages and Tobacco, or a law enforcement agency, to seize counterfeit cigarettes and related machinery. The committee substitute also requires the division to destroy the seized counterfeit cigarettes.

Civil Penalties

The committee substitute imposes civil penalties, in addition to other penalties provided in the cigarette tax law, against a person who:

- Knowingly omits, neglects, or refuses:
  - To comply with any duty imposed by the cigarette tax law, or
  - To do or cause to be done anything required by the cigarette tax law; or
- Does anything prohibited by the cigarette tax law.

The committee substitute specifies that the person violating these provisions is liable for a $1,000 fine or five times the retail value of the cigarettes, whichever is greater.

[32] The committee substitute specifies that "counterfeit cigarettes" are cigarettes with false manufacturing labels, tobacco product packs without tax stamps or with counterfeit tax stamps, or any combination of these items.

The committee substitute also imposes civil penalties, in addition to other penalties provided in the cigarette tax law, against a person who fails to pay any taxes imposed by the cigarette tax law at the time prescribed by law or rules. The committee substitute specifies that the person is liable for a penalty of five times the unpaid taxes due.

Effective Date

The committee substitute provides that it takes 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. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

According to the Department of Business and Professional Regulation, the committee substitute may generate additional revenues from permit fees collected for the additional required permits. However, it is indeterminate how many additional instate and out-of-state entities will become permitted and remit fees and excise taxes as a result of the committee substitute.

B. Private Sector Impact:

In addition to current reporting requirements, the committee substitute requires a person to detail the quantity of each brand style of cigarettes sold out-of-state. The committee substitute also requires nonparticipating manufacturers (tobacco companies that are not parties to the Master Settlement Agreement), which transport cigarettes from Florida for sale in another state, to comply with the laws of other state. Compliance with other state laws would most likely require the nonparticipating manufacturers to become subsequent participating manufacturers (and make payments under the Master Settlement Agreement) or make payments into escrow accounts in other states, thereby reducing the competitive advantage and market share of these companies. A reduction in the market share of nonparticipating manufacturers will most likely benefit the original participating manufacturers (Philip Morris, R. J. Reynolds, Brown & Williamson, and Lorillard) and other subsequent participating manufacturers.

The extent of any private-sector costs associated with the reporting requirements of the committee substitute has not been determined.

C. Government Sector Impact:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation estimates it will need one-time set-up costs of $250,000 to contract for the development and establishment of the computer system to capture the data reported under the requirements of the committee substitute. The department also cites that it would need annual budget authority of $30,000 to fund license agreements and maintenance, and one System Project Analyst position to provide technology support relating to the new database. According to the department, it would require one additional Regulatory Specialist II position in the Bureau of Licensing, one additional Revenue Specialist I position, and one Tax Auditor I position in the Bureau of Auditing, to administer the committee substitute, along with space and equipment applicable to the positions. The Division of Information Technology would require one Systems Project Analyst, $250,000 in one-time programming costs, and $30,000 in recurring expenses.

Tobacco Settlement Trust Funds

If the committee substitute causes an increase in the market share of the original participating manufacturers (Philip Morris, R. J. Reynolds, Brown & Williamson, and Lorillard) by reducing the market share of nonparticipating manufacturers through requiring compliance with the laws of other states, the committee substitute would likely increase the amounts of settlement payments made by the original participating manufacturers to Florida under the state's settlement agreement.

VI. Technical Deficiencies:

The committee substitute amends criminal penalties under the cigarette tax law in s. 210.18, F.S. Section 772.102(1)(a)1., F.S., includes a specific reference to s. 210.18, F.S., for purposes of a definition of "criminal activity." Section 895.02(1)(a)1., F.S., includes a specific reference to s. 210.18, F.S., for purposes of a definition of "racketeering activity." Unless the Legislature reenacts these specific references to s. 210.18, F.S., the references will not incorporate the changes made to s. 210.18, F.S., within the terms "criminal activity" and "racketeering activity." The Legislature may wish to amend the committee substitute to reenact these specific references.

VII. Related Issues:

None.

VIII. Amendments:

None.

Bill No. CS for CS for SB 2676

Amendment No. 1 134960

CHAMBER ACTION

Senate | House

Senator Jones moved the following amendment:

Senate Amendment

On page 2, lines 27 and 28, delete those lines

and insert: current permits under s. 210.15 or to any cigarette manufacturer, export warehouse proprietor, or importer who holds a valid and current permit under 26 U.S.C. s. 5712.

Bill No. CS for CS for SB 2676

Amendment No. 2 033188

CHAMBER ACTION

Senate | House

Senator Jones moved the following amendment:

Senate Amendment

On page 3, lines 14 and 15, delete those lines

and insert: have false manufacturing labels, tobacco product packs with counterfeit tax stamps, or any combination

Bill No. CS for CS for SB 2676

Amendment No. 3 630480

CHAMBER ACTION

Senate House

Senator Jones moved the following amendment:

Senate Amendment

On page 8, line 2, delete that line

and insert: into this state other than to a manufacturer, importer, or dealer holding a valid,

Bill No. CS for CS for SB 2676

Amendment No. 4 522046

CHAMBER ACTION

Senate | House

Senator Jones moved the following amendment:

Senate Amendment

On page 7, line 18, after the word "manufacturer"

insert: , importer,

Bill No. CS for CS for SB 2676

Amendment No. 5 521560

CHAMBER ACTION

Senate House

Senator Clary moved the following amendment:

Senate Amendment (with title amendment)

On page 17, between lines 11 and 12,

insert:

Section 10. For the purpose of incorporating the amendment made by this act to section 210.18, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is reenacted to read:

772.102 Definitions.--As used in this chapter, the term:

(1) "Criminal activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 414.39, relating to public assistance

1 fraud.
2 3. Section 440.105 or s. 440.106, relating to workers'
3 compensation.
4 4. Part IV of chapter 501, relating to telemarketing.
5 5. Chapter 517, relating to securities transactions.
6 6. Section 550.235, s. 550.3551, or s. 550.3605,
7 relating to dogracing and horseracing.
8 7. Chapter 550, relating to jai alai frontons.
9 8. Chapter 552, relating to the manufacture,
10 distribution, and use of explosives.
11 9. Chapter 562, relating to beverage law enforcement.
12 10. Section 624.401, relating to transacting insurance
13 without a certificate of authority, s. 624.437(4)(c)1.,
14 relating to operating an unauthorized multiple-employer
15 welfare arrangement, or s. 626.902(1)(b), relating to
16 representing or aiding an unauthorized insurer.
17 11. Chapter 687, relating to interest and usurious
18 practices.
19 12. Section 721.08, s. 721.09, or s. 721.13, relating
20 to real estate timeshare plans.
21 13. Chapter 782, relating to homicide.
22 14. Chapter 784, relating to assault and battery.
23 15. Chapter 787, relating to kidnapping.
24 16. Chapter 790, relating to weapons and firearms.
25 17. Section 796.03, s. 796.04, s. 796.05, or s.
26 796.07, relating to prostitution.
27 18. Chapter 806, relating to arson.
28 19. Section 810.02(2)(c), relating to specified
29 burglary of a dwelling or structure.
30 20. Chapter 812, relating to theft, robbery, and
31 related crimes.

1 21. Chapter 815, relating to computer-related crimes.
2 22. Chapter 817, relating to fraudulent practices,
3 false pretenses, fraud generally, and credit card crimes.
4 23. Section 827.071, relating to commercial sexual
5 exploitation of children.
6 24. Chapter 831, relating to forgery and
7 counterfeiting.
8 25. Chapter 832, relating to issuance of worthless
9 checks and drafts.
10 26. Section 836.05, relating to extortion.
11 27. Chapter 837, relating to perjury.
12 28. Chapter 838, relating to bribery and misuse of
13 public office.
14 29. Chapter 843, relating to obstruction of justice.
15 30. Section 847.011, s. 847.012, s. 847.013, s.
16 847.06, or s. 847.07, relating to obscene literature and
17 profanity.
18 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
19 or s. 849.25, relating to gambling.
20 32. Chapter 893, relating to drug abuse prevention and
21 control.
22 33. Section 914.22 or s. 914.23, relating to
23 witnesses, victims, or informants.
24 34. Section 918.12 or s. 918.13, relating to tampering
25 with jurors and evidence.
26 Section 11. For the purpose of incorporating the
27 amendment made by this act to section 210.18, Florida
28 Statutes, in a reference thereto, paragraph (a) of subsection
29 (1) of section 895.02, Florida Statutes, is reenacted to read:
30 895.02 Definitions.--As used in ss. 895.01-895.08, the
31 term:

1 (1) "Racketeering activity" means to commit, to
2 attempt to commit, to conspire to commit, or to solicit,
3 coerce, or intimidate another person to commit:
4 (a) Any crime which is chargeable by indictment or
5 information under the following provisions of the Florida
6 Statutes:
7 1. Section 210.18, relating to evasion of payment of
8 cigarette taxes.
9 2. Section 403.727(3)(b), relating to environmental
10 control.
11 3. Section 414.39, relating to public assistance
12 fraud.
13 4. Section 409.920, relating to Medicaid provider
14 fraud.
15 5. Section 440.105 or s. 440.106, relating to workers'
16 compensation.
17 6. Sections 499.0051, 499.0052, 499.0053, 499.0054,
18 and 499.0691, relating to crimes involving contraband and
19 adulterated drugs.
20 7. Part IV of chapter 501, relating to telemarketing.
21 8. Chapter 517, relating to sale of securities and
22 investor protection.
23 9. Section 550.235, s. 550.3551, or s. 550.3605,
24 relating to dogracing and horseracing.
25 10. Chapter 550, relating to jai alai frontons.
26 11. Chapter 552, relating to the manufacture,
27 distribution, and use of explosives.
28 12. Chapter 560, relating to money transmitters, if
29 the violation is punishable as a felony.
30 13. Chapter 562, relating to beverage law enforcement.
31 14. Section 624.401, relating to transacting insurance

1 without a certificate of authority, s. 624.437(4)(c)1.,
2 relating to operating an unauthorized multiple-employer
3 welfare arrangement, or s. 626.902(1)(b), relating to
4 representing or aiding an unauthorized insurer.
5 15. Section 655.50, relating to reports of currency
6 transactions, when such violation is punishable as a felony.
7 16. Chapter 687, relating to interest and usurious
8 practices.
9 17. Section 721.08, s. 721.09, or s. 721.13, relating
10 to real estate timeshare plans.
11 18. Chapter 782, relating to homicide.
12 19. Chapter 784, relating to assault and battery.
13 20. Chapter 787, relating to kidnapping.
14 21. Chapter 790, relating to weapons and firearms.
15 22. Section 796.03, s. 796.04, s. 796.05, or s.
16 796.07, relating to prostitution.
17 23. Chapter 806, relating to arson.
18 24. Section 810.02(2)(c), relating to specified
19 burglary of a dwelling or structure.
20 25. Chapter 812, relating to theft, robbery, and
21 related crimes.
22 26. Chapter 815, relating to computer-related crimes.
23 27. Chapter 817, relating to fraudulent practices,
24 false pretenses, fraud generally, and credit card crimes.
25 28. Chapter 825, relating to abuse, neglect, or
26 exploitation of an elderly person or disabled adult.
27 29. Section 827.071, relating to commercial sexual
28 exploitation of children.
29 30. Chapter 831, relating to forgery and
30 counterfeiting.
31 31. Chapter 832, relating to issuance of worthless

1 checks and drafts.
2 32. Section 836.05, relating to extortion.
3 33. Chapter 837, relating to perjury.
4 34. Chapter 838, relating to bribery and misuse of
5 public office.
6 35. Chapter 843, relating to obstruction of justice.
7 36. Section 847.011, s. 847.012, s. 847.013, s.
8 847.06, or s. 847.07, relating to obscene literature and
9 profanity.
10 37. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
11 or s. 849.25, relating to gambling.
12 38. Chapter 874, relating to criminal street gangs.
13 39. Chapter 893, relating to drug abuse prevention and
14 control.
15 40. Chapter 896, relating to offenses related to
16 financial transactions.
17 41. Sections 914.22 and 914.23, relating to tampering
18 with a witness, victim, or informant, and retaliation against
19 a witness, victim, or informant.
20 42. Sections 918.12 and 918.13, relating to tampering
21 with jurors and evidence.
22
23 (Redesignate subsequent sections.)
24
25
26 ========== T I T L E A M E N D M E N T ==========
27 And the title is amended as follows:
28 On page 2, line 8, after the semicolon,
29
30 insert:
31 reenacting ss. 772.102(1)(a) and 895.02(1)(a),

F.S., relating to crimes constituting a "criminal activity" and definitions as used in the Florida RICO Act, to incorporate the amendment to s. 210.18, F.S., in references thereto;

Bill No. CS for CS for SB 2676

Amendment No. 6 152002

CHAMBER ACTION

Senate House

Senator Clary moved the following amendment:

Senate Amendment (with title amendment)

On page 17, between lines 11 and 12,

insert:

Section 10. For the 2004-2005 fiscal year, the sum of $480,028 is appropriated from the Alcoholic Beverage and Tobacco Trust Fund and four full time equivalent positions are authorized to be established by the Department of Business and Professional Regulation for the purpose of conducting regulatory activities related to the transportation and sale of cigarettes.

(Redesignate subsequent sections.)

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

And the title is amended as follows:

On page 2, line 8, after the semicolon

1 insert:

2 providing an appropriation and authorizing

3 positions;

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/CS/SB 2910

SPONSOR: Appropriations Subcommittee on Health and Human Services; Banking and Insurance Committee; Health, Aging, and Long-term Care Committee; and Senator Peaden

SUBJECT: Affordable Health Care

DATE: April 20, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HC	Fav/CS
2.	Deffenbaugh	Deffenbaugh	BI	Fav/CS
3.	Peters	Belcher	AHS	Fav/CS
4.	Peters	Coburn	AP	
5.				
6.				

I. Summary:

The bill includes the following provisions:

Availability of Health Information ("Transparency")

- Requires health care facilities not operated by the state to publish the average cost of the top 50 inpatient and top 50 outpatient services provided.
- Requires health care facilities to provide an estimate of charges for the proposed service upon request of a prospective patient who does not have insurance or whose insurer or HMO does not have a contract with the hospital and an emergency medical condition does not exist or the service is not a covered service.
- Requires health care facilities, providers, and health insurers to submit data to the Agency for Health Care Administration (AHCA) and for AHCA to make performance outcome and financial data available to consumers, including retail prices for the 50 most frequently prescribed medicines for licensed pharmacies, and outcome data for specified medical conditions and procedures.

Health Insurance

- Creates the Florida Health Insurance Plan as the high risk pool for uninsurable medical risks, to replace the Florida Comprehensive Health Association. The plan must be approved by the Financial Services Commission but the plan cannot be implemented until funds are appropriated for start-up costs and any projected deficits. No appropriations for this purpose are provided.
- Expands of the Health Flex Program statewide.
- Deletes the requirement that small group carriers guaranty-issue policies to one-life groups if there is enrollment availability in the Florida Health Insurance Plan.

- Requires small group carriers to offer a high deductible plan that meets the federal requirements of a health savings account plan or health reimbursement account.
- Authorizes the Office of Insurance Regulation to select an insurer, through competitive bidding, to provide coverage to small employers with 25 or fewer employees within established geographical areas.
- Requires persons who provide access to any discounted medical services to be licensed by the Office of Insurance Regulation.
- Require health insurers to provide for a rebate of premiums when the majority of members of a health plan have maintained participation in a wellness program.

Patient Safety

- Creates the Florida Patient Safety Corporation to assist health care providers to improve the quality and safety of health care rendered and to reduce harm to patients.
- Requires the Patient Safety Center at the Florida State University College of Medicine to conduct a study on hospitals implementing computerized physician order entry and other information technologies related to patient safety.
- Requires patient safety officers and patient safety committees at licensed facilities to recommend improvements in the patient safety measures.

Other

- Allows hospitals and federally quality health centers to develop emergency room diversion programs.
- Renames the Statewide Provider and Subscriber Assistance Program as the Subscriber Assistance Program, limits the program to hearing grievances filed by subscribers of managed care plans, requires managed care entities to provide internal grievance records, and provides greater flexibility in the composition of the panel.

Appropriations

- $350,000 from the General Revenue Fund to AHCA for the establishment of the Florida Patient Safety Corporation.
- $113,500 from the General Revenue Fund to the Florida State University College of Medicine for the purpose of conducting the study on hospitals implementing computerized physician order entry.
- $250,000 from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation for the board of the Florida Health Insurance Plan to contract for an independent actuarial study.
- $250,000 from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to implement the provisions in this act relating to the Small Employer Access Program.
- $169,069 from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to implement provisions related to the regulation of Discount Medical Plan Organizations.

This bill amends the following sections of the Florida Statutes: 381.026, 381.734, 395.1012, 395.1041, 395.301, 408.05, 408.061, 408.062, 408.7056, 408.909, 409.9066, 409.91255, 641.31, 641.3154, 641.511, 641.54, 641.58, 627.410, 627.6499, 627.662, 627.6699, 627.9175 and 766.309.

The bill creates the following sections of the Florida Statutes: 381.0271, 465.0244, 624.6405, 627.6402, 627.64872, and 627.65626, and creates parts I and II of ch. 636.

The bill repeals the following sections of the Florida Statutes: 408.02, 766.1016(3)

The bill repeals the following sections of the Florida Statutes upon implementation of the Florida Health Insurance Plan: 627.6488, 627.6489, 627.649, 627.6492, 627.6494, 627.6496, and 627.6498.

II. Present Situation:

Governor's Task Force on Access to Affordable Health Insurance

The Governor's Task force on Access to Affordable Health Insurance (Governor's Task Force) was created for the purpose of identifying factors that contribute to rising health care costs which prevent Floridians from obtaining health insurance coverage. A recent study by the Kaiser Family Foundation ranks Florida sixth in the nation in percent of population without health insurance coverage, with 18 percent of Floridians uninsured during 2001-2002. The Governor's Task Force was charged with recommending policies that will improve access to health insurance at affordable, predictable costs, while maintaining consumer choice. The Governor's Task force was co-chaired by Lieutenant Governor Toni Jennings and Chief Financial Officer Tom Gallagher and was comprised of 17 members representing business leaders, health policy experts, health care providers, consumers, and legislators.

The Governor's Task Force final report[1] contained numerous recommendations to improve Floridian's access to affordable health insurance, including:

Expanding the Health Flex Program statewide as a means of offering basic, lower-cost health care coverage to uninsured workers who have low incomes;
Establishing purchasing pools for small employers;
Creation of health plans for uninsurable and HIPAA-eligible individuals
Encouraging the use of evidence-based medicine; and
Encouraging the development of an electronic medical record that could be used statewide.

The House Select Committee on Affordable Health Care for Floridians was also appointed on August 14, 2003. After seven public hearings and three committee meetings, 88 policy options were examined and reviewed. The "Policy Options -- Pros and Cons" section of the report provides a narrative regarding each of the options. The committee narrowed the list of policy options from 88 to 13 that were recommended to the Speaker of the House.

[1] Final Report of the Governor's Task Force on Access to Affordable Health Insurance. http://www.fdhc.state.fl.us/affordable_health_insurance/PDFs/task_force_report_021504_final.pdf

The Florida Health Insurance Market
Florida residents and employers spent $12.5 billion in health insurance premiums, as reported in calendar year 2000. Spending for all privately and publicly funded personal health care services and products (e.g., hospital care, physician services, nursing home care, prescription drugs, etc.) exceeded $60 billion in 1998.

The structure of the Florida health coverage market and the regulations that govern its operations are based on health plan type and size. The types of health plans are generally categorized as self-insured plans, large group health plans, small group health plans, individual health plans, out-of-state group plans, and persons insured in the state's high-risk pool, the Florida Comprehensive Health Association.

Most fully-insured private health coverage in Florida is issued through an employer group – a small group, which is defined by Florida law as one to 50 employees, or a large group, 51 employees or more. Many larger Florida employers provide coverage by self-insuring and establishing contracts with private insurance companies to provide "stop loss" reinsurance and administrative services, thus taking advantage of the Employment Retirement Income Security Act (ERISA) preemption of state laws. As a result, less than 30 percent of Florida's population has health insurance that is governed by state insurance laws. In fact, of Florida's 16.1 million residents in 2002:

4.8 million were in the Florida insurance market (fully-insured plans, large groups, small groups, and individual plans);
4.3 million were governed by only federal law (self-insured plans under ERISA);
1.7 million were enrolled in Medicaid;
2.5 million were enrolled in the Medicare program; and
2.8 million were uninsured.

Consequences of Lack of Health Insurance

Uninsured patients are often reluctant to use health services, and therefore wait until there is a crisis. They receive fewer preventive services and less regular care for chronic disease.

Not only does the lack of insurance affect the health and well being of U.S. and Florida residents, but there is a rippling affect on the economy. In 2001, the cost of medical care for uninsured residents in the U.S. totaled $98.9 billion. The Florida Hospital Association reports that in 2002 cost for uncompensated care provided in Florida hospitals amounted to $1.51 billion.

Studies estimate that the potential economic value to be gained in better health outcomes from uninterrupted coverage for all Americans is estimated to be between $65 and $130 billion each year, which is currently being lost per year in lost productivity. Each uninsured U.S. resident loses between $1,645 and $3,280 per year in lost wages and benefits and in the value that improved quality of life and longer lifespan would provide.

The state's budget is also strained by increasing numbers of uninsured. The Social Services Estimating Conference estimates that Florida's Medicaid expenditures will approach $14 billion in FY 2004-05, resulting in a $526 million deficit in General Revenue funding for that year.

As state budgets are stretched, funding health care for Florida residents falls on the local communities where care is provided. Counties are mandated by state law to contribute to the state Medicaid program. For fiscal year 2002-2003, counties contributed approximately $162 million. Counties are required to pay for eligible Medicaid recipients' inpatient hospital stay from day 11 through day 45, with this responsibility being increased by the state several years ago. Counties are currently funding inpatient hospital days at approximately $115 million statewide.

Florida Comprehensive Health Association

Many states have created health insurance risk pools to address the needs of the under-insured and uninsured. High-risk pools provide a safety net for otherwise uninsurable individuals; however, they typically enroll a relatively small number of individuals. Reasons for low enrollment include: limited funding, lack of public awareness, and the relatively high expense.

As enacted under chapters 82-243 and 82-386, Laws of Florida, the Florida Comprehensive Health Association (FCHA)[2] provides health insurance to individuals who, due to their health status or inability to afford coverage, are unable to obtain health insurance coverage in the private market. Throughout the early years of the program, enrollment and insurance fund losses were low; however, by 1989, enrollment and losses had increased substantially. Legislation was enacted to prohibit the FCHA from issuing policies to new applicants after July 1, 1991.

The FCHA currently provides coverage for approximately 500 individuals. The FCHA Summary of Plan Activities for 2002 reports that the net loss for calendar year 2002 was $4.6 million, which resulted in an assessment against health insurers of about 0.03 percent of premiums written in Florida, which totaled about $13.9 billion. The $4.6 million net loss amounted to net loss per policyholder of $8,131. The FCHA states that the net loss per policyholder remains high due to the FCHA's shrinking population.

The following table from the FHCA Summary of Plan Activities for 2002 shows the net loss that was assessed against health insurers, the net loss per FCHA policyholder, and the net loss as a percentage of the total premium assessment base for the period 1991 - 2002:

[2] Originally termed the State Comprehensive Health Association.

FCHA Assessments (Net Loss) for 1991 - 2002

Year	Number of Policyholders at Year End	Net Loss	Assessment Base	Net Loss per FCHA Policyholder	Net Loss as a Percentage of Assessment Base
1991	4,832	$5.6 mil.	$5.565 bil.	$1.156	0.10%
1992	4,326	$7.1 mil.	$6.852 bil.	$1,650	0.10%
1993	3,476	$5.8 mil.	$7.186 bil.	$1,667	0.08%
1994	2,387	$11.8 mil.	$6.905 bil.	$4,950	0.17%
1995	1,689	$9.8 mil.	$7.836 bil.	$5,814	0.13%
1996	1,418,	$3.2 mil.	$8.238 bil.	$2,273	0.04%
1997	1,095	$1.9 mil.	$9.793 bil.	$1,767	0.02%
1998	916	$4.9 mil.	$9.793 bil.	$5,341	0.05%
1999	811	$4.0 mil.	$12.760 bil.	$4,957	0.03%
2000	709	$5.4 mil.	$11.497 bil.	$7,629	0.05%
2001	638	$7.7 mil.	$12.537 bil.	$12,109	0.06%
2002	571	$4.6 mil.	$13.866 bil.	$8,131	0.03%

The FCHA has not published an annual report for 2003, but the Office of Insurance Regulation reports that for 2003, the FCHA had a net loss of $2.89 million and that this was lower than prior years primarily as a result of some decreases in reserving. For cash flow purposes, the assessment will most likely be closer to $4.0 million.

In 2002, FHCA policyholders paid an average premium of $3,663 per policyholder. The average annual premium for FCHA policyholders who did not have Medicare was $4,872, while the average annual premium for FHCA policyholders who also had Medicare was $1.656. The $3,663 average premium in 2002 has remained relatively constant since 1991, when the average premium was $3,823.

In its 2002 FCHA Summary of Plan Activities, the Director of the Office of Insurance Regulation, who is the chair of the FHCA board, wrote that the revitalization of a stable high-risk health insurance pool would provide many benefits to the individual and small group markets, including: 1) easing the financial burden to carriers of providing mandatory coverage for those HIPAA eligible individuals with serious health problems; 2) removing incentives by medically uninsurable individuals to "game the market" and qualify for guaranteed-issue small-group coverage and that removing these risks would improve carrier loss ratios and improve rates for the rest of the small group market; and 3) providing an avenue of insurance for those individuals who cannot pass health underwriting in the individual market.

Effective July 1, 1990, the FCHA was amended to require the FCHA to pattern its coverage after the state group health insurance program including benefits, exclusions, and other limitations, except as otherwise provided by law. The major medical expense coverage under FCHA includes a $500,000 lifetime limit per covered life. The FCHA provides for an annual deductible in the amount of $1,000 or more, as approved by the Office of Insurance Regulation (OIR or Office). The FCHA provides for a 12-month exclusion of insurance coverage with respect to a condition

that manifested itself within 6 months of the effective date of the coverage or medical advice or treatment recommended or received within a period of 6 months before the effective date of the coverage.

A precondition for FCHA eligibility is that the applicant be rejected by at least 2 insurers offering coverage substantially similar to the FCHA's coverage and the market assistance plan has been unsuccessful in finding an insurer to accept the application. Rejection is defined as an offer of coverage with a material underwriting restriction or an offer of coverage at a rate greater than the FCHA's rate. Therefore, the rejection may or may not be due to a determination that an applicant is literally uninsurable.

Legislative changes in 1990 required the FCHA board or administrator to verify the residency of an applicant and to prohibit the enrollment of a person who is eligible for Medicaid, unless such person has an illness or disease that requires supplies or medication that are covered by the FCHA, but that are not covered by the Medicaid program; or the person is not receiving benefits under Medicaid. In addition, the law was clarified to allow FCHA to terminate an enrollee immediately if the enrollee ceases to meet the eligibility requirements.

The Office annually establishes the standard risk rate that is used for determining premiums for the FCHA under s. 627.6498(4)(a), F.S. Under s. 627.6675, F.S., the Office uses reasonable actuarial techniques and standards adopted by rule. As currently provided, the maximum rates for the FCHA are 200 percent, 225 percent, and 250 percent of this standard risk rate for low, medium, and high-risk individuals, respectively.

As a condition of doing business in Florida, health insurers are required to pay assessments to fund the deficits of the FCHA. Companies subject to the assessment include all health insurance companies, health maintenance organizations, fraternal benefit societies, multiple employer welfare arrangements, and prepaid health clinics. Self-funded employers and governmental entities are not subject to the assessment.

The board assesses each insurer annually a portion of incurred operating losses of the FCHA, based on the insurer's market share in Florida as measured by premium volume. The total of all assessments per participating insurer is capped at 1 percent of such insurer's health insurance premium earned in Florida during the calendar year proceeding the year for which the assessment is levied.

Guaranteed Availability of Individual Coverage under the Health Insurance Portability and Accountability Act

In 1996, Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) which requires insurers issuing individual health insurance policies to guarantee the issuance of coverage to persons who previously were covered for at least 18 months with qualifying coverage and meet other eligibility criteria. The Act allows each state to craft alternative methods of guaranteeing availability of coverage. Each state must ensure that its provisions comport with HIPAA and do not diminish the federal requirements, but states may provide more favorable treatment for the individual.

In 1997, Florida enacted legislation to conform state law to HIPAA, which included an alternative mechanism that was deemed to be acceptable by the federal Health Care Finance Administration (HCFA). In order to be eligible for guaranteed-issuance of individual coverage under HIPAA and Florida's conforming legislation in s. 627.6487, F.S., an individual must have had prior creditable coverage for at least 18 months, without a break in coverage of more than 63 days, and not be eligible for any other group coverage, Medicare or Medicaid. Under federal law, the individual's most recent prior coverage must have been under a group plan, a governmental plan, or church plan. However, Florida has since expanded the eligibility criteria under state law to also include persons whose most recent coverage was under an individual plan that is terminated die to the insurer becoming insolvent or discontinuing the offering of individual coverage in the state, or due to the insured no longer living in the service area in Florida of the insurer.

The Florida law, in effect, provides two mechanisms for guaranteeing access to individual coverage. The first method is an individual conversion policy that must be offered by the insurer or HMO that issued the prior group coverage. The insurer or HMO must offer at least two conversion policy options, one being the standard benefit plan that small group carriers must to offer small employers. The maximum premium is limited to 200 percent of the standard risk rate, which is a statewide average rate computed annually by the Office of Insurance Regulation. If the individual is not eligible for a conversion policy issued pursuant to Florida requirements, the second method allows eligible individuals to purchase an individual policy from any insurance company or HMO issuing individual coverage in the state. This generally includes persons who were previously covered under a self-insured employer's plan or who move to Florida after terminating coverage from previous employment in another state. It also applies to persons whose previous coverage was under an individual plan that was terminated for specified reasons. The insurer or HMO must offer each of their two most popular policy forms, based on statewide premium volume. This is referred to as the federal fall back method, since it is the method that applies under HIPAA if a state fails to enact an alternative mechanism.

Florida's Patient's Bill of Rights

The Florida Patient's Bill of Rights and Responsibilities includes a listing of rights related to individual dignity, basic information rights, the right to grievances, the right to obtain information related to accepted payment by the facility, the right to be provided a reasonable estimate of the expected charges, the right to access to emergency care, and the right to know if the treatment is for the purpose of experimental research. In addition, the current statutes specify the responsibilities of a patient of a health care facility and or health care provider.

Health Flex Plan Pilot Program

The Health Flex Plan pilot program was created by the Florida Legislature during the 2002 Session. The pilot program permits entities to develop alternative health care coverage plans, referred to as health flex plans, for uninsured persons who have a family income equal to or less than 200 percent of the federal poverty level. The goal of the program is to improve the affordability and availability of heath care coverage for low-income Floridians who are unable to obtain health coverage, by encouraging the development of alternative approaches to traditional health insurance that still provide basic and preventative health care services.

A health flex plan is permitted to take measures that are impermissible for regular providers of health care coverage. The health flex plan may limit or exclude benefits that are otherwise required by law for insurers offering coverage in Florida (s. 408.909(3), F.S.). The plan may also cap the total amount of claims paid per year per enrollee, and may limit the number of enrollees (s. 408.909(3), F.S.).

A health flex plan may be developed and implemented by health insurers, HMOs, health care provider-sponsored organizations, local governments, heath care districts, or other community-based organizations (s. 408.909(2), F.S.). Current law specifies that the Agency must develop guidelines for reviewing health flex plan applications and must disapprove or withdraw approval of plans that do not meet minimum standards for quality of care and access to care. The Office must also develop guidelines for reviewing health flex plan applications and must disapprove or withdraw approval of plans that:

- Contain any ambiguous, inconsistent, or misleading provisions, or exceptions or conditions that deceptively affect or limit the benefits purported to be assumed in the general coverage provided by the plan;
- Provide benefits that are unreasonable in relation to the premium charged, contain provisions that are unfair or inequitable or contrary to the public policy of this state or that encourage misrepresentation, or result in unfair discrimination in sales practices; or
- Cannot demonstrate that the health flex plan is financially sound and that the applicant has the ability to underwrite or finance the benefits provided. (s. 408.909(3), F.S.)

The statute attempts to target the pilot programs in areas of the state that have the greatest number of the uninsured poor. The statute authorizes the Agency and the Office to approve health flex plans in the three areas of the state having the highest number of uninsured persons (s. 408.909(3), F.S.). These areas are in northern Florida (Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Franklin, Liberty, Gadsden, Leon, Wakulla, Jefferson, Taylor, Hamilton, Suwannee, Lafayette, Dixie, Levy, Citrus, Sumter, Columbia, Baker, Union, Bradford, Putnam, Clay, Duval and Madison counties), south Florida (Miami-Dade and Broward county), and Hillsborough County. The statute also authorizes the issuance of health flex plans in Indian River County.

Eligibility to enroll in a health flex plan is limited to Florida residents who are under 65 years of age and have a family income equal to or less than 200 percent of the federal poverty level (s. 408.909(5), F.S.). The enrollee must not be covered by a private insurance policy, must not be eligible for coverage through a public health insurance program such as Medicare, Medicaid, or KidCare, and must not have been covered at any time during the past 6 months. The enrollee must also have applied for health care coverage through an approved plan and agree to make any payments required for participation, including periodic payments or payments due at the time health care services are provided.

The Agency must evaluate the pilot program and its effects on the entities that seek approval as health flex plans, as well as the number of enrollees and the scope of the coverage afforded (s. 408.909(9), F.S.). The Agency and the Office are mandated to assess the health flex plans and their potential applicability in other settings. The Agency and the Office submitted a report due January 1, 2004, regarding the applicability of health flex programs to other areas of the state, to

the Governor, President of the Senate, and Speaker of the House of Representatives. The report states that several health insurers and governmental entities in areas of the state currently not covered by the program have contacted the Agency to express interest in establishing health flex plans. Each approved health flex plan is required to maintain records of enrollment, finances, and claims experience to enable the Agency and the Office to monitor the plan (s. 408.909(6), F.S.). The statute authorizing the health flex pilot program was amended during the 2003 Session to extend the expiration date of the program from July 1, 2004 to July 1, 2008.

The Agency reports that, to date, three health flex plans have been approved. American Care, Inc., has created a plan in Dade County that covers outpatient services only, including many outpatient surgery components with substantial co-payments and limitations; the program had 130 enrollees as of November 2003. Preferred Medical Plan, Inc., which has operated as an HMO for a number of years in Florida, was approved to offer a health flex plan in Dade County that offers a primary care and outpatient benefit plan with limited drug coverage, along with preventive services such as immunizations and mammograms. On December 1, 2003, JaxCare (a public/private sector partnership) became the most recent health flex plan to be approved. The plan links community groups and providers with private sector providers to create a network across Duval County. The JaxCare plan was developed through the "Communities In Charge" grant initiative of The Robert Wood Johnson Foundation and the technological infrastructure for the plan was developed through grants from the Department of Health and Human Services. In addition to the already approved plans, local government in Miami-Dade County is currently developing a health flex plan to offer to uninsured workers.

Electronic Medical Records

An electronic medical record is a patient's medical record in a digital format that a physician could transmit electronically to a hospital, to another physician, or to the patient. While most business and governmental record-keeping has been stored and transmitted electronically for many years, medical records are still largely paper records.

In recent years, private and public sector policy leaders have called for electronic medical records in a standard format that could be transmitted among medical professionals. The Institute of Medicine (IOM) issued a report in November 2003,[3] calling for the development of a national health information infrastructure with targeted support from the federal government for its development. Such a federal initiative has been compared to the Hill-Burton Act that provided funds for the construction of community hospitals. The proposal could also be compared with the federal legislation that established the e-rate for schools and libraries to permit nationwide access to the Internet.

The Healthy Florida Foundation,[4] a group of diverse Florida organizations representing health care providers, insurers, organized labor, state government and community initiatives recommends encouraging development of electronic medical records through financial incentives and the establishment of a universal electronic medical record system in Florida

[3] Institute of Medicine, Aspden, Philip, Corrigan, Janet M., Wolcott, Julie, and Erickson, Shari M., Eds. Patient Safety: Achieving a New Standard. The National Academies Press 2004. Readable at: http://books.nap.edu/catalog/10863.html
[4] http://www.healthyfloridafoundation.org/

within 5 years that would permit caregivers and patients to share medical records and access clinical information.

The Governor's Task Force on Access to Affordable Health Insurance recommended that the state encourage the development of electronic medical records by providing financial incentives and promoting the use of digital technology and information systems, involving Florida's medical schools in that effort.

In July 2003, the U.S. Secretary of Health and Human Services (HHS) announced that the department had taken two steps in building a national health information infrastructure by arranging for: (1) the establishment of a standardized medical vocabulary system and (2) the design of a standardized model of an electronic health record.[5] Through an agreement with the College of American Pathologists, HHS will license the College's standardized medical vocabulary system and make it available at no cost. HHS also commissioned IOM to design a standardized model of an electronic health record. After the standardized model record is evaluated, HHS will make it available at no cost.

Patient Safety Authority

As the 2003 Legislature addressed Florida's medical malpractice insurance crisis, the reduction of medical errors received renewed attention as one method of lowering the number of malpractice claims. A review of professional liability closed-claims data for the period 1990 – 2002 revealed that, in each of those years, more than 60 percent of indemnity claims paid in Florida were for injuries that occurred in the hospital setting.

In 1999, the Institute of Medicine reported that at least 44,000, and perhaps as many as 98,000, American hospital patients die each year as a result of medical error. The Governor's Select Task Force on Healthcare Professional Liability Insurance made 12 recommendations to improve health care quality in its January 2003 report, including the following two recommendations:

1. The Legislature should establish a Patient Safety Authority, or an entity similar in concept, as both a short-term and long-term strategy to improve patient safety. There are two options that should be considered. The first option, which is recommended by the Institute of Medicine (IOM) is to have two systems, one for the mandatory reporting of adverse events and another system for the voluntary reporting of near misses. The second option is similar to the Patient Safety Authority established and existing in Pennsylvania, which analyzes all adverse events and near misses in that state. Experts employed by both systems would analyze data received and make recommendations about how to reduce these adverse events and near misses. Information would not be subject to discovery in lawsuits.

2. The Legislature should timely develop or adopt statewide electronic medical records and protocols for a physician medication ordering system. The system should be developed collaboratively with hospitals, physicians, and other health care providers. The physician medication ordering system should be implemented first. The system

[5] http://www.os.dhhs.gov/news/press/2003pres/20030701.html

could be implemented initially with a web-based data exchange platform which establishes interconnectivity among providers. Another possibility is to begin with business functions, which provide an early return on investment, and then include clinical functions.

The Governor's Task Force also recommended that the Legislature consider creating a statutory public-private non-profit entity that would administer the Patient Safety Authority.

During the 2003 Legislative Session and several subsequent special sessions, the Legislature addressed the issue of medical malpractice insurance and called for initiatives to improve patient safety as an essential part of reducing incidents of medical malpractice. In SB 2-D, the Legislature required AHCA, in consultation with DOH and existing patient safety centers in the state universities, to study the implementation requirements of establishing a statewide Patient Safety Authority. The authority would be responsible for performing activities and functions designed to improve patient safety and the quality of care delivered by health care facilities and health care practitioners. In undertaking the study, the agency was directed to examine and evaluate a Patient Safety Authority that would, either directly, by contract, or through a consortium of university-based patient safety centers collect, analyze and evaluate patient safety data, foster the development of a statewide electronic infrastructure, inventory hospitals regarding use of computerized physician order entry systems, identify best practices, provide continuing education, and other specified tasks to improve health care quality.

The bill required that AHCA, in evaluating the operation of a Patient Safety Authority, must determine the costs of implementing and administering an authority and suggest funding sources and mechanisms. The report was produced by AHCA through a contract with the University of Miami Center for Patient Safety. The report contained the following recommendations:

- The Florida state legislature should establish and endow "A Learning Institute" to advise and foster improvements in patient safety, to be called the Florida Patient Safety Authority (PSA).
- The PSA should be a public-private partnership organized as a nonprofit corporation registered, incorporated, organized, and operated in compliance with ch. 617, F.S., and shall have all powers necessary to carry out the purposes of this section, including, but not limited to, the power to receive and accept from any source contributions of money, property, labor, or any other thing of value.
- The PSA should be given access to closed claims data from all insurance companies, self-insurance companies, professional liability carriers, as well as similar information from the trial bar. It should also be given the ability to seek to obtain access to expert witness reports, post litigation, as well as public and secured private records in the possession of regulators in order to allow full and effective usage of all adverse patient data collected in the state of Florida.
- The Florida state legislature should create a Patient Safety Advisory Board which will include representatives of all Florida academic medical centers, insurers (both indemnity plans such as Blue Cross, and HMOs), and consumer representatives in order to assure the Patient Safety Authority remains adherent to the highest standards of "evidence based" practice and emerging science. The report recommended 11 members.

- The PSA should collect patient safety data submitted voluntarily by a health care practitioner or health care facility, as well as data submitted to the state regulatory agencies, for learning purposes.
- The PSA should analyze the data and determine changes in practices and procedures that may be implemented for the purpose of improving patient safety and preventing patient harm events.
- The PSA should maintain and share a clearinghouse of "best practices" in the areas of quality improvement and patient safety and provide technical assistance to hospitals and other health care providers in the areas of health care quality improvement and patient safety.
- The PSA should disseminate all knowledge acquired via website, newsletter and email blasts.
- The PSA mandate will include procedures that ensure privacy and confidentiality of data in full accordance with the Health Insurance Portability and Accountability Act and consistent with other state and federal laws.
- The PSA should receive state funding and coordinate contracts with providers to increase access to various simulation resources for use by hospitals, universities and other providers.
- The PSA will hold an annual Patient Safety Conference, as an opportunity for stakeholders to share lessons learned on patient safety issues.

Computerized Physician Order Entry Systems

Computerized physician order entry systems are a tool that can be used to reduce medical errors and improve patient care by permitting the direct entry into a computer of orders for diagnostic tests, medications, patient care and referrals by physicians. The basic CPOE system is a computer application that accepts physician orders electronically, replacing hand-written orders on an order sheet or prescription pad. Most CPOE systems communicate the orders entered into the system electronically to the hospital departments and personnel responsible for their execution. The departments or personnel can send back notification of the status of the order or the results, such as laboratory or x-ray results.

The Leapfrog Group, comprised of 145 public and private organizations that provide health care benefits, is a leader in establishing a national emphasis on patient safety. The group identifies problems and proposes to hospitals solutions that have the potential to save lives. The Leapfrog Group has recently focused on three practices that likely would improve patient safety, computerized physician order entry (CPOE) for filling prescriptions, evidenced-based hospital referral, and intensive care unit physician staffing. The Leapfrog Group recommends using CPOE for medication orders because a computerized prescription system "can reduce serious medication mistakes by up to 86 percent."[6]

The Patient Safety Center at the Florida State University College of Medicine is conducting a study of the Information Technology (IT) capabilities of Florida Hospitals. Preliminary results have been obtained from a survey conducted during the summer and fall of 2003, with 40

[6] Leapfrog Group. "Survey Results". http://www.leapfroggroup.org/consumer_intro2.htm

percent of hospitals responding. See the Senate Staff analysis to CS/CS/SB 1474 for the results of this survey and additional information on Computerized physician order entry,

The 2003 Legislature created s. 395.1012, F.S., to require each licensed hospital, ambulatory surgical center, and mobile surgical facility to adopt a patient safety plan and appoint a patient safety officer and a patient safety committee. The purpose of the patient safety officer and the patient safety committee is to promote the health and safety of patients, review and evaluate the quality of patient safety measures used by the facility, and assist in the implementation of the facility's patient safety plan.

Patient Safety Data

Section 766.1016, F.S., which was created as section 10 of CS/SB 2-D (2003), provides that patient safety data, as defined in this section, shall not be subject to discovery or introduction into evidence in any civil or administrative action. However, information, documents, or records otherwise available from original sources are not immune from discovery or use in any civil or administrative action merely because they were also collected, analyzed, or presented to a patient safety organization.

Patient safety data is defined to mean reports made to patient safety organizations, including all health care data, interviews, memoranda, analyses, root cause analyses, products of quality assurance or quality improvement processes, corrective action plans information collected or created by a health care facility licensed under ch. 395, F.S., or a health care practitioner as defined in s. 456.001(4), F.S., as a result of an occurrence related to the provision of health care services which exacerbates an existing medical condition or could result in injury, illness, or death.

Patient safety organization is defined to mean any organization, group, or other entity that collects and analyzes patient safety data for the purpose of improving patient safety and health care outcomes and that is independent and not under the control of the entity that reports patient safety data.

Section 766.1016(3), F.S., requires that, unless otherwise provided by law, a patient safety organization must promptly remove all patient-identifying information after receipt of a complete patient safety data report unless such organization is otherwise permitted by state or federal law to maintain such information. Patient safety organizations must maintain the confidentiality of all patient-identifying information and may not disseminate such information, except as permitted by stat or federal law.

Centers for Patient Safety
Florida has three university-based patient safety centers, all created in the past two years:

- In 2001, the Suncoast Developmental Center for Patient Safety Evaluation and Research, a national patient safety center, was created at the University of South Florida with funding from the Federal Agency for Healthcare Research and Quality. The Suncoast center works in partnership with the Veteran's Administration Patient Safety Center of Inquiry at James A. Haley V.A. Hospital, with other local and regional health care

providers, with the patient safety centers at Florida State University and the University of Miami and with the college of Pharmacy at Florida Agricultural and Mechanical University.

- In 2002, the Florida State University College of Medicine established the Center on Patient Safety to promote and conduct research and education designed to reduce medical errors and increase healthcare quality. In 2003, the center conducted a survey of the information technology capabilities of Florida's hospitals relating to patient safety.
- In 2003, the Center for Patient Safety was established at the University of Miami. As the recipient of a grant from the Agency for Health Care Administration to conduct patient safety studies mandated by the 2003 Legislature in CS/SB 2-D, the center provided reports to the Legislature in February 2004, on the establishment of a statewide patient safety authority and on the most feasible information to provide to consumers comparing in-patient quality indicators for state licensed hospitals.

Senate Interim Project Report 2004-143

Senate Interim Project 2004-143 analyzed the use of CPOE systems in hospitals as a tool for reducing medical errors. The report concluded that:

- The history of the use of information technology in clinical practice by physicians and hospitals does not indicate that progress can be mandated.
- The implementation of CPOE has been successful where administrators and practitioners supported the change.
- The best way to bring about further use of CPOE in Florida would be for the Legislature to encourage the state's existing patient safety centers at universities to work with hospitals to improve their use of information technology to improve patient safety.
- Florida's university-based patient safety centers should analyze the return on investment that could be realized from implementing CPOE in large and small hospitals in both urban and rural settings.

Each hospital's patient safety officer, required under s. 395.1012, F.S., should identify ways that inpatient care processes that affect physicians, pharmacists, nurses, and ancillary personnel could be redesigned for implementation of CPOE.

Former Community Health Purchasing Alliances and Current Small Employer Health Alliances

In 1993, the Florida Legislature established Community Health Purchasing Alliances (CHPAs) as state chartered, nonprofit private organizations, intended to pool purchasers of health care together in organizations that broker health plans.[7] The number of persons insured through CHPAs steadily decreased from about 94,000 at the end of 1998 to about 35,000 in February 2000. Only seven insurance carriers were currently actively participating in CHPAs in 2000, as compared to 25 carriers that participated in 1998. CHPAs made health insurance plans available to small employers with 1 to 50 employees, including sole proprietors and self-employed individuals. The Agency for Health Care Administration (AHCA) was responsible for

[7] Chapter 93-129, Laws of Florida, codified as ss. 408.70-408.706, F.S. (1993)

implementation and oversight of the statewide system of CHPAs, including technical and legal assistance, liaison functions, and designation of "accountable health partnerships" (AHPs), which were authorized insurers and HMOs that offered health plans through CHPAs.

The law created eleven CHPAs, which was eventually reduced to seven due to merger of certain districts. Each CHPA operated under the direction of an appointed 17 member board of directors and employed an executive director and from one to three full time staff. All but one contracted with a third party administrator. CHPAs acted as clearing houses for health insurance plans that qualified as AHPs, and choosing AHPs via requests for proposals. The CHPAs offered several benefit plans from which small employers and employees could select, which were sold through authorized insurance agents.

The legislative Office of Program Policy Analysis and Government Accountability (OPPAGA) issued its report, The Follow Up Report on the Status of Community Health Purchasing Alliances in Florida, Report No. 98 14, October 1998. The report stated that the CHPAs continued to have a small impact in reducing the number of uninsured Floridians. Limitations cited in the report included:

- The CHPAs inability to negotiate or select health plans that offer the most competitive products and prices; and
- The CHPAs dependence on agents designated by health plans to sell CHPA products, and to further improve access to affordable health care coverage.

The OPPAGA report recommended that the Legislature should consider the following policy options, including:

- Allow CHPAs to negotiate with competing health plans and select those that offer the most competitive products and prices.
- Reduce AHCA's responsibilities to minimal oversight and coordination among CHPAs.
- Enable CHPAs to appoint their agents.

In 2000, the Legislature repealed the laws that established the CHPAs (ch. 2000-296, L.O.F.). In its place, the act amended s. 627.654, F.S., to authorize a health insurer to issue a group policy to a small employer health alliance organized as a not-for-profit corporation under ch. 617, F.S. This included former CHPAs that continued to operate as a not-for-profit corporation, or any other alliance so organized. The alliance may be formed for purposes of obtaining insurance. The group policy issued to the alliance may insure a small employer with 1 to 50 employees, including sole proprietors and self-employed individuals, and may cover dependents. The 2000 law amended s. 627.6699, F.S., to: (1) allow rates for a policy issued to an alliance or association to reflect a premium credit for expense savings attributable to administrative activities being performed by the group association; and (2) allow an insurer to modify the rate one time prior to 12 months after the initial issue date for a small employer who enrolls under a previously issued group policy that has a common anniversary date for all employers. According to the Office of Insurance Regulation, there was one small employer health alliance established, but that it never generated any significant enrollment and has been discontinued.

Statewide Provider and Subscriber Assistance Program

Section 408.7056, F.S., requires the Agency for Health Care Administration (AHCA) to implement the Statewide Provider and Subscriber Assistance Program to assist subscribers of managed care entities with grievances that have not been satisfactorily resolved through the managed care entity's internal grievance process. The program can hear grievances of subscribers of health maintenance organizations, prepaid health clinics and exclusive provider organizations. According to AHCA, the program title, "The Statewide Provider and Subscriber Assistance Program," is misleading and causes confusion to a large number of contracted and non-contracted managed health care providers who believe, incorrectly, that the panel can resolve their billing problems. Section 408.7057, F.S., establishes the Statewide Provider and Health Plan Claim Dispute Resolution Program in AHCA for the purpose of resolving billing problems.

Currently, managed health care entities and health care providers are required to submit medical records to the program upon request when the program is investigating a grievance between a subscriber and a managed care entity. Failure to provide medical records within 10 days of the request may subject the entity or provider to fines. It may not be clear whether the "medical records" that must be submitted include records associated with the grievance, such as telephone logs and internal communications, but such records are often requested by ACHA. In FY 2002-2003, 46 percent of all submissions of records other than medical records to the program were in excess of the 10 days permitted for the filing of medical records. According to representatives with AHCA, this significantly slows down the review process.

State and Federal Claims Procedures

State and federal claims procedures for health maintenance organizations (HMOs) differ significantly, and the federal procedures may preempt the current state statutes that are less restrictive. Under current Florida law, s. 641.511(5), F.S., HMOs must resolve subscriber grievances within 60 days after receipt of the grievance, or within a maximum of 90 days if the grievance involves the collection of information outside the service area.

The federal regulations, 29 C.F.R. 2560.503-1, effective to all ERISA-covered HMOs by January 1, 2002, are more restrictive and break down grievance procedures into two distinct categories, pre-service and post-service claims. Pre-service claims must be processed and a decision provided by the health plan within 15 days of receipt, plus a 15-day extension when a plan member receives a bona fide reason for extension. Post-service claims must be processed within 30 days with an additional 15-day authorized extension when the health plan has justified the extension in writing and notified the member.

A United States Department of Labor interpretive guideline addresses the "federal preemption" language of the final federal regulation and says, "States may impose non-conflicting standards for internal processes." (Paragraph 29, C.F.R. 2560.503-1(k)(1)). Under this interpretive guideline, states having less restrictive claims/grievance procedures for small and large group health plans may be in conflict with the federal standards and thereby preempted by federal law. Florida's grievance resolution time lines are less restrictive than the federal regulation and may be preempted.

III. Effect of Proposed Changes:

The bill makes Legislative findings ("Whereas" clauses) that identify statistics of the number of persons who are uninsured, reasons for persons not having insurance, average premium increases for the last two years, employers shifting premium costs to employees, increased health costs and health problems for the uninsured, the cost of uncompensated care to hospitals, the need for lower cost alternatives, and that the issue of available, affordable health care insurance be addressed in a meaningful manner.

Section 1 provides that the act may be referred to as "The 2004 Affordable Health Care for Floridians Act,"

Section 2 states the purpose of the act is to address the underlying cause of the double-digit increases in health insurance premiums by mitigating the overall growth in health care costs.

Section 3 amends s. 381.026, F.S., requires each licensed facility[8] (hospitals, ambulatory surgical centers and mobile surgical facilities) not operated by the state, to publish on its website the average cost of the top 50 inpatient and top 50 outpatient services provided. This must be the "package price" for all facility-related charges for all services typically associated with a procedure or diagnosis-related group. The facility must place a notice in the reception areas that such information is available on its website.

Section 4 amends s. 381.734, F.S., to require the Department of Health to provide on its website and a copy upon request a listing of the wellness programs that it offers and provide information to identify behavior risk factors that lead to preventable diseases. The department must monitor and assess the effectiveness of such programs and submit a status report to the Legislature, and the Office of Program Policy and Government Accountability must evaluate and report on the effectiveness of the Department's assessment.

Section 5 amends s. 395.1041, F.S., to allow hospitals to develop emergency room diversion programs, including an "Emergency Hotline" to help patients determine if emergency services are appropriate or if other health care settings may be more appropriate and a "Fast Track" program allowing nonemergency patients to be treated at an alternative site.

Section 6 amends s. 395.301, F.S., to require hospitals and other licensed facilities to provide an estimate of charges for the proposed service upon written request of a prospective patient. The estimate may be the average charges for the procedure or diagnosis-related group. The actual charge may exceed the estimate. The facility must place a notice in reception areas that such information is available.

This section also requires each licensed facility to make available on its website a link to the performance outcome and financial data that is published by AHCA.

[8] Section 381.026(2)(b), F.S., defines *health care facility* as a facility licensed under chapter 395, F.S., which includes hospitals, ambulatory surgical centers, and mobile surgical facilities.

Rural hospitals with fewer than 50 beds are exempt from the requirements of making performance outcome and financial data available on the web. AHCA is to evaluate the most cost-efficient method for collecting and reporting data for these rural hospitals and is to submit a report, by December 1, 2005, to the Governor and Legislature.

Section 7 amends s. 408.061, F.S., to require AHCA to require health care facilities, health care providers, and health insurers to submit certain information. Health care facilities must report data on the number of patients treated in the emergency department by acuity level, hospital-acquired infections, complications of diagnosis, and readmissions. ACHA must adopt a specified methodology (3M All Patient Refined DRG software) for reporting date regarding risk and severity adjustment. Data elements reported by facilities are to be reported electronically and certified by the Chief Executive Officer. Data submitted by health care providers are to be certified by authorized representatives or employees of the health care provider.

Health insurers must report percentage of claims denied, percentage of claims meeting prompt pay requirements, and medical and administrative loss ratios.

Section 8 amends s. 408.062, F.S., requires AHCA to:

- collect and report a statistically valid sample of data on retail prices charged by pharmacies for the 50 most frequently prescribed medicines for licensed pharmacies to provide comparative information;
- research and report on the use of emergency services by patient acuity level;
- make available on its website information regarding patient charges, volumes, length of stay, and performance outcome data collected from heath care facilities for specified medical conditions and procedures.

Section 9 amends s. 408.05, F.S., to require AHCA to develop, in conjunction with the State Comprehensive Health Information System Advisory Council, and implement a plan to make performance outcome and financial data available to consumers for health care services comparison purposes, including information on pharmaceuticals, physicians, health care facilities, and health plans. The plan must be submitted to the Governor and Legislature and updated annually.

Section 10 amends s. 409.9066, F.S., to require AHCA to provide retail price information by geographic area relating to the Medicare prescription discount program.

Section 11 amends s. 408.7056, F.S., to rename the Statewide Provider and Subscriber Assistance Program as the Subscriber Assistance Program, and limits the program to hearing grievances filed by subscribers of managed care plans, deleting references to hearing grievances filed by providers (for which a separate dispute resolution program exists).

The bill specifies that when AHCA is investigating a grievance, the managed care entity or health care provider must submit records associated with the grievance, as well as the medical records that are currently required. Officials of AHCA state that this will help speed up the review process.

The bill provides greater flexibility in the composition of the Subscriber Assistance Panel by permitting *at least* two members employed by AHCA, *at least* two members employed by the Department of Financial Services, a consumer and a physician appointed by the Governor, and *if necessary*, physicians who have expertise relevant to the case to be heard. The current authorization for the panel to contract with a medical director and a primary care physician to provide additional medical expertise is modified to authorize *a medical director, a primary care physician, or both*, and the bill specifies that they must not be voting members of the panel. The bill defines a quorum as a majority of the required membership and requires the presence of a quorum before the panel can hear a grievance. The maximum size of the panel will be 11 members.

Section 12 amends s 641.3154, F.S., to conform the renaming of the Statewide Provider and Subscriber Assistance Program as the Subscriber Assistance Program.

Section 13 amends s. 641.511, F.S., to adopt federal claims procedures established under the Employee Retirement Income Security Act as the minimum standards for grievance procedures (described in Present Situation, above) for certain organizations that administer group health plans. Incorporating the federal standards in this statute would give the state regulatory agencies, AHCA and the Department of Financial Services, the authority to enforce such federal standards.

Section 14 amends s 641.58, F.S., to conform the renaming of the Statewide Provider and Subscriber Assistance Program as the Subscriber Assistance Program.

Section 15 amends s. 408.909, F.S., related to Health Flex Plans, to:

- allow Health Flex Plans to be established statewide (as approved by AHCA and the Office of Insurance Regulation), rather than being limited to the three geographic areas of this state with the highest number of uninsured;
- deletes a reference to the program as a "pilot" program (but does not change the July 1, 2008 expiration of the statute);
- requires AHCA to ensure that health flex plans follow standardized grievance procedures similar to those required of HMOs;
- requires OIR to provide regulatory oversight of health flex plan advertising and marketing procedures;
- requires AHCA and OIR to use health flex plans to gather information to evaluate low-income, consumer driven benefit packages and submit a report that includes this information;
- includes public-private partnerships within the definition of a "health flex plan entity";
- allows the offering of a catastrophic plan option supplementing the health flex plan.

Section 16 creates s. 381.0271, F.S., to create the Florida Patient Safety Corporation to assist health care providers to improve the quality and safety of health care rendered and to reduce harm to patients.

The bill requires the Florida Patient Safety Corporation to be registered, incorporated, organized and operated as a non-profit corporation in compliance with ch. 617, F.S. The corporation may

create not-for-profit subsidiaries. The corporation is subject to public meetings and records requirements; is not an agency within the meaning of s. 20.03(11), F.S.; and is not subject to the provisions of ch. 297, F.S., relating to procurement of personal property and services. The bill establishes the membership of the board of directors of the corporation; requires certain advisory committees for the corporation; and requires AHCA to provide assistance in getting the corporation established. The bill specifies the powers and duties of the corporation; requires an annual report; and requires the Office of Program Policy Analysis and Government Accountability in consultation with AHCA and the Department of Health, to develop performance measures for the corporation. The bill requires a performance audit of the corporation during 2006.

The bill requires the corporation to collect, analyze, and evaluate patient safety data and related information; requires the corporation to establish a pilot project to identify and report near misses relating to patient safety; provides for an active library of evidence-based medicine and patient safety practices; requires the corporation to develop and recommend core competencies in patient safety and public education programs; and authorizes the corporation to seek funding and apply for grants.

Section 17 requires the Patient Safety Center at the Florida State University College of Medicine, in collaboration with researchers at other state universities, to conduct a study t to analyze the return on investment that hospitals could realize from implementing computerized physician order entry and other information technologies related to patient safety. The analysis must include both financial results and benefits relating to quality of care and patient safety. The study must include a representative sample of large and small hospitals, in urban and rural settings, in the north, central and southern regions of the state. By February 1, 2005, the Patient Safety Center at the Florida State University College of Medicine must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives concerning the results of the study.

Section 18 amends s. 395.1012, F.S., to require each patient safety officer and patient safety committee at a licensed hospital, ambulatory surgical facility, or mobile surgical facility to recommend improvements in the patient safety measures used by the facility. Each licensed facility must adopt a plan to reduce medication errors and adverse drug events that must consider the use of computerized physician order entry and other information technologies related to patient safety.

Section 19 amends s. 409.91255, F.S., to expand the requirements of federally quality health centers to include community emergency room diversion programs and urgent care services.

Section 20 amends s. 627.410, F.S., to correct a technical error in current law (to change *order* to *office*) to clarify that insurers must file certain rates with the Office of Insurance Regulation.

Section 21 amends s. 624.6405, F.S., to require health insurers selling individual health insurance policies to provide on their websites information regarding appropriate utilization of emergency care services which shall include a list of alternative urgent care contracted providers. It requires health insurers to develop community emergency department diversion programs, by enlisting providers to be on call after hours, and allows health insurers to require higher

copayments for nonemergency use of emergency departments and for use of out-of-network emergency departments.

Section 22 creates s. 627.64872, F.S., to create the Florida Health Insurance Plan as a plan to assume risks deemed uninsurable by the private market and to make coverage available to individuals who have no other option for similar coverage. The plan is intended to operate on sound actuarial principles but may include supplementary funding.

This section takes effect upon becoming law, which allows for the board to be appointed as soon as feasible. The board must submit to the Financial Services Commission a plan of operation that becomes effective upon approval in writing, consistent with the date on which the coverage must be made available. However, the bill also provides that the board shall take no action to implement the plan, other than completion of an actuarial study, until funds are appropriated for start-up costs and any projected deficits.

Board of Governors: A 9-member Board of Directors will supervise the plan, chaired by the Director of OIR, plus five members appointed by the Governor, one member appointed by the Chief Financial Officer, one member by the Senate President, and one by the Speaker of the House of Representatives. The initial meeting of the board must occur no later than September 1, 2004. At least 3 of the Governor's 5 appointees may not be individuals who are representatives of insurers or health care providers. The bill provides for staggered terms and specifies that board members will not be compensated, except for reimbursement for reasonable expenses in accordance with s. 112.061, F.S.

Plan of Operation: The board must submit a plan of operation to the Financial Services Commission, effective upon approval of the commission. By December 1, 2004, the board must submit an actuarial study to determine the impact the creation of the plan will have on the small group market, the number of individuals the pool could reasonably cover at various funding levels, and a recommendation as to the best source of funding for anticipated deficits. The plan of operation must ensure that the plan qualifies for any available federal funding. If the board fails to submit a suitable plan of operation within 180 days after the appointment of the board, the Commission must adopt rules to implement the Florida Health Insurance Plan.

Eligibility for coverage: Individuals who are a resident of Florida for at least 6 months are eligible for coverage if evidence is provided that:

- the person received notices of rejection or refusal to issue substantially similar insurance for health reasons from two or more health insurers; or
- the person is enrolled in the Florida Comprehensive Health Association as of the date the plan is implemented.

It appears that the language in the first bullet, above, incorrectly refers to "one insurer" and should have referred to two different insurers. Also, the 6-month residency requirement does not apply to a resident deemed eligible under federal HIPAA (but the bill does not otherwise expressly authorize HIPAA-eligible individuals to be eligible for coverage under the plan, without obtaining the two rejections of coverage).

Persons are not eligible for the plan if they are eligible for health insurance coverage that is substantially similar or more comprehensive, or eligible for Medicaid, Medicare, the state's children's health insurance program, or any other federal, state, or local government program that provides health benefits.

Benefits: The plan must offer the standard and basic benefit plans required to be offered to small employers and an option of alternative coverage such as catastrophic coverage with a minimum level of primary care coverage and a high deductible plan that meets the federal requirements of a health savings account. The board would establish the maximum benefits under the plan. Benefits previously paid to persons by the Florida Comprehensive Health Association must be used in determining the total lifetime benefits paid under the plan.

Funding: Funding of the high risk pool is provided premiums capped at 200% of standard risk rate, subject to a sliding scale surcharge based on the insured's income, but not to exceed 300 percent of the standard risk rate. Additional revenue for any deficit shall be primarily funded through amounts appropriated by the Legislature from general revenue sources, including a portion of the annual growth in premium taxes. The board must operate the plan so that the estimated cost will not exceed total income and to limit plan enrollment accordingly.

Upon the implementation of the FHIP, all high-risk individuals actively enrolled in the Florida Comprehensive Health Association shall be enrolled in the FHIP. For such individuals, for operating losses incurred on or after July 1, 2004, each insurer shall be annually assessed up to 1 percent of premiums.

Powers of the plan: The plan will have the general powers and authority granted to health insurers under state law, and in addition thereto, the specific authority to enter into contracts; take legal actions for specified purposes; establish and modify rates, agents' referral fees, claim reserve formulas, and any other actuarial functions appropriate to the operation of the plan; issue policies of insurance; appoint legal, actuarial, investment, and other committees; develop and educate its policyholders regarding health savings accounts (HSAs), policy and contract design, and any other function within the authority of the plan; borrow money to effect the purposes of the plan; employ and fix the compensation of employees; prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public; provide for reinsurance of risks incurred by the plan; provide for and employ cost containment measures and requirements, including, but not limited to, preadmission screening, second surgical opinion, concurrent utilization review, and individual case management for the purpose of making the plan more cost effective; and arrange for the delivery of cost effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.

The board must select, through a competitive bidding process, a plan administrator to administer the plan. The bill establishes criteria for the board to consider in evaluating bids. The administrator shall be either an insurer, a health maintenance organization or a third-party administrator, or another organization duly authorized under the Florida Insurance Code.

The board must make an annual report to the Governor and Legislative presiding officers that summarizes the activities of the plan in the preceding calendar year, including the net written and

earned premiums, plan enrollment, the expense of administration, and the paid and incurred losses. The board must submit an evaluation report three years after commencement of the operation of the plan.

The board and its employees are not liable for any obligations of the plan. A member or employee of the board is not liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under the act, unless such act or omission constitutes willful or wanton misconduct.

Section 23 repeals the statutes establishing the Florida Comprehensive Health Association upon implementation of the Florida Health Insurance Plan.

Section 24 amends s. 627.662, F.S., to require group health insurance policies to be subject to the laws that apply to individual health insurance policies related to the use of specific methodology for payment of claims (current law) and inappropriate utilization of emergency care (as created by Section 21).

Section 25 amends s. 627.6699, F.S., related to the Employee Health Care Access Act, to revise the requirements for small employer policies to:

- Deletes the requirement that small group carriers guaranty-issue policies to one-life groups (sole proprietors and self-employed individuals) if there is enrollment availability in the Florida Health Insurance Plan.
- Requires small group carriers to offer a high deductible plan that meets the federal requirements of a health savings account plan or health reimbursement account.
- Reduces from 5% to 4% the maximum aggregate increased premiums charged to all policyholders, over a 6-month period, due to the application of health-related rating factors (which allows rates to be adjusted by plus or minus 15% for a single employer.)

This section also creates the Small Employers Access Program to provide health insurance to small employers (25 employees). The Office of Insurance Regulation is required to administer the program by selecting an insurer, through competitive bidding, to provide coverage to small employers within established geographical areas of the state. The bill provides criteria for OIR to consider in evaluating bids. Establishes eligibility for the program, including any small employer group up to 25 employees; any municipality, county, school district, or hospital located in a rural community; any nursing home employee; and dependents of eligible persons.

The bill specifies that insurers must be duly authorized insurers or health maintenance organizations. Such insurers must meet certain other criteria. The bill provides that the contract term shall not exceed 3 years. At least 6 months before the expiration of each contract period, OIR must invite eligible entities to submit bids to serve as the insurer for a designated geographic area. Selection of the insurer for the succeeding period must be made at least 3 months before the end of the current period. The bill establishes requirements for health insurance agents to submit applications for coverage. The agent must be paid a fair commission if coverage is written. "Fair commission" is defined as a commission structure determined by the insurers and reflected in the insurers' rate filing. The benefits must be the same as the standard

and basic plans for small employers as outlined in s. 627.6699, F.S. The insurer, with the approval of OIR, may also establish an option of alternative coverage

Section 26 amends s. 627.9175, F.S., to require health insurers to annually report certain coverage information to OIR, including premiums, losses, number of policies, number of certificates, covered lives, number or percentage of claims denied and claims meeting prompt pay requirements, and the average number of days to pay claims. Deletes certain reporting requirements.

Section 27 renames chapter 636, F.S., as "Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations." This chapter is presently related only to prepaid limited health service organizations (PLHSO). Under this bill, the chapter will be divided into two parts. Part 1 will be for the PLHSO; Part 2 will be for Discount Medical Plan Organizations (DMPO).

Section 28 designates existing ch. 636, F.S., as part I of the chapter.

Section 29 amends s. 636.003, F.S., which defines prepaid limited health service organizations. The definition presently has an exemption for a person who provides access to a limited health service provider without assuming responsibility for payment, which has been generally interpreted as an exemption for discount plans. This exemption is changed in the bill to limit it to licensed discount plans (under part II, below).

Section 30 creates a new part II of ch. 636, F.S., titled Discount Medical Plan Organizations. The bill establishes a comprehensive regulatory scheme for discount medical plan organizations. It creates a new license for this purpose, forms and rate filings and approval, procedures for examinations and investigations by OIR, prohibited activities, required disclosures to plan members, better tracking of providers, annual report filing, minimum capital requirements, a process for suspension and revocation of licenses, sale by licensed agents only, service of process through the Department of Financial Services, security deposits, criminal penalties, injunctive relief by OIR, civil remedies, and unlicensed activities by the plans.

The following statutory sections are created by the bill:

Section 636.202 Creates definitions. *Medical discount plan* is the arrangement by which a *member* receives access to a *provider* from whom the member receives *medical services* at a discount. *Medical services* does not include pharmacy benefits. The *medical discount plan organization* is the company that runs one or more *medical discount plans*; it is the organization that will become the licensee. A *marketer* sells the plan to the members. A *provider network* is a group of providers; the medical discount plan organization has a contract with the provider network under which the individual providers provide the medical services at a discount.

Section 636.204 This section requires a medical discount plan organization to be a corporation and to be licensed by OIR. The licensing process is similar to that of specialty insurers. The OIR will create, by rule, an application packet which will require the corporate documents (articles and bylaws), backgrounds and biographical statements, fingerprint cards, audited financials, and explanation of how the business will be run. An exemption is provided for individual providers who offer discounts to their own patients; such providers will not need to have a license.

Section 636.206 This section gives the OIR the authority to examine and investigate discount medical plan organizations. The exams and investigations are conducted in accordance with ch. 624, F.S., and the cost of exams is to be paid by the licensee.

Section 636.208 A discount medical plan organization is allowed to charge a monthly fee; if it charges a fee for a time period exceeding one month, it must, in case of cancellation by either party, make a pro rata refund to the member.

Section 636.210 This section sets out prohibited activities of a discount medical plan organization. It prohibits the use of words which could lead a person into thinking the discount medical plan was health insurance. It prohibits a discount medical plan organization from having restrictions of free access to the providers with whom the discount medical plan organization has contracted. It prohibits the discount medical plan organization from making payments to its providers. It prohibits a discount medical plan organization from collecting fees for services from the members, in effect acting as an administrator for the providers, unless the discount medical plan organization has a TPA license.

Section 636.212 The discount medical plan organization is required to make four disclosures to prospective and actual members. These disclosures must be on all advertising and brochures.

The four disclosures are:

- the plan is not insurance;
- the plan does not make payments to providers;
- the member is responsible for the full amount of the discounted fee; and
- the corporate name and location of the discount medical plan organization.

Section 636.214 The discount medical plan organization must have a written provider agreement with every individual provider who offers discounts under its discount medical plans. The agreements must set forth the services and the discounts being offered, and must include an agreement by the provider that the provider will not charge members in excess of the discount. Provider networks must have written agreements with each of their providers which include these same provisions. Provider networks must provide the discount medical plan organization every month with an up-to-date list of providers in the network.

Section 636.216 Every discount medical plan organization must file and have approved all of its forms and rates.

Section 636.218 Every year each discount medical plan organization must file an annual report, containing audited financials on a GAPP basis, an updated list of principals, number of members, and other information as set forth in rules to be promulgated. Failure to timely file the report will result in specified fines.

Section 636.220 Establishes minimum capital requirements, which are a net worth of at least $150,000.

Section 636.222 Authorizes OIR to suspend or revoke the license of a discount medical plan organization when it violates the law, or when its continuing business would be harmful to the public, and other specified grounds.

Section 636.224 Each discount medical plan organization must give the OIR at least 30 days notice before changing its name or address.

Section 636.226 Each discount medical plan organization must have a web page on which it keeps an up to date list of all its providers. The address of the web page must be on all its marketing materials as well as on its discount cards.

Section 636.228 All advertisements used in marketing a discount medical plan must be approved by the discount medical plan organization. Persons marketing the plan must have an insurance agent license, must be appointed by the discount medical plan organization, and must have a written agreement with the discount medical plan organization.

Section 636.230 If a discount medical plan is sold in conjunction with any other product (for example, travel insurance) the fees for each product must be separately itemized.

Section 636.232 The Financial Services Commission has rulemaking authority regarding discount medical plan organizations.

Section 636.234 A licensed discount medical plan organization can be served in the same manner as an authorized insurer, through the Service of Process section of the Department of Financial Services.

Section 636.236 A discount medical plan organization must make a deposit with the Department in the amount of $35,000. The deposit is protected from levy.

Section 636.238 Violation of any provision of this part is a second degree misdemeanor. Operating an unlicensed discount medical plan organization is punishable under s. 624.401 F.S., as if the unlicensed discount medical plan organization were an unlicensed insurer and the fees charged were premium. The penalties increase as the amount of fees collected rises.

Section 636.240 The OIR is authorized to seek injunctive relief against an unlicensed discount medical plan organization, or any person who has violated a provision of this part or a rule adopted pursuant to this part.

Section 636.242 A private citizen may file a civil action against a person for violations of this part. Attorneys' fees may be recoverable.

Section 636.244 Sections 626.901 through 626.912, F.S., relating to unauthorized insurers, applies to unlicensed discount medical plan organizations as if they were unauthorized insurers. This includes penalties for representing an unlicensed discount medical plan organization and the procedure for serving an unlicensed discount medical plan organization.

Sections 31 and 32 amend ss. 627.65626 and 627.6402, F.S., to require health insurers issuing individual policies and group policies, respectively, to provide for a rebate of premiums when the majority of members of a health plan have maintained participation in any wellness program offered by the employer, subject to certain conditions.

Section 33 amends s. 641.31, F.S., to authorize HMOs that offer point-of-service riders to offer such riders to employers for employees living and working outside the HMO's approved geographic service area, without having to obtain a health care provider certificate, as long as the master group contract is issued to an employer that maintains its primary place of business within the HMO service area. The bill also requires HMOs to provide a premium rebate for individuals enrolled in a health wellness program approved by the HMO, under certain conditions.

Section 34 preserves rights to open enrollment for one-life groups until the Florida Health Insurance Plan begins to accept new risks or members.

Section 35 amends s. 465.0244, F.S., to require each pharmacy to make available on its Internet website a link to certain performance outcome and financial data of the Agency for Health Care Administration and a notice of the availability of such information.

Section 36 amends s. 627.6499, F.S., to require each health insurer to make available on its Internet website a link to certain performance outcome and financial data of the Agency for Health Care Administration and a notice in policies of the availability of such information.

Section 37 amends s.641.54, F.S., to require HMOs to make certain insurance financial information available to subscribers; and requires HMOs to make available on its Internet website a link to certain performance outcome and financial data of the Agency for Health Care Administration and a notice in policies of the availability of such information.

Section 38 repeals s. 408.02, F.S., relating to the development of patient management practice parameters by the Agency for Health Care Administration.

Section 39 amends s. 766.309, F.S., to grant the administrative law judge exclusive jurisdiction to make factual determinations as to whether the notice requirements in s. 766.316, F.S., are satisfied. This provision of law relates to obstetrical patients and the Florida Birth-Related Neurological Injury Compensation Plan.

Section 40 provides legislative intent to clarify that the administrative law judge has always had the exclusive jurisdiction to make factual determinations as to whether the notice requirements in s. 766.316, F.S., are satisfied.

Section 41 appropriates $250,000 from the Insurance Regulatory Trust Fund in the Department of Financial Services to the Office of Insurance Regulation to implement the provisions in this act relating to the Small Employer Access Program.

Section 42 appropriates $350,000 in nonrecurring general revenue funds to AHCA for the establishment of the Florida Patient Safety Corporation during the 2004-2005 fiscal year.

Section 43 appropriates $113,500 in nonrecurring general revenue funds to the Florida State University College of Medicine for the purpose of conducting the study required in section 15 on hospitals implementing computerized physician order entry, for the 2004-2005 fiscal year.

Section 44 appropriates $250,000 from the Insurance Regulatory Trust Fund in the Department of Financial Services to the Office of Insurance Regulation for the board of the Florida Health Insurance Plan to contract for an independent actuarial study for the interim report that the board is required to submit to the Financial Services Commission.

Section 45 appropriates $169,069 from the Insurance Regulatory Trust Fund in the Department of Financial Services to the Office of Insurance Regulation to implement the provisions of the act related to the regulation of Discount Medical Plan Organizations.

Section 46 Except as otherwise provided, the act takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the Florida Health Insurance Plan is opened to new enrollment, eligible individuals would be provided access to health insurance at subsidized rates. However, the funding for deficits must be provided by state general revenue sources, but the bill does not appropriate any funds for this purpose.

Small businesses, rural hospitals, and local governments may find affordable coverage through the creation of the Small Employers Access Program. However, for small employers, it is not clear where the savings would be generated compared to small group

policies that are otherwise offered. The bill does not provide any exception to the small group rating provisions of s. 626.6699, F.S., which requires small group carriers to establish a modified community rate for all of its small group policies. Such modified community rate would apparently still be required for coverage offered through the Small Employer Access Program. Carriers may generally vary rates by plus or minus 15 percent for factors related to health status and claims experience of a small employer.

Low-income persons may be provided access to affordable coverage due to the statewide expansion of the Health Flex program.

Consumers may benefit from increased knowledge, as well as increased competitive pressures, by providing transparency in pricing among health care providers.

C. Government Sector Impact:

Section 41 appropriates $250,000 from the Insurance Regulatory Trust Fund in the Department of Financial Services to the Office of Insurance Regulation to implement the provisions in this act relating to the Small Employer Access Program.

Section 42 appropriates $350,000 in nonrecurring general revenue funds to AHCA for the establishment of the Florida Patient Safety Corporation during the 2004-2005 fiscal year.

Section 43 appropriates $113,500 in nonrecurring general revenue funds to the Florida State University College of Medicine for the purpose of conducting the study required in section 15 on hospitals implementing computerized physician order entry, for the 2004-2005 fiscal year.

Section 44 appropriates $250,000 from the Insurance Regulatory Trust Fund in the Department of Financial Services to the Office of Insurance Regulation for the board of the Florida Health Insurance Plan to contract for an independent actuarial study for the interim report that the board is required to submit to the Financial Services Commission.

Section 45 appropriates $169,069 from the Insurance Regulatory Trust Fund in the Department of Financial Services to the Office of Insurance Regulation to implement the provisions of the act related to the regulation of Discount Medical Plan Organizations.

The bill requires deficits in the Florida Health Insurance Plan to be funded through appropriated General Revenue sources including, but not limited to, a portion of the annual growth in existing net insurance premium taxes. But, the bill does not make any appropriation for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for CS for CS for SB 2910

Amendment No. 1 275044

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 13, line 28, delete the word "patient"

and insert: person ~~patient~~

Bill No. CS for CS for CS for SB 2910

Amendment No. 2 271924

CHAMBER ACTION

Senate House

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 16, line 24, through
page 19, line 11, delete those lines

and insert:

Section 6. Paragraph (h) is added to subsection (1) of section 395.1055, Florida Statutes, to read:

395.1055 Rules and enforcement.--

(1) The agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part, which shall include reasonable and fair minimum standards for ensuring that:

(h) Licensed facilities make available on their Internet websites, no later than October 1, 2004, and in a hard-copy format upon request, a description of and a link to the patient charge and performance outcome data collected from licensed facilities under s. 408.061.

Section 7. Subsection (7) is added to section 395.1065, Florida Statutes, to read:

395.1065 Criminal and administrative penalties; injunctions; emergency orders; moratorium.--

(7) The agency shall impose a fine of $500 for each instance of a facility's failure to provide the information required by rules adopted under s. 395.1055(1)(h).

Section 8. Subsections (1), (2), and (3) of section 395.301, Florida Statutes, are amended, and subsections (7), (8), (9), and (10) are added to that section, to read:

395.301 Itemized patient bill; form and content prescribed by the agency.--

(1) A licensed facility not operated by the state shall notify each patient during admission and at discharge of his or her right to receive an itemized bill upon request. Within 7 days following the patient's discharge or release from a licensed facility not operated by the state, ~~or within 7 days after the earliest date at which the loss or expense from the service may be determined,~~ the licensed facility providing the service shall, upon request, submit to the patient, or to the patient's survivor or legal guardian as may be appropriate, an itemized statement detailing in language comprehensible to an ordinary layperson the specific nature of charges or expenses incurred by the patient, which in the initial billing shall contain a statement of specific services received and expenses incurred for such items of service, enumerating in detail the constituent components of the services received within each department of the licensed facility and including unit price data on rates charged by the licensed facility, as prescribed by the agency.

(2)(a) Each ~~such~~ statement submitted under this section:

1. ~~(a)~~ May not include charges of hospital-based

1 physicians if billed separately.

2 2.~~(b)~~ May not include any generalized category of
3 expenses such as "other" or "miscellaneous" or similar
4 categories.

5 3.~~(c)~~ Shall list drugs by brand or generic name and
6 not refer to drug code numbers when referring to drugs of any
7 sort.

8 4.~~(d)~~ Shall specifically identify therapy treatment as
9 to the date, type, and length of treatment when therapy
10 treatment is a part of the statement.

11 (b) Any person receiving a statement under ~~pursuant to~~
12 this section shall be fully and accurately informed as to each
13 charge and service provided by the institution preparing the
14 statement.

15 (3) On each ~~such~~ itemized statement submitted under
16 subsection (1) there shall appear the words "A FOR-PROFIT (or
17 NOT-FOR-PROFIT or PUBLIC) HOSPITAL (or AMBULATORY SURGICAL
18 CENTER) LICENSED BY THE STATE OF FLORIDA" or substantially
19 similar words sufficient to identify clearly and plainly the
20 ownership status of the licensed facility. Each itemized
21 statement must prominently display the phone number of the
22 medical facility's patient liaison who is responsible for
23 expediting the resolution of any billing dispute between the
24 patient, or his or her representative, and the billing
25 department.

26 (7) Each licensed facility not operated by the state
27 shall provide, before providing any nonemergency medical
28 services and upon the written request of a prospective
29 patient, a good-faith estimate of the reasonably anticipated
30 cost the facility proposes to charge to treat the patient's
31 condition. The facility's estimate must be in writing. The

1 estimate shall be provided to the prospective patient within 7
2 business days after receiving the patient's request. The
3 estimate may be the average charges for that
4 diagnostic-related group or the average charges for that
5 procedure. Upon request, the facility shall notify the patient
6 of any revision to the good-faith estimate. The estimate does
7 not preclude the actual charges from exceeding the estimate.
8 The facility shall place a notice in the reception area that
9 the information is available. Failure to provide the estimate
10 according to the procedures established under this section
11 shall result in a fine of $500 for each instance of the
12 facility's failure to provide the requested information.
13 (8) A licensed facility shall make available to a
14 patient all records necessary for verification of the accuracy
15 of the patient's bill within 30 business days after the
16 facility receives the request for these records. The
17 verification information must be made available in the
18 facility's offices. The records shall be available to the
19 patient before and after payment of the bill or claim. The
20 facility may not charge the patient for making these
21 verification records available to the patient; however, the
22 facility may charge its usual fee for providing copies of
23 records as specified in s. 395.3025.
24 (9) Each facility must establish a method for
25 reviewing and responding to questions from patients concerning
26 the patient's itemized bill. A response to a patient's
27 question must be provided within 30 days after the date a
28 question is received. If the patient is not satisfied with the
29 response, the facility must provide the patient with the
30 address of the agency to which the issue may be sent for
31 review.

1 (10) Each licensed facility shall make available on
2 its Internet website a link to the performance outcome and
3 financial data that is published by the Agency for Health Care
4 Administration under s. 408.05(3)(l). The facility shall
5 place a notice in the reception area which states that the
6 information is available electronically at the website
7 address.
8 Section 9. Subsection (1) of section 408.061, Florida
9 Statutes, is amended to read:
10 408.061 Data collection; uniform systems of financial
11 reporting; information relating to physician charges;
12 confidential information; immunity.--
13 (1) The agency shall ~~may~~ require the submission by
14 health care facilities, health care providers, and health
15 insurers of data necessary to carry out the agency's duties.
16 Specifications for data to be collected under this section
17 shall be developed by the agency with the assistance of
18 technical advisory panels including representatives of
19 affected entities, consumers, purchasers, and such other
20 interested parties as may be determined by the agency.
21 (a) Data ~~to be~~ submitted by health care facilities,
22 including the facilities defined in chapter 395, shall ~~may~~
23 include, but are not limited to: case-mix data, patient
24 admission and ~~or~~ discharge data, hospital emergency department
25 data, which includes the number of patients treated in the
26 emergency department of a licensed hospital reported by
27 patient acuity level, data on hospital-acquired infections as
28 specified by rule, data on complications as specified by rule,
29 data on readmissions as specified by rule, with patient and
30 provider-specific identifiers included, actual charge data by
31 diagnostic groups, financial data, accounting data, operating

1 expenses, expenses incurred for rendering services to patients
2 who cannot or do not pay, interest charges, depreciation
3 expenses based on the expected useful life of the property and
4 equipment involved, and demographic data. The agency shall
5 adopt nationally recognized risk adjustment methodologies or
6 software consistent with the standards of the Agency for
7 Healthcare Research and Quality and as selected by the agency
8 for all data submitted as required by this section. Data may
9 be obtained from documents such as, but not limited to:
10 leases, contracts, debt instruments, itemized patient bills,
11 medical record abstracts, and related diagnostic information.
12 Reported data elements shall be reported electronically in
13 accordance with rule 59E-7.012, Florida Administrative Code.
14 Data submitted must be certified as true and accurate by the
15 chief executive officer or an appropriate and duly authorized
16 representative or employee of the licensed facility.
17 (b) Data to be submitted by health care providers may
18 include, but are not limited to: Medicare and Medicaid
19 participation, types of services offered to patients, amount
20 of revenue and expenses of the health care provider, and such
21 other data which are reasonably necessary to study utilization
22 patterns. Data submitted shall be certified as true and
23 accurate by the appropriate duly authorized representative or
24 employee of the health care provider.
25 (c) Data to be submitted by health insurers may
26 include, but are not limited to: claims, premium,
27 administration, and financial information. Data submitted must
28 be certified as true and accurate by the chief financial
29 officer, the appropriate and duly authorized representative,
30 or an employee of the insurer.
31 (d) Data required to be submitted by health care

1 facilities, health care providers, or health insurers shall
2 not include specific provider contract reimbursement
3 information. However, the ~~such~~ specific provider reimbursement
4 data shall be reasonably available for onsite inspection by
5 the agency as is necessary to carry out the agency's
6 regulatory duties. Any ~~such~~ data obtained by the agency as a
7 result of onsite inspections may not be used by the state for
8 purposes of direct provider contracting and are confidential
9 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),
10 Art. I of the State Constitution.
11 (e) A requirement to submit data shall be adopted by
12 rule if ~~the~~ submission of data is being required of all
13 members of any type of health care facility, health care
14 provider, or health insurer. Rules are not required, however,
15 for the submission of data for a special study mandated by the
16 Legislature or when information is being requested for a
17 single health care facility, health care provider, or health
18 insurer.
19
20 (Redesignate subsequent sections.)
21
22
23 ========== T I T L E A M E N D M E N T ==========
24 And the title is amended as follows:
25 On page 1, line 20, through
26 page 2, line 5, delete those lines
27
28 and insert:
29 emergency room diversion programs; amending s.
30 395.1055, F.S.; specifying rulemaking authority
31 for implementation of certain provisions within

1 this act; amending s. 395.1065, F.S.; providing
2 for a fine for failure to provide financial
3 information; amending s. 395.301, F.S.;
4 requiring certain licensed facilities to
5 provide prospective patients certain estimates
6 of charges for services; requiring such
7 facilities to provide patients with certain
8 bill verification information; providing for a
9 fine for failure to provide such information;
10 providing charge limitations; requiring such
11 facilities to establish a patient question
12 review and response methodology; providing
13 requirements; requiring certain licensed
14 facilities to provide public Internet access to
15 certain financial information; amending s.
16 408.061, F.S.; requiring the Agency for Health
17 Care Administration to require health care
18 facilities, health care providers, and health
19 insurers to submit certain information;
20 providing requirements; requiring the agency to
21 adopt certain risk and severity adjustment
22 methodologies; requiring the agency to adopt
23 certain rules; requiring certain information to
24 be certified; amending s. 408.062, F.S.;
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Bill No. CS for CS for CS for SB 2910

Amendment No. 3 145636

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 18, lines 14-16, delete those lines

and insert: demographic data. Performance outcome indicators shall be risk adjusted or severity adjusted, as applicable, using nationally recognized methodologies or software consistent with the standards of the Agency for Health Care Research and Quality and as selected by the agency. Data may

Bill No. CS for CS for CS for SB 2910

Amendment No. 4 454046

CHAMBER ACTION

Senate House

Senator Peaden moved the following amendment:

Senate Amendment

On page 19, lines 5-7, delete those lines

and insert: include, but are not limited to: claims,

Bill No. CS for CS for CS for SB 2910

Amendment No. 5 755614

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 41, line 22, delete that line

and insert:

Section 16. Effective upon this act becoming a law, section 381.0271, Florida Statutes, is

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

And the title is amended as follows:

On page 11, line 17, delete that line

and insert:

providing effective dates.

Bill No. CS for CS for CS for SB 2910

Amendment No. 6 260120

CHAMBER ACTION

Senate | House

Senator Jones moved the following amendment:

Senate Amendment

On page 44, between lines 4 and 5,

insert:

(l) A physician with expertise in patient safety, appointed by the Florida Podiatric Medical Association.

(m) A physician with expertise in patient safety, appointed by the Florida Chiropractic Association.

(n) A dentist with expertise in patient safety, appointed bt the Florida Dental Association.

Bill No. CS for CS for CS for SB 2910

Amendment No. 7 113340

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 44, line 5, through
page 45, line 12, delete those lines

and insert:

(5) ADVISORY COMMITTEES.--In addition to any committees that the corporation may establish, the corporation shall establish the following advisory committees:

(a) A scientific research advisory committee that includes, at a minimum, a representative from each patient safety center or other patient safety program in the universities of this state who is a physician licensed under chapter 458 or chapter 459, with experience in patient safety and evidence-based medicine. The duties of the scientific research advisory committee shall include, but not be limited to, the analysis of existing data and research to improve patient safety and encourage evidence-based medicine.

(b) A technology advisory committee that includes, at a minimum, a representative of a hospital that has implemented

1 a computerized physician order entry system and a health care
2 provider that has implemented an electronic medical records
3 system. The duties of the technology advisory committee shall
4 include, but not be limited to, fostering development and use
5 of new patient safety technologies, including electronic
6 medical records.
7 (c) A health care provider advisory committee that
8 includes, at a minimum, representatives of hospitals,
9 ambulatory surgical centers, physicians, nurses, and
10 pharmacists licensed in this state and a representative of the
11 Veterans Integrated Service Network 8 VA Patient Safety
12 Center. The duties of the health care provider advisory
13 committee shall include, but not be limited to, promotion of a
14 culture of patient safety that reduces errors.
15 (d) A health care consumer advisory committee that
16 includes, at a minimum, representatives of businesses that
17 provide health insurance coverage to their employees, consumer
18 advocacy groups, and representatives of patient organizations.
19 The duties of the health care consumer advisory committee
20 shall include, but not be limited to, identification of
21 incentives to encourage patient safety and the efficiency and
22 quality of care.
23 (e) A state agency advisory committee that includes,
24 at a minimum, a representative from each state agency that has
25 regulatory responsibilities related to patient safety. The
26 duties of the state agency advisory committee shall include,
27 but not be limited to, fostering coordination of patient
28 safety activities among state agencies.
29 (f) A litigation alternatives advisory committee that
30 includes, at a minimum, representatives of attorneys who
31 represent plaintiffs and defendants in medical malpractice

1 cases, a representative of each law school in the state,
2 physicians, and health care facilities. The duties of the
3 litigation alternatives advisory committee shall include, but
4 not be limited to, identification of alternative systems to
5 compensate for injuries.
6 (g) An education advisory committee that includes, at
7 a minimum, the associate dean for education, or the equivalent
8 position, as a representative from each school of medicine,
9 nursing, public health, or allied health to provide advice on
10 the development, implementation, and measurement of core
11 competencies for patient safety to be considered for
12 incorporation in the educational programs of the universities
13 and colleges of this state.
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Bill No. CS for CS for CS for SB 2910

Amendment No. 8 852172

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 47, between lines 2 and 3,

insert:

(d) Foster the development of a statewide electronic infrastructure that may be implemented in phases over a multiyear period and that is designed to improve patient care and the delivery and quality of health care services by health care facilities and health care practitioners.

(Redesignate subsequent paragraphs.)

Bill No. CS for CS for CS for SB 2910

Amendment No. 9 952426

CHAMBER ACTION

Senate House

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 52, lines 16 through 18, delete those lines

and insert: Section 21. Section 627.6405, Florida Statutes, is created to read:

627.6405 Decrease in inappropriate utilization of

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

And the title is amended as follows:

On page 5, line 5, delete that line

and insert:

Regulation; creating s. 624.6405, F.S.; making

Bill No. CS for CS for CS for SB 2910

Amendment No. 10 210454

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 53, line 15, after the comma

insert: at the discretion of the insurer,

Bill No. CS for CS for CS for SB 2910

Amendment No. 11 820298

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 53, lines 15-16, delete those lines

and insert: department diversion programs. Such programs may include, at the discretion of the insurer, but are not limited to, enlisting providers to be on call to

Bill No. CS for CS for CS for SB 2910

Amendment No. 12 515986

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 53, between lines 27 and 28,

insert:

Section 22. Section 641.31097, Florida Statutes, is created to read:

641.31097 Decreasing inappropriate utilization of emergency care.--

(1) The Legislature finds and declares it to be of vital importance that emergency services and care be provided by hospitals and physicians to every person in need of such care, but with the double-digit increases in health insurance premiums, health care providers and insurer should encourage patients and the insured to assume responsibilty for their treatment, including emergency care. The Legislature finds that inappropriate utilization of emergency department services increases the overall cost of providing health care, and these costs are ultimately borne by the hospital, by the insured patients, and, many times, by the taxpayers of this

1 state. Finally, the Legislature declares that the providers
2 and insurer must share the responsibility of providing
3 alternative treatment options to urgent care patients outside
4 of the emergency department. Therefore, it is the intent of
5 the Legislature to place the obligation for educating
6 consumers and creating mechanisms for delivery of care which
7 will decrease the overutilization of emergency service on
8 health maintenance organizations and providers.
9 (2) Health maintenance organizations shall provide on
10 their Internet websites information regarding appropriate
11 utilization of emergency care services, which shall include,
12 but not be limited to, a list of alternative urgent care
13 contracted providers, the types of services offered by these
14 providers, and what to do in the event of a true emergency.
15 (3) Health maintenance organizations shall develop
16 community emergency department diversion programs. Such
17 programs may include, at the discretion of the health
18 maintenance organization, but need not be limited to,
19 enlisting providers to be on call to subscribers after hours,
20 coordinating care through local community resources, and
21 providing incentives to providers for case management.
22 (4) As a disincentive for subscribers to
23 inappropriately use emergency department services for
24 nonemergency care, health maintenance organizations may
25 require higher copayments for urgent care or primary care
26 provided in an emergency department and higher copayments for
27 use of out-of-network emergency departments. Higher copayments
28 may not be charged for the utilization of the emergency
29 department for emergency care. For the purposes of this
30 section, the term "emergency care" has the same meaning as
31 provided in s. 395.002 and includes services provided to rule

1 out an emergency medical condition.
2
3 (Redesignate subsequent sections.)
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6 ========== T I T L E A M E N D M E N T ==========
7 And the title is amended as follows:
8 On page 5, line 10, after the semicolon,
9
10 insert:
11 creating s. 641.31097, F.S.; providing
12 legislative findings; requiring health
13 maintenance organizations to provide
14 information about appropriate use of emergency
15 care services on their Internet websites;
16 requiring health maintenance organizations to
17 develop community emergency department
18 diversion programs; authorizing health
19 maintenance organizations to require higher
20 copayments for certain care provided in an
21 emergency department; defining the term
22 "emergency care";
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Bill No. CS for CS for CS for SB 2910

Amendment No. 13 363806

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 56, lines 3 and 4, delete those lines

and insert: (f) "Implementation" means the effective date after the first meeting of the board when legal authority and administrative ability exists for the board to subsume the transfer of all statutory powers, duties, functions, assets, records, personnel, and property of the florida Comprehensive Health Association as specified in s. 627.6488.

Bill No. CS for CS for CS for SB 2910

Amendment No. 14 275820

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 57, lines 6 through 8, delete those lines

and insert: months.

Bill No. CS for CS for CS for SB 2910

Amendment No. 15 891384

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 57, line 21, through
page 58, line 4, delete those lines

and insert: (b) The Director of the Office of Insurance Regulation's term on the board shall be determined by continued employment in the position. The remaining initial board members shall serve for a period of time as follows: two members appointed by the Governor and the members appointed by the President of the Senate and the Speaker of the House of Representatives shall serve a term of 2 years; and three members appointed by the Governor and the state's Chief Financial Officer shall serve a term of 4 years. Subsequent board members shall serve for a term of 3 years. A board member's term shall continue until his or her successor is appointed.

(c) Vacancies on the board shall be filled by the appointing authority, the authority being the Governor, the President of the Senate, the Speaker of the House of

Representatives, or the Chief Financial Officer. Board members may be removed by the appointing authority for cause.

(d) The director, or his or her representative, is responsible for any organizational requirements necessary for the initial meeting of the board which shall take place no later than September 1, 2004.

Bill No. CS for CS for CS for SB 2910

Amendment No. 16 101360

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 58, line 28, after the word "than"

and insert: the administration of coverage of individuals enrolled in the Florida Comprehensive Health Association, as specified in subsection (20) and

Bill No. CS for CS for CS for SB 2910

Amendment No. 17 212768

CHAMBER ACTION

Senate House

Senator Peaden moved the following amendment:

Senate Amendment

On page 61, between lines 24 and 25,

insert: (n) Subsume the transfer of statutory powers, duties, functions, assets, records, personnel, and property of the Florida Comprehensive Health Association as specified in ss. 627.6488, 627.6489, 627.649, 627.6492, 627.6496, 627.6498, and 627.6499, unless otherwise specified by law.

Bill No. CS for CS for CS for SB 2910

Amendment No. 18 622930

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 62, between lines 6 and 7,

insert: 4. The effect on the individual and small group market by including in the Florida Health Insurance Plan persons eligible for coverage under s. 627.6487, as well as the cost of including these individuals.

Bill No. CS for CS for CS for SB 2910

Amendment No. 19 931790

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 68, lines 3 through 5, delete those lines

and insert: based upon the insured's income may apply to all enrollees, provided that the premiums do not exceed 300

Bill No. CS for CS for CS for SB 2910

Amendment No. 20 753804

CHAMBER ACTION

Senate | House

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11 Senator Peaden moved the following amendment:
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13 **Senate Amendment**
14 On page 70, line 20, through
15 page 71, line 2, delete those lines
16
17 and insert:
18 (a)1. Upon implementation of the Florida Health
19 Insurance Plan, the Florida Comprehensive Health Association,
20 as specified in s. 627.6488 is abolished as a separate
21 nonprofit entity and shall be subsumed under the Board of
22 Directors of the Florida Health Insurance Plan. All
23 individuals actively enrolled in the Florida Comprehensive
24 Health Association shall be enrolled in th plan subject to its
25 rules and requirements, except as where otherwise specified in
26 this section. Maximum lifetime benefits paid to an individual
27 in the plan may not exceed the amount established under
28 subsection (16), and benefits previously paid for any
29 individual by the Florida Comprehensive Health Association
30 shall be used in the determination of the total lifetime
31 benefits paid under the plan.

2. All persons enrolled in the Florida Comprehensive Health Association upon implementation of the Florida Health Insurance Plan are eligible only for the benefits authorized under subsection (16). Persons identified by this section shall convert to the benefits authorized under subsection (16) no later than January 1, 2005.

Bill No. CS for CS for CS for SB 2910

Amendment No. 21 450372

CHAMBER ACTION

Senate House

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 75, lines 5-9, delete those lines

and insert:

(d) A small employer carrier must file with the office, in a format and manner prescribed by the committee, a standard health care plan, a high deductible plan that meets the federal requirements of a health savings account plan or a health reimbursement arrangement, and a basic health care plan to be used by the carrier. The provisions of this section that require the filing of a high deductible plan shall take effect September 1, 2004.

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

And the title is amended as follows:

On page 7, line 7, after the semicolon,

insert:

1 providing a delayed effective date for certain
2 filing requirements;
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Bill No. CS for CS for CS for SB 2910

Amendment No. 22 240870

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 75, lines 8 and 9, delete those lines

and insert: the federal requirements of a health savings account plan or a health reimbursement arrangement, and a basic health care plan to be used by the carrier. The provisions of this section requiring the filing of a high deductible plan are effective September 1, 2004.

Bill No. CS for CS for CS for SB 2910

Amendment No. 23 535956

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 77, line 25, through
page 78, line 5, delete those lines

and insert: community rates. If the aggregate resulting from the application of such adjustment exceeds the premium that would have been charged by application of the approved modified community rate by 5 percent for the current reporting period, the carrier shall limit the application of such adjustments only to minus adjustments beginning not more than 60 days after the report is sent to the office. For any subsequent reporting period, if the total aggregate adjusted premium actually charged does not exceed the premium that would have been charged by application of the approved modified community rate by 5 percent, the carrier may apply both plus and minus adjustments. A small employer carrier may

Bill No. CS for CS for CS for SB 2910

Amendment No. 24 070826

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 83, lines 17 through 27, delete those lines

and insert:

8. The high deductible plan associated with a health savings account or a health reimbursement arrangement shall include all the benefits specified in subparagraph 4.

9. ~~8.~~ Each small employer carrier that provides for inpatient and outpatient services by allopathic hospitals may provide as an option of the insured similar inpatient and outpatient services by hospitals accredited by the American Osteopathic Association when such services are available and the osteopathic hospital agrees to provide the service.

(c) If a small employer rejects, in writing, the standard health benefit plan, ~~and~~ the basic health benefit plan, and the high deductible health savings account plan or a health reimbursement arrangement, the

Bill No. CS for CS for CS for SB 2910

Amendment No. 25 365422

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 93, lines 5-6, delete those lines

and insert: lives, and the average number of

Bill No. CS for CS for CS for SB 2910

Amendment No. 26 760606

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 96, line 17, after the period

insert: However, the term does not include any product regulated under chapter 627, chapter 641, or part I of this chapter.

Bill No. CS for CS for CS for SB 2910

Amendment No. 27 745098

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 96, line 20, after the period

insert: Discount medical plan organization does not include an entity licensed under chapter 624, chapter 641, or part I of chapter 636.

Bill No. CS for CS for CS for SB 2910

Amendment No. 28 372270

CHAMBER ACTION

Senate House

Senator Peaden moved the following amendment:

Senate Amendment

On page 100, line 11, through
page 101, line 26, delete those lines

and insert:

636.208 Fees.--A discount medical plan organization may charge a reasonable one-time processing fee and a periodic charge. If a discount medical plan charges a fee for a time period exceeding 1 month, it must, in the event of cancellation of the membership by either party, make a pro rata reimbursement of the fee to the member.

636.210 Prohibited activities of a discount medical plan.--

(1) A discount medical plan organization may not:

(a) Use in its advertisements, marketing material, brochures, or discount cards the term "insurance" except as otherwise authorized in this part;

(b) Use in its advertisements, marketing material, brochures, or discount cards the terms "health plan,"

1 "coverage," "co-pay," "co-payments," "pre-existing
2 conditions," "guaranteed issue," "premium," "enrollment,"
3 "PPO," "preferred provider organization," or other terms that
4 could reasonably mislead a person into believing the discount
5 medical plan was health insurance;
6 (c) Have restrictions on free access to plan
7 providers, including, but not limited to, waiting periods and
8 notification periods; or
9 (d) Pay providers any fees for medical services.
10 (2) A discount medical plan organization is prohibited
11 from collecting or accepting money from a member for payment
12 to a provider for specific medical services furnished or to be
13 furnished to the member unless it has an active certificate of
14 authority from the office to act as an administrator.
15 636.212 Disclosures.--The following disclosures must
16 be made in writing to any prospective member, and must be on
17 the first page of any advertisements, marketing material, or
18 brochures relating to a discount medical plan. The disclosures
19 must be printed in not less than 12-point type or no smaller
20 than the largest type on the page if larger than 12-point
21 type, and must state:
22 (1) That the plan is not a health insurance policy;
23 (2) That the plan provides discounts at certain
24 healthcare providers for medical services;
25 (3) That the plan does not make payments directly to
26 providers of medical services;
27 (4) That the plan member is obligated to pay for all
28 health care services but will receive a discount from those
29 health care providers who have contracted with the discount
30 plan organization; and
31 (5) The corporate name and the locations of the

1 licensed discount medical plan organization.
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Bill No. CS for CS for CS for SB 2910

Amendment No. 29 780720

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 102, lines 25-27, delete those lines

and insert:

636.216 Form and fees filings.--

(1) All fees charged to members must be filed with the office and any fee or charge to members greater than $30 per month or $360 per year must be approved by the office before they can be

Bill No. CS for CS for CS for SB 2910

Amendment No. 30 513154

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 107, lines 7-12, delete those lines

and insert: discount medical plan and shall be responsible and financially liable for any acts of its marketers that do not comply with the provisions of this part.

Bill No. CS for CS for CS for SB 2910

Amendment No. 31 115930

CHAMBER ACTION

Senate | House

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11 Senator Peaden moved the following amendment:
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13 **Senate Amendment (with title amendment)**
14 On page 117, between lines 15 and 16,
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16 insert:
17 Section 41. Subsection (9) of section 409.907, Florida
18 Statutes, is amended to read:
19 409.907 Medicaid provider agreements.--The agency may
20 make payments for medical assistance and related services
21 rendered to Medicaid recipients only to an individual or
22 entity who has a provider agreement in effect with the agency,
23 who is performing services or supplying goods in accordance
24 with federal, state, and local law, and who agrees that no
25 person shall, on the grounds of handicap, race, color, or
26 national origin, or for any other reason, be subjected to
27 discrimination under any program or activity for which the
28 provider receives payment from the agency.
29 (9) Upon receipt of a completed, signed, and dated
30 application, and completion of any necessary background
31 investigation and criminal history record check, the agency

1 must either:

2 (a) Enroll the applicant as a Medicaid provider no
3 earlier than the effective date of the approval of the
4 provider application. With respect to providers who were
5 recently granted a change of ownership and those who primarily
6 provide emergency medical services transportation or emergency
7 services and care pursuant to s. 395.1041 or s. 401.45, or
8 services provided by entities under s. 409.91255, and
9 out-of-state providers, upon approval of the provider
10 application, the effective date of approval is considered to
11 be the date the agency receives the provider application; or

12 (b) Deny the application if the agency finds that it
13 is in the best interest of the Medicaid program to do so. The
14 agency may consider the factors listed in subsection (10), as
15 well as any other factor that could affect the effective and
16 efficient administration of the program, including, but not
17 limited to, the applicant's demonstrated ability to provide
18 services, conduct business, and operate a financially viable
19 concern; the current availability of medical care, services,
20 or supplies to recipients, taking into account geographic
21 location and reasonable travel time; the number of providers
22 of the same type already enrolled in the same geographic area;
23 and the credentials, experience, success, and patient outcomes
24 of the provider for the services that it is making application
25 to provide in the Medicaid program. The agency shall deny the
26 application if the agency finds that a provider; any officer,
27 director, agent, managing employee, or affiliated person; or
28 any partner or shareholder having an ownership interest equal
29 to 5 percent or greater in the provider if the provider is a
30 corporation, partnership, or other business entity, has failed
31 to pay all outstanding fines or overpayments assessed by final

order of the agency or final order of the Centers for Medicare and Medicaid Services, not subject to further appeal, unless the provider agrees to a repayment plan that includes withholding Medicaid reimbursement until the amount due is paid in full.

(Redesignate subsequent sections.)

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

And the title is amended as follows:

On page 11, line 16, after the first semicolon,

insert:

amending s. 409.907, F.S.; providing criteria for establishing the effective date of approval of a community health center as a Medicaid provider;

Bill No. CS for CS for CS for SB 2910

Amendment No. 32 930932

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 118, line 7, delete that line

and insert: Florida Statutes, as created by this act. In addition, the board shall include in that study an analysis of exempting health insurance rates for employers with 26 to 50 employees from the requirements of modified community rating, as provided in section 672.6699, Florida Statutes, and the potential impact that such an exemption would have on the accessibility and affordability of health insurance coverage in the small employer market.

Bill No. CS for CS for CS for SB 2910

Amendment No. 33 131670

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 118, line 15, delete that line

and insert: this act, and except for this section which shall take effect upon this act becoming a law, this act shall take effect July 1, 2004.

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

And the title is amended as follows:

On page 11, line 17, delete that line

and insert:

providing effective dates.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2820

SPONSOR: Governmental Oversight & Productivity Committee, Natural Resources Committee and Senator Argenziano

SUBJECT: Fish and Wildlife Conservation Commission

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Kiger	NR	Fav/CS
2.	Rhea	Wilson	GO	Fav/CS
3.			AGG	Withdrawn
4.	Hayes	Coburn	AP	
5.				
6.				

I. Summary:

This bill provides for the reorganization of the Fish and Wildlife Conservation Commission (FWC) in an effort to align and integrate similar functions within the agency, flatten the agency's organizational structure, and improve agency efficiency. The FWC is authorized to publish the Florida Wildlife Magazine, and the Florida Wildlife Magazine Advisory Council is created to provide recommendations to the FWC regarding the development, publication and sale of the magazine.

This bill provides 4.5 full time equivalent positions and $390,000 in recurring appropriations from the State Game Trust Fund to the FWC to fund and operate the magazine.

This bill substantially amends sections 20.331, 20.2551, 370.0603, 370.06091, 370.0692, 370.06093, 372.0215, 372.0222, 372.0225, 372.5701, 372.5702, and 403.0882, Florida Statutes. This bill repeals subsection (11) of s. 370.021, subsections (2) and (5) of section 370.16, subsection (4) of s. 370.172, and sections 370.083, 370.162, 372.051, 372.9906, Florida Statutes.

II. Present Situation:

Fish and Wildlife Conservation Commission (FWC)

The FWC was created by the Legislature during the 1999 Regular Session as a result of the passage of Revision #5 to the State Constitution during the November 1998 General Election. Chapter 99-245, Laws of Florida, was enacted to transfer the responsibilities of the former Game & Fresh Water Fish Commission (GFC) and the former Marine Fisheries Commission (MFC) to the FWC in accordance with the provisions of the constitutional amendment which required that one entity regulate wild animal life, freshwater aquatic life, and marine life.

Effective July 1, 1999, the MFC and the GFC were merged into the FWC. Portions of the Division of Marine Resources and the Division of Law Enforcement at the Department of Environmental Protection (DEP) also were transferred to the FWC. Bureaus and offices of the GFC which were in existence on February 1, 1999, were re-created in the FWC, and the Bureau of Protected Species Management at the DEP was transferred as a bureau to the Office of Environmental Services within the FWC.

At the time of the merger, the FWC had just over 1700 full-time employees (FTEs) and a budget of approximately $150 million. The FWC is primarily funded from revenues generated by the sale of hunting and fishing licenses, fees for specialty permits to hunt and fish, the sale of commercial licenses and permits, revenue generated by the sale of specialty license plates such as the "Save the Manatee" license plate, vessel registration fees, federal funds including grant funds, and general revenue which primarily funds the Division of Law Enforcement.

Current Administrative Structure

The primary organizational units of the FWC are established in s. 20.331, F.S., which requires the FWC to assign duties, responsibilities, and functions to the administrative units within the agency as follows:

- *Division of Freshwater Fisheries* (155 FTEs) - Ensures compliance with the laws and rules governing the management, protection, conservation, improvement, and expansion of Florida's freshwater aquatic life.
- *Division of Marine Fisheries* (43 FTEs) - Ensures compliance with the laws and rules governing the management, protection, conservation, improvement, and expansion of Florida's marine life resources.
- *Division of Wildlife* (302.5 FTEs) - Ensures compliance with the laws and rules governing the management, protection, conservation, improvement, and expansion of Florida's wildlife resources.[1]
- *Division of Law Enforcement* (900.5 FTEs) - Ensures enforcement of the laws and rules governing the management, protection, conservation, improvement, and expansion of Florida's wildlife, freshwater aquatic life, and marine life resources. In the performance of their duties as sworn law enforcement officers for the State of Florida, the division's officers are required to assist in the enforcement of all general environmental laws remaining under the responsibility of the DEP.[2]
- *Division of Administrative* Services (85 FTEs) - No specific duties or responsibilities are statutorily assigned to the Division of Administrative Services.
- *Florida Marine Research Institute* (248.5 FTEs) - Serves as the primary source of research and technical information and expertise on the status of Florida's saltwater resources; monitors the status and health of saltwater habitat, marine life, and wildlife; develops and

[1] During the 2003 Regular Session, the Legislature enacted ch. 2003-143, L.O.F., to repeal the assignment of the Bureau of Protected Species Management to the Office of Environmental Services. The FWC's request to the Department of Management Services and the Executive Office of the Governor to transfer the Bureau to the Division of Wildlife was approved pursuant to the requirements of s. 20.04(7)(b), F.S.

[2] Since the 1999 creation of the FWC, the DEP has transferred funding for these services from the Coastal Protection Trust Fund to the Marine Resources Conservation Trust Fund. However, while the FWC is still required to assist DEP in its law enforcement efforts, budget proposals for fiscal year 2004-2005 eliminate $2.5 million in funding due to a deficit in the Coastal Protection Trust Fund.

implements restoration techniques for marine habitat and enhancement of saltwater plant and animal populations; responds and provides critical technical support for marine catastrophes including oil spills, ship groundings, major marine species die-offs, hazardous spills, and natural disasters; identifies and monitors marine toxic red tides and their impacts and provides technical support for state and local public health concerns, and provides state and local governments with estuarine, marine, coastal technical information and research results.

- *Office of Boating and Waterways*[3] (17 FTEs) - Manages and promotes the use of state waterways for safe and enjoyable boating with duties and responsibilities including oversight and coordination of waterway markers on state waters, providing boating education and boating safety programs, improving boating access, coordinating the removal of derelict vessels from state waters, economic development initiatives to promote boating in the state, and coordinating the submission of state comments on marine events.

Organizational structure of state agencies - Chapter 20, F.S.
Historically, the FWC has complied with requirements applicable to most state agencies regarding internal organizational structure and the use of standard terminology. Within the FWC, the existing structure follows the requirements of s. 20.04, F.S., providing for the structure of the executive branch. The principal unit within the FWC is a "division" headed by a "director". The principal unit of the division is a "bureau" headed by a "chief". The principal unit of the bureau is the "section" headed by an "administrator". Sections can be divided into "subsections" headed by a "supervisor". District and area offices can be established to combine division, bureau, section and subsection functions. However, the FWC does have existing offices within the organizational structure which are not attached to any of the statutorily created divisions. These include Office of Environmental Services, the Office of Informational Services, and the Office of Information Technology.

State law provides that the head of a department may not reallocate duties and functions specifically assigned in statute. Further, new bureaus, sections and subsections of departments can be initiated by the department but must be established as recommended by the Department of Management Services (DMS) and approved by the Executive Office of the Governor (EOG), or established by specific statutory enactment.

All reorganization requests submitted by agencies must be assessed by the DMS and the EOG using specific criteria. The EOG must maintain a current organizational chart of each agency of the executive branch that identifies all divisions, bureaus, units and subunits of the agency.

DMS Broadbanding Classification and Compensation System[4]
In 2001, the Legislature enacted ch. 2001-43, L.O.F., known as the Service First Initiative, which established parameters for restructuring the state's job classification and pay system. Service First limits the number of occupational groups in the personnel system and provides for a maximum number classification levels for each occupation within an occupation group, thereby

[3] During the 2003 Regular Session, the Legislature enacted ch. 2003-156, L.O.F., to specifically fund the Office of Boating and Waterways from taxes collected on the sale of motor and diesel fuel at marinas. For fiscal year 2004-2005, $5 million is to be transferred from the Fuel Tax Collection Trust fund to the Marine Resources Conservation Trust Fund. However, budget proposals for fiscal year 2004-2005 use $1.7 million of these funds to replace the loss of revenue from the Coastal Protection Trust Fund at DEP.
[4] *Service First-Broadbanding Report*, December 2001

establishing a limit on job classification levels for the State Personnel System. As part of Service First, DMS developed and is implementing the Broadbanding Classification and Compensation System.

In 2002, the Legislature adopted ch. 2002-402, L.O.F. to authorize DMS to establish and maintain a classification and compensation program addressing Career Service, Selected Exempt Service, and Senior Management Service positions and requiring board-based salary ranges. Using the Federal Standard Occupational Classification System as a foundation, approximately 3,300 classes of employees were consolidated into 38 occupational groups with 3-6 levels in each resulting in 144 broadband classification levels (occupations in the same occupational group with the same level of difficulty or responsibility and having the same pay band)[5]. For purposes of reporting state employees to DMS for classification and compensation under Service First, state agencies must identify employees using the broadband classification levels.

The FWC is proposing to restructure the agency using division directors, section leaders, subsection administrators and directors, classifications which do not all meet the standard organizational provisions of s. 20.04, F.S. For purposes of meeting DMS requirements under Service First, employees will have to be classified within the Broadband Classification and Compensation System the rest of the state is using.

FWC Restructure Plan

Over the past two years, the FWC developed a restructure plan, with the participation of interested stakeholders, which proposes to restructure the agency in an effort to combine like functions, especially biological and administrative functions, flatten the organization to reduce bureaucracy, and shift decision-making to the local level where staff in the regional offices are more familiar with local issues. The goals of the agency's restructure proposal are to improve customer service, improve communication between the agency and the general public, increase partnership opportunities with communities, other agencies, and private entities, and increase efficiency thereby allowing the agency to improve performance.

Under the Fish and Wildlife Conservation Commission Restructure Proposal, February 3, 2004, the proposed changes to existing divisions and offices are:

- *Division of Wildlife* - Move hunting and game management to a higher level in the agency by creating a new Hunting and Game Management Division, and move the habitat and nongame components into a new Habitat and Species Conservation Division. All three functional areas of hunting and game management, habitat conservation, and species conservation will have a seat at the senior leadership table.
- *Division of Freshwater Fisheries* - Move fisheries management activities to a higher level and move the habitat restoration and management efforts into the new Habitat and Species Conservation Division.
- *Florida Marine Research Institute* - Move research and monitoring components from the Divisions of Wildlife, Freshwater Fisheries, and Law Enforcement. Change the name of the Institute to the Fish and Wildlife Research Institute.

[5] FL Government EXPO 2002 Broadbanding Presentation, http://www.state.fl.us/dms/hrm/BROADBAND/index.html

- *Division of Marine Fisheries* - Move commercial licensing to the new Licensing and Permitting Office.
- *Division of Administrative Services* - Develop a regional service center concept and move the recreational licensing bureau into the new Licensing and Permitting Office.
- *Office of Environmental Services* - Move basic services back into the Divisions and establish coordinating functions for many of their services in the new Policy and Stakeholder Coordination Office.
- *Office of Information Services* - Move basic services back into the Divisions and regions, and establish coordination functions for many of their services in the Community Relations Office.
- *Division of Law Enforcement* - No moving of organizational units but three bureau chiefs are eliminated as part of the overall flattening of the organization to make decisions at the local level.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.331, F.S., to provide that within the FWC, the principal unit for program services is a "division" headed by a "director." The principal subunit of the division is a "section" headed by a "leader." The principal subunit of a section is a "subsection" headed by an "administrator." The principal unit for research services within the FWC is the Fish and Wildlife Research Institute, which must be headed by a "director."

Renames administrative units within the FWC and requires that the FWC and the Legislature assign duties, responsibilities, and functions to those units as follows:

- *Fish and Wildlife Research Institute* (266 FTEs) - Serves as the primary source of research and technical information and expertise on the status of Florida's saltwater, freshwater, and wild animal life resources; monitors the status and health of saltwater, freshwater, and wild animal life species and their habitat, develops restoration and management techniques for habitat and enhancement of plant and animal populations; responds and provides critical technical support for catastrophes including oil spills, ship groundings, major species die-offs, hazardous spills, and natural disasters; identifies and monitors harmful algal blooms including red tides to evaluate their impact and provide technical support for state and local public health concerns, and provides state and local governments with fish and wildlife technical information and research results.
- *Division of Freshwater Fisheries Management* (69.5 FTEs) - Facilitates the responsible and sustained use of freshwater aquatic life resources; provides expertise on freshwater fish populations or other aspects of freshwater fisheries needed for recreational and commercial use management decisions; and assesses impacts of decisions made by others to ensure quality fishers and fishing in selected Florida lakes, fish management areas, rivers, and streams.
- *Division of Habitat and Species Conservation* (285.5 FTEs) - protects and conserves Florida's diverse and unique fish and wildlife; utilizes scientific data to develop resource management plans to maintain stable or increasing populations of fish and wildlife species; focuses duties and responsibilities at the ecosystem or landscape level to provide for the greatest benefits to the widest possible array of fish and wildlife species including public lands habitat restoration and management; develops and implements plans for nongame

species management and imperiled species recovery; provides scientific support and assistance to private and public sector landowners on habitat-related issues; performs aquatic habitat restoration and provides habitat management assistance; acquires land; and coordinates exotic species control measures and prevention of introductions.

- *Division of Hunting and Game Management* (46 FTEs) - Facilitates the responsible and sustained use of wildlife resources; develops science-based recommendations to support effective regulation of public use and sound management of game wildlife resources; coordinates the development and management of public hunting opportunities; and delivers hunter safety training and certification.
- *Division of Law Enforcement* (889.5 FTEs) - Ensures enforcement of the laws and rules governing the management, protection, conservation, improvement, and expansion of wildlife resources, freshwater aquatic life resources, and marine life resources. Enforce all laws relating to boating, provide public safety services for citizens on lands and waters of the state, provide search and rescue and disaster response assistance; provide assistance in enforcing all general laws of the state, and coordinates with local, state, and federal entities on law enforcement issues. The responsibilities of the Boating and Waterways Section within the Division remain the same as the existing Office of Boating and Waterways.
- *Division of Marine Fisheries* (24 FTEs) - Facilitates the responsible and sustained use of marine life resources; develops recommendations for managing and enhancing commercial and recreational saltwater fisheries resources; implements marine fisheries management programs; and assists in the development and monitoring of artificial reefs in Florida.
- *Office of Executive Direction and Administrative Support Services* (274 FTEs) - Functions as the principal unit for administrative and support services and is headed by the Executive Director of the FWC. Each additional office within this principal unit must be headed by a "director". The following offices are created within the Office of Executive Direction and Administrative Support Services:

  - Finance & Budget,
  - Human Resources,
  - Information Technology,
  - Inspector General,
  - Legal, and
  - Regional Operations. Within the Regional Operations Office, the executive director is authorized to establish regional offices for each of the administrative regions established by the commission. Each regional office shall be headed by a "director."

Provides that section leader positions are classified at a level equal to bureau chiefs, and that subsection administrators are classified at a level equal to section administrators as established in s. 20.04, F.S. Authorizes the Executive Director of the FWC to classify office director positions at a level equal to a division director, bureau chief, or section administrator as provided in s. 20.04, F.S.

Provides that the commission can establish additional sections, subsections, and offices at the recommendation of the DMS and with the approval of the EOG. Provides that additional divisions within the FWC may only be established by general law.

Section 2. Amends s. 20.2551, F.S., to clarify that citizen support organizations within the DEP do not receive grant funding from the Florida Marine Research Institute.[6]

Section 3. Amends s. 370.0603, F.S., to conform the name change for the Boating and Waterways Section.

Section 4. Amends s. 370.06091, F.S., to conform the name change for the Fish and Wildlife Research Institute.

Section 5. Amends s. 370.06092,. F.S., to repeal obsolete provisions relating to the Harmful-Algal-Bloom Task Force at the FWC, and conform the name change for the Fish and Wildlife Research Institute.

Section 6. Amends s. 370.06093, F.S., to conform the name change for the Fish and Wildlife Research Institute.

Section 7. Amends s. 372.0215, F.S., to conform the name change for the Fish and Wildlife Research Institute.

Section 8. Amends s. 372.0222, F.S., to authorize the publication of the Florida Wildlife Magazine beginning January 1, 2005. The magazine must be published at least quarterly and must focus on the promotion of hunting and fishing. Authorizes the FWC to sell advertising and provides for an annual subscription fee of up to $25, a 2-year subscription fee of up to $45, and a 3-year subscription fee of up to $60. Provides for a retail sales fee of up to $7. The commission is authorized to approve all advertising placed in the magazine, including the form and content. The magazine also must contain a clause that advertisement in the magazine does not constitute an endorsement by the state.

Creates the Florida Wildlife Magazine Advisory Council to advise and make recommendations to the FWC on the development, publication and sale of the magazine. Seven council members must be appointed by the FWC no later August 1, 2004. Terms are staggered and the Council must meet quarterly. The FWC must provide the Council will staff assistance. Council members are not compensation but are eligible to receive per diem and reimbursement of travel expenses.

Section 9. Amends s. 372.0225, F.S., to conform provisions relating to the promotion, marketing and quality control of freshwater organisms produced in Florida to the new structure of the FWC.

Section 10. Amends s. 372.5701, F.S., to provide that federal fishing funds will be divided between freshwater fisheries research and management and saltwater fisheries research and management based on the number of freshwater and saltwater fishing licenses sold.

Section 11. Amends s. 372.5702, F.S., to conform the name change for the Fish and Wildlife Research Institute.

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[6] At the time this provision was implemented, the FMRI was assigned to the Division of Marine Resources at the DEP. When the FWC was created in 1999, the FMRI was transferred from DEP to the FWC.

Section 12. Amends s. 403.0882, F.S., to conform the name change for the Fish and Wildlife Research Institute.

Section 13. Repeals s. 370.021 (11), F.S., relating to employee bond requirements; s. 370.16 (2) and (5), F.S., relating to noncultured shellfish harvesting; s. 370.172 (4), F.S., relating to spearfishing; s. 370.083, F.S., relating to special acts; s. 370.162, F.S., relating to the purchase of sponges; s. 372.051, F.S., relating to the seal of the commission; and s. 372.9906, F.S., relating to the Wildlife Enforcement Program.

Section 14. Repeals subsection (3) of section 5 of ch. 99-245, L.O.F., relating to the Florida Marine Research Institute.

Section 15. Appropriates $390,000 from the State Game Trust Fund to the FWC and provides 4.5 full time equivalent positions for funding and operating costs associated with the Florida Wildlife Magazine, including travel and per diem costs for the Florida Wildlife Magazine Advisory Council.

Section 16. Provides that the act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has a recurring appropriation of $390,000 from the State Game Trust Fund to the FWC for purposes of funding 4.5 full time equivalent positions and to fund and operate the Florida Wildlife Magazine.

Overall, the FWC expects no fiscal impact on the agency under this reorganization proposal.

FWC Fiscal Year 2003-2004 Budget

	GR	TF
Operating	**$ 45,435,834**	**$ 140,994,224**
Fixed Capital Outlay	**$ 0**	**$ 12,020,506**
Total by fund	**$ 45,435,834**	**$ 153,014,730**

Agency Total: **$ 198,450,564**
FTEs: **1,854.50**

FWC Fiscal Year 2004-2005 Legislative Budget Request

	GR	TF
Operating	**$ 54,166,783**	**$ 168,894,921**
Fixed Capital Outlay	**$ 300,000**	**$ 13,298,663**
Total by Fund	**$ 54,466,783**	**$ 182,193,584**

Agency total: **$ 236,660,367**
FTEs: **1,879.50**

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the FWC restructure plan has the purpose of flattening the agency's organizational structure, the proposal still provides for a Division of Marine Fisheries Management with only 24 FTEs.

The Office of Boating and Waterways is assigned to the Division of Law Enforcement in the reorganization. While the Division will have its own Training Section, Operations Section, and Investigations Sections, information provided by the FWC indicates that the Office of Boating and Waterways now has 5 sworn law enforcement positions that conduct "boating under the influence" patrols in the field, train officers on boating accident investigations, and work with the staff of the Bureau of Protected Species Management on manatee zone enforcement. None of these responsibilities are statutorily assigned to the Office of Boating and Waterways under current law or under the restructure proposal.

Also, while some existing offices are being integrated into the proposed structure, the agency restructure proposal provides for 14 offices, all within the Office of Executive Direction and Administrative Support Services, some of which appear to duplicate services. The FWC proposes both an Information Technology Office and a Data Portal Office. The Customer Care

and Licensing/Permitting Office, the Community Relations Office, the Recreation Services Office and the External Relations Office are four separate entities, each with a Director and staff.

The bill provides that in the FWC, the principal unit for program services is a "division" headed by a "director;" the principal subunit of the division is a "section" headed by a "leader;" and the principal subunit of a section is a "subsection" headed by an "administrator". The principal unit for research services within the FWC is the Fish and Wildlife Research Institute, which must be headed by a "director." The bill permits the Commission to use the same structural terminology that is currently provided in ch. 20, F.S., but to use those terms to mean something other than how they are defined in ch. 20, F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2884

SPONSOR: Appropriations Subcommittee on Education, Education Committee and Senator Carlton

SUBJECT: State Universities/Incentive Funds

DATE: April 20, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dormady	O'Farrell	ED	Favorable/CS
2.	Newman	Newman	AED	Favorable/CS
3.	Newman	Coburn	AP	
4.				
5.				
6.				

I. Summary:

CS/CS/SB 2884 creates a program to provide incentive funding for state universities that develop degree programs in targeted critical areas. It also requires university boards of trustees to provide each student with a billing statement every semester that details the cost to the state and university of the student's education.

The bill requires each university board of trustees to develop a proposal for a block tuition and fee policy. The proposals are required to be submitted to the Board of Governors, the Governor, the President of the Senate and the Speaker of the House of Representatives by December 15, 2004.

The bill also requires each university board of trustees to establish a policy, beginning in 2004-2005, that students who (1) have earned more than 115 percent of the number of credit hours they need to graduate, or (2) are not seeking a degree, would have to pay the full cost of their education per credit hour, with some exceptions. This policy, however, may not be implemented without legislative authorization.

CS/CS/SB 2884 amends the Florida Bright Futures Scholarship Program to eliminate the eligibility of students who are enrolled full time in the early admission program of an eligible postsecondary education institution. The bill also amends the Trust Fund for University Major Gifts, giving authority to the Board of Governors and revising provisions regarding donations, including match amounts.

The bill designates the Student Union Building at the University of North Florida as the "James E. "Jim" and Linda King, Jr., Student Union Building" and the proposed entrance pavilion at the

John and Mabel Ringling Museum of Art at Florida State University as the "John M. McKay Visitors' Pavilion."

This bill creates a new section 1011.901 of the Florida Statutes, amends sections 1009.24, 1009.531, and 1011.94 of the Florida Statutes, and creates two undesignated sections of Florida law. The Division of Statutory Revision will determine whether these undesignated sections are included in the Florida Statutes or remain as laws.

The bill will take effect July 1, 2004.

II. Present Situation:

Board of Governors

Article IX, Section 7 of the Florida Constitution provides that the state will have a single state university system comprised of all public universities. It establishes a board of governors to govern the state university system as a whole. Under the constitution, the Board of Governors (BOG) must "operate, regulate, control and be fully responsible for the management of the whole university system." The BOG's management is subject to the power of the legislature to appropriate for the expenditure of funds, and the board must account for expenditures as provided by law.

University Boards of Trustees

As noted above, Article IX, Section 7 of the Florida Constitution provides that the state will have a single state university system comprised of all public universities. It provides that a board of trustees must administer each public university and that the powers and duties of the boards of trustees are established by the BOG.

Current tuition structure

Percentage of actual costs paid by state residents; current payment per credit hour

Currently, the state substantially underwrites the cost of tuition for students who are residents of Florida. Based on the university tuition established in the 2003-2004 General Appropriations Act, a non-resident undergraduate student pays tuition of $328.74 per credit hour, while a Florida resident undergraduate student pays tuition of $63.41 per credit hour. The amount of tuition that a Florida resident undergraduate pays typically amounts to approximately 20-25 percent of the total cost of education. Nonresident students are, by law, required to pay 100 percent of the cost of education.

Credit hours payable currently

Data provided by OPPAGA[1] indicate that the 2001-2002 graduating class accumulated 347,482 credit hours over 115 percent of their degree requirements, costing the state approximately $30

[1] OPPAGA Report No. 03-31, Voluntary Bright Futures Scholarship Testing Program Would Reduce Costs.

million. Overall, 20 percent of the students accounted for 82 percent of all credit hours earned over the 115 percent standard. Data for the 2002-2003 graduating class were similar – the 2002-2003 graduating class accumulated 337,837 credit hours over 115 percent of their degree requirements, costing the state approximately $30 million if the 2001-2002 cost per credit hour figures are used.[2]

Bright Futures Scholarship Program; Full-Time Early Admission Students

Full-time early admission students skip their senior year of high school to attend a postsecondary education institution. Pursuant to s. 1009.25(2)(a), F.S., they are not required to pay any tuition or fees for their attendance at the postsecondary institution during the early admission year. Accordingly, providing Bright Futures Scholarship funding to these students results in a double funding of their education for the early admission year. It is estimated that approximately 300 early admission students qualified for Bright Futures Scholarships during the 2002-2003 academic year, with an attendant cost of approximately $500,000 for the state.

Trust Fund for University Major Gifts

The Trust Fund for University Major Gifts, created in s. 1011.94, F.S., is designed to provide donors with an incentive in the form of matching grants for donations for the establishment of permanent endowments and sales tax exemption matching funds received pursuant to applicable law. The funds must be invested, with the proceeds of the investment used to support libraries and instruction and research programs as defined by the State Board of Education under current law. The matches are subject to appropriation. Currently, not all gifts to institutions are being matched, and a waiting list for match funds exists.

Agency for Workforce Innovation

The Agency for Workforce Innovation is a state agency that is responsible for implementing policy dealing with workforce development programs, welfare transition, unemployment compensation, workforce information services and labor market information.

Workforce Florida, Inc.

Workforce Florida, Inc. was created with the passage of the Workforce Innovation Act of 2000. A board appointed by the Governor oversees and monitors the administration of the state's workforce policy, programs and services carried out by the 24 business-led regional workforce boards and the Agency for Workforce Innovation. Direct workforce services are provided at nearly 100 centers with locations in every county in the state.

Enterprise Florida, Inc.

Enterprise Florida, Inc. (EFI) is the public-private partnership responsible for leading Florida's statewide economic development efforts. EFI's mission is to diversify Florida's economy and create better-paying jobs for its citizens by supporting, attracting and helping to create businesses

[2] Source: OPPAGA, 3/30/04.

in innovative, high-growth industries. EFI was formed in July 1996 and replaced the state's Commerce Department.

Designation of university buildings; living namesakes

Section 267.062, F.S., requires approval in law before naming a state building or other facility for a living person. Accordingly, if a university wishes to name a building or facility after a living person, the designation must be approved by the Legislature.

III. Effect of Proposed Changes:

Section 1

CS/CS/SB 2884 amends s. 1009.531, F.S., regarding the Bright Futures Scholarship Program. The bill eliminates the payment of Bright Futures Scholarship funds to students who are exempt from tuition and fees as secondary students enrolled in postsecondary courses.

Section 2

CS/CS/SB 2884 creates a program for incentive funding, payable to university boards of trustees, for developing degree programs at their universities in targeted critical areas.

Incentive funding for degrees in critical areas

Subject to appropriation, the BOG is directed to annually allocate an amount specified in the General Appropriations Act as incentive awards to individual university boards of trustees for establishing programs, policies and procedures that lead to increased degree production in academic areas deemed critical to the state's future job growth.

Targeted critical areas in fiscal year 2004-2005

The bill provides that academic areas deemed critical for the 2004-2005 fiscal year are teaching, nursing, engineering and information technology.

Allocation of incentive awards in fiscal year 2004-2005

The bill requires the BOG to identify the specific academic disciplines and the appropriate courses that articulate to targeted career areas by July 15, 2004. It also provides that, before allocating any appropriated incentive funds, the BOG must establish a base from the number of full-time equivalent (FTE) students enrolled during 2003-2004 in the upper-division and graduate-level courses taken by students seeking degrees in targeted academic areas. By August 15, 2004, the BOG must develop a methodology for allocating any appropriated awards for the 2004-2005 fiscal year based on a prorated share of the increase in the number of full-time equivalent students enrolled in these courses. Funds appropriated but not awarded by the end of the fiscal year will revert to the General Revenue Fund unallocated.

Targeted critical areas during 2005-2006 and thereafter

The BOG is required to consult with the Agency for Workforce Innovation, Workforce Florida, Inc., and Enterprise Florida, Inc., to develop, by October 1, 2004, a multiyear forecasting mechanism for identifying occupations in areas that may require an increase in the number of undergraduate and graduate degrees awarded.

By October 1 of each year, the forecasting must identify occupations with the largest unmet growth rates and highest wage potential for subsequent years.

By November 1, 2004, the BOG must develop a methodology for allocating awards beginning in the 2005-2006 fiscal year, based on increasing undergraduate and graduate degree production in academic disciplines linked to targeted critical areas. Any appropriated funds that are not allocated by the end of the fiscal year will revert to the General Revenue Fund unallocated.

By December 1 of each year, the BOG must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives about the details of the implementation of the section, including any university successes or barriers to such implementation.

Section 3

Requirement to provide students information about the cost of education

The bill requires each university board of trustees to provide every student who is charged tuition and fees a billing statement at the beginning of each semester that identifies the amount of funds the state and the university are paying on behalf of the student. State funding to the university and state-supported financial assistance must be itemized in the statement.

The billing statement may be transmitted to the student by email, web page, or other electronic means. A sample of the billing statement format must be submitted to the BOG for review and approval before August 15 of each year.

Block tuition and fee policy

The bill requires each university board of trustees to develop a proposal to establish a block tuition and fee policy in order to decrease the time required for students to earn their degrees. The proposals cannot increase costs to students or the state for students participating in the Bright Futures Scholarship Program or the Florida Prepaid College Program. The proposals must be submitted to the Board of Governors, the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2004.

Costs for students not seeking degrees

The bill requires each university board of trustees to establish a policy, beginning in the 2004-2005 academic year, that would require students who are not seeking degrees to pay the full cost

of instruction per credit hour. The bill defines "students who are not seeking degrees" as students who have not been formally admitted to the university as undergraduate, graduate, or professional students.

The bill provides a number of exemptions to the required policy. Students in the following categories will not be required to pay the full cost of instruction:

- Students who provide documentation that the courses they seek to enroll in are required for professional licensure, certification, or recertification,
- Active duty military personnel,
- Retired military personnel within 2 years after retirement, and
- Full-time employees of state agencies or political subdivisions of the state when the employee's tuition and fees are paid by the state agency or political subdivision for the purpose of taking job-related courses.

Credit hours generated by students covered under this provision, excluding those students who are subject to an exemption, must be identified separately by the universities in reporting FTE student enrollments.

Each policy must be provided to the BOG for review and submission to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The policy may not be implemented without Legislative authorization.

Costs for students who have taken more than 115 percent of required courses

The bill requires each university board of trustees to establish a policy, beginning in the 2004-2005 academic year, that will require students who are in excess of the number of credit hours needed to graduate by more than 15 percent to pay the full cost of instruction per credit hour.

The bill provides a number of exemptions for the following types of credit hours earned by those students:

- Credit hours earned through an acceleration mechanism identified in s. 1007.27
- Credit hours earned in remedial courses
- Credit hours earned in military science courses
- Credit hours required to achieve a dual major
- Credit hours required to achieve teacher certification that are not credited toward the student's first baccalaureate degree
- Credit hours taken by active duty military personnel
- Credit hours in courses from which a student must withdraw due to medical or personal hardship reasons.

The policies must specifically *include*, however:

- credit hours for courses taken at the university from which the student is seeking a degree, including:

  - repeated courses and failed courses, except as provided in s. 1009.285, F.S., and
  - courses that are dropped after the university's advertised last day of drop and add.
- All credit hours earned at another institution and accepted for transfer.

Credit hours generated by students covered under this provision, excluding those credit hours that are subject to an exemption, must be identified separately by the universities in reporting FTE student enrollments.

Each policy must be provided to the BOG for review and submission to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The policy may not be implemented without Legislative authorization.

Section 4

The bill amends s. 1011.94, F.S., to make changes to conform the Trust Fund for University Major Gifts provisions with s. 1000.21(6), F.S., which defines New College as a state university for purposes of the education code. It also revises the section to make conforming changes to reflect the creation of the BOG as the entity responsible for management of the state university system. In particular, the bill provides that the BOG will administer the allocation of funds to universities to match gifts.

The bill revises the purposes for which a donation must be made to require that the donation must be used to support university priorities as established by the university boards of trustees. It revises the donation levels available for matches in the section as well as corresponding state matching grant amounts.

The bill restricts bundled gifts to a maximum of $1 million and a maximum match of fifty percent. This provision avoids the practice of bundling gifts to attain a higher state matching grant.

CS/CS/SB 2884 also provides a maximum amount of matching funds for any single gift in a given year at $3 million and caps the overall matching funds for any single gift at $15 million, payable over 5 years in equal amounts, subject to availability of funds.

The bill provides that implementation of the matching program is contingent upon legislative appropriation. The section's changes apply to new gifts and pledges made after July 1, 2005.

The bill eliminates the authority of the State Board of Education to authorize any university to encumber the state match from unexpended funds in a university operating budget. It also eliminates pro rata distribution for state matching funds, effectively requiring complete gifts to be funded. The state matching funds are provided on a first-come, first-served basis.

Section 5

The bill designates the student union building at the University of North Florida as the "James E. "Jim" and Linda King, Jr., Student Union Building." The university is also authorized to erect suitable markers for the building.

James E. "Jim" King was first elected to the Florida House of Representatives in 1986 and served in that body until 1999, at which time he was elected to the Florida Senate. During his distinguished career in the Florida House of Representatives, he served as the Majority Leader as well as in numerous other leadership positions. He also served as the Majority Leader of the Florida Senate, from 2000-2002, and was elected President of the Senate in 2002. He has been the recipient of numerous public service and business related awards from a variety of organizations in Florida. President King received an A.A. from St. Petersburg Junior College in 1959, a B.S.B.A. from Florida State University in 1961, and an M.B.A. from Florida State University in 1962. He served in the U.S. Coast Guard from 1962 to 1968.

Section 6

The bill designates the proposed entrance pavilion at the John and Mabel Ringling Museum of Art at the Florida State University Center for Cultural Arts in Sarasota as the "John M. McKay Visitors' Pavilion." The university is also authorized to erect suitable markers for the building.

A native Floridian, John M. McKay has dedicated his life to serving the people of the state of Florida. Mr. McKay is a 1971 graduate of Florida State University who was elected to the Florida Senate in 1990 and served consecutive terms until 2002. He served as President of Senate in 2001-2002. During his successful tenure in the Senate, Senator McKay received numerous awards for his leadership and dedication to improving life in Florida. In addition, Senator McKay was instrumental in passing legislation that created the affiliation between the John and Mable Ringling Museum of Art and Florida State University.

The bill will take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Bright Futures program/early admission students

The bill's changes would have saved the state approximately $500,000 in the 2002-2003 fiscal year; however, the actual future savings to the state from these changes are not determinable, due to the variable number of early admission students participating in Bright Futures.

Requirement to provide billing statement to students

The cost of this requirement is not currently determinable, but because universities generally provide students with billing statements every semester, the incremental cost of the newly-required information should be small. Initial administrative costs will likely be incurred as schools tie in additional data files to add required information to billing statements.

Incentive funding for developing targeted degree programs

It is not possible to determine the fiscal impact of this program, because (1) it is specifically subject to annual appropriation by the Legislature, (2) it is not known how many universities would develop programs to meet the incentive funding criteria, and (3) the size of the incentive awards to be made by the BOG are not known or stipulated in the bill. All of these variables will vary the section's fiscal impact.

Building designations

The universities will incur costs of erecting suitable markers for the building, which typically cost approximately $250 each.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

Bill No. CS for CS for SB 2884

Amendment No. 1 670108

CHAMBER ACTION

Senate House

Senators Klein and Pruitt moved the following amendment:

Senate Amendment (with title amendment)

On page 13 between lines 3 and 4,

and insert:

Section 7. Section 1004.63, Florida Statutes, is created to read:

1004.63 Florida Scripps Research Compact..--

(1) There is created the Florida-Scripps Research Compact. The purpose of the Compact is to explore facilitating and maximizing Florida's postsecondary collaboration with The Scripps Research Institute, including the feasibility and planning of a physical presence constituting a fully operational State of Florida-Scripps Research Campus over a multi-year phase-in. Such plans may include but not be limited to the creation of research and graduate education facilities for faculty, support staff, and students of the state universities and University of Miami to collaborate with the Scripps Research Institute; the acquisition of land, facilities, and equipment; the potential

1 for placement of a research hospital on the Campus, the
2 placement of a public-private research incubator on the
3 Campus, and any other public-private partnerships and
4 necessary physical resources that would enhance the State's
5 relationship with The Scripps Research Institute. By December
6 31, 2004, the Compact will submit a report to the Office of
7 the Governor, the House of Representatives, and the Senate
8 outlining the potential and feasibility of a Florida-Scripps
9 Research Campus, including plans for governance, operation,
10 and phased-in budget.
11 (2) For purposes of administration and fiscal agency,
12 the Compact shall be hosted by Florida Atlantic University and
13 chaired by the President of Florida Atlantic University.
14 Functions of the Compact shall be overseen by a Board of
15 Directors whose composition shall be determined by the
16 Governor in consultation with The Scripps Research Institute.
17 (3) A Compact Research Advisory Committee shall serve
18 as a standing committee of the Board of Directors. The
19 Committee shall be comprised of all members of the Florida
20 Research Consortium and other members determined by the
21 Governor. The purpose of the Research Advisory Committee
22 shall be to facilitate the report, as well as the future
23 collaboration and coordination among Florida's postsecondary
24 institutions and The Scripps Research Institute. Such
25 coordination shall be for purposes of communication,
26 efficiency, priority, and non-duplication rather than as a
27 restriction on any Florida postsecondary institution and its
28 relationship with The Scripps Research Institute.
29 Section 8. There is hereby appropriated from the
30 General Revenue Fund to the State Board of Education the sum
31 of $250,000 in nonrecurring funds for the 2004-2005 Fiscal

1 Year. These funds shall be administered by the Board of
2 Governors of the State University System to support the
3 activities of The Florida-Scripps Research Compact and the
4 Compact Research Advisory Committee.
5
6
7 ========== T I T L E A M E N D M E N T ==========
8 And the title is amended as follows:
9 On page 2, line 4, after the semi-colon,
10
11 and insert:
12 creating The Florida-Scripps Research Compact;
13 providing an appropriation;
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2842

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Atwater

SUBJECT: Trauma Care Services

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	Cibula	Lang	JU	Favorable
3.	Belcher	Belcher	AHS	Favorable
4.	Belcher	Coburn DKC	AP	
5.				
6.				

I. Summary:

This bill creates a method to fund trauma centers with the proceeds of surcharges or penalties imposed on persons who:

- violate certain traffic laws, including speeding and other violations;
- are convicted of driving under the influence;
- drive without a license or with a suspended or revoked license; or
- fail to have insurance.

If a person fails to pay the surcharge or penalty, the person's driver's license is automatically suspended until paid.

The surcharges will be deposited in the Administrative Trust Fund and paid to trauma centers under a new funding formula. The payments to a trauma center will be based on the ratio of the volume, acuity, and uncompensated trauma care provided by the trauma center to the total volume, acuity, and uncompensated trauma care provided by all trauma centers.

The bill also enables an acute care general hospital or pediatric hospital that is located in a trauma service area in which no trauma center is located to apply to the Department of Health for approval and verification to operate as a provisional trauma center or trauma center.

This bill amends sections 381.74, 381.745, 395.40, 395.4001, 395.401, 395.4015, 395.402, 395.4025, 395.403, 395.404, 395.405, and 318.18, Florida Statutes. This bill creates ss. 322.751, 322.7515, 322.7516, 322.7525, and 322.753, F.S. This bill also repeals s. 395.4035, F.S., relating to the Trauma Services Trust Fund.

II. Present Situation:

Trauma Care

Part II, chapter 395, F.S., governs trauma services and trauma center operations in Florida. There are twenty state-approved trauma centers in the state. DOH regulates trauma centers and has developed minimum standards for trauma centers based on national trauma standards. The department also has statutory authority to develop an inclusive trauma system to meet the needs of all injured trauma victims, which is accomplished through the development of a state trauma system plan and coordination with local trauma agencies. There are four county and multi-county local trauma agencies approved by DOH. In areas where local or regional agencies have not been formed, DOH is responsible for developing regional trauma system plans.

Section 395.4001, F.S., defines various types of trauma centers. A "Level I trauma center" is defined to mean a trauma center that:

- Has formal research and education programs for the enhancement of trauma care and is determined by the department to be in substantial compliance with Level I trauma center and pediatric trauma referral center standards.
- Serves as a resource facility to Level II trauma centers, pediatric trauma referral centers, and general hospitals through shared outreach, education, and quality improvement activities.
- Participates in an inclusive system of trauma care, including providing leadership, system evaluation, and quality improvement activities.

A "Level II trauma center" is defined to mean a trauma center that:

- Is determined by the department to be in substantial compliance with Level II trauma center standards.
- Serves as a resource facility to general hospitals through shared outreach, education, and quality improvement activities.
- Participates in an inclusive system of trauma care.

A "Pediatric trauma referral center" is defined to mean a hospital that is determined by the department to be in substantial compliance with pediatric trauma referral center standards as established by rule of the department.

Part II, chapter 395, F. S., places legislative emphasis on the need for an inclusive trauma system which provides Floridians and visitors timely access to trauma care. Trauma standards and procedures are based on the "golden hour" principle, which is the optimal timeframe for the delivery of services to trauma victims. DOH has the primary responsibility for the oversight, planning, monitoring and establishment of a statewide inclusive trauma system. There are six Level I trauma centers that are also pediatric trauma centers, thirteen Level II trauma centers, of which five are also pediatric centers, and one pediatric trauma center. Nineteen trauma service areas have been designated in Florida to facilitate trauma planning.

Reimbursement of Trauma Care

Section 395.403, F.S., expresses legislative findings that many hospitals which provide services to trauma victims are not adequately compensated for such treatment and that current verified trauma centers are providing such services without adequate reimbursement. This section expresses legislative intent to provide financial support to the current verified trauma centers and to establish a system of state-sponsored trauma centers as soon as feasibly possible.
Section 395.403, F.S., outlines an elaborate funding formula based on the provision of charity or uncompensated care by trauma centers. Section 395.403(2), F.S., states that trauma centers shall be considered state-sponsored trauma centers when state funds are specifically appropriated for state-sponsored trauma centers in the General Appropriations Act.

For the past three years the funding for trauma care beyond the normal reimbursements from Medicaid, other third party payers, and private payers has come from the Medicaid program in the form of special nonrecurring Medicaid payments under the Upper Payment Limit Program. The Medicaid Hospital Upper Payment Limit Program provides a mechanism for states to make special Medicaid payments to compensate participating hospitals in ways to make up the difference between Medicaid and Medicare or usual and customary fees. States have used a variety of non-federal funding sources for the state match, usually local funds, to draw down additional federal funds. In the last three years $44 million in Medicaid payments have been made for trauma care through the Upper Payment Limit Program.

The Medicaid Program staff also estimates that $97.7 million was paid during 2002 in fee-for-service payments for trauma-related diagnoses. Prior to 1998, there was no specific funding for trauma centers. Earlier efforts in 1990-91 by the Legislature to implement s. 395.403, F.S., which provides a funding formula to reimburse trauma centers for charity care, were stymied because of a budgetary shortfall. The resources appropriated were cut from the state budget. The elaborate funding formula based on the provision of charity care by trauma centers outlined in s. 395.403, F.S, has not been implemented.[1]

The Medicaid Disproportionate Share Task Force was authorized to convene in fiscal year 2003-2004 for the purpose of monitoring the implementation of enhanced Medicaid funding through the Special Medicaid Payment program. The taskforce was directed to review the federal status of the upper payment limit funding option and recommend how this option may be further used to promote local primary care networks to uninsured citizens in Florida, to increase the accessibility of trauma centers to Floridians and to ensure financial viability of the state's graduate medical education programs and other health care policies determined by the task force to be state health care priorities.

[1] For more details see Interim Project 2004-108 by Florida Senate Committee on Appropriations, November 2003, cited at <http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-108ahs.pdf>.

HISTORY OF STATE APPROPRIATIONS FOR TRAUMA CARE			
Fiscal Year	**Department of Health**	**Agency for Health Care Administration**	**Comments - Total**
1990-1991			$24 million appropriated but later eliminated by legislative action.
1998-1999	2,500,000		Level I Centers only
1999-2000	3,000,000		Level I Centers only
2000-2001	4,800,000		All Centers
2001-2002	1,622,601	15,000,000	All Centers
2002-2003		18,000,000	All Centers
2003-2004		11,610,000	All Centers
TOTAL	**$ 11,922,601**	**$44,610,000**	**$56,532,601**

Source: Florida Senate Interim Project 2004-108

Brain and Spinal Cord Injury

The Department of Health administers the brain and spinal cord injury program that provides services to individuals who have moderate-to-severe brain or spinal cord injuries. The program gives eligible persons the opportunity to obtain necessary rehabilitative services, enabling such persons to be referred to a vocational rehabilitation program or to return to an appropriate level of functioning in their community. Under s. 381.74, F.S., the department maintains a central registry of persons who have moderate-to-severe brain or spinal cord injuries. Every public or private health agency, public or private social agency, and attending physician must report to the department within 5 days after identification or diagnosis of any person who has a moderate-to-severe brain or spinal cord injury. The consent of such person is not required and the report must contain the name, age, residence, and type of disability of the individual, and any additional information that the department deems necessary. During fiscal year 2002-2003, the brain and spinal cord injury central registry received 3,175 referrals. Eighty-nine percent of the 3,175 referrals were received from state-designated trauma centers and designated rehabilitation facilities.

Notwithstanding s. 381.74, F.S., each trauma center and acute care hospital must submit severe disability and head-injury registry data to DOH as provided by rule. Each trauma center and acute care hospital must continue to provide initial notification of persons who have severe disabilities and head injuries to DOH within timeframes set forth in chapter 413, F.S.[2]

[2] The Division of Vocational Rehabilitation within the Department of Labor and Employment Security was established to assist persons with physical or mental impairment to gain employment and its statutory authority was at part II, ch. 413, F.S., and ch. 38J, F.A.C. The Office of Disability Determinations was also housed in the Division. This is a federally funded program which is responsible for determining medical eligibility for Social Security Disability Insurance and Supplemental Security Income Benefits. The office at that time made appropriate referrals to the Division of Vocational Rehabilitation and programs within DOH to assist the claimant in obtaining the necessary health care and to regain economic employment security. The Brain and Spinal Cord Injury Program and the Office of Disability Determinations were transferred to the Department of Health in 1999; that transfer is now codified in ch. 381, F.S.

Domestic Security/Counter-Terrorism

After the September 11, 2001 terrorist attack, federal, state and local governments began to review and revise laws relating to domestic security. During the 2001 Special Session "C", the Florida Legislature enacted a number of laws dealing with security, including chapter 2001-365, Laws of Florida, to direct the Department of Law Enforcement to coordinate and direct the law enforcement, initial emergency, and other initial responses to acts of terrorism within or affecting this state. The Department of Law Enforcement must work closely with the Division of Emergency Management; other federal, state, and local law enforcement agencies; fire and rescue agencies; first-responder agencies; and others involved in preparation against and responses to such terrorism. The Department of Law Enforcement must designate a Chief of Domestic Security Initiatives. The legislation established the duties and responsibilities of the chief, which include, but are not limited to, coordinating the department's ongoing assessment of Florida's vulnerability to, and ability to detect and respond to, acts of terrorism; conducting specified security assessments; making recommendations for minimum security standards, funding and training requirements and other security matters; and developing best practices for safety and security.

Chapter 2001-365, L.O.F., also required the Department of Law Enforcement to establish a regional domestic security task force in each of the department's operational regions to serve in an advisory capacity to the Chief of Domestic Security Initiatives.[3] Goals and objectives of each task force include, but are not limited to, coordinating efforts, training, and the collection and dissemination of investigative and intelligence information relevant to countering terrorism; identifying appropriate equipment and training needs, curricula, and materials relevant to responding to acts of terrorism or incidents involving real or hoax weapons of mass destruction; and ensuring that there are appropriate investigations and responses to hate-driven acts against ethnic groups that may have been targeted as a result of acts of terrorism.

Transportation

The National Highway Traffic Safety Administration estimates in 2000, traffic crashes imposed a burden of $230.6 billion in the form of property damage, lost productivity and medical expenses, excluding costs related to pain and suffering (noneconomic damages). During 2002, law enforcement agencies in Florida issued 4.3 million uniform traffic citations to Florida motorists. During calendar year 2002, 3,143 people died and 229,611 people were injured in Florida traffic crashes.

Title XXIII, F.S, is entitled "Highway Safety" and includes chapters 316-325, F.S. These chapters set forth the laws relating to "State Uniform Traffic Control," "Off-Highway Vehicle Titling," "Disposition of Traffic Infractions," "Title Certificates," "Motor Vehicle Licenses," "Highway Patrol," "Drivers' Licenses," "Wrecker Operators," "Financial Responsibility," and "Motor Vehicle Refrigerants and Emissions" respectively. The Division of Motor Vehicles protects Florida consumers through motor vehicle and vessel titling and registration services. The division also regulates motor vehicle and mobile home manufacturers and dealers. Most

[3] See s. 943.0312, F.S.

motor vehicle registration and title transactions are initiated through county tax collectors who serve as agents for DHSMV.

Chapter 316, F.S., is known as the Florida Uniform Traffic Control Law. The purpose of this chapter is to make traffic laws uniform throughout the state to the maximum extent possible. The provisions of this chapter apply to the operation of vehicles and the movement of pedestrians upon all state and county maintained highways, or municipal streets. Section 316.193, F.S., prohibits driving under the influence (DUI) of alcohol or drugs to the extent normal faculties are impaired or driving with a blood or breath alcohol level of .08 percent or higher. During 2002, 32.04 percent of Florida's traffic fatalities and 8.6 percent of Florida's traffic crashes were alcohol related.

Penalties for DUI vary according to the frequency of previous convictions, the offender's blood alcohol level (BAL) when arrested, and whether serious injury or death results. If a driver is stopped by a law enforcement officer for suspicion of DUI and refuses to take a test, his or her driving privilege is automatically suspended for one year.

Chapter 318, F.S., is known as the Florida Uniform Disposition of Traffic Infractions Act. The purpose of this chapter is to decriminalize certain violations of the highway safety laws and to facilitate a more uniform and expeditious system for the disposition of traffic infractions. "Infraction" means a noncriminal violation that may require community service hours under s. 316.027(4), F.S., but is not punishable by incarceration and for which there is no right to a trial by jury or a right to court-appointed counsel.[4]

The purpose of chapter 322, F.S., is to set forth the circumstances and conditions for the issuance of drivers' licenses and identification cards in Florida. A person may not drive any motor vehicle upon a highway in this state unless such person has a valid driver's license.[5] Section 322.27, F.S., establishes a system of points that are assessed against a driver's license when a person is convicted of violating certain motor vehicle laws.

The point system is used for the evaluation and determination of the continuing qualification of any person to operate a motor vehicle. DHSMV is authorized to suspend the license of any person upon a showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws amounting to 12 or more points as determined by the point system. The suspension will be for a period of not more than one year. The statute specifies the following provisions:

- When a licensee accumulates 12 points within a 12-month period, the period of suspension will be for not more than 30 days.

- When a licensee accumulates 18 points within an 18-month period, the suspension will be for a period of not more than 3 months.

[4] See s. 318.13(3), F.S.
[5] See s. 322.03(1), F.S.

- When a licensee accumulates 24 points within a 36-month period, the suspension will be for a period of not more than 1 year.

- The point system has, as its basic element, a graduated scale of points assigning relative values to convictions of the following violations:

  - Reckless driving—4 points.

  - Leaving the scene of a crash resulting in property damage of more than $50—6 points.

  - Unlawful speed resulting in a crash—6 points.

  - Passing a stopped school bus—4 points.

  - Unlawful speed:

    - Not in excess of 15 miles per hour of lawful or posted speed—3 points.
    - In excess of 15 miles per hour of lawful or posted speed—4 points.

  - All other moving violations (including parking on a highway outside the limits of a municipality)—3 points.

  - Any moving violation, excluding unlawful speed, resulting in a crash—4 points.

  - Dumping litter in an amount exceeding 15 pounds, which involves the use of a motor vehicle—3 points.

  - Driving during restricted hours—3 points.

  - Violation of curfew—3 points.

  - Open container as an operator—3 points.

  - Child restraint violation—3 points.

- A conviction which occurred out-of-state or in a federal court may be recorded against a driver on the basis of the same number of points received had the conviction been made in a court of this state.

- In computing the total number of points, when the licensee reaches the danger zone, DHSMV is authorized to send the licensee a warning letter advising any further convictions may result in suspension of their driving privilege.

- Three points are deducted from the driver history record of any person whose driving privilege has been suspended only once under the point system and has been reinstated, if such person has complied with all other requirements.

- The offense date of all convictions is used in computing the points and period of time for suspensions.

The purpose of chapter 324, F.S., is to promote safety and to provide financial security requirements for owners or operators of motor vehicles whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.

III. Effect of Proposed Changes:

Trauma Center Funding

This bill creates a method to fund trauma centers with the proceeds of surcharges or penalties imposed on persons who:

- violate certain traffic laws, including speeding and other violations;
- are convicted of driving under the influence;
- drive with a suspended or revoked license; or
- fail to have insurance.

If a person fails to pay the surcharge, the person's driver's license is automatically suspended until paid.

Specific Funding Sources (Sections 12-17)
The bill provides that the proceeds of surcharge or penalties described below must be deposited in the Administrative trust fund of the Department of Health (DOH).

- $6 for each civil violation of ch. 316, F.S., relating to traffic control.
- $6 for each offense enumerated in s. 318.17, F.S., relating to specified traffic offenses.
- $9 for any other offense in ch. 316, F.S., relating to traffic control which is classified as a criminal violation. *See Section 12 of the bill.*

- $100 surcharge for the first seven points accumulated against a person's driver's license during a 36-month period and $25 for each additional point. *See Section 13 of the bill.*

- $1,000 surcharge per year for one DUI conviction within the thirty-six month period.
- $1,500 surcharge per year upon a second or subsequent conviction within a thirty-six month period.
- $2,000 surcharge for a first or subsequent conviction in a thirty-six month period if the blood-alcohol level was 0.20 or higher at the time the analysis was performed. *See Section 14 of the bill.*

- $250 annual monetary penalty for one or more convictions in a 36-month period for driving without a license or driving with a revoked or suspended license; or
- $250 annual monetary penalty for one or more convictions in a 36-month period for driving without insurance or proof of self-insurance, or a bond to cover liability arising out of the use of a motor vehicle. *See Section 15 of the bill.*

DHSMV must notify the holder of a driver's license by first class mail of the assessment of a surcharge, the date by which the surcharge must be paid and the consequences of a failure to pay the surcharge. If the surcharge is not paid before the 30th day after the holder is notified or fails to enter into an installment payment agreement with DHSMV, the person's driving privilege will be suspended until the surcharge is paid. *See Section 16 of the bill.*

For amounts less than $2,300, DHSMV may authorize an installment plan for up to 12 months. For amounts over $2,300, DHSMV may authorize an installment plan for up to 24 months. *See Section 17 of the bill.*

Funding Formula

Funds in the Administrative Trust Fund of DOH, not disbursed for trauma readiness and preparedness, will be paid to trauma centers in accordance with a new funding formula provided by the bill. Payments to a "provisional trauma center or trauma center shall be in an amount that bears the same ratio to the total amount of such distributions as the volume, acuity, and uncompensated trauma care provided by all trauma centers and provisional trauma centers in this state." The bill, however, does not specify how volume, acuity, and uncompensated trauma care should be weighted in the formula. The Legislature may wish to clarify how volume, acuity, and uncompensated trauma care should be weighted.

Trauma Center Approval

In areas where there is no existing trauma center, the bill authorizes an acute care general or pediatric hospital to apply to the DOH for approval and verification to operate as a provisional trauma center or trauma center beginning on July 1, 2004.

Revised Definitions

The bill revises the definition of "charity care" or "uncompensated care" to provide that restricted or unrestricted revenues provided to a hospital by local governments or tax districts for a patient whose family income is less than or equal to 200 percent of the federal poverty level do not qualify as compensation.

The bill revises the definition of Level I and Level II trauma center to provide that such entities must be approved as a Level I or Level II trauma center by DOH in addition to meeting the standards of a Level I or Level II trauma center.

The bill defines "provisional trauma center" as a hospital that is in substantial compliance with the requirements of trauma centers and has approved by DOH to operate as a provisional Level I or Level II trauma center or pediatric trauma center.

Trauma Regions

The bill requires the boundaries of trauma regions administered by the DOH to be coterminous with the boundaries of the regional domestic security task forces established within the Florida Department of Law Enforcement. Exceptions are provided for the delivery of trauma services by

or in coordination with a trauma agency established before July 1, 2004, which may continue in accordance with public and private agreements and operational procedures. The requirement for DOH to develop regional trauma systems plans is deleted.

Other Changes

Obsolete language is deleted and conforming changes are made throughout the bill.

Effective Date

The bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

See comments in the Government Sector Impact section below.

B. Private Sector Impact:

Drivers and owners of motor vehicles will be liable for enhanced assessments and fines. Trauma centers eligible for funding under the bill will recoup some startup and other costs associated with the provision of trauma services.

C. Government Sector Impact:

The estimates on the following table are official estimates of the Revenue Estimating Conference except that the figures for the surcharge on uniform traffic violations are preliminary estimates.

	Issue	Fine	FY 2004-05	FY 2005-06
1)	Civil traffic violations - ch. 316	6	$ 12,338,334	$ 16,451,112
2)	Criminal violations - DUI; fleeing; leaving scene of accident; reckless driving	6	339,984	453,312
3)	All other criminal violations - ch. 316	9	1,631,921	2,175,894
4)	$100 surcharge for 1st 7-points accumulated	100 +25		
	over 36 months; $25 for each add'l point	for 3 Years	*	30,105,130
5)	Surcharge on final DUI conviction	1,000		
	$1,000 -1st offence; $,1,500 - 2nd; $2,000 - 3rd	for 3 Years	*	9,057,188
6)	Driving without insurance within 36-month period	250 for 3 Years	*	13,463,063
7)	Driving without license within 36-month period	100 for 3 Years	*	2,007,525
	Total		$ 14,310,239	$ 73,713,224

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 2842

Amendment No. 1 204476

CHAMBER ACTION

Senate | House

Senator Jones moved the following amendment:

Senate Amendment (with title amendment)

On page 27, line 13, following the period

insert: Likewise, until the department has conducted the review provided under s. 395.402, only hospitals located in trauma service areas where there is no existing trauma center may apply.

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

And the title is amended as follows:

On page 2, line 24, following the first semicolon

insert:

limiting applications until the completion of a specified review;

Bill No. CS for SB 2842

Amendment No. 2 844512

CHAMBER ACTION

Senate | House

Senator Jones moved the following amendment:

Senate Amendment

On page 28, line 11, delete the phrase "as of July 1 of"

and insert: during

Bill No. CS for SB 2842

Amendment No. 3 770696

CHAMBER ACTION

Senate House

Senator Villalobos moved the following amendment:

Senate Amendment (with title amendment)

On page 39, between lines 13 and 14,

insert:

Section 19. Subsection (4) of section 316.075, Florida Statutes, is amended to read:

316.075 Traffic control signal devices.--

(1) Except for automatic warning signal lights installed or to be installed at railroad crossings, whenever traffic, including municipal traffic, is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green indication.--

1. Vehicular traffic facing a circular green signal may proceed cautiously straight through or turn right or left

1 unless a sign at such place prohibits either such turn. But
2 vehicular traffic, including vehicles turning right or left,
3 shall yield the right-of-way to other vehicles and to
4 pedestrians lawfully within the intersection or an adjacent
5 crosswalk at the time such signal is exhibited.
6 2. Vehicular traffic facing a green arrow signal,
7 shown alone or in combination with another indication, as
8 directed by the manual, may cautiously enter the intersection
9 only to make the movement indicated by such arrow, or such
10 other movement as is permitted by other indications shown at
11 the same time, except the driver of any vehicle may U-turn, so
12 as to proceed in the opposite direction unless such movement
13 is prohibited by posted traffic control signs. Such vehicular
14 traffic shall yield the right-of-way to pedestrians lawfully
15 within an adjacent crosswalk and to other traffic lawfully
16 using the intersection.
17 3. Unless otherwise directed by a pedestrian control
18 signal as provided in s. 316.0755, pedestrians facing any
19 green signal, except when the sole green signal is a turn
20 arrow, may proceed across the roadway within any marked or
21 unmarked crosswalk.
22 (b) Steady yellow indication.--
23 1. Vehicular traffic facing a steady yellow signal is
24 thereby warned that the related green movement is being
25 terminated or that a red indication will be exhibited
26 immediately thereafter when vehicular traffic shall not enter
27 the intersection.
28 2. Pedestrians facing a steady yellow signal, unless
29 otherwise directed by a pedestrian control signal as provided
30 in s. 316.0755, are thereby advised that there is insufficient
31 time to cross the roadway before a red indication is shown and

1 no pedestrian shall start to cross the roadway.
2 (c) Steady red indication.--
3 1. Vehicular traffic facing a steady red signal shall
4 stop before entering the crosswalk on the near side of the
5 intersection or, if none, then before entering the
6 intersection and shall remain standing until a green
7 indication is shown; however:
8 a. The driver of a vehicle which is stopped at a
9 clearly marked stop line, but if none, before entering the
10 crosswalk on the near side of the intersection, or, if none
11 then at the point nearest the intersecting roadway where the
12 driver has a view of approaching traffic on the intersecting
13 roadway before entering the intersection in obedience to a
14 steady red signal may make a right turn, but shall yield the
15 right-of-way to pedestrians and other traffic proceeding as
16 directed by the signal at the intersection, except that
17 municipal and county authorities may prohibit any such right
18 turn against a steady red signal at any intersection, which
19 prohibition shall be effective when a sign giving notice
20 thereof is erected in a location visible to traffic
21 approaching the intersection.
22 b. The driver of a vehicle on a one-way street that
23 intersects another one-way street on which traffic moves to
24 the left shall stop in obedience to a steady red signal, but
25 may then make a left turn into the one-way street, but shall
26 yield the right-of-way to pedestrians and other traffic
27 proceeding as directed by the signal at the intersection,
28 except that municipal and county authorities may prohibit any
29 such left turn as described, which prohibition shall be
30 effective when a sign giving notice thereof is attached to the
31 traffic control signal device at the intersection.

1 2. Unless otherwise directed by a pedestrian control
2 signal as provided in s. 316.0755, pedestrians facing a steady
3 red signal shall not enter the roadway.
4 (4)(a) A violation of this section is a noncriminal
5 traffic infraction, punishable pursuant to chapter 318 as
6 either a pedestrian violation or, if the infraction resulted
7 from the operation of a vehicle, as a moving violation.
8 (b) A person committing a violation of subparagraph
9 (1)(c)1. resulting in a crash is subject to a mandatory
10 hearing under the provisions of s. 318.19.
11 Section 20. Subsection (5) of section 318.14, Florida
12 Statutes, is amended to read:
13 318.14 Noncriminal traffic infractions; exception;
14 procedures.--
15 (5) Any person electing to appear before the
16 designated official or who is required so to appear shall be
17 deemed to have waived his or her right to the civil penalty
18 provisions of s. 318.18. The official, after a hearing, shall
19 make a determination as to whether an infraction has been
20 committed. If the commission of an infraction has been proven,
21 the official may impose a civil penalty not to exceed $500,
22 except that in cases involving unlawful speed in a school zone
23 or~~,~~ involving unlawful speed in a construction zone, ~~or~~
24 ~~involving a death,~~ the civil penalty may not exceed $1,000; or
25 require attendance at a driver improvement school, or both. If
26 the person is required to appear before the designated
27 official pursuant to s. 318.19(1) and is found to have
28 committed the infraction, the designated official shall impose
29 a civil penalty of $1,000 in addition to any other penalties.
30 If the person is required to appear before the designated
31 official pursuant to s. 318.19(2) and is found to have

1 committed the infraction, the designated official shall impose
2 a civil penalty of $500 in addition to any other penalties. If
3 the person is required to appear before the designated
4 official pursuant to s. 318.19(3) and is found to have
5 committed the infraction, the designated official shall impose
6 a civil penalty of $200 in addition to any other penalties. If
7 the official determines that no infraction has been committed,
8 no costs or penalties shall be imposed and any costs or
9 penalties that have been paid shall be returned. Moneys
10 received from the mandatory civil penalties imposed pursuant
11 to this subsection upon persons required to appear before a
12 designated official pursuant to s. 318.19(1), (2), or (3)
13 shall be remitted to the Department of Revenue and distributed
14 in the following manner:
15 (a) One million dollars annually shall be transferred
16 to ABATE of Florida, Inc., a nonprofit corporation under s.
17 501(c)(4) of the Internal Revenue Code, for the purpose of
18 fostering motorcycle safety awareness and educational and
19 research programs relating to accident prevention. Such funds
20 shall be subject to annual audit by the department and the
21 Auditor General.
22 (b) The remaining funds shall be deposited into the
23 Trauma Services Trust Fund created under s. 395.4035 to be
24 used by the Department of Health as required under s.
25 395.4036.
26 Section 21. Subsection (13) is added to section
27 318.18, Florida Statutes, to read:
28 318.18 Amount of civil penalties.--The penalties
29 required for a noncriminal disposition pursuant to s. 318.14
30 are as follows:
31 (13) One hundred twenty-five dollars for a violation

1 of s. 316.075(1)(c)1., of which $60 shall be distributed as
2 provided in s. 318.21, and the remaining $65 shall be remitted
3 to the Department of Revenue for deposit into the Trauma
4 Services Trust Fund created under s. 395.4035 to be used by
5 the Department of Health as required under s. 395.4036.
6 Section 22. Section 318.19, Florida Statutes, is
7 amended to read:
8 318.19 Infractions requiring a mandatory hearing.--Any
9 person cited for the infractions listed in this section shall
10 not have the provisions of s. 318.14(2), (4), and (9)
11 available to him or her but must appear before the designated
12 official at the time and location of the scheduled hearing:
13 (1) Any infraction which results in a crash that
14 causes the death of another;
15 (2) Any infraction which results in a crash that
16 causes "serious bodily injury" of another as defined in s.
17 316.1933(1);
18 (3) Any infraction which results in a crash that
19 causes any bodily injury other than "serious bodily injury"
20 defined in s. 316.1933(1);
21 (4) ~~(3)~~ Any infraction of s. 316.172(1)(b); ~~or~~
22 (5) ~~(4)~~ Any infraction of s. 316.520(1) or (2); or
23 (6) Any infraction of s. 316.075(1)(c)1. resulting in
24 a crash.
25 Section 23. Subsection (13) is added to section
26 318.21, Florida Statutes, to read:
27 318.21 Disposition of civil penalties by county
28 courts.--All civil penalties received by a county court
29 pursuant to the provisions of this chapter shall be
30 distributed and paid monthly as follows:
31 (13)(a) Notwithstanding subsections (1) and (2), the

1 proceeds from the mandatory civil penalties imposed pursuant
2 to s. 318.14(5) shall be distributed as provided in that
3 section.
4 (b) Notwithstanding subsections (1) and (2), the
5 proceeds from the fines imposed under s. 318.18(13) shall be
6 distributed as provided in that section.
7 Section 24. Section 322.0261, Florida Statutes, is
8 amended to read:
9 322.0261 ~~Mandatory~~ Driver improvement course;
10 requirement to maintain driving privileges; failure to
11 complete; department approval of course ~~certain crashes~~.--
12 (1) The department shall screen crash reports received
13 under s. 316.066 or s. 324.051 to identify crashes involving
14 the following:
15 (a) A crash involving death or a bodily injury
16 requiring transport to a medical facility; or
17 (b) A second crash by the same operator within the
18 previous 2-year period involving property damage in an
19 apparent amount of at least $500.
20 (2) With respect to an operator convicted of, or who
21 pleaded nolo contendere to, a traffic offense giving rise to a
22 crash identified pursuant to subsection (1), the department
23 shall require that the operator, in addition to other
24 applicable penalties, attend a department-approved
25 ~~departmentally-approved~~ driver improvement course in order to
26 maintain driving privileges. If the operator fails to complete
27 the course within 90 days of receiving notice from the
28 department, the operator's driver's license shall be canceled
29 by the department until the course is successfully completed.
30 (3) The department shall identify any operator
31 convicted of, or who pleaded nolo contendere to, a second

1 violation of s. 316.075(1)(c)1., which violation occurred
2 within 12 months after the first violation, and shall require
3 that operator, in addition to other applicable penalties, to
4 attend a department-approved driver improvement course in
5 order to maintain driving privileges. If the operator fails to
6 complete the course within 90 days after receiving notice from
7 the department, the operator's driver's license shall be
8 canceled by the department until the course is successfully
9 completed.
10 (4) ~~(3)~~ In determining whether to approve a driver
11 improvement course for the purposes of this section, the
12 department shall consider course content designed to promote
13 safety, driver awareness, crash avoidance techniques, and
14 other factors or criteria to improve driver performance from a
15 safety viewpoint.
16 Section 25. Paragraph (d) of subsection (3) of section
17 322.27, Florida Statutes, is amended to read:
18 322.27 Authority of department to suspend or revoke
19 license.--
20 (3) There is established a point system for evaluation
21 of convictions of violations of motor vehicle laws or
22 ordinances, and violations of applicable provisions of s.
23 403.413(6)(b) when such violations involve the use of motor
24 vehicles, for the determination of the continuing
25 qualification of any person to operate a motor vehicle. The
26 department is authorized to suspend the license of any person
27 upon showing of its records or other good and sufficient
28 evidence that the licensee has been convicted of violation of
29 motor vehicle laws or ordinances, or applicable provisions of
30 s. 403.413(6)(b), amounting to 12 or more points as determined
31 by the point system. The suspension shall be for a period of

1 not more than 1 year.
2 (d) The point system shall have as its basic element a
3 graduated scale of points assigning relative values to
4 convictions of the following violations:
5 1. Reckless driving, willful and wanton--4 points.
6 2. Leaving the scene of a crash resulting in property
7 damage of more than $50--6 points.
8 3. Unlawful speed resulting in a crash--6 points.
9 4. Passing a stopped school bus--4 points.
10 5. Unlawful speed:
11 a. Not in excess of 15 miles per hour of lawful or
12 posted speed--3 points.
13 b. In excess of 15 miles per hour of lawful or posted
14 speed--4 points.
15 6. A violation of a traffic control signal device as
16 provided in s. 316.075(1)(c)1.--4 points.
17 7.~~6.~~ All other moving violations (including parking on
18 a highway outside the limits of a municipality)--3 points.
19 However, no points shall be imposed for a violation of s.
20 316.0741 or s. 316.2065(12).
21 8.~~7.~~ Any moving violation covered above, excluding
22 unlawful speed, resulting in a crash--4 points.
23 9.~~8.~~ Any conviction under s. 403.413(5)(b)--3 points.
24 Section 26. Section 395.4036, Florida Statutes, is
25 created to read:
26 395.4036 Trauma preparedness payments.--
27 (1) Recognizing the Legislature's stated intent to
28 provide financial support to the current verified trauma
29 centers and to provide incentives for the establishment of
30 additional trauma centers as part of a system of
31 state-sponsored trauma centers, the department shall use funds

1 collected under ss. 318.18(13) and 318.14(5) and deposited
2 into the Trauma Services Trust Fund to assure the availability
3 and accessibility of trauma services throughout the state as
4 provided in this subsection.
5 (a) Each existing trauma center and each new center
6 shall receive a one-time fixed payment to offset startup
7 costs.
8 (b) Equal payments shall be made to all current
9 verified trauma centers for the purpose of providing financial
10 support for each center to meet minimum standards of trauma
11 preparedness.
12 (c) Funds not disbursed as trauma preparedness
13 payments or startup costs shall be allocated to trauma centers
14 to pay for uncompensated trauma care. Distribution of
15 available funds shall be proportionate to utilization of
16 trauma center services by unfunded patients, as indicated in
17 the most recent year for which data is available.
18 (d) Any funds remaining after distribution under
19 paragraphs (a)-(c) shall be deposited into the Nursing Student
20 Loan Forgiveness Trust Fund to be used equally for the
21 department's Nursing Student Loan Forgiveness Program under s.
22 1009.66, and the Nursing Scholarship Program under s. 1009.67.
23 (2) Each trauma center receiving funds under this
24 section is responsible for ensuring that the funds are used in
25 accordance with law and for maintaining all associated
26 financial records of the use of such funds.
27 (a) Any trauma center not subject to audit pursuant to
28 s. 215.97 shall annually attest, under penalty of perjury,
29 that such proceeds were used in compliance with law. The
30 attestation shall be made annually in a form and format
31 determined by the department.

1 (b) Any trauma center subject to audit pursuant to s.
2 215.97 shall submit an audit report in accordance with rules
3 adopted by the Auditor General. The annual attestation shall
4 be submitted to the department for review within 9 months
5 after the end of the organization's fiscal year.
6 (3) The department, working with the Agency for Health
7 Care Administration, shall maximize resources for trauma
8 services wherever possible.
9
10 (Redesignate subsequent sections.)
11
12
13 ========== T I T L E A M E N D M E N T ==========
14 And the title is amended as follows:
15 On page 4, line 25, after the semicolon,
16
17 insert:
18 amending s. 316.075, F.S.; requiring a hearing
19 for specified violations of traffic control
20 signal devices resulting in a crash; amending
21 s. 318.14, F.S.; providing penalties for
22 certain traffic infractions requiring a
23 mandatory hearing; providing for the
24 distribution of penalty proceeds; amending s.
25 318.18, F.S.; providing a penalty for a
26 specified violation of traffic control signal
27 devices; providing for distribution of moneys
28 collected; amending s. 318.19, F.S.; requiring
29 a hearing for certain violations resulting in a
30 crash; amending s. 318.21, F.S.; providing for
31 distribution of specified civil penalties by

1 county courts; amending s. 322.0261, F.S.;
2 requiring the driver improvement course for a
3 second violation of specified provisions within
4 a specified time period; providing a penalty
5 for failure to complete the course within a
6 specified time period; amending s. 322.27,
7 F.S.; assigning a point value for conviction of
8 a specified violation of traffic control signal
9 devices; creating s. 395.4036, F.S.; providing
10 for the distribution of funds to trauma
11 centers; providing for the distribution of
12 funds for nursing student loan forgiveness and
13 scholarship programs; providing for audits and
14 attestations;
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Bill No. CS for SB 2842

Amendment No. 4 340558

CHAMBER ACTION

Senate | House

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11 Senator Carlton moved the following amendment:
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13 **Senate Amendment (with title amendment)**
14 On page 39, between lines 13 and 14,
15
16 insert:
17 Section 19. Paragraph (b) of subsection (3) of section
18 794.055, Florida Statutes, is amended to read:
19 794.055 Access to services for victims of sexual
20 battery.--
21 (3)
22 (b) Funds received under s. 938.085 <u>and funds received</u>
23 <u>pursuant to the driver's responsibility program</u> shall be used
24 to provide sexual battery recovery services to victims and
25 their families. Funds shall be distributed by county, based on
26 an allocation formula that takes into account the population
27 and rural characteristics of the county. No more than 15
28 percent of the funds shall be used for statewide initiatives,
29 including developing service standards and a certification
30 process for rape crisis centers. No more than 5 percent of the
31 funds may be used for administrative costs.

1 Section 20. Section 794.056, Florida Statutes, is
2 amended to read:
3 794.056 Rape Crisis Program Trust Fund.--
4 (1) The Rape Crisis Program Trust Fund is created
5 within the Department of Health for the purpose of providing
6 funds for rape crisis centers in this state. Trust fund moneys
7 shall be used exclusively for the purpose of providing
8 services for victims of sexual assault. Funds deposited in the
9 trust fund shall include revenues as provided by law, moneys
10 as appropriated by the Legislature, and grants from public or
11 private entities. Funds credited to the trust fund shall
12 include ~~consist of~~ those funds collected as an additional
13 court assessment in each case in which a defendant pleads
14 guilty or nolo contendere to, or is found guilty of,
15 regardless of adjudication, an offense defined in s. 784.011,
16 s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s.
17 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s.
18 785.085, or s. 794.011. Funds credited to the trust fund shall
19 include those funds collected as an annual penalty by the
20 Department of Highway Safety and Motor Vehicles and remitted
21 pursuant to the driver's responsibility program.
22 (2) The Department of Health shall establish by rule,
23 consistent with s. 794.055(3)(a), criteria for distributing
24 moneys from the trust fund to the statewide nonprofit
25 association whose primary purpose is to represent and provide
26 technical assistance to rape crisis centers for distribution
27 to rape crisis centers.
28 (3) In accordance with s. 19(f)(2), Art. III of the
29 State Constitution, the Rape Crisis Program Trust Fund shall
30 be terminated on July 1, 2007, unless terminated sooner.
31 Before its scheduled termination, the trust fund shall be

1 reviewed as provided in s. 215.3206(1) and (2).
2 Section 21. Remittance of penalty to the
3 Administrative Trust Fund and Rape Crisis Services Trust
4 Fund.--All penalties collected under sections 12 through 15 of
5 this act shall be deposited into the Administrative Trust
6 Fund. Five million dollars of such penalties shall be
7 transferred annually from the Administrative Trust Fund to the
8 Rape Crisis Services Trust Fund to provide sexual battery
9 recovery services in accordance with s. 794.055, the Sexual
10 Battery Victims' Access to Services Act.
11
12 (Redesignate subsequent sections.)
13
14
15 ========== T I T L E A M E N D M E N T ==========
16 And the title is amended as follows:
17 On page 4, line 25, after the semicolon,
18
19 and insert:
20 amending s. 795.055, F.S.; providing that funds
21 received pursuant to the driver's
22 responsibility program shall be used to provide
23 sexual battery recovery services to victims and
24 their families; amending s. 795.056, F.S.
25 providing that funds credited to the Rape
26 Crisis Program Trust Fund shall include both
27 funds collected as an additional court
28 assessment in certain cases and certain funds
29 collected as annual penalties by the Department
30 of Highway Safety and Motor Vehicles; revising
31 a requirement relating to the distribution of

1 moneys from the trust fund pursuant to a rule
2 by the Department of Health; directing the
3 department to deposit certain penalties into
4 the Administrative Trust Fund; directing up to
5 $5 million annually to be distributed from that
6 trust fund to the Rape Crisis Services Trust
7 Fund;
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2994

SPONSOR: Banking and Insurance Committee and Senator Posey

SUBJECT: Department of Financial Services

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Deffenbaugh	BI	Fav/CS
2.			AGG	Withdrawn
3.	Kynoch	Coburn	AP	
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 2994 transfers the authority to license and regulate insurance adjusters from the Office of Insurance Regulation (OIR) to the Department of Financial Services (department). The OIR currently licenses and regulates insurance companies and other risk-bearing entities. The department currently licenses and regulates insurance agents. The department's Division of Agents and Agency Services currently perform the administrative functions related to the licensure and regulation of insurance adjusters based on an informal agreement with the OIR as the administrative functions are similar to those performed for insurance agents.

The bill allows the Chief Financial Officer (CFO) to also be known as the "Treasurer". Further, the bill allows the Director of the Office of Insurance Regulation to also be known as the "Commissioner of Insurance Regulation" and allows the Director of the Office of Financial Regulation to also be known as the "Commissioner of Financial Regulation."

The bill provides that the Director of the Office of Insurance Regulation, rather than the Chief Financial Officer, will make appointments to: 1) the board of directors for the Florida Employee Long-Term Care Plan Act; 2) the State Comprehensive Health Information System Advisory Council; 3) the Florida Commission on Hurricane Loss Projection Methodology; and 4) the board of the Small Employer Health Reinsurance Program.

The bill also:

- Clarifies that the State Deferred Compensation Program is funded in whole or in part from fees charged by investment providers to plan participants.

- Requires every state agency to deposit in the State Treasury the proceeds from any claim brought on behalf of the state, unless the proceeds are for restitution. Proceeds from any claim for restitution are to be promptly transmitted to the intended beneficiaries.
- Adds the Commissioner of Agriculture to the Financial Management Information Board and to the board's coordinating council.
- Extends the sunset date for the Enterprise Resource Planning Integration Task Force from July 1, 2004 to July 1, 2008.
- Allows for a centralized financing process under the CFO for the financing of Guaranteed Energy Performance Savings Contracts, similar to the process currently used in the Consolidated Equipment Financing Program.
- Clarifies the persons and entities that are not subject to the Unfair Trade Practices Act.
- Changes incorrect references to the Department of Financial Services and the Office of Insurance Regulation.

This bill substantially amends the following sections of the Florida Statutes: 17.16, 17.57, 17.59, 17.61, 112.215, 215.31, 20.121, 110.1227, 408.05, 501.212, 516.35, 624,313, 624.317, 624.501, 626.016, 626.112, 626.161, 626.171, 616.181, 626.191, 626.211, 626.221, 626.231, 626.241, 626.251, 626.261, 626.266, 626.271, 626.281, 626.2817, 626.291, 626.301, 626.371, 626.381, 626.431, 626.461, 626.471, 626.521, 626.541, 626.551, 626.611, 626.621, 626.631, 626.641, 626.661, 626.681, 626.691, 626.692, 626.8582, 626.8584, 626.859, 626.863, 626.865, 626.866, 626.867, 626.869, 626.8695, 626.8696, 626.8697, 626.8698, 626.870, 626.871, 626.872, 626.873, 626.8732, 626.8734, 626.8736, 626.8738, 626.874, 626.878, 626.9543, 626.989, 627.0628. 627.6699, and transfers and renumbers section 627.7012 as section 626.879.

II. Present Situation:

Organization of the Department of Financial Services, Financial Services Commission, Office of Insurance Regulation, and the Office of Financial Regulation

In 1998, Florida voters approved an amendment to the State Constitution abolishing the offices of the Treasurer and the Comptroller and merging their duties into the office of the Chief Financial Officer (CFO), effective January 7, 2003. The CFO serves as the chief fiscal officer of the state. The CFO is responsible for settling and approving all accounts against the state and keeping all state funds and securities. The Legislature may, by law, prescribe additional powers and duties for the CFO, as previously allowed for the Treasurer and Comptroller.

Legislation enacted in 2002 reassigned the statutory duties of the Comptroller and Treasurer to the newly created Department of Financial Services, headed by the CFO, and to the Financial Services Commission, whose members are the Governor and Cabinet, effective January 7, 2003.[1] Two "offices" were created under the Financial Services Commission (commission), the Office of Insurance Regulation and the Office of Financial Regulation. Each office is headed by a director who is appointed by and serves at the pleasure of the commission. Both the Governor and the CFO must concur for the appointment or removal of a director. The commission acts as the agency head for purposes of rulemaking, while the director of each respective office acts as

[1] Ch. 2002-404, Laws of Florida

the agency head for final orders and other final agency actions.[2] The 2002 act prescribed, in general terms, the jurisdiction of the affected agencies, as set forth in s. 20.121, F.S. In 2003, conforming legislation made changes throughout the Florida Statutes to assign specific statutory duties consistent with s. 20.121, F.S., and the 2002 act.[3]

Insurance Regulation; Regulation of Insurance Adjusters

The Office of Insurance Regulation (OIR) and the Department of Financial Services (department) each have distinct regulatory powers related to insurance. The OIR is responsible for all activities concerning insurers and other risk-bearing entities, such as licensing, solvency, rates, and policy forms.[4] The OIR is also authorized to regulate insurance adjusters.[5] The department among other duties is responsible for the regulation of insurance agents and other individuals who are licensed to sell insurance-type products.[6]

There are three types of licensed insurance adjusters in Florida: public adjusters,[7] independent adjusters,[8] and company employee adjusters.[9] A fourth type, catastrophe and emergency adjusters, are unlicensed and only used if a hurricane occurs or an emergency is declared. The OIR may assign such adjusters to the affected area and an insurer may use them, but cannot be required to do so.[10]

Delegation of the regulation of insurance adjusters to the OIR, instead of the department, was based on the argument that it was more closely linked to the regulation of insurers than to the regulation of agents. Most adjusters work for or represent insurance companies and directly affect the amount of the insurer's claim payment. However, adjusters are the only individual persons who are regulated by the OIR, which otherwise regulates insurance entities. In actual practice, the department and the OIR have made an informal agreement to allow the department's Division of Agents and Agency Services to perform the administrative functions related to the licensure and regulation of insurance adjusters as the functions are similar to those performed for insurance agents. Spokespersons state that the infrastructure and personnel dedicated to the licensure of individuals can not be efficiently split between the department and OIR. As informally agreed, the OIR director approves all final orders for any disciplinary action that is taken against an adjuster. Regulatory matters are handled by the department.

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[2] Section 20.121(3)(c), F.S.
[3] Ch. 2003-261, Laws of Florida
[4] Section 20.121(3)(a)1., F.S.
[5] Sections 20.121(3)(a)1. and 626.626.016(2), F.S.
[6] Sections 20.121(2)(g) and 626.016(1), F.S..
[7] Section 626.854, F.S. A public adjuster is a person who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant, or who, for compensation acts or aids in any manner on behalf of an insured or third-party claimant in negotiating for, or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract.
[8] Section 626.855, F.S. An independent adjuster is any person who is self-employed or is associated with or employed by an independent adjusting firm or other independent adjusters, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim payable under an insurance contract or undertakes to effect settlement of a claim.
[9] Section 626.856, F.S. A company employee adjuster is an adjuster who is employed by an insurer or insurer's subsidiary, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim payable under an insurance contract or undertakes to effect settlement of a claim.
[10] Section 626.859, F.S. Emergency adjusters are designated and certified by the Office of Insurance Regulation as qualified to adjust claims.

Appointments to Boards and Commissions

The 2002 act provided that from January 7, 2003, until June 30, 2003, the CFO would make all appointments to boards and commissions that were formerly made by the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal.[11] The 2003 act delegated appointment authority for each of these boards and commissions. The CFO retained the appointment authority for most of these boards and commissions. The director of the OIR was provided appointment authority for certain boards that appeared to be more closely tied to the regulation of insurers.[12] Specific boards and commissions addressed by the bill are discussed in the section-by-section analysis, below.

Fiscal Duties of the Chief Financial Officer
Division of Treasury within the Department of Financial Services

Investment of State Funds and Funds of Statutorily-Created Entities -- The Chief Financial Officer (CFO) invests all general revenue funds, all trust funds, and all agency funds, including the judicial branch, and may, upon request, invest funds of a statutorily created board, association or entity, with certain exceptions, as authorized by s. 17.61, F.S. The Division of Treasury operates an investment program for funds of "statutorily created entities" that maintain funds outside of the State Treasury. This program is called The Treasurer's Special Purpose Investment Account. For example, special districts are authorized to invest in this program because they are created in statute.

Safekeeping of Deposits -- The CFO is also authorized to accept deposits of cash, securities, and other documents or articles of value from any state agency or any county, city, or other public authority.[13] This typically includes statutorily required deposits of cash or securities imposed as a condition of state licensure for various professions on entities. According to the Division of Treasury, this service is performed at no charge to state agencies, even though the current law authorizes the CFO to establish a fee for processing, servicing, and safekeeping such deposits. The Division also reports that it has not yet performed these services for local governments, even though it has authority to do so. The Division anticipates it will implement this authority in the future and charge local governments a fee for this service.

Deferred Compensation Program -- The CFO is charged with the duty of establishing, with the approval of the State Board of Administration, the Government Employees' Deferred Compensation Plan under s. 112.215, F.S., including all investment vehicles or products as may be offered to employees by qualified companies. The state enters into contracts with qualified investment providers and those providers then enter into separate contracts with the employees who chose their particular investment programs. The law allows the CFO, with the approval of the State Board of Administration, to delegate responsibility for administration of the plan to a qualified person, and through such person, contract with a private corporation or institution to provide any necessary or proper services for the plan.[14] Most administrative functions are performed by the Office of Deferred Compensation, under the department's Division of

[11] Section 8, ch.2002-404, Laws of Florida
[12] See, Senate Staff Analysis to CS/CS/SB 1712 (March 26, 2003), pp. 37-46.
[13] Section 17.59, F.S.
[14] Section 112.215(4)(c), F.S.

Treasury. Recordkeeping services are performed by a private entity. The state's contracts with the investment providers currently require a $0.75 per month fee per account and require the providers to pay for these services. According to the Division, 5 of the 6 providers currently include these fees in the fees charged by the provider to participating employees. In 1999, a lawsuit was filed in the Circuit Court for Leon County challenging the authority of the state to require payment of the administrative fees. In the summary judgment order, the trial court rejected the claim for recovery of the fees. The trial court determined that the state's authority to impose the administrative fees against the providers was inherent in the statutory authority to contract for administrative services. The First District Court of Appeal affirmed the summary judgment on the ground that the appellants did not have standing to pursue the claim.[15]

Florida Unfair and Deceptive Trade Practices Act

Part II of ch. 501, F.S., is the Florida Deceptive and Unfair Trade Practices Act (FDUPTA). This act declares as unlawful, unfair or deceptive acts or practices in the conduct of any trade or commerce and other violations of this part, as defined.[16] The act authorizes state attorneys and the Department of Legal Affairs (Attorney General) to enforce the act, as well as private causes of action by persons who have suffered a loss as a result of a violation.[17]

Prior to the 2003 act that made conforming changes to the reorganization of the Department of Financial Services, s. 501.212, F.S., provided an exemption from FDUPTA for "any person or activity regulated under laws administered by the Department of Insurance or banks and savings and loan associations regulated by the Department of Banking and Finance."[18] The 2003 act made conforming changes to this section to provide that the Act did not apply to "any person or activity regulated under laws administered by the Department of Financial Services or the Office of Insurance Regulation of the Financial Services Commission or banks and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission."[19] No substantive change was intended, as the reference to "persons or activities regulated under the laws administered by the Department of Financial Services or the Office of Insurance Regulation" was meant to encompass the same entities that were formerly regulated by the Department of Insurance. However, the Department of Financial Services now regulates cemeteries, which was not previously regulated by the Department of Insurance. Also, the reference to the Department of Financial Services might be incorrectly interpreted to include entities regulated by the Office of Financial Regulation, such as consumer finance companies and other entities other than banks and savings and loans formerly regulated by the Department of Banking and Finance, which were not exempt under this section.

[15] Nedeau v. Gallagher, 851 So.2d 214 (Fla. 1st DCA, 2003)
[16] Sections 501.204 and 501.203, F.S.
[17] Sections 501.203(2), 501.207, and 501.211, F. S.
[18] Section 501.212, F.S. (2002)
[19] Section 565, ch. 2003-261, Laws of Florida

III. Effect of Proposed Changes:

Section 1 amends s. 17.16, F.S., to allow the office of the Chief Financial Officer to have an official seal, which would no longer must be the same seal as previously used by the Comptroller.

Section 2 amends s. 17.57, F.S., to clarify that the Chief Financial Officer (Division of Treasury of the Department) may use reverse repurchase agreements in investment transactions, as well as repurchase agreements. This would provide the same language as provided for the State Board of Administration in s. 215.47(8), F.S. Repurchase agreements involve the purchase of a security under an agreement to sell it back to the seller at a specified date in the future. The interest rate to be earned by the investor is determined at the time of the agreement. A reverse repurchase agreement is the same transaction from the other side of the transaction. Currently, the Division of Treasury reports that it is not using reverse repurchase agreements for their internally managed accounts, but that outside mangers under contract with the department are using such agreements.

Section 3 amends s. 17.59, F.S., to require the CFO to administer a collateral management service (rather than allowing the CFO to accept deposits for safekeeping) for state agencies, counties and cities. The bill specifies that this service is for any deposit or pledge of collateral required by statute, rule, or contract. The bill clarifies the ways such collateral may be deposited or pledged to the CFO, provides rulemaking authority to the CFO, and allows for the CFO to specify fees in the service-level agreement. The bill deletes the specific $5.00 fee for the CFO certifying or authenticating any document and the $0.50 per page fee for copies of documents.

Section 4 amends s. 17.61, F.S., to expand the authority of the CFO to invest funds, upon request, of funds of boards, associations, or entities to include those that are "created by the State Constitution or by law" rather than those that are "statutorily created." This would include municipalities, which are created by special act, rather than by statute, and such constitutional officers as clerks of the courts and sheriffs.

Section 5 amends s. 20.121, F.S., to delete the authority for the Office of Insurance Regulation to regulate adjusters.

The bill allows the Chief Financial Officer to also be known as the "Treasurer."

The bill allows the Director of the Office of Insurance Regulation to also be known as the "Commissioner of Insurance Regulation." This is the more common title used in other states and would help clarify the role of the Director to such bodies as the National Association of Insurance Commissioners.

The bill allows the Director of the Office of Financial Regulation to also be known as the "Commissioner of Financial Regulation."

Section 6 amends s. 110.1227, F.S., to provide that the Director of OIR, rather than the CFO, appoints an actuary to the board of directors for the Florida Employee Long-Term Care Plan Act. The purpose of this board is to assist the Department of Management Services and the

Department of Elderly Affairs in implementing a self-funded or fully insured voluntary, long-term-care insurance plan for public employees. Prior to 2003, this appointment was made by the Insurance Commissioner.

Section 7 amends s. 112.215, F.S., to clarify that the Government Employees' Deferred Compensation Program is funded in whole or in part from fees charged by investment providers and may be recouped from their respective plan participants. Such fees must be deposited in the Deferred Compensation Trust Fund. These fees have been charged since the program's inception, but an unsuccessful lawsuit challenged the legal authority for such fees, as explained above in Present Situation.

Section 8 amends s. 215.31, F.S., to require every state agency to deposit in the State Treasury the proceeds from any claim brought on behalf of the state, unless the proceeds are for restitution, in which case the funds are to be promptly transmitted to the intended beneficiaries. This allows payments to any state trust fund, since all state trust funds are part of the State Treasury. This provision is aimed at prohibiting settlements by which a state official would require the payment of funds to an unrelated third party, such as a charity. The amendment would not affect any law specifically requiring payment outside the State Treasury.

Sections 9 and 10 amend ss. 215.95 and 215.96, F.S. to add the Commissioner of Agriculture to the Financial Management Information Board and to the board's coordinating council. Currently, the Commissioner of Agriculture is the only member of the Cabinet who is not on the board or the coordinating council, which jointly plan and implement the integration and coordination of the state's administrative and financial management information systems. The bill also extends the sunset date for the Enterprise Resource Planning Integration Task Force from July 1, 2004 to July 1, 2008, since the task force is expected to be needed for several more years and, according to the department, is important to the success of coordinating the state's financial and accounting information systems.

Section 11 amends s. 287.064, F.S., related to consolidated financing of deferred-payment purchases. The bill allows for a centralized financing process under the CFO for the financing of Guaranteed Energy Performance Savings Contracts, similar to the process currently used in the Consolidated Equipment Financing Program. The bill provides for a maximum term of 10 years for repayment and prohibits financing the costs of training, operation, and maintenance. (See Economic Impact for the advantages of this process.)

Section 12 amends s. 408.05, F.S., to provide that an employee of OIR appointed by the Director of OIR, rather than an employee of the Department appointed by the CFO, is a member of the State Comprehensive Health Information System Advisory Council. The purpose of the council is to assist the State Center for Health Statistics in reviewing the comprehensive health information system and to recommend improvements to the system (which coordinates the activities of state agencies to assure the consistency and quality of health-care related data).

Section 13 amends s. 501.212, F.S., to clarify the entities that are not subject to the Deceptive and Unfair Trace Practices Act (FDUPTA), part II of ch. 501, F.S. The bill more clearly matches the substance of this section as it existed prior to 2003. (See Present Situation, above, for discussion of the changes to this section in 2003 that were intended to conform to the

reorganization of the Department of Financial Services.) Instead of exempting persons or activities regulated under laws administered by the Department of Financial Services, the bill exempts "any person or activity regulated under the laws administered by the former Department of Insurance which are now administered by the Department of Financial Services."

Section 14 amends s. 516.35, F.S., to change a reference from OIR to the Department to refer to the correct agency that licenses persons as agents to sell credit insurance.

Sections 15-74 amend ss. 624.313-627.7012, F.S., (all sections are listed on page 2 of this analysis) to make conforming changes to authorize the Department of Financial Services, rather than the Office of Insurance Regulation, to regulate insurance adjusters.

Many of these sections are in part I of ch. 626, which currently delegate powers and duties to the "department or office" (or "department or commission" for rulemaking) because they are general powers related to the licensure of both insurance agents and adjusters. Section 626.016, F.S., specifies how these sections are to be interpreted, by providing that the powers and duties of the department, OIR, and the commission specified in part I are limited to the licensees that they each regulate, which are specified. The bill deletes references to the "office" in those sections in part I that apply to agents and adjusters and other individual licenses that would now be solely within the jurisdiction of the department. (Other sections of ch. 626, F.S., will still authorize the OIR to license and regulate service companies, administrators, and viatical settlement providers.)

Section 75 amends s. 626.9543, F.S., related to Holocaust victims, to delete the provision that defines "department" as the Department of Insurance, which the 2003 act failed to delete. The intent of the 2003 act was to authorize the Department of Financial Services to administer this program. As stated in the Senate Staff Analysis for the 2003 legislation:

> *The bill does not amend s. 626.9643, F.S., related to Holocaust victims, which has the effect of authorizing the "department" (DFS) to administer this section, which is consistent with the role of the Division of Consumer Services, as it administered this section under the former DOI. As such, the bill would provide that the proof of claim that insurers must allow claimants to use, must meet standards established by the department (DFS). The department would have rulemaking authority for establishing procedures and related forms for facilitating, monitoring, and verifying compliance with this section and for establishing a restitution program for Holocaust victims, survivors, and their heirs and beneficiaries. Insurers would be required to annually report to the department information relating to the results of efforts to locate and pay claims of insured Holocaust victims and their beneficiaries.* [Senate Staff Analysis for CS/CS/SB 1712, March 26, 2003 (p. 34)]

Section 76 amends s. 626.989, F.S., related to the Division of Insurance Fraud in the Department of Financial Services. This division and the related duties of investigation and arrest of persons committing insurance fraud were delegated to the Department. However, subsection (9), which requires an annual report related to workers' compensation fraud activities, incorrectly refers to the "office" as conducing fraud investigations and presenting cases for prosecution. The bill changes these references to the Bureau of Workers' Compensation Fraud, a bureau under the Division of Insurance Fraud of the Department. The bill also corrects the reference to the

Division of Workers' Compensation Insurance Bureau of Compliance (also in the Department) related to the activities of that bureau in enforcing the requirement that employers maintain workers' compensation coverage.

Section 77 amends s. 627.0628, F.S., to provide that the Director of OIR, rather than the CFO, would appoint an actuary employed by OIR to the Florida Commission on Hurricane Loss Projection Methodology. As provided in current law, this person must be an employee of OIR who is the actuary responsible for property insurance rate filings. This commission adopts findings as to the accuracy or reliability of models for hurricane loss projections used in residential property insurance rate filings. The findings of the commission are admissible and relevant in consideration of an insurer's rate filing by the OIR or in any arbitration or administrative or judicial review.

As amended, the CFO would appoint 5, rather than 6, of the 11 members of the commission. But this does not include 2 other members who the CFO effectively selects: the insurance consumer advocate who is employed by the CFO and the Executive Director of the Citizens Property Insurance Corporation, for which the CFO is the board chairman.

Section 78 amends s. 627.6699, F.S., to provide that the Director of OIR or his or her designee, rather than the CFO or his or her designee, would be the chairperson of the Small Employer Health Reinsurance Program, and would appoint all 13 additional members of the board. This board supervises the operation of the program which provides reinsurance to participating small employer carriers for a portion of claims paid to identified high-risk employers and employees.

Section 79 provides that the transfer of the regulation of adjusters from OIR to the Department shall not affect any administrative or judicial action before or pending on the effective date and the Department shall be substituted as a party in interest on any such pending action.

Section 80 provides that any license, form, or action that was approved or authorized by the commission or OIR which was otherwise lawfully in use before the effective date of this act may continue to be used or be effective as originally authorized or permitted, until the Department otherwise prescribes.

Section 81 provides that the rule of the commission which governs the regulation of insurance adjusters shall become rules of the Department.

Section 82 provides that the act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Regulation of Insurance Adjusters: None. The bill does not transfer positions or funding from Office of Insurance Regulation to the Department of Financial Services for the regulation of insurance adjusters since the Department is currently performing the administrative tasks related to licensure and regulation of insurance adjusters pursuant to agreement between OIR and the Department.

Section 4. Allowing the Chief Financial Officer (Division of Treasury) to invest funds of boards and entities created by the constitution or by law would allow municipalities, clerks of court, sheriffs, and other entities that are not created by statute to have access to the Treasury's Special Purpose Investment Account (SPIA). Currently, participants wire funds for investment into SPIA from their bank account. Withdrawals are wired on a same day basis if the request is made to Treasury staff by 11:00 am. SPIA funds are invested in the same portfolio as Treasury funds and therefore receive an advantage because a large portion of the Treasury portfolio is in higher earning medium term instruments such as investment grade corporate bonds and mortgage backed securities. Earnings are posted monthly based on a pro-rata share of total Treasury earnings. The rates averaged 5.221 percent in FY 01-02, 5.144 percent in FY 02-03, and 3.547 percent through the end of March for FY 03-04A. These rates are net of the 0.12 percent investment fee charged in accordance with the authorizing statute.

Section 11. Allowing for a centralized financing process under the Chief Financial Officer (CFO) for the financing of Guaranteed Energy Performance Savings Contracts, similar to the process currently used in the Consolidated Equipment Financing Program, would be a more efficient way of financing energy savings contracts. It would take advantage of economies of scale since a lender is likely to provide a better interest rate if it believes it would be financing $100 million of purchases, rather than $2 million. It would allow for all of the financing negotiations to be done at one time, so that the terms would be standardized across all agencies and eliminate the negotiation skills variance among agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 2994

Amendment No. 1 362956

CHAMBER ACTION

Senate | House

Senator Crist moved the following amendment:

Senate Amendment

On page 15, line 10, after the period

insert: Effective July 1, 2007,

Bill No. CS for SB 2994

Amendment No. 2 101956

CHAMBER ACTION

Senate | House

Senator Clary moved the following amendment:

Senate Amendment (with title amendment)

On page 22, line 19, through
page 23, line 3, delete those lines

and insert:

Section 13. Subsection (4) of section 501.212, Florida Statutes, is amended and subsection (7) is added to section, to read:

501.212 Application.--This part does not apply to:

(4) Any person or activity regulated under laws administered by:

(a) The ~~Department of Financial Services or the~~ Office of Insurance Regulation of the Financial Services Commission; ~~or~~

(b) Banks and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission; ~~or~~

(c) Banks or savings and loan associations regulated by federal agencies; or~~.~~

1 (d) Any person or activity regulated under the laws
2 administered by the former Department of Insurance which are
3 now administered by the Department of Financial Services.
4 (7)(a) Causes of action pertaining to commercial real
5 property located in this state if the parties to the action
6 executed a written lease or contract that expressly provides
7 for the process of resolution of any dispute and the award of
8 damages, attorney's fees, and costs, if any; or
9 (b) Causes of action concerning failure to maintain
10 real property if the Florida Statutes:
11 1. Require the owner to comply with applicable
12 building, housing, and health codes;
13 2. Require the owner to maintain buildings and
14 improvements in common areas in a good state of repair and
15 maintenance and maintain the common areas in a good state of
16 appearance, safety, and cleanliness; and
17 3. Provide a cause of action for failure to maintain
18 the real property and provide legal or equitable remedies,
19 including the award of attorney's fees.
20
21 However, this subsection does not prohibit the enforcing
22 authority from retaining exclusive jurisdiction to bring any
23 cause of action authorized under s. 501.207 and to seek any
24 civil penalties authorized under s. 501.2075.
25
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 On page 2, line 30, delete that lines
30
31 and insert:

amending s. 501.212, F.S.; specifying persons, causes of action,

Bill No. CS for SB 2994

Amendment No. 3 094500

CHAMBER ACTION

Senate | House

Senator Crist moved the following amendment:

Senate Amendment

On page 79, line 20, delete that line

and insert:

Section 82. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2004.

Senate Committee On

APPROPRIATIONS

Ken Pruitt, Chair
Daniel Webster, Vice Chair

Additional Amendments
Filed prior to 2 Hour Amendment Deadline

Tuesday, April 20, 2004
3:30 p.m. – 5:30 p.m.
412 Knott

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

E X P A N D E D A G E N D A

COMMITTEE ON APPROPRIATIONS

Senator Pruitt, CHAIR
Senator Webster, VICE-CHAIR

DATE: Tuesday, April 20, 2004
TIME: 3:30 p.m. -- 5:30 p.m.
PLACE: The *Pat Thomas Committee Room,* 412 Knott Building

(MEMBERS: Senators Carlton, Clary, Crist, Dawson, Diaz de la Portilla, Dockery, Hill, Jones, Klein, Lawson, Lee, Miller, Peaden, Smith, Villalobos and Wasserman Schultz)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 0096 Agriculture / Alexander (Similar H 0225)	Citrus Dept./Fla. Citrus Commission; requires commission to establish executive committee from among its members; provides for selection of executive committee members & for terms of office; requires that meetings of executive committee be open to public & governed by specified provision re to public meetings & records; prohibits dept. from expending any remaining amount of excise tax moneys for advertising, marketing, or public-relations activities, etc. Amends 601.04,.155. AG 03/10/04 CS JU 03/30/04 FAVORABLE WITH AMEND 1 FT 04/13/04 FAVORABLE AGG 04/16/04 WITHDRAWN AP 04/20/04	
2	~~CS/SB 0244~~ ~~Finance and~~ ~~Taxation / -- Cowin~~ ~~et al~~	~~Fla. -- Sales Tax Relief Act~~	Withdrawn from committee by floor action
3	CS/SB 0174 Education / Clary et al (Compare H 0037, H 0055, S 0190, S 0270, S 0320, S 0592, S 0628)	Lottery/Unclaimed Prize Money; provides for deposit of percentage of unclaimed prize money in Educational Enhancement Trust Fund; revises provisions re allocation of revenues for public education; conforms provisions. Amends 24.115,.121, 1010.70. ED 03/17/04 Not considered ED 03/24/04 CS FT 04/13/04 FAVORABLE AGG 04/16/04 WITHDRAWN AP 04/20/04	

E X P A N D E D A G E N D A

COMMITTEE ON APPROPRIATIONS

DATE: Tuesday, April 20, 2004 TIME: 3:30 p.m. -- 5:30 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 0602 Children and Families / Smith et al (Linked CS/S 0606, Similar H 0515, Compare H 0517)	Children's Advocacy Centers/Funding; imposes additional court cost against persons who plead guilty or nolo contendere to, or who are found guilty of, certain crimes against minors; requires clerk of court to deposit proceeds of court cost into State Treasury for deposit into specified trust fund to be used to fund children's advocacy centers; requires compliance with specified statutory provisions in order for such center to receive certain funding, etc. Creates 938.10; amends 39.3035. CJ 03/02/04 WITHDRAWN CF 03/02/04 WITHDRAWN FT 03/02/04 WITHDRAWN AAV 03/02/04 WITHDRAWN AP 03/02/04 WITHDRAWN CF 03/10/04 CS CJ 03/24/04 FAVORABLE FT 04/01/04 FAVORABLE AAV 04/13/04 FAVORABLE AP 04/20/04	
5	CS/CS/CS/SB 0700 Criminal Justice / Peaden et al (Similar H 0463)	Mental Health; defines & redefines terms used in "the Baker Act"; amends provision re guardian advocates; amends provision re confidentiality of clinical records; revises criteria for involuntary examination; provides for involuntary outpatient placement; provides for voluntary examination for outpatient placement; provides for petition for involuntary outpatient placement, etc. Amends Ch. 394. CF 02/18/04 CS JU 03/09/04 CS/CS CJ 03/31/04 CS/CS/CS AAV 04/13/04 FAVORABLE WITH AMEND 7 AP 04/20/04	
6	CS/SB 1172 Transportation / Peaden (Identical H 0201)	License Plates/Service Charges; increases certain service charges for certificates of title & license plates, certain stickers, or registration certificates. Amends 319.32, 320.04. TR 03/30/04 CS FT 04/13/04 FAVORABLE ATD 04/16/04 WITHDRAWN AP 04/20/04	

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COMMITTEE ON APPROPRIATIONS

DATE: Tuesday, April 20, 2004 TIME: 3:30 p.m. -- 5:30 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/CS/SB 1178 Appropriations Subcommittee on Health and Human Services / Miller et al (Similar H 0645)	Florida Healthy People 2010 Program; provides for DOH to monitor & report on Florida's status re Healthy People 2010 goals & objectives currently tracked by dept.; requires dept. to work with various groups to educate health care professionals on racial & ethnic issues in health, to recruit & train health care professionals from minority backgrounds, & to promote certain research; defines term "minority physician network", etc. Creates 381.736; amends 409.901,.912. HC 01/21/04 CS AHS 04/13/04 CS/CS AP 04/20/04	
8	CS/SB 1228 & SB 2080 Education / Wilson et al (Similar H 0119, S 2068, S 2080, Compare 1ST ENG/H 1725, CS/CS/CS/S 1622)	Tuition/Resident Status; (THIS BILL COMBINES S1228,2080) classifies as residents for tuition purposes certain active duty members of foreign nation's military, dependent children of certain active duty members of U.S. Armed Services, & certain employees of international multilateral organizations; provides exemption from payment of nonresident tuition at community colleges & state universities for certain students meeting eligibility criteria, etc. Amends Ch. 1009. ED 03/31/04 CS MS MS 04/16/04 FAVORABLE WITH AMEND 1 AED 04/16/04 WITHDRAWN AP 04/20/04 RC	
9	CS/SB 1458 Education / Wasserman Schultz et al (Similar H 1429)	Florida Virtual School; authorizes board of trustees of such school to enter into franchise agreements with Florida-based virtual schools that are accredited by Southern Assoc. of Colleges & Schools; defines term "Florida-based"; prohibits accredited & approved Florida-based virtual schools from charging parents of student a fee if student received services & was counted as full-time student by Florida-based virtual school, etc. Amends 1002.37. ED 03/03/04 Temporarily postponed ED 03/31/04 Not considered ED 04/13/04 CS AED 04/16/04 WITHDRAWN AP 04/20/04	

E X P A N D E D A G E N D A

COMMITTEE ON APPROPRIATIONS

DATE: Tuesday, April 20, 2004 TIME: 3:30 p.m. -- 5:30 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 1900 Klein et al (Identical H 1019)	Centers of Excellence; provides for terms of members appointed to Emerging Technology Commission; provides for filling any vacancy that occurs during term of member of commission; delays expiration of Florida Technology Development Act; requires Florida Research Consortium, Inc., to report to Emerging Technology Commission within specified timeframe re criteria for reviewing proposals for center of excellence, etc. Amends 1004.225. ED 03/03/04 Temporarily postponed ED 03/10/04 FAVORABLE CM 03/16/04 FAVORABLE AED 04/16/04 WITHDRAWN AP 04/20/04	
11	CS/SB 1280 Children and Families / Peaden et al (Compare H 1903, CS/S 1248, CS/S 2808)	Children & Family Services Dept.; removes developmental disabilities program from said dept.; establishes Agency for Persons with Disabilities for purpose of providing services to persons with developmental disabilities, including institutional services; amends legislative intent to add said agency & Elderly Affairs Dept. as agencies that AHCA must enter into interagency agreement re persons with special needs, etc. Amends FS. AHS 03/16/04 WITHDRAWN RC 03/16/04 WITHDRAWN AP 03/31/04 WITHDRAWN CF 04/13/04 CS AHS 04/16/04 WITHDRAWN AP 04/20/04	
12	CS/CS/SB 1982 Finance and Taxation / Posey et al (Similar H 0689, Compare H 1521)	Electric Transmission Line Siting; changes short title to "Fla. Electric Transmission Line Siting Act"; revises provisions for applicability, certification, & exemptions under act; requires that application contain starting point & ending point of transmission line specifically defined by applicant & verified by commission; subjects hydrogen fueling stations to fire safety regulations, etc. Amends Ch. 403, 373.441, 633.022. CU 03/09/04 CS CP 03/23/04 FAVORABLE NR 03/30/04 FAVORABLE FT 04/13/04 CS/CS AP 04/20/04 If received AP 04/20/04	

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	CS/SB 2184 Education / Miller et al (Similar H 1301)	Student Achievement; cites act as "Fla. Partnership for Minority & Underrepresented Student Achievement"; provides legislative intent; creates Fla. Partnership for Minority & Underrepresented Student Achievement; provides purposes & duties of partnership; provides duties of DOE & The College Board; requires partnership to protect confidentiality of information; provides for funding partnership, etc. Creates 1007.35. *(A proposed committee substitute is expected to be filed prior to the amendment deadline.)* ED 03/31/04 CS AED 04/15/04 WITHDRAWN AP 04/20/04	
14	CS/CS/CS/SB 2488 Finance and Taxation / Alexander et al	Florida Hurricane Catastrophe Fund; redefines & defines terms; provides for State Board of Administration to specify interest due on delinquent remittances; revises conditions of, amounts of, & procedures re reimbursement contracts; revises maximum rates of, procedures relating to, & types of insurance subject to emergency assessments; revises provisions re reinsurance; deletes expired provisions. Amends 215.555. BI 03/24/04 CS GO 04/13/04 CS/CS FT 04/15/04 CS/CS/CS AGG 04/16/04 WITHDRAWN AP 04/20/04	
15	CS/SB 2722 Governmental Oversight and Productivity / Atwater (Similar H 1891, Compare CS/S 1248)	Public Property/DMS; provides that DMS, rather than agencies acting on their own behalf, can lease space for agencies; authorizes dept. to participate in large-scale leases; changes requirement for competitive bidding for leases of real property for agencies to requirement for competitive solicitation; increases bond requirement for protests of lease solicitation; provides criteria for leasing space financed by local government obligations, etc. Amends FS. GO 03/30/04 Not considered GO 04/13/04 CS RI 04/15/04 WITHDRAWN AGG 04/15/04 WITHDRAWN AP 04/20/04 RC	

E X P A N D E D A G E N D A

COMMITTEE ON APPROPRIATIONS

DATE: Tuesday, April 20, 2004 TIME: 3:30 p.m. -- 5:30 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	CS/CS/SB 2676 Commerce, Economic Opportunities, and Consumer Services / Haridopolos et al (Similar H 1459, Compare H 0405, S 2112)	Cigarettes/Transportation & Sale; provides stamp requirements for cigarettes in transport; revises requirements for & limitations on affixation of stamps; requires manufacturers, importers, distributing agents, dealers, & retail dealers to hold current, valid permit to sell, distribute, or receive cigarettes; authorizes certain law enforcement officials to inspect certain shipping vehicles; authorizes destruction of certain cigarettes, etc. Amends Ch. 210. RI 03/17/04 CS CM 03/30/04 CS/CS FT 04/02/04 WITHDRAWN AGG 04/15/04 WITHDRAWN AP 04/20/04	
17	CS/CS/CS/SB 2910 Appropriations Subcommittee on Health and Human Services / Peaden et al (Linked CS/S 0702, Similar H 1629, Compare H 0701, H 1885, H 1887, CS/CS/S 1066, CS/S 1092, CS/CS/S 1464, CS/S 1744, CS/S 2022, S 3018)	Affordable Health Care; requires certain licensed facilities to provide public Internet access to certain financial information; includes participation by health care providers, small businesses, & health insurers in Healthy Communities, Healthy People Program; creates Florida Health Insurance Plan for certain purposes; creates Small Employers Access Program; provides for insurance rebates for healthy lifestyles, etc. Amends FS. HC 03/23/04 CS BI 03/31/04 CS/CS AHS 04/13/04 CS/CS/CS AP 04/20/04	
18	CS/CS/SB 2820 Governmental Oversight and Productivity / Argenziano et al (Similar H 1799)	Fish & Wildlife Conservation Comm.; reorganizes commission; provides responsibilities & duties of executive director; revises administrative structure of commission; authorizes DMS & Executive Office of Governor to establish & approve new sections, subsections, & offices as initiated by commission; provides for employee bonds at request of commission; requires commission to publish Florida Wildlife Magazine, etc. Amends Chs. 20, 370, 372, 403. NR 03/30/04 CS GO 04/13/04 CS/CS AGG 04/16/04 WITHDRAWN AP 04/20/04	

E X P A N D E D A G E N D A

COMMITTEE ON APPROPRIATIONS

DATE: Tuesday, April 20, 2004 TIME: 3:30 p.m. -- 5:30 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	CS/CS/SB 2884 Appropriations Subcommittee on Education / Carlton et al (Compare H 1781, CS/2ND ENG/S 1176)	State Universities; revises eligibility criteria for Florida Bright Futures Scholarship Program; awards incentive funds to state universities; requires Board of Governors to allocate incentive awards to university boards of trustees; requires university boards of trustees to provide students with billing statement that reflects true cost of student's education; amends Trust Fund for University Major Gifts, etc. Amends Ch. 1009, 1011, ED 03/31/04 CS AED 04/13/04 CS/CS AP 04/20/04	
20	CS/SB 2842 Health, Aging, and Long-Term Care / Atwater (Compare H 1911, H 1927, CS/S 1496, CS/S 1762, CS/S 1818, CS/S 2448)	Trauma Care Center Care Services; requires hospitals & trauma centers to provide data on moderate-to-severe brain or spinal cord injuries to DOH; revises requirements for DOH to review trauma service areas; revises requirements for DOH's development of state trauma system plan; directs HSMV to assess specified annual surcharges against motor vehicle licensee who accumulates seven or more points against his or her license within previous 36 months, etc. Amends FS. HC 03/30/04 CS JU 04/12/04 AHS 04/13/04 If received AHS 04/13/04 FAVORABLE AP 04/20/04	
21	CS/SB 2994 Banking and Insurance / Posey (Similar H 1695)	Financial Services Department; provides that office of Chief Financial Officer may have official seal; authorizes said officer to use reverse repurchase agreements in investment transactions; provides that Financial Services Dept., rather than Insurance Reg. Office, is responsible for regulation of insurance adjusters; authorizes financing of guaranteed energy performance savings contract pursuant to master equipment financing agreement, etc. Amends FS. BI 04/13/04 CS AGG 04/15/04 WITHDRAWN AP 04/20/04	

Bill No. CS for CS for CS for SB 700

Amendment No. 9 420172

CHAMBER ACTION

Senate House

Senator Diaz de la Portilla moved the following amendment:

Senate Amendment

On page 20, lines 26 and 27, delete the phrase "or a clinical psychologist with a Ph.D., Psy.D., or Ed.D."

Bill No. CS for CS for SB 1178

Amendment No. 2 643690

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 5, between lines 11 and 12,

insert:

Section 4. The Agency for Health Care Administration shall ensure that any Medicaid managed care plan as defined in section 409.9122(2)(h), Florida Statutes, whether paid on a capitated basis or a shared savings basis, reduces net Medicaid spending by an amount equal to or greater than the level achieved by the most economical managed care models adjusted for case mix, to the extent possible. In addition, the agency shall measure, compare, and report on differences in administrative costs, the quality of care, and member outcomes of Medicaid managed care plans on an ongoing basis.

(Redesignate subsequent sections.)

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 1, line 19, after the semicolon,
4
5 insert:
6 requiring the agency to ensure that any
7 Medicaid managed care plan reduces net Medicaid
8 spending by a certain amount; requiring the
9 agency to report about certain criteria
10 regarding Medicaid managed care plans on a
11 continuous basis;
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Bill No. CS for CS for SB 1178

Amendment No. 3 174560

CHAMBER ACTION

Senate | House

Senator Miller moved the following amendment:

Senate Amendment

On page 5, lines 1-6, delete those lines

and insert:

(b) The agency shall reimburse the minority physician network as a fee-for-service provider, including the case management fee for primary care, or as a capitated rate provider for Medicaid services. Any savings shall be shared with the minority physician network pursuant to the contract.

Bill No. CS for SB 1280

Amendment No. 2 083514

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 91, line 22, through
page 92, line 8, delete those lines

and insert:

Section 47. (1) In the Department of Children and Family Services' Economic Self-Sufficiency Services Program Office, the department may provide its eligibility determination functions either with department staff or through contracts with at least two private vendors, with the following restrictions:

(a) With the exception of information technology, a contract may not include a geographic area larger than a combined seven districts or combined three zones without the prior approval of the Legislative Budget Commission; and

(b) Department employees may provide the functions in at least two districts or one zone.

(2) This section shall take effect upon this act becoming a law.

Bill No. CS for SB 1280

Amendment No. 3 841926

CHAMBER ACTION

Senate | House

LATE FILED

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Paragraph (b) of subsection (4) of section 20.19, Florida Statutes, is amended to read:

20.19 Department of Children and Family Services.--There is created a Department of Children and Family Services.

(4) PROGRAM OFFICES AND SUPPORT OFFICES.--

(b) The following program offices are established:

1. Adult Services.
2. Child Care Services.
3. Domestic Violence ~~Developmental Disabilities~~.
4. Economic Self-Sufficiency Services.
5. Family Safety.
6. Mental Health.
7. Refugee Services.
8. Substance Abuse.

1 Section 2. Section 20.197, Florida Statutes, is
2 created to read:
3 20.197 Agency for Persons with Disabilities.--There is
4 created the Agency for Persons with Disabilities, housed
5 within the Department of Children and Family Services for
6 administrative purposes only. The agency shall be a separate
7 budget entity not subject to control, supervision, or
8 direction by the Department of Children and Family Services in
9 any manner, including, but not limited to, personnel,
10 purchasing, transactions involving real or personal property,
11 and budgetary matters.
12 (1) The director of the agency shall be the agency
13 head for all purposes and shall be appointed by the Governor
14 and serve at the pleasure of the Governor. The director shall
15 administer the affairs of the agency and establish
16 administrative units as needed and may, within available
17 resources, employ assistants, professional staff, and other
18 employees as necessary to discharge the powers and duties of
19 the agency.
20 (2) The agency shall be responsible for the provision
21 of all services provided to persons with developmental
22 disabilities pursuant to chapter 393, including the operation
23 of all state institutional programs and the programmatic
24 management of Medicaid waivers established to provide services
25 to persons with developmental disabilities.
26 (3) The agency shall engage in such other
27 administrative activities as are deemed necessary to
28 effectively and efficiently address the needs of the agency's
29 clients.
30 (4) The agency shall enter into an interagency
31 agreement that delineates the responsibilities of the Agency

for Health Care Administration for the following:

(a) The terms, and execution of contracts with Medicaid providers for the provision of services provided through Medicaid, including federally approved waiver programs.

(b) Billing, payment, and reconciliation of claims for Medicaid services reimbursed by the agency.

(c) The implementation of utilization management measures, including the prior authorization of services plans and the streamlining and consolidation of waivers services, to ensure the cost-effective provision of needed Medicaid services and to maximize the number of persons with access to such services.

(d) A system of approving each client's plan of care to ensure that the services on the plan of care are those that without which the client would require the services of an intermediate care facility for the developmentally disabled.

Section 3. Section 393.063, Florida Statutes, is amended to read:

393.063 Definitions.--For the purposes of this chapter:

~~(1)--"Active-treatment"-means-the-provision-of-services by-an-interdisciplinary-team-necessary-to-maximize-a-client's individual-independence-or-prevent-regression-or-loss-of functional-status.~~

(1) ~~(2)~~ "Agency" means the Agency for Persons with Disabilities ~~Health-Care-Administration~~.

(2) ~~(3)~~ "Autism" means 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.

(3) ~~(4)~~ "Cerebral palsy" means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

(4) ~~(5)~~ "Client" means any person determined eligible by the agency ~~department~~ for ~~developmental~~ services under this chapter.

(5) ~~(6)~~ "Client advocate" means a friend or relative of the client, or of the client's immediate family, who advocates for the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.

(6) ~~(7)~~ "Comprehensive assessment" means the process ~~which is~~ used to determine eligibility for ~~developmental~~ services under this chapter ~~and develop the family or individual support plan. The term includes review and evaluation of information provided by the applicant, the individual receiving supports or services through developmental services, or the family, and others providing supports or services to the individual or family, as well as the use of formal assessment instruments.~~

(7) ~~(8)~~ "Comprehensive transitional education program" means a group of jointly operating centers or units, the collective purpose of which is to provide a sequential series

1 of educational care, training, treatment, habilitation, and
2 rehabilitation services to persons who have developmental
3 disabilities~~,-as-defined-in-subsection-(12),~~ and who have
4 severe or moderate maladaptive behaviors. However, nothing in
5 this subsection shall require such ~~comprehensive-transitional~~
6 ~~education~~ programs to provide services only to persons with
7 developmental disabilities~~,-as-defined-in-subsection-(12)~~. All
8 such services shall be temporary in nature and delivered in a
9 structured residential setting with the primary goal of
10 incorporating the normalization principle to establish
11 permanent residence for persons with maladaptive behaviors in
12 facilities not associated with the comprehensive transitional
13 education program. The staff shall include psychologists and
14 teachers who~~,-and-such-staff-personnel~~ shall be available to
15 provide services in each component center or unit of the
16 program. The psychologists shall be individuals who are
17 licensed in this state and certified as behavior analysts in
18 this state, or individuals who ~~meet-the-professional~~
19 ~~requirements-established-by-the-department-for-district~~
20 ~~behavior-analysts-and~~ are certified as behavior analysts
21 pursuant to s. 393.17 ~~in-this-state~~.
22 (a) Comprehensive transitional education programs
23 shall include a minimum of two component centers or units, ~~as~~
24 ~~defined-in-this-paragraph,~~ one of which shall be either an
25 intensive treatment and educational center or a transitional
26 training and educational center, which provide services to
27 persons with maladaptive behaviors in the following sequential
28 order:
29 1. Intensive treatment and educational center. This
30 component is a self-contained residential unit providing
31 intensive psychological and educational programming for

1 persons with severe maladaptive behaviors, whose behaviors
2 preclude placement in a less restrictive environment due to
3 the threat of danger or injury to themselves or others.
4 2. Transitional training and educational center. This
5 component is a residential unit for persons with moderate
6 maladaptive behaviors, providing concentrated psychological
7 and educational programming emphasizing a transition toward a
8 less restrictive environment.
9 3. Community transition residence. This component is
10 a residential center providing educational programs and such
11 support services, training, and care as are needed to assist
12 persons with maladaptive behaviors to avoid regression to more
13 restrictive environments while preparing them for more
14 independent living. Continuous-shift staff shall be required
15 for this component.
16 4. Alternative living center. This component is a
17 residential unit providing an educational and family living
18 environment for persons with maladaptive behaviors, in a
19 moderately unrestricted setting. Residential staff shall be
20 required for this component.
21 5. Independent living education center. This
22 component is a facility providing a family living environment
23 for persons with maladaptive behaviors, in a largely
24 unrestricted setting which includes education and monitoring
25 appropriate to support the development of independent living
26 skills ~~by the students~~.
27 (b) Centers or units that are components of a
28 comprehensive transitional education program are subject to
29 the license issued to the comprehensive transitional education
30 program and may be located on either single or multiple sites.
31 (c) Comprehensive transitional education programs

1 shall develop individual education plans for each person with
2 maladaptive behaviors who receives services therein. Such
3 individual education plans shall be developed in accordance
4 with the criteria specified ~~included~~ in ~~Pub.--L.--No.-94-142,~~ 20
5 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300.
6 (d) In no instance shall the total number of persons
7 with maladaptive behaviors being provided services in a
8 comprehensive transitional education program exceed 120.
9 (e) This subsection shall authorize licensure for
10 comprehensive transitional education programs which by July 1,
11 1989:
12 1. Are in actual operation; or
13 2. Own a fee simple interest in real property for
14 which a county or city government has approved zoning allowing
15 for the placement of the facilities described in this
16 subsection, and have registered an intent with the department
17 to operate a comprehensive transitional education program.
18 However, nothing shall prohibit the assignment by such a
19 registrant to another entity at a different site within the
20 state, so long as there is compliance with all criteria of the
21 comprehensive transitional education program and local zoning
22 requirements and provided that each residential facility
23 within the component centers or units of the program
24 authorized under this subparagraph shall not exceed a capacity
25 of 15 persons.
26 ~~(9)--"Day-service"-means-the-care,-protection,-and~~
27 ~~supervision-of-a-client-for-a-period-of-less-than-24-hours-a~~
28 ~~day-on-a-regular-basis-which-supplements-for-the-client,-in~~
29 ~~accordance-with-his-or-her-individual-needs,-daily-care,~~
30 ~~enrichment-opportunities,-and-health-supervision.~~
31 (8)~~(10)~~ "Day habilitation facility" means any

1 nonresidential facility which provides day habilitation
2 services.
3 (9) "Day habilitation service" means assistance with
4 the acquisition, retention, or improvement in self-help,
5 socialization, and adaptive skills which takes place in a
6 nonresidential setting, separate from the home or facility in
7 which the individual resides. Day habilitation services shall
8 focus on enabling the individual to attain or maintain his or
9 her maximum functional level and shall be coordinated with any
10 physical, occupational, or speech therapies listed in the plan
11 of care.
12 ~~(11)--"Department"-means-the-Department-of-Children-and~~
13 ~~Family-Services.~~
14 (10)~~(12)~~ "Developmental disability" means a disorder
15 or syndrome that is attributable to retardation, cerebral
16 palsy, autism, spina bifida, or Prader-Willi syndrome and that
17 constitutes a substantial handicap that can reasonably be
18 expected to continue indefinitely.
19 (11)~~(13)~~ "Developmental disabilities ~~services~~
20 institution" means a state-owned and state-operated facility,
21 formerly known as a "Sunland Center," providing for the care,
22 habilitation, and rehabilitation of clients with developmental
23 disabilities.
24 ~~(14)--"Developmental-training-facility"-means-any~~
25 ~~nonresidential-facility-which-provides-basic-training-and~~
26 ~~habilitation-to-clients.~~
27 (12)~~(15)~~ "Direct service provider," also known as
28 "caregiver" in chapters 39 and 415 or "caretaker" in
29 provisions relating to employment security checks, means a
30 person 18 years of age or older who has direct contact with
31 individuals with developmental disabilities, or has access to

1 a client's living areas or to a client's funds or personal
2 property, and is not a relative of such ~~unrelated-to-the~~
3 individuals ~~with-developmental-disabilities~~.
4 ~~(a)--The-term-"direct-service-provider"-also-includes~~
5 ~~any-person,-including-members-of-the-direct-service-provider's~~
6 ~~family,-over-12-years-of-age-who-resides-with-the-direct~~
7 ~~service-provider-when:~~
8 ~~1.--The-direct-service-provider-provides-supports-or~~
9 ~~services-in-his-or-her-residence;~~
10 ~~2.--The-direct-service-provider-provides-supports-or~~
11 ~~services-in-a-facility-adjacent-to-his-or-her-residence;-or~~
12 ~~3.--The-person-residing-with-the-direct-service~~
13 ~~provider-has-direct-contact-with-the-individual-with~~
14 ~~developmental-disabilities-during-the-hours-of-provision-of~~
15 ~~supports-or-services.~~
16 ~~(b)--Persons-residing-with-the-direct-service-provider,~~
17 ~~including-family-members,-who-are-between-the-ages-of-12-years~~
18 ~~and-18-years-are-not-required-to-be-fingerprinted,-but-shall~~
19 ~~be-screened-for-delinquency-records.~~
20 ~~(c)--A-volunteer-who-assists-on-an-intermittent-basis~~
21 ~~for-less-than-40-hours-per-month-is-not-a-direct-service~~
22 ~~provider-for-the-purposes-of-screening-if-the-volunteer-is~~
23 ~~under-the-direct-and-constant-supervision-of-persons-who-meet~~
24 ~~the-personnel-requirements-of-s.-393.0655.~~
25 ~~(d)--A-physician,-nurse,-or-other-professional-licensed~~
26 ~~and-regulated-by-the-Department-of-Business-and-Professional~~
27 ~~Regulation-is-not-a-direct-service-provider-for-the-purposes~~
28 ~~of-screening-if-the-service-he-or-she-is-providing-to-a-client~~
29 ~~is-within-the-scope-of-practice-for-which-he-or-she-is~~
30 ~~licensed.~~
31 ~~(e)--A-person-selected-by-the-family-or-the-individual~~

1 ~~with-developmental-disabilities-and-paid-by-the-family-or-the~~
2 ~~individual-to-provide-supports-or-services-is-not-a-direct~~
3 ~~service-provider-for-the-purpose-of-screening.~~
4 ~~(16)--"District"-means-a-service-district-of-the~~
5 ~~department.~~
6 (13) ~~(17)~~ "Domicile" means the place where a client
7 legally resides, which place is his or her permanent home.
8 Domicile may be established as provided in s. 222.17.
9 Domicile may not be established in Florida by a minor who has
10 no parent domiciled in Florida, or by a minor who has no legal
11 guardian domiciled in Florida, or by any alien not classified
12 as a resident alien.
13 (14) ~~(18)~~ "Enclave" means a work station in public or
14 private business or industry where a small group of persons
15 with developmental disabilities is employed and receives
16 training and support services or follow-along services among
17 nonhandicapped workers.
18 (15) ~~(19)~~ "Epilepsy" means a chronic brain disorder of
19 various causes which is characterized by recurrent seizures
20 due to excessive discharge of cerebral neurons. When found
21 concurrently with retardation, autism, or cerebral palsy,
22 epilepsy is considered a secondary disability for which the
23 client is eligible to receive services to ameliorate this
24 condition pursuant ~~according~~ to ~~the-provisions-of~~ this
25 chapter.
26 (16) ~~(20)~~ "Express and informed consent" means consent
27 voluntarily given in writing with sufficient knowledge and
28 comprehension of the subject matter involved to enable the
29 person giving consent to make an understanding and enlightened
30 decision without any element of force, fraud, deceit, duress,
31 or other form of constraint or coercion.

1 (17) ~~(21)~~ "Family care program" means the program
2 established in s. 393.068 ~~an-alternative-to-residential~~
3 ~~placement,-in-which-a-direct-service-provider-provides-a-home~~
4 ~~for-a-client-and-assists-him-or-her-to-the-extent-necessary~~
5 ~~for-the-client-to-participate-in-normal-activities-and-to-meet~~
6 ~~the-demands-of-daily-living.-The-program-provides-the-support~~
7 ~~needed-by-the-client's-family-or-caretaker-to-meet-the~~
8 ~~individual-needs-of-the-client~~.
9 (18) ~~(22)~~ "Follow-along services" means those support
10 services ~~which-shall-be~~ provided to persons with developmental
11 disabilities in all supported employment programs and may
12 include, but are not limited to, family support, assistance in
13 meeting transportation and medical needs, employer
14 intervention, performance evaluation, advocacy, replacement,
15 retraining or promotional assistance, or other similar support
16 services.
17 (19) ~~(23)~~ "Foster care facility" means a residential
18 facility which provides a family living environment including
19 supervision and care necessary to meet the physical,
20 emotional, and social needs of its residents. The capacity of
21 such a facility shall not be more than three residents.
22 (20) ~~(24)~~ "Group home facility" means a residential
23 facility which provides a family living environment including
24 supervision and care necessary to meet the physical,
25 emotional, and social needs of its residents. The capacity of
26 such a facility shall be at least 4 ~~residents~~ but not more
27 than 15 residents. For the purposes of this chapter, group
28 home facilities shall not be considered commercial
29 enterprises.
30 (21) ~~(25)~~ "Guardian advocate" means a person appointed
31 by the circuit court to represent a person with developmental

disabilities in any proceedings brought pursuant to s. 393.12, and excludes the use of the same term as applied to a guardian advocate for mentally ill persons in chapter 394.

(22) ~~(26)~~ "Habilitation" means the process by which a client is assisted to acquire and maintain those life skills which enable the client to cope more effectively with the demands of his or her condition and environment and to raise the level of his or her physical, mental, and social efficiency. It includes, but is not limited to, programs of formal structured education and treatment.

(23) ~~(27)~~ "High-risk child" means, for the purposes of this chapter, a child from birth to 5 years of age with one or more of the following characteristics:

(a) A developmental delay in cognition, language, or physical development.

(b) A child surviving a catastrophic infectious or traumatic illness known to be associated with developmental delay, when funds are specifically appropriated.

(c) A child with a parent or guardian with developmental disabilities ~~who is developmentally disabled and~~ who requires assistance in meeting the child's developmental needs.

(d) A child who has a physical or genetic anomaly associated with developmental disability.

(24) ~~(28)~~ "Intermediate care facility for the developmentally disabled" or "ICF/DD" means a residential facility licensed and certified pursuant to part XI of chapter 400 ~~in accordance with state law, and certified by the Federal Government pursuant to the Social Security Act, as a provider of Medicaid services to persons who are developmentally disabled. The capacity of such a facility shall not be more~~

1 ~~than-120-clients.~~

2 (25) ~~(29)~~ "Job coach" means a person who provides
3 employment-related training at a work site to individuals with
4 developmental disabilities.

5 (26) ~~(30)~~ "Medical/dental services" means medically
6 necessary ~~these~~ services which are provided or ordered for a
7 client by a ~~person~~ licensed physician or dentist and includes
8 ~~pursuant-to-the-provisions-of-chapter-458,-chapter-459,-or~~
9 ~~chapter-466.--Such-services-may-include,-but-are-not-limited~~
10 ~~to,~~ prescription drugs, specialized therapies, nursing
11 supervision, hospitalization, dietary services, prosthetic
12 devices, surgery, specialized equipment and supplies, adaptive
13 equipment, and other services as required to prevent or
14 alleviate a medical or dental condition.

15 (27) ~~(31)~~ "Mobile work crew" means a group of workers
16 employed by an agency that provides services outside the
17 agency, usually under service contracts.

18 (28) ~~(32)~~ "Normalization principle" means the principle
19 of letting the client obtain an existence as close to the
20 normal as possible, making available to the client patterns
21 and conditions of everyday life which are as close as possible
22 to the norm and patterns of the mainstream of society.

23 (29) ~~(33)~~ "Personal services" include, but are not
24 limited to, such services as: individual assistance with or
25 supervision of essential activities of daily living for
26 self-care, including ambulation, bathing, dressing, eating,
27 grooming, and toileting, and other similar services that ~~which~~
28 the agency ~~department~~ may define by rule. "Personal services"
29 shall not be construed to mean the provision of medical,
30 nursing, dental, or mental health services by the staff of a
31 facility, except as provided in this chapter. In addition, an

1 emergency response device installed in the apartment or living
2 area of a resident shall not be classified as a personal
3 service.
4 (30) ~~(34)~~ "Prader-Willi syndrome" means an inherited
5 condition typified by neonatal hypotonia with failure to
6 thrive, hyperphagia or an excessive drive to eat which leads
7 to obesity usually at 18 to 36 months of age, mild to moderate
8 retardation, hypogonadism, short stature, mild facial
9 dysmorphism, and a characteristic neurobehavior.
10 (31) ~~(35)~~ "Reassessment" means a process which
11 periodically develops, through annual review and revision of a
12 client's family or individual support plan, a knowledgeable
13 statement of current needs and past development for each
14 client.
15 ~~(36)--"Rehabilitation-workshop-facility"-means-a-place~~
16 ~~operated-by-a-for-profit-or-nonprofit-agency-engaged-in-the~~
17 ~~manufacture-or-production-of-products-or-provision-of~~
18 ~~services,-which-provides-gainful-rehabilitation-to-severely~~
19 ~~handicapped-persons-until-such-persons-can-become-employed-or~~
20 ~~which-provides-gainful-work-to-persons-who-are-developmentally~~
21 ~~disabled.~~
22 (32) ~~(37)~~ "Relative" means an individual who is
23 connected by affinity or consanguinity to the client and who
24 is 18 years of age or more.
25 (33) ~~(38)~~ "Resident" means any person who is
26 developmentally disabled residing at a residential facility in
27 the state, whether or not such person is a client of the
28 agency ~~department~~.
29 (34) ~~(39)~~ "Residential facility" means a facility
30 providing room and board and personal care for persons with
31 developmental disabilities.

1 (35) "Residential habilitation" means assistance
2 provided in a residential habitation center with acquisition,
3 retention, or improvement in skills related to activities of
4 daily living, such as personal grooming and cleanliness,
5 bedmaking and household chores, eating and the preparation of
6 food, and the social and adaptive skills necessary to enable
7 the individual to reside in a noninstitutional setting.
8 (36) ~~(40)~~ "Residential habilitation center" means a
9 community residential facility that provides residential
10 habilitation. ~~operated-primarily-for-the-diagnosis,-treatment,~~
11 ~~habilitation,-or-rehabilitation-of-its-residents,-which~~
12 ~~facility-provides,-in-a-structured-residential-setting,~~
13 ~~individualized-continuing-evaluation,-planning,-24-hour~~
14 ~~supervision,-and-coordination-and-integration-of-health-or~~
15 ~~rehabilitative-services-to-help-each-resident-reach-his-or-her~~
16 ~~maximum-functioning-capabilities.~~ The capacity of such a
17 facility shall not be fewer ~~less~~ than nine residents. After
18 October 1, 1989, no new residential habilitation centers shall
19 be licensed and the licensed capacity shall not be increased
20 for any existing residential habilitation center.
21 (37) ~~(41)~~ "Respite service" means appropriate,
22 short-term, temporary care that is provided to a person with
23 developmental disabilities to meet the planned or emergency
24 needs of the person ~~with-developmental-disabilities~~ or the
25 family or other direct service provider.
26 (38) ~~(42)~~ "Retardation" means significantly subaverage
27 general intellectual functioning existing concurrently with
28 deficits in adaptive behavior and manifested during the period
29 from conception to age 18. "Significantly subaverage general
30 intellectual functioning," for the purpose of this definition,
31 means performance which is two or more standard deviations

1 from the mean score on a standardized intelligence test
2 specified in the rules of the agency ~~department~~. "Adaptive
3 behavior," for the purpose of this definition, means the
4 effectiveness or degree with which an individual meets the
5 standards of personal independence and social responsibility
6 expected of his or her age, cultural group, and community.
7 ~~(43)--"Screening,"-for-purposes-of-employment,~~
8 ~~contracting,-or-certification,-means-the-act-of-assessing-the~~
9 ~~background-of-direct-service-providers-and-independent-support~~
10 ~~coordinators,-who-are-not-related-to-clients-for-whom-they~~
11 ~~provide-services,-and-includes,-but-is-not-limited-to,~~
12 ~~employment-history-checks,-local-criminal-records-checks~~
13 ~~through-local-law-enforcement-agencies,-fingerprinting-for-all~~
14 ~~purposes-and-checks-in-this-subsection,-statewide-criminal~~
15 ~~records-checks-through-the-Department-of-Law-Enforcement,-and~~
16 ~~federal-criminal-records-checks-through-the-Federal-Bureau-of~~
17 ~~Investigation,-except-that-screening-for-volunteers-included~~
18 ~~under-the-definition-of-personnel-includes-only-local-criminal~~
19 ~~records-checks-through-local-law-enforcement-agencies-for~~
20 ~~current-residence-and-residence-immediately-prior-to~~
21 ~~employment-as-a-volunteer,-if-different,-and-statewide~~
22 ~~criminal-records-correspondence-checks-through-the-Department~~
23 ~~of-Law-Enforcement.~~
24 (39) ~~(44)~~ "Severe self-injurious behavior" means any
25 chronic behavior that results in injury to the person's own
26 body, which includes, but is not limited to, self-hitting,
27 head banging, self-biting, scratching, and the ingestion of
28 harmful or potentially harmful nutritive or nonnutritive
29 substances.
30 (40) ~~(45)~~ "Specialized therapies" means those
31 treatments or activities prescribed by and provided by an

appropriately trained, licensed, or certified professional or staff person and may include, but are not limited to, physical therapy, speech therapy, respiratory therapy, occupational therapy, behavior therapy, physical management services, and related specialized equipment and supplies.

(41) ~~(46)~~ "Spina bifida" means, for purposes of this chapter, a person with a medical diagnosis of spina bifida cystica or myelomeningocele.

(42) ~~(47)~~ "Support coordinator" means a person who is designated by the agency ~~department~~ to assist individuals and families in identifying their ~~desires,~~ capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.

(43) ~~(48)~~ "Supported employee" means a person ~~whose developmental disability has traditionally kept him or her from integrated, community-based employment and~~ who requires and receives supported employment ~~ongoing support or follow-along~~ services in order to maintain community-based employment.

(44) ~~(49)~~ "Supported employment" means employment located or provided in a normal employment setting which provides at least 20 hours employment per week in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is ~~or follow-along services are~~ needed for ~~continuing~~ job maintenance.

1 (45) ~~(50)~~ "Supported living" means a category of
2 individually determined services designed and coordinated in
3 such a manner as to provide assistance to adult clients who
4 require ongoing supports to live as independently as possible
5 in their own homes, to be integrated into the community, and
6 to participate in community life to the fullest extent
7 possible.
8 (46) ~~(51)~~ "Training" means a planned approach to
9 assisting a client to attain or maintain his or her maximum
10 potential and includes services ranging from sensory
11 stimulation to instruction in skills for independent living
12 and employment.
13 (47) ~~(52)~~ "Treatment" means the prevention,
14 amelioration, or cure of a client's physical and mental
15 disabilities or illnesses.
16 Section 4. Subsections (1), (3), (4), and (5) of
17 section 393.064, Florida Statutes, are amended to read:
18 393.064 Prevention.--
19 (1) The agency ~~Department of Children and Family~~
20 ~~Services~~ shall give priority to the development, planning, and
21 implementation of programs which have the potential to
22 prevent, correct, cure, or reduce the severity of
23 developmental disabilities. The agency ~~department~~ shall
24 direct an interagency ~~interdepartmental~~ and interprogram
25 effort for the continued development of a prevention plan and
26 program. The agency ~~department~~ shall identify, through
27 demonstration projects, through ~~departmental~~ program
28 evaluation, and through monitoring of programs and projects
29 conducted outside of the agency ~~department~~, any medical,
30 social, economic, or educational methods, techniques, or
31 procedures that ~~which~~ have the potential to effectively

1 ameliorate, correct, or cure developmental disabilities. The
2 program ~~department~~ shall determine the costs and benefits that
3 would be associated with such prevention efforts and shall
4 implement, or recommend the implementation of, those methods,
5 techniques, or procedures which are found likely to be
6 cost-beneficial. ~~The-department-in-its-legislative-budget~~
7 ~~request-shall-identify-funding-needs-for-such-prevention~~
8 ~~programs.~~
9 (3) Other agencies of state government shall cooperate
10 with and assist the agency ~~department~~, within available
11 resources, in implementing programs which have the potential
12 to prevent, or reduce the severity of, developmental
13 disabilities and shall consider the findings and
14 recommendations of the agency ~~department~~ in developing and
15 implementing agency programs and formulating agency budget
16 requests.
17 (4) There is created at the developmental services
18 institution in Gainesville a research and education unit.
19 Such unit shall be named the Raymond C. Philips Research and
20 Education Unit. The functions of such unit shall include:
21 (a) Research into the etiology of developmental
22 disabilities.
23 (b) Ensuring that new knowledge is rapidly
24 disseminated throughout the developmental services program of
25 the agency ~~Department-of-Children-and-Family-Services~~.
26 (c) Diagnosis of unusual conditions and syndromes
27 associated with developmental disabilities in clients
28 identified throughout the developmental services programs.
29 (d) Evaluation of families of clients with
30 developmental disabilities of genetic origin in order to
31 provide them with genetic counseling aimed at preventing the

recurrence of the disorder in other family members.

(e) Ensuring that health professionals in the developmental services institution at Gainesville have access to information systems that will allow them to remain updated on newer knowledge and maintain their postgraduate education standards.

(f) Enhancing staff training for professionals throughout the agency ~~department~~ in the areas of genetics and developmental disabilities.

(5) The agency ~~Department of Children and Family Services~~ shall have the authority, within available resources, to contract for the supervision and management of the Raymond C. Philips Research and Education Unit, and such contract shall include specific program objectives.

Section 5. Section 393.0655, Florida Statutes, is amended to read:

393.0655 Screening of direct service providers.--

(1) MINIMUM STANDARDS.--The agency ~~department~~ shall require level 2 employment screening pursuant to chapter 435~~, using the level 2 standards for screening set forth in that chapter,~~ for direct service providers who are unrelated to their clients, including support coordinators, and managers and supervisors of residential facilities or comprehensive transitional education programs licensed under s. 393.067 and any other person, including volunteers, who provide care or services, who have access to a client's living areas, or who have access to a client's funds or personal property. Background screening shall include employment history checks as provided in s. 435.03(1) and local criminal records checks through local law enforcement agencies.

(a) A volunteer who assists on an intermittent basis

1 for less than 40 hours per month does not have to be screened,
2 if the volunteer is under the direct and constant supervision
3 of persons who meet the screening requirements of this
4 section.
5 (b) Licensed physicians, nurses, or other
6 professionals licensed and regulated by the Department of
7 Health are not subject to background screening pursuant to
8 this section if they are providing a service that is within
9 their scope of licensed practice.
10 (c) A person selected by the family or the individual
11 with developmental disabilities and paid by the family or the
12 individual to provide supports or services is not required to
13 have a background screening under this section.
14 (d) Persons residing with the direct services
15 provider, including family members, are subject to background
16 screening; however, such persons who are 12 to 18 years of age
17 shall be screened for delinquency records only.
18 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency
19 ~~department~~ may grant exemptions from disqualification from
20 working with children or adults with developmental
21 disabilities ~~the developmentally disabled~~ as provided in s.
22 435.07.
23 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE
24 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints
25 and the state criminal records checks shall be borne by the
26 employer or by the employee or individual who is being
27 screened.
28 (4) EXCLUSION FROM OWNING, OPERATING, OR BEING
29 EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL FACILITY;
30 HEARINGS PROVIDED.--
31 (a) The agency ~~department~~ shall deny, suspend,

terminate, or revoke a license, certification, rate agreement, purchase order, or contract, or pursue other remedies provided in s. 393.0673, s. 393.0675, or s. 393.0678 in addition to or in lieu of denial, suspension, termination, or revocation for failure to comply with this section.

(b) When the agency ~~department~~ has reasonable cause to believe that grounds for denial or termination of employment exist, it shall notify, in writing, the employer and the direct service provider affected, stating the specific record which indicates noncompliance with the standards in this section.

(c) The procedures established for hearing under chapter 120 shall be available to the employer and the direct service provider in order to present evidence relating either to the accuracy of the basis of exclusion or to the denial of an exemption from disqualification.

(d) Refusal on the part of an employer to dismiss a direct service provider who has been found to be in noncompliance with standards of this section shall result in automatic denial, termination, or revocation of the license, certification, rate agreement, purchase order, or contract, in addition to any other remedies pursued by the agency ~~department~~.

Section 6. Section 393.066, Florida Statutes, is amended to read:

393.066 Community services and treatment for persons who are developmentally disabled.--

(1) The agency ~~Department of Children and Family Services~~ shall plan, develop, organize, and implement its programs of services and treatment for persons who are developmentally disabled ~~along district lines. The goal of~~

1 such-programs-shall-be to allow clients to live as
2 independently as possible in their own homes or communities
3 and to achieve productive lives as close to normal as
4 possible.
5 (2)--All-programs-of-services-and-treatment-for-clients
6 shall-be-administered-through-the-districts-and-shall-serve
7 all-clients-regardless-of-the-type-of-residential-setting-in
8 which-the-client-lives. All elements of community-based
9 services shall be made available, in-each-service-district and
10 eligibility for these services shall be consistent across the
11 state districts. In addition, all purchased services shall be
12 approved by the agency district.
13 (2)(3) All services needed shall be purchased instead
14 of provided directly by the agency department, when such
15 arrangement is more cost-efficient than having those services
16 provided directly by-the-department.
17 (3)(4) Community-based services that are medically
18 necessary to prevent institutionalization shall, to the extent
19 of available resources, include:
20 (a) Day habilitation services, including developmental
21 training services.
22 (b) Family care services.
23 (c) Guardian advocate referral services.
24 (d) Medical/dental services, except that medical
25 services shall not be provided to clients with spina bifida
26 except as specifically appropriated by the Legislature.
27 (e) Parent training.
28 (f) Recreation.
29 (g) Residential services.
30 (h) Respite services.
31 (i) Social services.

1 (j) Specialized therapies.
2 (k) Supported employment, including enclave, job
3 coach, mobile work crew, and follow-along services.
4 (l) Supported living.
5 (m) Training, including behavioral programming.
6 (n) Transportation.
7 (o) Other habilitative and rehabilitative services as
8 needed.
9
10 ~~Services-to-clients-with-spina-bifida-shall-not-include~~
11 ~~medical-services-except-as-appropriated-by-the-Legislature.~~
12 ~~(5)--Provided-it-is-consistent-with-the-intent-of-the~~
13 ~~Legislature,-the-department-shall-prioritize-increased~~
14 ~~appropriations-provided-for-community-based-services-for~~
15 ~~developmentally-disabled-individuals-toward-individualized,~~
16 ~~community-based-supports-and-services-for-consumers-and-their~~
17 ~~families.--Further,-the-department's-5-year-plan-for~~
18 ~~Developmental-Services-shall-reflect-a-priority-toward~~
19 ~~individualized,-community-based-supports-and-services-for~~
20 ~~consumers-and-their-families.~~
21 (4) ~~(6)~~ The agency ~~department~~ shall utilize the
22 services of private businesses, not-for-profit organizations,
23 and units of local government whenever such services are more
24 cost-efficient than such services provided directly by the
25 department, including arrangements for provision of
26 residential facilities.
27 (5) ~~(7)~~ In order to improve the potential for
28 utilization of more cost-effective, community-based
29 residential facilities, the agency ~~department~~ shall promote
30 the statewide development of day habilitation services for
31 clients who live with a direct service provider in a

1 community-based residential facility and who do not require
2 24-hour-a-day care in a hospital or other health care
3 institution, but who may, in the absence of day habilitation
4 services, require admission to a developmental disabilities
5 ~~services~~ institution. Each day service facility shall provide
6 a protective physical environment for clients, ensure that
7 direct service providers meet ~~the~~ minimum screening standards
8 ~~for good moral character~~ as required ~~contained~~ in s. 393.0655,
9 make available to all day habilitation service participants at
10 least one meal on each day of operation, provide facilities to
11 enable participants to obtain needed rest while attending the
12 program, as appropriate, and provide social and educational
13 activities designed to stimulate interest and provide
14 socialization skills.
15 (6) To promote independence and productivity, the
16 agency shall provide supports and services, within available
17 resources, to assist clients enrolled in Medicaid waivers who
18 choose to pursue gainful employment.
19 (7) ~~(8)~~ For the purpose of making needed
20 community-based residential facilities available at the least
21 possible cost to the state, the agency ~~department~~ is
22 authorized to lease privately owned residential facilities
23 under long-term rental agreements, if such rental agreements
24 are projected to be less costly to the state over the useful
25 life of the facility than state purchase or state construction
26 of such a facility. ~~In addition, the department is authorized~~
27 ~~to permit, on any public land to which the department holds~~
28 ~~the lease, construction of a residential facility for which~~
29 ~~the department has entered into a long-term rental agreement~~
30 ~~as specified in this subsection.~~
31 (8) ~~(9)~~ The agency ~~department~~ may adopt rules to ensure

compliance with federal laws or regulations that apply to services provided pursuant to this section.

Section 7. Section 393.0661, Florida Statutes, is amended to read:

393.0661 Home and community-based services delivery system; comprehensive redesign.--The Legislature finds that the home and community-based services delivery system for persons with developmental disabilities and the availability of appropriated funds are two of the critical elements in making services available. Therefore, it is the intent of the Legislature that the Agency for Persons with Disabilities ~~Department-of-Children-and-Family-Services~~ shall develop and implement a comprehensive redesign of the system. The redesign of the home and community-based services system shall include, at a minimum, all actions necessary to achieve an appropriate rate structure, client choice within a specified service package, appropriate assessment strategies, an efficient billing process that contains reconciliation and monitoring components, a redefined role for support coordinators that avoids potential conflicts of interest, and family/client budgets linked to levels of need. ~~Prior-to-the-release-of funds-in-the-lump-sum-appropriation,-the-department-shall present-a-plan-to-the-Executive-Office-of-the-Governor,-the House-Fiscal-Responsibility-Council,-and-the-Senate Appropriations-Committee.-The-plan-must-result-in-a-full implementation-of-the-redesigned-system-no-later-than-July-1, 2003.--At-a-minimum,-the-plan-must-provide-that-the-portions related-to-direct-provider-enrollment-and-billing-will-be operational-no-later-than-March-31,-2003.--The-plan-must further-provide-that-a-more-effective-needs-assessment instrument-will-be-deployed-by-January-1,-2003,-and-that-all~~

1 ~~clients-will-be-assessed-with-this-device-by-June-30,-2003.~~
2 (1) ~~In-no-event-may~~ The agency shall use ~~department~~
3 ~~select~~ an assessment instrument ~~without-appropriate-evidence~~
4 that is ~~it-will-be~~ reliable and valid for identifying the
5 support needs of individuals. ~~Once-such-evidence-has-been~~
6 ~~obtained,-however,~~ The agency may contract with ~~department~~
7 ~~shall-determine-the-feasibility-of-contracting-with-an~~
8 ~~external-vendor-to-apply-the-new-assessment-device-to-all~~
9 ~~clients-receiving-services-through-the-Medicaid-waiver.--In~~
10 ~~lieu-of-using~~ an external vendor or~~,-the-department~~ may use
11 support coordinators to complete client ~~for-the~~ assessments if
12 it develops sufficient safeguards and training to ensure
13 ongoing ~~significantly-improve the~~ inter-rater reliability ~~of~~
14 ~~the-support-coordinators-administering-the-assessment.~~
15 (2) The agency, with the concurrence of the Agency for
16 Health Care Administration, may contract for the determination
17 of medical necessity and establishment of individual budgets.
18 Section 8. Section 393.068, Florida Statutes, is
19 amended to read:
20 393.068 Family care program.--
21 (1) The family care program is established for the
22 purpose of providing services and support to families and
23 individuals with developmental disabilities in order to
24 maintain the individual in the home environment and avoid
25 costly out-of-home residential placement. ~~The-Legislature~~
26 ~~recognizes-the-importance-of-family-support-in-the-long-range~~
27 ~~success-of-deinstitutionalization.~~ Services and support
28 available to families and individuals with developmental
29 disabilities shall emphasize community living and enable
30 individuals with developmental disabilities to enjoy typical
31 lifestyles. ~~Support-and-flexibility-in-coordinating-support~~

1 ~~and-services-are-core-elements-in-caring-for-the-individual~~
2 ~~who-is-developmentally-disabled.~~ One way to accomplish this is
3 to recognize that families are the greatest resource available
4 to individuals who have developmental disabilities and ~~that~~
5 ~~families~~ must be supported in their role as primary care
6 givers.
7 (2) Services and support authorized under this program
8 shall, to the extent of available resources, include the
9 services listed under s. 393.066 ~~s.-393.066(4)~~ and, in
10 addition, shall include, but not be limited to:
11 (a) Attendant care.
12 (b) Barrier-free modifications to the home.
13 (c) Home visitation by agency workers.
14 (d) In-home subsidies.
15 (e) Low-interest loans.
16 ~~(f)--Parent-training.~~
17 ~~(g)--Respite-care.~~
18 (f) ~~(h)~~ Modifications for vehicles used to transport
19 the individual with a developmental disability.
20 (g) ~~(i)~~ Facilitated communication.
21 (h) ~~(j)~~ Family counseling.
22 (i) ~~(k)~~ Equipment and supplies.
23 (j) ~~(l)~~ Self-advocacy training.
24 (k) ~~(m)~~ Roommate services.
25 (l) ~~(n)~~ Integrated community activities.
26 (m) ~~(o)~~ Emergency services.
27 (n) ~~(p)~~ Support coordination.
28 (o) Supported employment.
29 (p) ~~(q)~~ Other support services as identified by the
30 family or individual.
31 ~~(2)--Provided-it-is-consistent-with-the-intent-of-the~~

1 ~~Legislature,-the-department-shall-prioritize-increased~~
2 ~~appropriations-provided-for-family-based-services-for~~
3 ~~developmentally-disabled-individuals-toward-individualized,~~
4 ~~family-based-supports-and-services-for-consumers-and-their~~
5 ~~families.-Further,-the-department's-5-year-plan-for~~
6 ~~developmental-services-shall-reflect-a-priority-toward~~
7 ~~individualized,-family-based-supports-and-services-for~~
8 ~~consumers-and-their-families.~~
9 (3) When it is determined by the agency ~~department~~ to
10 be more cost-effective and in the best interest of the client
11 to maintain such client in the home of a direct service
12 provider, the parent or guardian of the client or, if
13 competent, the client may enroll the client in the family care
14 program. The direct service provider of a client enrolled in
15 the family care program shall be reimbursed according to a
16 rate schedule set by the agency ~~department~~. In-home subsidies
17 cited in paragraph (1)(d) shall be provided according to s.
18 393.0695 and are not subject to any other payment method or
19 rate schedule provided for in this section.
20 (4) All existing community resources available to the
21 client shall be utilized to support program objectives.
22 Additional services may be incorporated into the program as
23 appropriate and to the extent that resources are available.
24 The agency ~~department~~ is authorized to accept gifts and grants
25 in order to carry out the program.
26 (5) The agency ~~department~~ may contract for the
27 provision of any portion of the services required by the
28 program, except for in-home subsidies cited in paragraph
29 (2)(d) ~~(1)(d)~~, which shall be provided pursuant to s.
30 393.0695. Otherwise, purchase of service contracts shall be
31 used whenever the services so provided are more cost-efficient

than those provided by the agency ~~department~~.

(6) When possible, services shall be obtained under the "Florida Comprehensive Annual Services Program Plan under Title XX of the Social Security Act" and the "Florida Plan for Medical Assistance under Title XIX of the Social Security Act."

(7) To provide a range of personal services for the client, the use of volunteers shall be maximized. The agency ~~department~~ shall assure appropriate insurance coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments under the program.

~~(8)--The department shall submit to the President of the Senate and the Speaker of the House of Representatives, as part of the biennial plan required by s. 393.14, an evaluation report summarizing the progress of the family care program. The report shall include the information and data necessary for an accurate analysis of the costs and benefits associated with the establishment and operation of the programs that were established.~~

Section 9. Subsections (1) and (3) of section 393.0695, Florida Statutes, are amended to read:

393.0695 Provision of in-home subsidies.--

(1) The agency may pay ~~department shall develop by October 1, 1991, a plan for paying~~ in-home subsidies to clients enrolled in the family care program or supported living when it is determined to be more cost-effective and in the best interest of the client to provide a cash supplement to the client's income to enable the client to remain in the family home or the client's own home. Payments may be made to the parent or guardian of the client or, if the client is competent, directly to the client.

1 (3) In-home subsidies must be based on an individual
2 determination of need and must not exceed maximum amounts set
3 by the agency ~~department~~ and reassessed by the agency annually
4 ~~department-quarterly~~.
5 Section 10. Subsection (1), paragraph (a) of
6 subsection (2), paragraph (a) of subsection (4), paragraphs
7 (a), (d), and (h) of subsection (5), paragraph (a) of
8 subsection (6), paragraphs (d) and (e) of subsection (8), and
9 subsection (13) of section 393.11, Florida Statutes, are
10 amended to read:
11 393.11 Involuntary admission to residential
12 services.--
13 (1) JURISDICTION.--When a person is mentally retarded
14 and requires involuntary admission to residential services
15 provided by the agency ~~developmental-services-program-of-the~~
16 ~~Department-of-Children-and-Family-Services~~, the circuit court
17 of the county in which the person resides shall have
18 jurisdiction to conduct a hearing and enter an order
19 involuntarily admitting the person in order that the person
20 may receive the care, treatment, habilitation, and
21 rehabilitation which the person needs. For the purpose of
22 identifying mental retardation, diagnostic capability shall be
23 established by ~~in-every-program-function-of~~ the agency
24 ~~department-in-the-districts,-including,-but-not-limited-to,~~
25 ~~programs-provided-by-children-and-families,-delinquency~~
26 ~~services,-alcohol,-drug-abuse,-and-mental-health,-and-economic~~
27 ~~services,-and-by-the-Department-of-Labor-and-Employment~~
28 ~~Security~~. Except as otherwise specified, the proceedings under
29 this section shall be governed by the Florida Rules of Civil
30 Procedure.
31 (2) PETITION.--

1 (a) A petition for involuntary admission to
2 residential services may be executed by a petitioning
3 commission. For proposed involuntary admission to residential
4 services arising out of chapter 916, the petition may be filed
5 by a petitioning commission, the agency ~~department~~, the state
6 attorney of the circuit from which the defendant was
7 committed, or the defendant's attorney.
8 (4) DEVELOPMENTAL SERVICES PARTICIPATION.--
9 (a) Upon receiving the petition, the court shall
10 immediately order the developmental services program of the
11 agency ~~department~~ to examine the person being considered for
12 involuntary admission to residential services.
13 (5) EXAMINING COMMITTEE.--
14 (a) Upon receiving the petition, the court shall
15 immediately appoint an examining committee to examine the
16 person being considered for involuntary admission to
17 residential services of the developmental services program of
18 the agency ~~department~~.
19 (d) Members of the committee shall not be employees of
20 the agency ~~department~~ or be associated with each other in
21 practice or in employer-employee relationships. Members of
22 the committee shall not have served as members of the
23 petitioning commission. Members of the committee shall not be
24 employees of the members of the petitioning commission or be
25 associated in practice with members of the commission.
26 (h) The agency ~~department~~ shall develop and prescribe
27 by rule one or more standard forms to be used as a guide for
28 members of the examining committee.
29 (6) COUNSEL; GUARDIAN AD LITEM.--
30 (a) The person with mental retardation shall be
31 represented by counsel at all stages of the judicial

1 proceeding. In the event the person is indigent and cannot
2 afford counsel, the court shall appoint a public defender not
3 less than 20 working days before the scheduled hearing. The
4 person's counsel shall have full access to the records of the
5 service provider and the agency ~~department~~. In all cases, the
6 attorney shall represent the rights and legal interests of the
7 person with mental retardation, regardless of who may initiate
8 the proceedings or pay the attorney's fee.
9 (8) ORDER.--
10 (d) If an order of involuntary admission to
11 residential services provided by the developmental services
12 program of the agency ~~department~~ is entered by the court, a
13 copy of the written order shall be served upon the person, the
14 person's counsel, the agency ~~department~~, and the state
15 attorney and the person's defense counsel, if applicable. The
16 order of involuntary admission sent to the agency ~~department~~
17 shall also be accompanied by a copy of the examining
18 committee's report and other reports contained in the court
19 file.
20 (e) Upon receiving the order, the agency ~~department~~
21 shall, within 45 days, provide the court with a copy of the
22 person's family or individual support plan and copies of all
23 examinations and evaluations, outlining the treatment and
24 rehabilitative programs. The agency ~~department~~ shall document
25 that the person has been placed in the most appropriate, least
26 restrictive and cost-beneficial residential facility. A copy
27 of the family or individual support plan and other
28 examinations and evaluations shall be served upon the person
29 and the person's counsel at the same time the documents are
30 filed with the court.
31 (13) HABEAS CORPUS.--At any time and without notice,

1 any person involuntarily admitted to the developmental
2 services program of the agency ~~department~~, or the person's
3 parent or legal guardian in his or her behalf, is entitled to
4 a writ of habeas corpus to question the cause, legality, and
5 appropriateness of the person's involuntary admission. Each
6 person, or the person's parent or legal guardian, shall
7 receive specific written notice of the right to petition for a
8 writ of habeas corpus at the time of his or her involuntary
9 placement.
10 Section 11. Paragraphs (a), (b), and (d) of subsection
11 (2), subsection (3), paragraphs (b), (g), (i), and (j) of
12 subsection (4), and subsection (6) of section 393.13, Florida
13 Statutes, are amended to read:
14 393.13 Personal treatment of persons who are
15 developmentally disabled.--
16 (2) LEGISLATIVE INTENT.--
17 (a) The Legislature finds and declares that the system
18 of care provided ~~which the state provides~~ to individuals who
19 are developmentally disabled must be designed to meet the
20 needs of the clients as well as protect the integrity of their
21 legal and human rights. ~~Further, the current system of care~~
22 ~~for persons who are developmentally disabled is in need of~~
23 ~~substantial improvement in order to provide truly meaningful~~
24 ~~treatment and habilitation.~~
25 (b) The Legislature further finds and declares that
26 the design and delivery of treatment and services to persons
27 who are developmentally disabled should be directed by the
28 principles of normalization and therefore should:
29 1. Abate the use of large institutions.
30 2. Continue the development of community-based
31 services which provide reasonable alternatives to

1 institutionalization in settings that are least restrictive to
2 the client.
3 3. Provide training and education to individuals who
4 are developmentally disabled which will maximize their
5 potential to lead independent and productive lives and which
6 will afford opportunities for outward mobility from
7 institutions.
8 4. Reduce the use of sheltered workshops and other
9 noncompetitive employment day activities and promote
10 opportunities for gainful employment for persons with
11 developmental disabilities who choose to seek such employment.
12 (d) It is the intent of the Legislature:
13 1. To articulate the existing legal and human rights
14 of persons who are developmentally disabled so that they may
15 be exercised and protected. Persons with developmental
16 disabilities shall have all the rights enjoyed by citizens of
17 the state and the United States.
18 2. To provide a mechanism for the identification,
19 evaluation, and treatment of persons with developmental
20 disabilities.
21 3. To divert those individuals from institutional
22 commitment who, by virtue of comprehensive assessment, can be
23 placed in less costly, more effective community environments
24 and programs.
25 ~~4.--To-develop-a-plan-which-will-indicate-the-most~~
26 ~~effective-and-efficient-manner-in-which-to-implement-treatment~~
27 ~~programs-which-are-meaningful-to-individuals-with~~
28 ~~developmental-disabilities,-while-safeguarding-and-respecting~~
29 ~~the-legal-and-human-rights-of-such-individuals.~~
30 4.~~5.--Once-the-plan-developed-under-the-provisions-of~~
31 ~~subparagraph-4.-is-presented-to-the-Legislature,~~ To fund

1 improvements in the program in accordance with the
2 availability of state resources and yearly priorities
3 determined by the Legislature.
4 5.~~6.~~ To ensure that persons with developmental
5 disabilities receive treatment and habilitation which fosters
6 the developmental potential of the individual.
7 6.~~7.~~ To provide programs for the proper habilitation
8 and treatment of persons with developmental disabilities which
9 shall include, but not be limited to, comprehensive
10 medical/dental care, education, recreation, specialized
11 therapies, training, social services, transportation,
12 guardianship, family care programs, day habilitation services,
13 and habilitative and rehabilitative services suited to the
14 needs of the individual regardless of age, degree of
15 disability, or handicapping condition. No person with
16 developmental disabilities shall be deprived of these
17 enumerated services by reason of inability to pay.
18 7.~~8.~~ To fully effectuate the normalization principle
19 through the establishment of community services for persons
20 with developmental disabilities as a viable and practical
21 alternative to institutional care at each stage of individual
22 life development. If care in a residential facility becomes
23 necessary, it shall be in the least restrictive setting.
24 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL
25 DISABILITIES.--The rights described in this subsection shall
26 apply to all persons with developmental disabilities, whether
27 or not such persons are clients of the agency ~~department~~.
28 (a) Persons with developmental disabilities shall have
29 a right to dignity, privacy, and humane care, including the
30 right to be free from sexual abuse in residential facilities.
31 (b) Persons with developmental disabilities shall have

1 the right to religious freedom and practice. Nothing shall
2 restrict or infringe on a person's right to religious
3 preference and practice.
4 (c) Persons with developmental disabilities shall
5 receive services, within available sources, which protect the
6 personal liberty of the individual and which are provided in
7 the least restrictive conditions necessary to achieve the
8 purpose of treatment.
9 (d) Persons who are developmentally disabled shall
10 have a right to participate in an appropriate program of
11 quality education and training services, within available
12 resources, regardless of chronological age or degree of
13 disability. Such persons may be provided with instruction in
14 sex education, marriage, and family planning.
15 (e) Persons who are developmentally disabled shall
16 have a right to social interaction and to participate in
17 community activities.
18 (f) Persons who are developmentally disabled shall
19 have a right to physical exercise and recreational
20 opportunities.
21 (g) Persons who are developmentally disabled shall
22 have a right to be free from harm, including unnecessary
23 physical, chemical, or mechanical restraint, isolation,
24 excessive medication, abuse, or neglect.
25 (h) Persons who are developmentally disabled shall
26 have a right to consent to or refuse treatment, subject to the
27 provisions of s. 393.12(2)(a) or chapter 744.
28 (i) No otherwise qualified person shall, by reason of
29 having a developmental disability, be excluded from
30 participation in, or be denied the benefits of, or be subject
31 to discrimination under, any program or activity which

1 receives public funds, and all prohibitions set forth under
2 any other statute shall be actionable under this statute.
3 (j) No otherwise qualified person shall, by reason of
4 having a developmental disability, be denied the right to vote
5 in public elections.
6 (4) CLIENT RIGHTS.--For purposes of this subsection,
7 the term "client," as defined in s. 393.063, shall also
8 include any person served in a facility licensed pursuant to
9 s. 393.067.
10 (b) Each client has the right to the possession and
11 use of his or her own clothing and personal effects, except in
12 those specific instances where the use of some of these items
13 as reinforcers is essential for training the client as part of
14 an appropriately approved behavioral program. The chief
15 administrator of the facility may take temporary custody of
16 such effects when it is essential to do so for medical or
17 safety reasons. Custody of such personal effects shall be
18 promptly recorded in the client's record, and a receipt for
19 such effects shall be immediately given to the client, if
20 competent, or the client's parent or legal guardian.
21 1. All money belonging to a client held by the agency
22 ~~department~~ shall be held in compliance with s. 402.17(2).
23 2. All interest on money received and held for the
24 personal use and benefit of a client shall be the property of
25 that client and shall not accrue to the general welfare of all
26 clients or be used to defray the cost of residential care.
27 Interest so accrued shall be used or conserved for the
28 personal use or benefit of the individual client as provided
29 in s. 402.17(2).
30 3. Upon the discharge or death of a client, a final
31 accounting shall be made of all personal effects and money

1 belonging to the client held by the agency ~~department~~. All
2 such personal effects and money, including interest, shall be
3 promptly turned over to the client or his or her heirs.
4 (g) No client shall be subjected to a treatment
5 program to eliminate bizarre or unusual behaviors without
6 first being examined by a physician who in his or her best
7 judgment determines that such behaviors are not organically
8 caused.
9 1. Treatment programs involving the use of noxious or
10 painful stimuli shall be prohibited.
11 2. All alleged violations of this paragraph shall be
12 reported immediately to the chief administrative officer of
13 the facility or the district administrator, the agency
14 ~~department~~ head, and the Florida local advocacy council. A
15 thorough investigation of each incident shall be conducted and
16 a written report of the finding and results of such
17 investigation shall be submitted to the chief administrative
18 officer of the facility or the district administrator and to
19 the agency ~~department~~ head within 24 hours of the occurrence
20 or discovery of the incident.
21 3. The agency ~~department~~ shall adopt ~~promulgate~~ by
22 rule a system for the oversight of behavioral programs. Such
23 system shall establish guidelines and procedures governing the
24 design, approval, implementation, and monitoring of all
25 behavioral programs involving clients. The system shall
26 ensure statewide and local review by committees of
27 professionals certified as behavior analysts pursuant to s.
28 393.17. No behavioral program shall be implemented unless
29 reviewed according to the rules established by the agency
30 ~~department~~ under this section. Nothing stated in this section
31 shall prohibit the review of programs by the Florida statewide

1 or local advocacy councils.
2 (i) Clients shall have the right to be free from
3 unnecessary physical, chemical, or mechanical restraint.
4 Restraints shall be employed only in emergencies or to protect
5 the client from imminent injury to himself or herself or
6 others. Restraints shall not be employed as punishment, for
7 the convenience of staff, or as a substitute for a
8 habilitative plan. Restraints shall impose the least possible
9 restrictions consistent with their purpose and shall be
10 removed when the emergency ends. Restraints shall not cause
11 physical injury to the client and shall be designed to allow
12 the greatest possible comfort.
13 1. Mechanical supports used in normative situations to
14 achieve proper body position and balance shall not be
15 considered restraints, but shall be prescriptively designed
16 and applied under the supervision of a qualified professional
17 with concern for principles of good body alignment,
18 circulation, and allowance for change of position.
19 2. Totally enclosed cribs and barred enclosures shall
20 be considered restraints.
21 3. Daily reports on the employment of physical,
22 chemical, or mechanical restraints by those specialists
23 authorized in the use of such restraints shall be made to the
24 appropriate chief administrator of the facility, and a monthly
25 summary of such reports shall be relayed to the district
26 administrator and the Florida local advocacy council. The
27 reports shall summarize all such cases of restraints, the type
28 used, the duration of usage, and the reasons therefor.
29 Districts shall submit districtwide quarterly reports of these
30 summaries to the state Developmental Disabilities Program
31 Office.

1 4. The agency ~~department~~ shall post a copy of the
2 rules adopted ~~promulgated~~ under this section in each living
3 unit of residential facilities. A copy of the rules adopted
4 ~~promulgated~~ under this section shall be given to all staff
5 members of licensed facilities and made a part of all
6 preservice and inservice training programs.
7 (j)1. Each client shall have a central record. The
8 record shall include data pertaining to admission and such
9 other information as may be required under rules of the agency
10 ~~department~~.
11 2. Unless waived by the client, if competent, or the
12 client's parent or legal guardian if the client is
13 incompetent, the client's central record shall be confidential
14 and exempt from the provisions of s. 119.07(1), and no part of
15 it shall be released except:
16 a. The record may be released to physicians,
17 attorneys, and government agencies having need of the record
18 to aid the client, as designated by the client, if competent,
19 or the client's parent or legal guardian, if the client is
20 incompetent.
21 b. The record shall be produced in response to a
22 subpoena or released to persons authorized by order of court,
23 excluding matters privileged by other provisions of law.
24 c. The record or any part thereof may be disclosed to
25 a qualified researcher, a staff member of the facility, or an
26 employee of the agency ~~department~~ when the administrator of
27 the facility or the director ~~secretary~~ of the agency
28 ~~department~~ deems it necessary for the treatment of the client,
29 maintenance of adequate records, compilation of treatment
30 data, or evaluation of programs.
31 d. Information from the records may be used for

1 statistical and research purposes if the information is
2 abstracted in such a way to protect the identity of
3 individuals.
4 3. All central records for each client in residential
5 facilities shall be kept on uniform forms distributed by the
6 agency ~~department~~. The central record shall accurately
7 summarize each client's history and present condition.
8 4. The client, if competent, or the client's parent or
9 legal guardian if the client is incompetent, shall be supplied
10 with a copy of the client's central record upon request.
11 (6) NOTICE OF RIGHTS.--Each person with developmental
12 disabilities, if competent, or parent or legal guardian of
13 such person if the person is incompetent, shall promptly
14 receive from the agency ~~Department-of-Children-and-Family~~
15 ~~Services~~ or the Department of Education a written copy of this
16 act. Each person with developmental disabilities able to
17 comprehend shall be promptly informed, in the language or
18 other mode of communication which such person understands, of
19 the above legal rights of persons with developmental
20 disabilities.
21 Section 12. Section 393.17, Florida Statutes, is
22 amended to read:
23 393.17 Behavioral programs; certification of behavior
24 analysts~~;--fees~~.--The agency may recognize the certification of
25 behavior analysts awarded by a nonprofit corporation whose
26 mission is to meet professional credentialing needs identified
27 by behavior analysts, state governments, and consumers of
28 behavior analysis services and whose work has the support of
29 the Association for Behavior Analysis International. ~~The~~
30 ~~department-shall-by-rule-implement-a-certification-program-to~~
31 ~~ensure-that-qualified-persons-oversee-the-design-and~~

1 ~~implementation-of-behavioral-programs-for-persons-who-are~~
2 ~~developmentally-disabled.--Certification-and-recertification~~
3 ~~minimum-standards-must-comply-with-departmental-rules-and-must~~
4 ~~include,-for-initial-certification,-examination-of~~
5 ~~competencies-in-applying-behavior-analysis-with-persons-who~~
6 ~~are-developmentally-disabled-within-established-competency~~
7 ~~clusters.--These-competency-clusters-shall-include,-but-not-be~~
8 ~~limited-to,-behavioral-assessments,-observation-and-recording,~~
9 ~~behavioral-program-development-and-monitoring,-and-other-areas~~
10 ~~as-determined-by-professional-practitioners-of-behavior~~
11 ~~analysis.--Fees-shall-be-charged-for-certification-not-to~~
12 ~~exceed-the-cost-of-development-and-administration-of-the~~
13 ~~examination-and-periodic-renewal-of-certification.--The~~
14 ~~department-shall-establish-by-rule-the-procedures-for~~
15 ~~certification-and-certification-renewal.~~
16 Section 13. Section 393.22, Florida Statutes, is
17 amended to read:
18 393.22 ~~Transfer-of-appropriations,-barriers-to~~
19 ~~services,~~ Financial commitment to <u>community services</u>
20 programs.--
21 ~~(1)--No-funds-appropriated-for-developmental-services~~
22 ~~programs-shall-be-transferred-pursuant-to-s.-216.292,-unless~~
23 ~~there-is-a-finding-by-the-secretary-that-treatment-programs~~
24 ~~for-developmental-disabilities-will-not-be-adversely-affected~~
25 ~~by-the-transfer.~~
26 ~~(2)--Development-of-programs-for-other-disabilities~~
27 ~~shall-not-effectuate-a-reduction-or-dilution-of-the-ongoing~~
28 ~~financial-commitment-of-the-state-through-appropriations-for~~
29 ~~programs-and-services-for-persons-with-mental-retardation,~~
30 ~~cerebral-palsy,-autism,-or-spina-bifida.~~
31 ~~(3)~~ <u>In order to</u> ~~The-Department-of-Children-and-Family~~

1 ~~Services and the Agency for Health Care Administration jointly~~
2 ~~shall~~ ensure that whenever a number of persons move from an
3 institution serving persons with developmental disabilities
4 which is sufficient to allow an entire residential unit within
5 that institution to be closed, no less than 80 percent of the
6 direct costs of providing services to persons who had resided
7 in that unit shall be reallocated for community services.
8 Section 14. Section 393.502, Florida Statutes, is
9 amended to read:
10 393.502 Family care councils.--
11 (1) CREATION.--There shall be established and located
12 within each service area of the agency ~~district of the~~
13 ~~department~~ a ~~district~~ family care council.
14 (2) MEMBERSHIP.--
15 (a) Each local ~~district~~ family care council shall
16 consist of at least 10 and no more than 15 members recommended
17 by a majority vote of the local ~~district~~ family care council
18 and appointed by the Governor.
19 (b) At least three of the members of the council must
20 be consumers. One such member shall be a consumer who received
21 ~~developmental~~ services within the 4 years prior to the date of
22 recommendation, or the legal guardian of such a consumer. The
23 remainder of the council members shall be parents, guardians,
24 or siblings of persons with developmental disabilities who
25 qualify for ~~developmental~~ services pursuant to this chapter.
26 (c) A person who is currently serving on another board
27 or council of the agency ~~department~~ may not be appointed to a
28 local ~~district~~ family care council.
29 (d) Employees of the agency ~~department~~ are not
30 eligible to serve on a local ~~district~~ family care council.
31 (e) Persons related by consanguinity or affinity

1 within the third degree shall not serve on the same local
2 ~~district~~ family care council at the same time.
3 (f) A chair for the council shall be chosen by the
4 council members to serve for 1 year. A person may serve no
5 more than four 1-year terms as chair.
6 (3) TERMS; VACANCIES.--
7 (a) Council members shall be appointed for a 3-year
8 term, except as provided in subsection (8), and may be
9 reappointed to one additional term.
10 (b) A member who has served two consecutive terms
11 shall not be eligible to serve again until 12 months have
12 elapsed since ending his or her service on the local ~~district~~
13 council.
14 (c) Upon expiration of a term or in the case of any
15 other vacancy, the local ~~district~~ council shall, by majority
16 vote, recommend to the Governor for appointment a person for
17 each vacancy. ~~If the Governor does not act on the council's~~
18 ~~recommendations within 45 days after receiving them, the~~
19 ~~persons recommended shall be considered to be appointed.~~
20 (4) COMMITTEE APPOINTMENTS.--The chair of the local
21 ~~district~~ family care council may appoint persons to serve on
22 council committees. Such persons may include former members of
23 the council and persons not eligible to serve on the council.
24 (5) TRAINING.--
25 (a) The agency ~~department~~, in consultation with the
26 local ~~district~~ councils, shall establish a training program
27 for local ~~district~~ family care council members. Each local
28 area ~~district~~ shall provide the training program when new
29 persons are appointed to the local ~~district~~ council and at
30 other times as the secretary deems necessary.
31 (b) The training shall assist the council members to

1 understand the laws, rules, and policies applicable to their
2 duties and responsibilities.
3 (c) All persons appointed to a local ~~district~~ council
4 must complete this training within 90 days after their
5 appointment. A person who fails to meet this requirement shall
6 be considered to have resigned from the council.
7 (6) MEETINGS.--Council members shall serve on a
8 voluntary basis without payment for their services but shall
9 be reimbursed for per diem and travel expenses as provided for
10 in s. 112.061. The council shall meet at least six times per
11 year.
12 (7) PURPOSE.--The purpose of the local ~~district~~ family
13 care councils shall be to advise the agency ~~department and its~~
14 ~~district advisory boards~~, to develop a plan for the delivery
15 of ~~developmental services~~ family support services within the
16 local area ~~district~~, and to monitor the implementation and
17 effectiveness of services and support provided under the plan.
18 The primary functions of the local ~~district~~ family care
19 councils shall be to:
20 (a) Assist in providing information and outreach to
21 families.
22 (b) Review the effectiveness of service ~~developmental~~
23 ~~services~~ programs and make recommendations with respect to
24 program implementation.
25 (c) Advise the agency ~~district developmental services~~
26 ~~administrators~~ with respect to policy issues relevant to the
27 community and family support system in the local area
28 ~~district~~.
29 (d) Meet and share information with other local
30 ~~district~~ family care councils.
31 (8) NEW COUNCILS.--When a local ~~district~~ family care

council is established for the first time in a local area ~~district~~, the Governor shall appoint the first four council members, who shall serve 3-year terms. These members shall submit to the Governor, within 90 days after their appointment, recommendations for at least six additional members, selected by majority vote. ~~If the Governor does not act on the recommendations within 45 days after receiving them, the persons recommended shall be considered to be appointed. Those members recommended for appointment by the Governor shall serve for 2 years.~~

(9) FUNDING; FINANCIAL REVIEW.--The local ~~district~~ family care council may apply for, receive, and accept grants, gifts, donations, bequests, and other payments from any public or private entity or person. Each local ~~district~~ council is ~~shall be~~ subject to an annual financial review by ~~district~~ staff assigned by the agency ~~district administrator~~. Each local ~~district~~ council shall exercise care and prudence in the expenditure of funds. The local ~~district~~ family care councils shall comply with state expenditure requirements.

Section 15. Section 408.301, Florida Statutes, is amended to read:

408.301 Legislative findings.--The Legislature has found that access to quality, affordable, health care for all Floridians is an important goal for the state. The Legislature recognizes that there are Floridians with special health care and social needs which require particular attention. The people served by the Department of Children and Family Services, the Agency for Persons with Disabilities, ~~and~~ the Department of Health, and the Department of Elderly Affairs are examples of citizens with special needs. The Legislature further recognizes that the Medicaid program is an intricate

1 part of the service delivery system for the special needs
2 citizens ~~served by or through the Department of Children and~~
3 ~~Family Services and the Department of Health~~. However, the
4 Agency for Health Care Administration is not a service
5 provider and does not develop or direct programs for the
6 special needs citizens ~~served by or through the Department of~~
7 ~~Children and Family Services and the Department of Health~~.
8 Therefore, it is the intent of the Legislature that the Agency
9 for Health Care Administration work closely with the
10 Department of Children and Family Services, the Agency for
11 Persons with Disabilities, ~~and~~ the Department of Health, and
12 the Department of Elderly Affairs in developing plans for
13 assuring access to all Floridians in order to assure that the
14 needs of special citizens are met.
15 Section 16. Section 408.302, Florida Statutes, is
16 amended to read:
17 408.302 Interagency agreement.--
18 (1) The Agency for Health Care Administration shall
19 enter into an interagency agreement with the Department of
20 Children and Family Services, the Agency for Persons with
21 Disabilities, ~~and~~ the Department of Health, and the Department
22 of Elderly Affairs to assure coordination and cooperation in
23 serving special needs citizens. The agreement shall include
24 the requirement that the secretaries or directors ~~secretary~~ of
25 the Department of Children and Family Services, the Agency for
26 Persons with Disabilities, ~~and the secretary of~~ the Department
27 of Health, and the Department of Elderly Affairs approve,
28 prior to adoption, any rule developed by the Agency for Health
29 Care Administration where such rule has a direct impact on the
30 mission of the respective state agencies ~~Department of~~
31 ~~Children and Family Services and the Department of Health~~,

1 their programs, or their budgets.
2 (2) For rules which indirectly impact on the mission
3 of the Department of Children and Family Services, the Agency
4 for Persons with Disabilities, ~~and~~ the Department of Health,
5 and the Department of Elderly Affairs, their programs, or
6 their budgets, the concurrence of the respective secretaries
7 or directors ~~secretary-of-the-Department-of-Children-and~~
8 ~~Family-Services-and-the-secretary-of-the-Department-of-Health~~
9 on the rule is required.
10 (3) For all other rules developed by the Agency for
11 Health Care Administration, coordination with the Department
12 of Children and Family Services, the Agency for Persons with
13 Disabilities, ~~and~~ the Department of Health, and the Department
14 of Elderly Affairs is encouraged.
15 (4) The interagency agreement shall also include any
16 other provisions necessary to ensure a continued cooperative
17 working relationship between the Agency for Health Care
18 Administration and the Department of Children and Family
19 Services, the Agency for Persons with Disabilities, ~~and~~ the
20 Department of Health, and the Department of Elderly Affairs as
21 each strives to meet the needs of the citizens of Florida.
22 Section 17. Subsection (13) of section 409.906,
23 Florida Statutes, is amended to read:
24 409.906 Optional Medicaid services.--Subject to
25 specific appropriations, the agency may make payments for
26 services which are optional to the state under Title XIX of
27 the Social Security Act and are furnished by Medicaid
28 providers to recipients who are determined to be eligible on
29 the dates on which the services were provided. Any optional
30 service that is provided shall be provided only when medically
31 necessary and in accordance with state and federal law.

1 Optional services rendered by providers in mobile units to
2 Medicaid recipients may be restricted or prohibited by the
3 agency. Nothing in this section shall be construed to prevent
4 or limit the agency from adjusting fees, reimbursement rates,
5 lengths of stay, number of visits, or number of services, or
6 making any other adjustments necessary to comply with the
7 availability of moneys and any limitations or directions
8 provided for in the General Appropriations Act or chapter 216.
9 If necessary to safeguard the state's systems of providing
10 services to elderly and disabled persons and subject to the
11 notice and review provisions of s. 216.177, the Governor may
12 direct the Agency for Health Care Administration to amend the
13 Medicaid state plan to delete the optional Medicaid service
14 known as "Intermediate Care Facilities for the Developmentally
15 Disabled." Optional services may include:
16 (13) HOME AND COMMUNITY-BASED SERVICES.--The agency
17 may pay for home-based or community-based services that are
18 rendered to a recipient in accordance with a federally
19 approved waiver program. The agency may limit or eliminate
20 coverage for certain ~~Project-AIDS-Care-Waiver~~ services,
21 preauthorize high-cost or highly utilized services, or make
22 any other adjustments necessary to comply with any limitations
23 or directions provided for in the General Appropriations Act.
24 Section 18. Sections 393.14, 393.165, 393.166, and
25 393.505, Florida Statutes, are repealed.
26 Section 19. (1) Effective October 1, 2004, the
27 developmental disabilities program and the developmental
28 services institutions in the Department of Children and Family
29 Services shall be transferred to the Agency for Persons with
30 Disabilities by a type two transfer pursuant to section 20.06,
31 Florida Statutes. Prior to that date:

1 (a) The Agency for Persons with Disabilities and the
2 Department of Children and Family Services, in consultation
3 with the Department of Management Services, shall determine
4 the number of positions and resources within the department
5 dedicated to the developmental disabilities program which
6 shall be transferred to the agency and will develop an
7 agreement that delineates who within the department will
8 provide administrative support to the agency.
9 (b) The Director of the Agency for Persons with
10 Disabilities, in consultation with the Secretaries of the
11 Department of Children and Family Services and the Agency for
12 Health Care Administration or their designees, shall prepare a
13 transition plan that must address, at a minimum, building
14 leases, information support systems, cash ownership and
15 transfer, administrative support functions, inventory and
16 transfers of equipment and structures, expenditure transfers,
17 budget authority and positions, and certifications forward.
18 This plan shall be submitted by September 1, 2004, to the
19 Executive Office of the Governor, the President of the Senate,
20 and the Speaker of the House of Representatives.
21 (c) The Agency for Persons with Disabilities and the
22 Department of Children and Family Services shall work with the
23 Agency for Health Care Administration to develop a plan that
24 ensures that all of the necessary electronic and paper-based
25 data of the Developmental Disabilities program is accessible
26 to the Medicaid program and that all electronic records will
27 be migrated to a new data system that is compatible with the
28 Florida Medicaid Management Information System.
29 (d) The Agency for Persons with Disabilities and the
30 Agency for Health Care Administration shall develop a plan for
31 the orderly relocation of the noncentral-office staff of the

1 Agency for Persons with Disabilities to the area offices of
2 the Agency for Health Care Administration. Such plan shall
3 include a schedule that takes into consideration the
4 availability of space, the expiration of current leases, and
5 the initiation of new leases that can accommodate the
6 relocated staff, as well as appropriate reimbursement for
7 collocation costs, including office space and other operating
8 expenses.
9 (2) Effective October 1, 2004, the agency shall enter
10 into an interagency agreement with the Department of Children
11 and Family Services for the provision of the necessary
12 day-to-day administrative and operational needs of the agency,
13 including, but not limited to, personnel, purchasing,
14 information technology support, legal support, and other
15 related services. This interagency agreement shall continue
16 until the agency no longer requires the provision of services
17 through such agreement.
18 (3) This act does not affect the validity of any
19 judicial or administrative proceeding pending on October 30,
20 2004, and the Agency for Persons with Disabilities is
21 substituted as a real party in interest with respect to any
22 proceeding pending on that date which involves the
23 developmental services programs of the Department of Children
24 and Family Services.
25 Section 20. The Office of Program Policy Analysis and
26 Government Accountability shall identify and evaluate
27 statewide entities receiving state funding for the purpose of
28 addressing the interests of, but not directly providing
29 services for, persons with disabilities.
30 (1) The purpose of the analysis shall be to provide
31 information with respect to:

1 (a) The extent to which activities of these entities
2 are coordinated;
3 (b) The similarities and differences in the
4 organizational missions of these entities; and
5 (c) The amount of state funds provided to these
6 entities for the purpose of addressing the interests of
7 persons with disabilities, the uses of these funds, and
8 whether they duplicate the efforts of other private or
9 federally funded entities.
10 (2) The report shall be completed and provided to the
11 Governor and Legislature by December 2005.
12 Section 21. Subsection (1) of section 92.53, Florida
13 Statutes, is amended to read:
14 92.53 Videotaping of testimony of victim or witness
15 under age 16 or person with mental retardation.--
16 (1) On motion and hearing in camera and a finding that
17 there is a substantial likelihood that a victim or witness who
18 is under the age of 16 or who is a person with mental
19 retardation as defined in s. 393.063 ~~s.--393.063(42)~~ would
20 suffer at least moderate emotional or mental harm due to the
21 presence of the defendant if the child or person with mental
22 retardation is required to testify in open court, or that such
23 victim or witness is otherwise unavailable as defined in s.
24 90.804(1), the trial court may order the videotaping of the
25 testimony of the victim or witness in a case, whether civil or
26 criminal in nature, in which videotaped testimony is to be
27 utilized at trial in lieu of trial testimony in open court.
28 Section 22. Subsections (1), (2), and (3), paragraph
29 (i) of subsection (4), subsection (5), paragraphs (a), (b),
30 (c), (d), (f), and (g) of subsection (6), and subsections (8),
31 (9), (10), (11), (12), (13), (14), and (17) of section

1 393.067, Florida Statutes, are amended to read:
2 393.067 Licensure of residential facilities and
3 comprehensive transitional education programs.--
4 (1) The agency ~~department~~ shall provide through its
5 licensing authority a system of provider qualifications,
6 standards, training criteria for meeting standards, and
7 monitoring for residential facilities and comprehensive
8 transitional education programs.
9 (2) The agency ~~department~~ shall conduct inspections
10 and reviews of residential facilities and comprehensive
11 transitional education programs annually.
12 (3) An application for a license for a residential
13 facility or a comprehensive transitional education program
14 shall be made to the agency ~~Department of Children and Family~~
15 ~~Services~~ on a form furnished by it and shall be accompanied by
16 the appropriate license fee. A license issued to a residential
17 facility or a comprehensive transitional education program as
18 described in this section is not a professional license of any
19 individual. Receipt of a license under this section does not
20 create a property right in the recipient. A license is a
21 public trust and a privilege and is not an entitlement. This
22 privilege must guide the finder of fact or trier of law during
23 any administrative or court proceeding initiated by the
24 agency.
25 (4) The application shall be under oath and shall
26 contain the following:
27 (i) Such other information as the agency ~~department~~
28 determines is necessary to carry out the provisions of this
29 chapter.
30 (5) The applicant shall submit evidence which
31 establishes the good moral character of the manager or

1 supervisor of the facility or program and the direct service
2 providers in the facility or program and its component centers
3 or units. A license may be issued if all the screening
4 materials have been timely submitted; however, a license may
5 not be issued or renewed if any of the direct service
6 providers have failed the screening required by s. 393.0655.
7 (a)1. A licensed residential facility or comprehensive
8 transitional education program which applies for renewal of
9 its license shall submit to the agency ~~department~~ a list of
10 direct service providers who have worked on a continuous basis
11 at the applicant facility or program since submitting
12 fingerprints to the agency or the Department of Children and
13 Family Services, identifying those direct service providers
14 for whom a written assurance of compliance was provided by the
15 agency or department and identifying those direct service
16 providers who have recently begun working at the facility or
17 program and are awaiting the results of the required
18 fingerprint check along with the date of the submission of
19 those fingerprints for processing. The agency ~~department~~ shall
20 by rule determine the frequency of requests to the Department
21 of Law Enforcement to run state criminal records checks for
22 such direct service providers except for those direct service
23 providers awaiting the results of initial fingerprint checks
24 for employment at the applicant facility or program. The
25 agency ~~department~~ shall review the records of the direct
26 service providers at the applicant facility or program with
27 respect to the crimes specified in s. 393.0655 and shall
28 notify the facility or program of its findings. When
29 disposition information is missing on a criminal record, it is
30 ~~shall be~~ the responsibility of the person being screened, upon
31 request of the agency ~~department~~, to obtain and supply within

1 30 days the missing disposition information to the agency
2 ~~department~~. Failure to supply the missing information within
3 30 days or to show reasonable efforts to obtain such
4 information shall result in automatic disqualification.
5 2. The applicant shall sign an affidavit under penalty
6 of perjury stating that all new direct service providers have
7 been fingerprinted and that the facility's or program's
8 remaining direct service providers have worked at the
9 applicant facility or program on a continuous basis since
10 being initially screened at that facility or program or have a
11 written assurance of compliance from the agency or department.
12 (b) As a prerequisite for issuance of the initial
13 license to a residential facility or comprehensive
14 transitional education program:
15 1. The applicant shall submit to the agency ~~department~~
16 a complete set of fingerprints, taken by an authorized law
17 enforcement agency or an employee of the agency ~~department~~ who
18 is trained to take fingerprints, for the manager, supervisor,
19 or direct service providers of the facility or program;
20 2. The agency ~~department~~ shall submit the fingerprints
21 to the Department of Law Enforcement for state processing and
22 for federal processing by the Federal Bureau of Investigation;
23 and
24 3. The agency ~~department~~ shall review the record of
25 the manager or supervisor with respect to the crimes specified
26 in s. 393.0655(1) and shall notify the applicant of its
27 findings. When disposition information is missing on a
28 criminal record, it is ~~shall be~~ the responsibility of the
29 manager or supervisor, upon request of the agency ~~department~~,
30 to obtain and supply within 30 days the missing disposition
31 information to the agency ~~department~~. Failure to supply the

1 missing information within 30 days or to show reasonable
2 efforts to obtain such information shall result in automatic
3 disqualification.
4 (c) The agency ~~department~~ or a residential facility or
5 comprehensive transitional education program may not use the
6 criminal records or juvenile records of a person obtained
7 under this subsection for any purpose other than determining
8 if that person meets the minimum standards for good moral
9 character for a manager or supervisor of, or direct service
10 provider in, such a facility or program. The criminal records
11 or juvenile records obtained by the agency ~~department~~ or a
12 residential facility or comprehensive transitional education
13 program for determining the moral character of a manager,
14 supervisor, or direct service provider are exempt from s.
15 119.07(1).
16 (6) Each applicant for licensure as an intermediate
17 care facility for the developmentally disabled must comply
18 with the following requirements:
19 (a) Upon receipt of a completed, signed, and dated
20 application, the agency shall require background screening, in
21 accordance with the level 2 standards for screening set forth
22 in chapter 435, of the managing employee, or other similarly
23 titled individual who is responsible for the daily operation
24 of the facility, and of the financial officer, or other
25 similarly titled individual who is responsible for the
26 financial operation of the center, including billings for
27 resident care and services. The applicant must comply with
28 the procedures for level 2 background screening as set forth
29 in chapter 435, as well as the requirements of s. 435.03(3).
30 (b) The agency may require background screening of any
31 other individual who is an applicant if the agency has

1 probable cause to believe that he or she has been convicted of
2 a crime or has committed any other offense prohibited under
3 the level 2 standards for screening set forth in chapter 435.
4 (c) Proof of compliance with the level 2 background
5 screening requirements of chapter 435 which has been submitted
6 within the previous 5 years in compliance with any other
7 health care licensure requirements of this state is acceptable
8 in fulfillment of the requirements of paragraph (a).
9 (d) A provisional license may be granted to an
10 applicant when each individual required by this section to
11 undergo background screening has met the standards for the
12 Department of Law Enforcement background check, but the agency
13 has not yet received background screening results from the
14 Federal Bureau of Investigation, or a request for a
15 disqualification exemption has been submitted to the agency as
16 set forth in chapter 435, but a response has not yet been
17 issued. A standard license may be granted to the applicant
18 upon the agency's receipt of a report of the results of the
19 Federal Bureau of Investigation background screening for each
20 individual required by this section to undergo background
21 screening which confirms that all standards have been met, or
22 upon the granting of a disqualification exemption by the
23 agency as set forth in chapter 435. Any other person who is
24 required to undergo level 2 background screening may serve in
25 his or her capacity pending the agency's receipt of the report
26 from the Federal Bureau of Investigation. However, the person
27 may not continue to serve if the report indicates any
28 violation of background screening standards and a
29 disqualification exemption has not been requested of and
30 granted by the agency as set forth in chapter 435.
31 (f) Each applicant must submit to the agency a

1 description and explanation of any conviction of an offense
2 prohibited under the level 2 standards of chapter 435 by a
3 member of the board of directors of the applicant, its
4 officers, or any individual owning 5 percent or more of the
5 applicant. This requirement does not apply to a director of a
6 not-for-profit corporation or organization if the director
7 serves solely in a voluntary capacity for the corporation or
8 organization, does not regularly take part in the day-to-day
9 operational decisions of the corporation or organization,
10 receives no remuneration for his or her services on the
11 corporation or organization's board of directors, and has no
12 financial interest and has no family members with a financial
13 interest in the corporation or organization, provided that the
14 director and the not-for-profit corporation or organization
15 include in the application a statement affirming that the
16 director's relationship to the corporation satisfies the
17 requirements of this paragraph.
18 (g) A license may not be granted to an applicant if
19 the applicant or managing employee has been found guilty of,
20 regardless of adjudication, or has entered a plea of nolo
21 contendere or guilty to, any offense prohibited under the
22 level 2 standards for screening set forth in chapter 435,
23 unless an exemption from disqualification has been granted by
24 the agency as set forth in chapter 435.
25 (8) The agency ~~department~~ shall adopt ~~promulgate~~ rules
26 establishing minimum standards for licensure of residential
27 facilities and comprehensive transitional education programs,
28 including rules requiring facilities and programs to train
29 staff to detect and prevent sexual abuse of residents and
30 clients, minimum standards of quality and adequacy of care,
31 and uniform firesafety standards established by the State Fire

1 Marshal which are appropriate to the size of the facility or
2 of the component centers or units of the program.
3 (9) The agency ~~department~~ and the Agency for Health
4 Care Administration, after consultation with the Department of
5 Community Affairs, shall adopt rules for residential
6 facilities under the respective regulatory jurisdiction of
7 each establishing minimum standards for the preparation and
8 annual update of a comprehensive emergency management plan. At
9 a minimum, the rules must provide for plan components that
10 address emergency evacuation transportation; adequate
11 sheltering arrangements; postdisaster activities, including
12 emergency power, food, and water; postdisaster transportation;
13 supplies; staffing; emergency equipment; individual
14 identification of residents and transfer of records; and
15 responding to family inquiries. The comprehensive emergency
16 management plan for all comprehensive transitional education
17 programs and for homes serving individuals who have complex
18 medical conditions is subject to review and approval by the
19 local emergency management agency. During its review, the
20 local emergency management agency shall ensure that the
21 following agencies, at a minimum, are given the opportunity to
22 review the plan: the Agency for Health Care Administration,
23 the Agency for Persons with Disabilities ~~Department of~~
24 ~~Children and Family Services~~, and the Department of Community
25 Affairs. Also, appropriate volunteer organizations must be
26 given the opportunity to review the plan. The local emergency
27 management agency shall complete its review within 60 days and
28 either approve the plan or advise the facility of necessary
29 revisions.
30 (10) The agency ~~department~~ may conduct unannounced
31 inspections to determine compliance by residential facilities

1 and comprehensive transitional education programs with the
2 applicable provisions of this chapter and the rules adopted
3 pursuant hereto, including the rules adopted for training
4 staff of a facility or a program to detect and prevent sexual
5 abuse of residents and clients. The facility or program shall
6 make copies of inspection reports available to the public upon
7 request.
8 (11) An alternative living center and an independent
9 living education center, as defined in s. 393.063 ~~s.~~
10 ~~393.063(8)~~, shall be subject to the provisions of s. 419.001,
11 except that such centers shall be exempt from the
12 1,000-foot-radius requirement of s. 419.001(2) if:
13 (a) Such centers are located on a site zoned in a
14 manner so that all the component centers of a comprehensive
15 transition education center may be located thereon; or
16 (b) There are no more than three such centers within
17 said radius of 1,000 feet.
18 (12) Each residential facility or comprehensive
19 transitional education program licensed by the agency
20 ~~department~~ shall forward annually to the agency ~~department~~ a
21 true and accurate sworn statement of its costs of providing
22 care to clients funded by the agency ~~department~~.
23 (13) The agency ~~department~~ may audit the records of
24 any residential facility or comprehensive transitional
25 education program that ~~which~~ it has reason to believe may not
26 be in full compliance with the provisions of this section;
27 provided that, any financial audit of such facility or program
28 shall be limited to the records of clients funded by the
29 agency ~~department~~.
30 (14) The agency ~~department~~ shall establish, for the
31 purpose of control of licensure costs, a uniform management

information system and a uniform reporting system with uniform definitions and reporting categories.

(17) The agency ~~department~~ shall not be required to contract with new facilities licensed after October 1, 1989, pursuant to this chapter. Pursuant to chapter 287, the agency ~~department~~ shall continue to contract within available resources for residential services with facilities licensed prior to October 1, 1989, if such facilities comply with the provisions of this chapter and all other applicable laws and regulations.

Section 23. Subsection (9) of section 397.405, Florida Statutes, is amended to read:

397.405 Exemptions from licensure.--The following are exempt from the licensing provisions of this chapter:

(9) Facilities licensed under s. 393.063 ~~s.--393.063(8)~~ that, in addition to providing services to persons who are developmentally disabled as defined therein, also provide services to persons developmentally at risk as a consequence of exposure to alcohol or other legal or illegal drugs while in utero.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a psychotherapist licensed under chapter 491 who provides substance abuse treatment, so long as the physician, psychologist, or psychotherapist does

1 not represent to the public that he or she is a licensed
2 service provider and does not provide services to clients
3 pursuant to part V of this chapter. Failure to comply with any
4 requirement necessary to maintain an exempt status under this
5 section is a misdemeanor of the first degree, punishable as
6 provided in s. 775.082 or s. 775.083.
7 Section 24. Paragraph (b) of subsection (5) of section
8 400.464, Florida Statutes, is amended to read:
9 400.464 Home health agencies to be licensed;
10 expiration of license; exemptions; unlawful acts; penalties.--
11 (5) The following are exempt from the licensure
12 requirements of this part:
13 (b) Home health services provided by a state agency,
14 either directly or through a contractor with:
15 1. The Department of Elderly Affairs.
16 2. The Department of Health, a community health
17 center, or a rural health network that furnishes home visits
18 for the purpose of providing environmental assessments, case
19 management, health education, personal care services, family
20 planning, or followup treatment, or for the purpose of
21 monitoring and tracking disease.
22 3. Services provided to persons who have developmental
23 disabilities, as defined in s. 393.063 ~~s. 393.063(12)~~.
24 4. Companion and sitter organizations that were
25 registered under s. 400.509(1) on January 1, 1999, and were
26 authorized to provide personal services under s. 393.063(33)
27 under a developmental services provider certificate on January
28 1, 1999, may continue to provide such services to past,
29 present, and future clients of the organization who need such
30 services, notwithstanding the provisions of this act.
31 5. The Department of Children and Family Services.

1 Section 25. Paragraph (d) of subsection (1) of section
2 419.001, Florida Statutes, is amended to read:
3 419.001 Site selection of community residential
4 homes.--
5 (1) For the purposes of this section, the following
6 definitions shall apply:
7 (d) "Resident" means any of the following: a frail
8 elder as defined in s. 400.618; a physically disabled or
9 handicapped person as defined in s. 760.22(7)(a); a
10 developmentally disabled person as defined in s. 393.063 ~~s.~~
11 ~~393.063(12)~~; a nondangerous mentally ill person as defined in
12 s. 394.455(18); or a child as defined in s. 39.01(14), s.
13 984.03(9) or (12), or s. 985.03(8).
14 Section 26. Section 914.16, Florida Statutes, is
15 amended to read:
16 914.16 Child abuse and sexual abuse of victims under
17 age 16 or persons with mental retardation; limits on
18 interviews.--The chief judge of each judicial circuit, after
19 consultation with the state attorney and the public defender
20 for the judicial circuit, the appropriate chief law
21 enforcement officer, and any other person deemed appropriate
22 by the chief judge, shall provide by order reasonable limits
23 on the number of interviews that a victim of a violation of s.
24 794.011, s. 800.04, or s. 827.03 who is under 16 years of age
25 or a victim of a violation of s. 794.011, s. 800.02, s.
26 800.03, or s. 825.102 who is a person with mental retardation
27 as defined in s. 393.063 ~~s.--393.063(42)~~ must submit to for law
28 enforcement or discovery purposes. The order shall, to the
29 extent possible, protect the victim from the psychological
30 damage of repeated interrogations while preserving the rights
31 of the public, the victim, and the person charged with the

violation.

Section 27. Subsection (2) of section 914.17, Florida Statutes, is amended to read:

914.17 Appointment of advocate for victims or witnesses who are minors or persons with mental retardation.--

(2) An advocate shall be appointed by the court to represent a person with mental retardation as defined in s. 393.063 ~~s.--393.063(42)~~ in any criminal proceeding if the person with mental retardation is a victim of or witness to abuse or neglect, or if the person with mental retardation is a victim of a sexual offense or a witness to a sexual offense committed against a minor or person with mental retardation. The court may appoint an advocate in any other criminal proceeding in which a person with mental retardation is involved as either a victim or a witness. The advocate shall have full access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the person with mental retardation at all proceedings, and may request additional examinations by medical doctors, psychiatrists, or psychologists. It is the duty of the advocate to perform the following services:

(a) To explain, in language understandable to the person with mental retardation, all legal proceedings in which the person shall be involved;

(b) To act, as a friend of the court, to advise the judge, whenever appropriate, of the person with mental retardation's ability to understand and cooperate with any court proceedings; and

(c) To assist the person with mental retardation and

1 the person's family in coping with the emotional effects of
2 the crime and subsequent criminal proceedings in which the
3 person with mental retardation is involved.
4 Section 28. Subsection (1) of section 918.16, Florida
5 Statutes, is amended to read:
6 918.16 Sex offenses; testimony of person under age 16
7 or person with mental retardation; testimony of victim;
8 courtroom cleared; exceptions.--
9 (1) Except as provided in subsection (2), in the trial
10 of any case, civil or criminal, when any person under the age
11 of 16 or any person with mental retardation as defined in s.
12 393.063 ~~s.-393.063(42)~~ is testifying concerning any sex
13 offense, the court shall clear the courtroom of all persons
14 except parties to the cause and their immediate families or
15 guardians, attorneys and their secretaries, officers of the
16 court, jurors, newspaper reporters or broadcasters, court
17 reporters, and, at the request of the victim, victim or
18 witness advocates designated by the state attorney's office.
19 Section 29. Subsections (3) and (4) of section
20 393.0641, Florida Statutes, are amended to read:
21 393.0641 Program for the prevention and treatment of
22 severe self-injurious behavior.--
23 (3) The agency ~~department~~ may contract for the
24 provision of any portion or all of the services required by
25 the program.
26 (4) The agency has ~~department shall have~~ the authority
27 to license this program and shall adopt ~~promulgate~~ rules to
28 implement the program.
29 Section 30. Section 393.065, Florida Statutes, is
30 amended to read:
31 393.065 Application and eligibility determination.--

1 (1) Application for services shall be made in writing
2 to the agency ~~Department of Children and Family Services~~, in
3 the district in which the applicant resides. Employees of the
4 agency's ~~department's~~ developmental services program shall
5 review each applicant for eligibility within 45 days after the
6 date the application is signed for children under 6 years of
7 age and within 60 days after the date the application is
8 signed for all other applicants. When necessary to
9 definitively identify individual conditions or needs, the
10 agency ~~department~~ shall provide a comprehensive assessment.
11 Only individuals whose domicile is in Florida are ~~shall be~~
12 eligible for services. Information accumulated by other
13 agencies, including professional reports and collateral data,
14 shall be considered in this process when available.
15 (2) In order to provide immediate services or crisis
16 intervention to applicants, the agency ~~department~~ shall
17 arrange for emergency eligibility determination, with a full
18 eligibility review to be accomplished within 45 days of the
19 emergency eligibility determination.
20 (3) The agency ~~department~~ shall notify each applicant,
21 in writing, of its eligibility decision. Any applicant
22 determined by the agency ~~department~~ to be ineligible for
23 developmental services has ~~shall have~~ the right to appeal this
24 decision pursuant to ss. 120.569 and 120.57.
25 (4) The agency ~~department~~ shall assess the level of
26 need and medical necessity for prospective residents of
27 intermediate-care facilities for the developmentally disabled
28 after October 1, 1999. The agency ~~department~~ may enter into an
29 agreement with the Department of Elderly Affairs for its
30 Comprehensive Assessment and Review for Long-Term-Care
31 Services (CARES) program to conduct assessments to determine

1 the level of need and medical necessity for long-term-care
2 services under this chapter. To the extent permissible under
3 federal law, the assessments must be funded under Title XIX of
4 the Social Security Act.
5 Section 31. Section 393.0651, Florida Statutes, is
6 amended to read:
7 393.0651 Family or individual support plan.--The
8 agency ~~department~~ shall provide for an appropriate family
9 support plan for children ages birth to 18 years of age and an
10 individual support plan for each client. The parent or
11 guardian of the client or, if competent, the client, or, when
12 appropriate, the client advocate, shall be consulted in the
13 development of the plan and shall receive a copy of the plan.
14 Each plan shall include the most appropriate, least
15 restrictive, and most cost-beneficial environment for
16 accomplishment of the objectives for client progress and a
17 specification of all services authorized. The plan shall
18 include provisions for the most appropriate level of care for
19 the client. Within the specification of needs and services for
20 each client, when residential care is necessary, the agency
21 ~~department~~ shall move toward placement of clients in
22 residential facilities based within the client's community.
23 The ultimate goal of each plan, whenever possible, shall be to
24 enable the client to live a dignified life in the least
25 restrictive setting, be that in the home or in the community.
26 For children under 6 years of age, the family support plan
27 shall be developed within the 45-day application period as
28 specified in s. 393.065(1); for all applicants 6 years of age
29 or older, the family or individual support plan shall be
30 developed within the 60-day period as specified in that
31 subsection.

1 (1) The agency ~~department~~ shall develop and specify by
2 rule the core components of support plans to be used by each
3 district.
4 (2)(a) The family or individual support plan shall be
5 integrated with the individual education plan (IEP) for all
6 clients who are public school students entitled to a free
7 appropriate public education under the Individuals with
8 Disabilities Education Act, I.D.E.A., as amended. The family
9 or individual support plan and IEP shall be implemented to
10 maximize the attainment of educational and habilitation goals.
11 If the IEP for a student enrolled in a public school program
12 indicates placement in a public or private residential program
13 is necessary to provide special education and related services
14 to a client, the local education agency shall provide for the
15 costs of that service in accordance with the requirements of
16 the Individuals with Disabilities Education Act, I.D.E.A., as
17 amended. This shall not preclude local education agencies and
18 the agency ~~department~~ from sharing the residential service
19 costs of students who are clients and require residential
20 placement. Under no circumstances shall clients entitled to a
21 public education or their parents be assessed a fee by the
22 agency ~~department~~ under s. 402.33 for placement in a
23 residential program.
24 (b) For clients who are entering or exiting the school
25 system, an interdepartmental staffing team composed of
26 representatives of the agency ~~department~~ and the local school
27 system shall develop a written transitional living and
28 training plan with the participation of the client or with the
29 parent or guardian of the client, or the client advocate, as
30 appropriate.
31 (3) Each family or individual support plan shall be

1 facilitated through case management designed solely to advance
2 the individual needs of the client.
3 (4) In the development of the family or individual
4 support plan, a client advocate may be appointed by the
5 support planning team for a client who is a minor or for a
6 client who is not capable of express and informed consent
7 when:
8 (a) The parent or guardian cannot be identified;
9 (b) The whereabouts of the parent or guardian cannot
10 be discovered; or
11 (c) The state is the only legal representative of the
12 client.
13
14 Such appointment shall not be construed to extend the powers
15 of the client advocate to include any of those powers
16 delegated by law to a legal guardian.
17 (5) The agency ~~department~~ shall place a client in the
18 most appropriate and least restrictive, and cost-beneficial,
19 residential facility according to his or her individual
20 habilitation plan. The parent or guardian of the client or, if
21 competent, the client, or, when appropriate, the client
22 advocate, and the administrator of the residential facility to
23 which placement is proposed shall be consulted in determining
24 the appropriate placement for the client. Considerations for
25 placement shall be made in the following order:
26 (a) Client's own home or the home of a family member
27 or direct service provider.
28 (b) Foster care facility.
29 (c) Group home facility.
30 (d) Intermediate care facility for the developmentally
31 disabled.

1 (e) Other facilities licensed by the agency ~~department~~
2 which offer special programs for people with developmental
3 disabilities.
4 (f) Developmental services institution.
5 (6) In developing a client's annual family or
6 individual support plan, the individual or family with the
7 assistance of the support planning team shall identify
8 measurable objectives for client progress and shall specify a
9 time period expected for achievement of each objective.
10 (7) The individual, family, and support coordinator
11 shall review progress in achieving the objectives specified in
12 each client's family or individual support plan, and shall
13 revise the plan annually, following consultation with the
14 client, if competent, or with the parent or guardian of the
15 client, or, when appropriate, the client advocate. The agency
16 ~~department~~ shall annually report in writing to the client, if
17 competent, or to the parent or guardian of the client, or to
18 the client advocate, when appropriate, with respect to the
19 client's habilitative and medical progress.
20 (8) Any client, or any parent of a minor client, or
21 guardian, authorized guardian advocate, or client advocate for
22 a client, who is substantially affected by the client's
23 initial family or individual support plan, or the annual
24 review thereof, shall have the right to file a notice to
25 challenge the decision pursuant to ss. 120.569 and 120.57.
26 Notice of such right to appeal shall be included in all
27 support plans provided by the agency ~~department~~.
28 Section 32. Section 393.0673, Florida Statutes, is
29 amended to read:
30 393.0673 Denial, suspension, revocation of license;
31 moratorium on admissions; administrative fines; procedures.--

1 (1) The agency ~~Department of Children and Family~~
2 ~~Services~~ may deny, revoke, or suspend a license or impose an
3 administrative fine, not to exceed $1,000 per violation per
4 day, for a violation of any provision of s. 393.0655 or s.
5 393.067 or rules adopted pursuant thereto. All hearings shall
6 be held within the county in which the licensee or applicant
7 operates or applies for a license to operate a facility as
8 defined herein.
9 (2) The agency ~~department~~, as a part of any final
10 order issued by it under the provisions of this chapter, may
11 impose such fine as it deems proper, except that such fine may
12 not exceed $1,000 for each violation. Each day a violation of
13 this chapter occurs constitutes a separate violation and is
14 subject to a separate fine, but in no event may the aggregate
15 amount of any fine exceed $10,000. Fines paid by any facility
16 licensee under the provisions of this subsection shall be
17 deposited in the Resident Protection Trust Fund and expended
18 as provided in s. 400.063.
19 (3) The agency ~~department~~ may issue an order
20 immediately suspending or revoking a license when it
21 determines that any condition in the facility presents a
22 danger to the health, safety, or welfare of the residents in
23 the facility.
24 (4) The agency ~~department~~ may impose an immediate
25 moratorium on admissions to any facility when the department
26 determines that any condition in the facility presents a
27 threat to the health, safety, or welfare of the residents in
28 the facility.
29 Section 33. Subsections (1) and (3) of section
30 393.0675, Florida Statutes, are amended to read:
31 393.0675 Injunctive proceedings authorized.--

1 (1) The agency ~~Department of Children and Family~~
2 ~~Services~~ may institute injunctive proceedings in a court of
3 competent jurisdiction to:
4 (a) Enforce the provisions of this chapter or any
5 minimum standard, rule, regulation, or order issued or entered
6 pursuant thereto; or
7 (b) Terminate the operation of facilities licensed
8 pursuant to this chapter when any of the following conditions
9 exist:
10 1. Failure by the facility to take preventive or
11 corrective measures in accordance with any order of the agency
12 ~~department~~.
13 2. Failure by the facility to abide by any final order
14 of the agency ~~department~~ once it has become effective and
15 binding.
16 3. Any violation by the facility constituting an
17 emergency requiring immediate action as provided in s.
18 393.0673.
19 (3) The agency ~~department~~ may institute proceedings
20 for an injunction in a court of competent jurisdiction to
21 terminate the operation of a provider of supports or services
22 if such provider has willfully and knowingly refused to comply
23 with the screening requirement for direct service providers or
24 has refused to terminate direct service providers found not to
25 be in compliance with the requirements for good moral
26 character.
27 Section 34. Subsection (1), paragraphs (b), (c), and
28 (d) of subsection (2), and paragraph (e) of subsection (3) of
29 section 393.0678, Florida Statutes, are amended to read:
30 393.0678 Receivership proceedings.--
31 (1) The agency ~~department~~ may petition a court of

1 competent jurisdiction for the appointment of a receiver for
2 an intermediate care facility for the developmentally
3 disabled, a residential habilitation center, or a group home
4 facility owned and operated by a corporation or partnership
5 when any of the following conditions exist:
6 (a) Any person is operating a facility without a
7 license and refuses to make application for a license as
8 required by s. 393.067 or, in the case of an intermediate care
9 facility for the developmentally disabled, as required by ss.
10 393.067 and 400.062.
11 (b) The licensee is closing the facility or has
12 informed the department that it intends to close the facility;
13 and adequate arrangements have not been made for relocation of
14 the residents within 7 days, exclusive of weekends and
15 holidays, of the closing of the facility.
16 (c) The agency ~~department~~ determines that conditions
17 exist in the facility which present an imminent danger to the
18 health, safety, or welfare of the residents of the facility or
19 which present a substantial probability that death or serious
20 physical harm would result therefrom. Whenever possible, the
21 agency ~~department~~ shall facilitate the continued operation of
22 the program.
23 (d) The licensee cannot meet its financial obligations
24 to provide food, shelter, care, and utilities. Evidence such
25 as the issuance of bad checks or the accumulation of
26 delinquent bills for such items as personnel salaries, food,
27 drugs, or utilities constitutes prima facie evidence that the
28 ownership of the facility lacks the financial ability to
29 operate the home in accordance with the requirements of this
30 chapter and all rules promulgated thereunder.
31 (2)

1 (b) A hearing shall be conducted within 5 days of the
2 filing of the petition, at which time all interested parties
3 shall have the opportunity to present evidence pertaining to
4 the petition. The agency ~~department~~ shall notify the owner or
5 operator of the facility named in the petition of its filing
6 and the date set for the hearing.
7 (c) The court shall grant the petition only upon
8 finding that the health, safety, or welfare of residents of
9 the facility would be threatened if a condition existing at
10 the time the petition was filed is permitted to continue. A
11 receiver may not be appointed ex parte unless the court
12 determines that one or more of the conditions in subsection
13 (1) exist; that the facility owner or operator cannot be
14 found; that all reasonable means of locating the owner or
15 operator and notifying him or her of the petition and hearing
16 have been exhausted; or that the owner or operator after
17 notification of the hearing chooses not to attend. After such
18 findings, the court may appoint any person qualified by
19 education, training, or experience to carry out the
20 responsibilities of receiver pursuant to this section, except
21 that the court may not appoint any owner or affiliate of the
22 facility which is in receivership. Before the appointment as
23 receiver of a person who is the operator, manager, or
24 supervisor of another facility, the court shall determine that
25 the person can reasonably operate, manage, or supervise more
26 than one facility. The receiver may be appointed for up to 90
27 days with the option of petitioning the court for 30-day
28 extensions. The receiver may be selected from a list of
29 persons qualified to act as receivers developed by the agency
30 ~~department~~ and presented to the court with each petition for
31 receivership. Under no circumstances may the agency ~~department~~

1 or designated agency ~~departmental~~ employee be appointed as a
2 receiver for more than 60 days; however, the agency
3 ~~departmental~~ receiver may petition the court for 30-day
4 extensions. The court shall grant an extension upon a showing
5 of good cause. The agency ~~department~~ may petition the court
6 to appoint a substitute receiver.
7 (d) During the first 60 days of the receivership, the
8 agency ~~department~~ may not take action to decertify or revoke
9 the license of a facility unless conditions causing imminent
10 danger to the health and welfare of the residents exist and a
11 receiver has been unable to remove those conditions. After
12 the first 60 days of receivership, and every 60 days
13 thereafter until the receivership is terminated, the agency
14 ~~department~~ shall submit to the court the results of an
15 assessment of the ability of the facility to assure the safety
16 and care of the residents. If the conditions at the facility
17 or the intentions of the owner indicate that the purpose of
18 the receivership is to close the facility rather than to
19 facilitate its continued operation, the agency ~~department~~
20 shall place the residents in appropriate alternate residential
21 settings as quickly as possible. If, in the opinion of the
22 court, the agency ~~department~~ has not been diligent in its
23 efforts to make adequate arrangements for placement, the court
24 shall find the agency ~~department~~ to be in contempt and shall
25 order the agency ~~department~~ to submit its plans for moving the
26 residents.
27 (3) The receiver shall make provisions for the
28 continued health, safety, and welfare of all residents of the
29 facility and:
30 (e) May use the building, fixtures, furnishings, and
31 any accompanying consumable goods in the provision of care and

1 services to residents and to any other persons receiving
2 services from the facility at the time the petition for
3 receivership was filed. The receiver shall collect payments
4 for all goods and services provided to residents or others
5 during the period of the receivership at the same rate of
6 payment charged by the owner at the time the petition for
7 receivership was filed, or at a fair and reasonable rate
8 otherwise approved by the court for private, paying residents.
9 The receiver may apply to the agency ~~department~~ for a rate
10 increase for residents under Title XIX of the Social Security
11 Act if the facility is not receiving the state reimbursement
12 cap and if expenditures justify an increase in the rate.
13 Section 35. Section 393.071, Florida Statutes, is
14 amended to read:
15 393.071 Client fees.--The agency ~~Department of~~
16 ~~Children and Family Services~~ shall charge fees for services
17 provided to clients in accordance with s. 402.33.
18 Section 36. Subsection (2) of section 393.075, Florida
19 Statutes, is amended to read:
20 393.075 General liability coverage.--
21 (2) The Division of Risk Management of the Department
22 of Financial Services shall provide coverage through the
23 agency ~~Department of Children and Family Services~~ to any
24 person who owns or operates a foster care facility or group
25 home facility solely for the agency ~~Department of Children and~~
26 ~~Family Services~~, who cares for children placed by
27 developmental services staff of the agency ~~department~~, and who
28 is licensed pursuant to s. 393.067 to provide such supervision
29 and care in his or her place of residence. The coverage shall
30 be provided from the general liability account of the State
31 Risk Management Trust Fund. The coverage is limited to

1 general liability claims arising from the provision of
2 supervision and care of children in a foster care facility or
3 group home facility pursuant to an agreement with the agency
4 ~~department~~ and pursuant to guidelines established through
5 policy, rule, or statute. Coverage shall be subject to the
6 limits provided in ss. 284.38 and 284.385, and the exclusions
7 set forth therein, together with other exclusions as may be
8 set forth in the certificate of coverage issued by the trust
9 fund. A person covered under the general liability account
10 pursuant to this subsection shall immediately notify the
11 Division of Risk Management of the Department of Financial
12 Services of any potential or actual claim.
13 Section 37. Section 393.115, Florida Statutes, is
14 amended to read:
15 393.115 Discharge.--
16 (1) DISCHARGE AT THE AGE OF MAJORITY.--
17 (a) When any residential client reaches his or her
18 18th birthday, the agency ~~department~~ shall give the resident
19 or legal guardian the option to continue residential services
20 or to be discharged from residential services.
21 (b) If the resident appears to meet the criteria for
22 involuntary admission to residential services, as defined in
23 s. 393.11, the agency ~~department~~ shall file a petition to
24 determine the appropriateness of continued residential
25 placement on an involuntary basis. The agency ~~department~~ shall
26 file the petition for involuntary admission in the county in
27 which the client resides. If the resident was originally
28 involuntarily admitted to residential services pursuant to s.
29 393.11, then the agency ~~department~~ shall file the petition in
30 the court having continuing jurisdiction over the case.
31 (c) Nothing in this section shall in any way limit or

1 restrict the resident's right to a writ of habeas corpus or
2 the right of the agency ~~department~~ to transfer a resident
3 receiving residential care to a program of appropriate
4 services provided by the agency ~~department~~ when such program
5 is the appropriate habilitative setting for the resident.
6 (2) DISCHARGE AFTER CRIMINAL OR JUVENILE
7 COMMITMENT.--Any person with developmental disabilities
8 committed to the custody of the agency ~~department~~ pursuant to
9 the provisions of the applicable criminal or juvenile court
10 law shall be discharged in accordance with the requirements of
11 the applicable criminal or juvenile court law.
12 Section 38. Subsection (3) of section 393.12, Florida
13 Statutes, is amended to read:
14 393.12 Capacity; appointment of guardian advocate.--
15 (3) COURT COSTS.--In all proceedings under this
16 section, no court costs shall be charged against the agency
17 ~~department~~.
18 Section 39. Section 393.125, Florida Statutes, is
19 amended to read:
20 393.125 Hearing rights.--
21 (1) REVIEW OF AGENCY ~~DEPARTMENT~~ DECISIONS.--
22 (a) Any developmental services applicant or client, or
23 his or her parent, guardian, guardian advocate, or authorized
24 representative, who has any substantial interest determined by
25 the agency ~~department~~, has ~~shall have~~ the right to request an
26 administrative hearing pursuant to ss. 120.569 and 120.57.
27 (b) Notice of the right to an administrative hearing
28 shall be given, both verbally and in writing, to the applicant
29 or client, and his or her parent, guardian, guardian advocate,
30 or authorized representative, at the same time that the agency
31 ~~department~~ gives the applicant or client notice of the

1 agency's ~~department's~~ action. The notice shall be given, both
2 verbally and in writing, in the language of the client or
3 applicant and in English.
4 (c) A request for a hearing under this section shall
5 be made to the agency ~~department~~, in writing, within 30 days
6 of the applicant's or client's receipt of the notice.
7 (2) REVIEW OF PROVIDER DECISIONS.--The agency
8 ~~department~~ shall adopt ~~promulgate~~ rules to establish uniform
9 guidelines for the agency ~~department~~ and service providers
10 relevant to termination, suspension, or reduction of client
11 services by the service provider. The rules shall ensure the
12 due process rights of service providers and clients.
13 Section 40. Subsections (3), (4), (5), and (6) of
14 section 393.15, Florida Statutes, are amended to read:
15 393.15 Legislative intent; Community Resources
16 Development Trust Fund.--
17 (3) There is created a Community Resources Development
18 Trust Fund in the State Treasury to be used by the agency
19 ~~Department of Children and Family Services~~ for the purpose of
20 granting loans to eligible programs for the initial costs of
21 development of the programs. Loans shall be made only to
22 those facilities which are in compliance with the zoning
23 regulations of the local community. Costs of development may
24 include structural modification, the purchase of equipment and
25 fire and safety devices, preoperational staff training, and
26 the purchase of insurance. Such costs shall not include the
27 actual construction of a facility.
28 (4) The agency ~~department~~ may grant to an eligible
29 program a lump-sum loan in one payment not to exceed the cost
30 to the program of providing 2 months' services, care, or
31 maintenance to each person who is developmentally disabled to

be placed in the program by the agency ~~department~~, or the actual cost of firesafety renovations to a facility required by the state, whichever is greater. Loans granted to programs shall not be in lieu of payment for maintenance, services, or care provided, but shall stand separate and distinct. The agency ~~department~~ shall adopt ~~promulgate~~ rules, as provided in chapter 120, to determine the standards under which a program shall be eligible to receive a loan as provided in this section and criteria for the equitable allocation of loan trust funds when eligible applications exceed the funds available.

(5) Any loan granted by the agency ~~department~~ under this section shall be repaid by the program within 5 years. A program that ~~which~~ operates as a nonprofit corporation meeting the requirements of s. 501(c)(3) of the Internal Revenue Code, and that ~~which~~ seeks forgiveness of its loan shall submit to the agency ~~department~~ a statement setting forth the service it has provided during the year together with such other information as the agency ~~department~~ by rule shall require, and, upon approval of each such annual statement, the agency ~~department~~ shall forgive 20 percent of the principal of any such loan granted after June 30, 1975.

(6) If any program that ~~which~~ has received a loan under this section ceases to accept, or provide care, services, or maintenance to persons placed in the program by the department, or if such program files ~~shall file~~ papers of bankruptcy, at that point in time the loan shall become an interest-bearing loan at the rate of 5 percent per annum on the entire amount of the initial loan which shall be repaid within a 1-year period from the date on which the program ceases to provide care, services, or maintenance, or files

1 papers in bankruptcy, and the amount of the loan due plus
2 interest shall constitute a lien in favor of the state against
3 all real and personal property of the program. The lien shall
4 be perfected by the appropriate officer of the agency
5 ~~department~~ by executing and acknowledging a statement of the
6 name of the program and the amount due on the loan and a copy
7 of the promissory note, which shall be recorded by the agency
8 ~~department~~ with the clerk of the circuit court in the county
9 wherein the program is located. If the program has filed a
10 petition for bankruptcy, the agency ~~department~~ shall file and
11 enforce the lien in the bankruptcy proceedings. Otherwise,
12 the lien shall be enforced in the manner provided in s.
13 85.011. All funds received by the agency ~~department~~ from the
14 enforcement of the lien shall be deposited in the Community
15 Resources Development Trust Fund.
16 Section 41. Subsection (1) of section 393.501, Florida
17 Statutes, is amended to read:
18 393.501 Rulemaking.--
19 (1) The agency ~~department~~ shall adopt rules to carry
20 out the provisions of this chapter.
21 Section 42. Section 393.503, Florida Statutes, is
22 amended to read:
23 393.503 Respite and family care subsidy expenditures;
24 funding.--The agency ~~Department-of-Children-and-Family~~
25 ~~Services~~ shall determine the amount of expenditures per fiscal
26 year for the respite and family care subsidy to families and
27 individuals with developmental disabilities living in their
28 own homes. This information shall be made available to the
29 family care councils and to others requesting the information.
30 The family care councils shall review the expenditures and
31 make recommendations to the agency ~~department~~ with respect to

1 any new funds that are made available for family care.
2 Section 43. Subsection (2) of section 393.506, Florida
3 Statutes, is amended to read:
4 393.506 Administration of medication.--
5 (2) Each facility, institution, or program must
6 include in its policies and procedures a plan for training
7 designated staff to ensure the safe handling, storage, and
8 administration of prescription medication. These policies and
9 procedures must be approved by the agency ~~department~~ before
10 unlicensed direct care services staff assist with medication.
11 Section 44. Section 393.135, Florida Statutes, is
12 created to read:
13 393.135 Sexual misconduct prohibited; reporting
14 required; penalties.--
15 (1) As used in this section, the term:
16 (a) "Employee" includes any paid staff member,
17 volunteer, or intern of the agency or the Agency for Health
18 Care Administration or any person under contract with the
19 agency or the Agency for Health Care Administration or any
20 person providing care or support to a client on behalf of the
21 agency or the Agency for Health Care Administration or their
22 providers.
23 (b) "Sexual activity" means:
24 1. Fondling the genital area, groin, inner thighs,
25 buttocks, or breasts of a person;
26 2. The oral, anal, or vaginal penetration by, or union
27 with, the sexual organ of another or the anal or vaginal
28 penetration of another by any other object;
29 3. Intentionally touching in a lewd or lascivious
30 manner the breasts, genitals, the genital area, or buttocks,
31 or the clothing covering them, of a person, or forcing or

1 enticing a person to touch the perpetrator;
2 4. Intentionally masturbating in the presence of
3 another person;
4 5. Intentionally exposing the genitals in a lewd or
5 lascivious manner in the presence of another person; or
6 6. Intentionally committing any other sexual act that
7 does not involve actual physical or sexual contact with the
8 victim, including, but not limited to, sadomasochistic abuse,
9 sexual bestiality, or the simulation of any act involving
10 sexual activity in the presence of a victim.
11 (c) "Sexual misconduct" means any sexual activity
12 between an employee and a client, regardless of the consent of
13 the client. The term does not include an act done for a bona
14 fide medical purpose or an internal search conducted in the
15 lawful performance of duty by an employee.
16 (2) An employee who engages in sexual misconduct with
17 an individual with a developmental disability who:
18 (a) Is in the custody of the agency;
19 (b) Resides in a residential facility, including any
20 comprehensive transitional education program, developmental
21 disabilities institution, foster care facility, group home
22 facility, intermediate care facility for the developmentally
23 disabled, or residential habilitation center; or
24 (c) Receives services from a family care program
25
26 commits a felony of the second degree, punishable as provided
27 in s. 775.082, s. 775.083, or s. 775.084. An employee may be
28 found guilty of violating this subsection without having
29 committed the crime of sexual battery.
30 (3) The consent of the client to sexual activity is
31 not a defense to prosecution under this section.

1 (4) This section does not apply to an employee who:
2 (a) Is legally married to the client; or
3 (b) Had no reason to believe that the person with whom
4 the employee engaged in sexual misconduct is a client
5 receiving services as described in subsection (2).
6 (5) An employee who witnesses sexual misconduct, or
7 who otherwise knows or has reasonable cause to suspect that a
8 person has engaged in sexual misconduct, shall immediately
9 report the incident to the Department of Children and Family
10 Services' central abuse hotline and to law enforcement. Such
11 employee shall also prepare, date, and sign an independent
12 report that specifically describes the nature of the sexual
13 misconduct, the location and time of the incident, and the
14 persons involved. The employee shall deliver the report to the
15 supervisor or program director, who is responsible for
16 providing copies to the agency's inspector general. The
17 inspector general shall immediately conduct an appropriate
18 administrative investigation, and, if there is probable cause
19 to believe that sexual misconduct has occurred, the inspector
20 general shall notify the state attorney in the circuit in
21 which the incident occurred.
22 (6)(a) Any person who is required to make a report
23 under this section and who knowingly or willfully fails to do
24 so, or who knowingly or willfully prevents another person from
25 doing so, commits a misdemeanor of the first degree,
26 punishable as provided in s. 775.082 or s. 775.083.
27 (b) Any person who knowingly or willfully submits
28 inaccurate, incomplete, or untruthful information with respect
29 to a report required under this section commits a misdemeanor
30 of the first degree, punishable as provided in s. 775.082 or
31 s. 775.083.

1 (c) Any person who knowingly or willfully coerces or
2 threatens any other person with the intent to alter testimony
3 or a written report regarding an incident of sexual misconduct
4 commits a felony of the third degree, punishable as provided
5 in s. 775.082, s. 775.083, or s. 775.084.
6 (7) The provisions and penalties set forth in this
7 section are in addition to any other civil, administrative, or
8 criminal action provided by law which may be applied against
9 an employee.
10 Section 45. Section 394.4593, Florida Statutes, is
11 created to read:
12 394.4593 Sexual misconduct prohibited; reporting
13 required; penalties.--
14 (1) As used in this section, the term:
15 (a) "Employee" includes any paid staff member,
16 volunteer, or intern of the department or any person under
17 contract with the department or any person providing care or
18 support to a patient on behalf of the department or its
19 providers.
20 (b) "Sexual activity" means:
21 1. Fondling the genital area, groin, inner thighs,
22 buttocks, or breasts of a person;
23 2. The oral, anal, or vaginal penetration by, or union
24 with, the sexual organ of another or the anal or vaginal
25 penetration of another by any other object;
26 3. Intentionally touching in a lewd or lascivious
27 manner the breasts, genitals, the genital area, or buttocks,
28 or the clothing covering them, of a person, or forcing or
29 enticing a person to touch the perpetrator;
30 4. Intentionally masturbating in the presence of
31 another person;

1 5. Intentionally exposing the genitals in a lewd or
2 lascivious manner in the presence of another person; or
3 6. Intentionally committing any other sexual act that
4 does not involve actual physical or sexual contact with the
5 victim, including, but not limited to, sadomasochistic abuse,
6 sexual bestiality, or the simulation of any act involving
7 sexual activity in the presence of a victim.
8 (c) "Sexual misconduct" means any sexual activity
9 between an employee and a patient, regardless of the consent
10 of the patient. The term does not include an act done for a
11 bona fide medical purpose or an internal search conducted in
12 the lawful performance of duty by an employee.
13 (2) An employee who engages in sexual misconduct with
14 a patient who:
15 (a) Is in the custody of the department; or
16 (b) Resides in a receiving facility as defined in s.
17 394.455(26) or a treatment facility as defined in s.
18 394.455(30),
19
20 commits a felony of the second degree, punishable as provided
21 in s. 775.082, s. 775.083, or s. 775.084. An employee may be
22 found guilty of violating this subsection without having
23 committed the crime of sexual battery.
24 (3) The consent of the patient to sexual activity is
25 not a defense to prosecution under this section.
26 (4) This section does not apply to an employee who:
27 (a) Is legally married to the patient; or
28 (b) Had no reason to believe that the person with whom
29 the employee engaged in sexual misconduct is a patient
30 receiving services as described in subsection (2).
31 (5) An employee who witnesses sexual misconduct, or

1 who otherwise knows or has reasonable cause to suspect that a
2 person has engaged in sexual misconduct, shall immediately
3 report the incident to the department's central abuse hotline
4 and to law enforcement. Such employee shall also prepare,
5 date, and sign an independent report that specifically
6 describes the nature of the sexual misconduct, the location
7 and time of the incident, and the persons involved. The
8 employee shall deliver the report to the supervisor or program
9 director, who is responsible for providing copies to the
10 department's inspector general. The inspector general shall
11 immediately conduct an appropriate administrative
12 investigation, and, if there is probable cause to believe that
13 sexual misconduct has occurred, the inspector general shall
14 notify the state attorney in the circuit in which the incident
15 occurred.
16 (6)(a) Any person who is required to make a report
17 under this section and who knowingly or willfully fails to do
18 so, or who knowingly or willfully prevents another person from
19 doing so, commits a misdemeanor of the first degree,
20 punishable as provided in s. 775.082 or s. 775.083.
21 (b) Any person who knowingly or willfully submits
22 inaccurate, incomplete, or untruthful information with respect
23 to a report required under this section commits a misdemeanor
24 of the first degree, punishable as provided in s. 775.082 or
25 s. 775.083.
26 (c) Any person who knowingly or willfully coerces or
27 threatens any other person with the intent to alter testimony
28 or a written report regarding an incident of sexual misconduct
29 commits a felony of the third degree, punishable as provided
30 in s. 775.082, s. 775.083, or s. 775.084.
31 (7) The provisions and penalties set forth in this

1 section are in addition to any other civil, administrative, or
2 criminal action provided by law which may be applied against
3 an employee.
4 Section 46. Section 916.1075, Florida Statutes, is
5 created to read:
6 916.1075 Sexual misconduct prohibited; reporting
7 required; penalties.--
8 (1) As used in this section, the term:
9 (a) "Employee" includes any paid staff member,
10 volunteer, or intern of the department or the Agency for
11 Persons with Disabilities or any person under contract with
12 the department or the Agency for Persons with Disabilities or
13 any person providing care or support to a client on behalf of
14 the department or the Agency for Persons with Disabilities or
15 their providers.
16 (b) "Sexual activity" means:
17 1. Fondling the genital area, groin, inner thighs,
18 buttocks, or breasts of a person;
19 2. The oral, anal, or vaginal penetration by, or union
20 with, the sexual organ of another or the anal or vaginal
21 penetration of another by any other object;
22 3. Intentionally touching in a lewd or lascivious
23 manner the breasts, genitals, the genital area, or buttocks,
24 or the clothing covering them, of a person, or forcing or
25 enticing a person to touch the perpetrator;
26 4. Intentionally masturbating in the presence of
27 another person;
28 5. Intentionally exposing the genitals in a lewd or
29 lascivious manner in the presence of another person; or
30 6. Intentionally committing any other sexual act that
31 does not involve actual physical or sexual contact with the

1 victim, including, but not limited to, sadomasochistic abuse,
2 sexual bestiality, or the simulation of any act involving
3 sexual activity in the presence of a victim.
4 (c) "Sexual misconduct" means any sexual activity
5 between an employee and a client, regardless of the consent of
6 the client. The term does not include an act done for a bona
7 fide medical purpose or an internal search conducted in the
8 lawful performance of duty by an employee.
9 (2) An employee who engages in sexual misconduct with
10 a client who resides in a civil or forensic state mental
11 health treatment facility commits a felony of the second
12 degree, punishable as provided in s. 775.082, s. 775.083, or
13 s. 775.084. An employee may be found guilty of violating this
14 subsection without having committed the crime of sexual
15 battery.
16 (3) The consent of the client to sexual activity is
17 not a defense to prosecution under this section.
18 (4) This section does not apply to an employee who:
19 (a) Is legally married to the client; or
20 (b) Had no reason to believe that the person with whom
21 the employee engaged in sexual misconduct is a client
22 receiving services as described in subsection (2).
23 (5) An employee who witnesses sexual misconduct, or
24 who otherwise knows or has reasonable cause to suspect that a
25 person has engaged in sexual misconduct, shall immediately
26 report the incident to the department's central abuse hotline
27 or law enforcement. Such employee shall also prepare, date,
28 and sign an independent report that specifically describes the
29 nature of the sexual misconduct, the location and time of the
30 incident, and the persons involved. The employee shall deliver
31 the report to the supervisor or program director, who is

1 responsible for providing copies to either the department's or
2 Agency for Persons with Disabilities' inspector general as
3 appropriate. The inspector general shall immediately conduct
4 an appropriate administrative investigation, and, if there is
5 probable cause to believe that sexual misconduct has occurred,
6 the inspector general shall notify the state attorney in the
7 circuit in which the incident occurred.
8 (6)(a) Any person who is required to make a report
9 under this section and who knowingly or willfully fails to do
10 so, or who knowingly or willfully prevents another person from
11 doing so, commits a misdemeanor of the first degree,
12 punishable as provided in s. 775.082 or s. 775.083.
13 (b) Any person who knowingly or willfully submits
14 inaccurate, incomplete, or untruthful information with respect
15 to a report required under this section commits a misdemeanor
16 of the first degree, punishable as provided in s. 775.082 or
17 s. 775.083.
18 (c) Any person who knowingly or willfully coerces or
19 threatens any other person with the intent to alter testimony
20 or a written report regarding an incident of sexual misconduct
21 commits a felony of the third degree, punishable as provided
22 in s. 775.082, s. 775.083, or s. 775.084.
23 (7) The provisions and penalties set forth in this
24 section are in addition to any other civil, administrative, or
25 criminal action provided by law which may be applied against
26 an employee.
27 Section 47. Subsection (2) of section 435.03, Florida
28 Statutes, is amended to read:
29 435.03 Level 1 screening standards.--
30 (2) Any person for whom employment screening is
31 required by statute must not have been found guilty of,

1 regardless of adjudication, or entered a plea of nolo
2 contendere or guilty to, any offense prohibited under any of
3 the following provisions of the Florida Statutes or under any
4 similar statute of another jurisdiction:
5 (a) Section 393.135, relating to sexual misconduct
6 with certain developmentally disabled clients and reporting of
7 such sexual misconduct.
8 (b) Section 394.4593, relating to sexual misconduct
9 with certain mental health patients and reporting of such
10 sexual misconduct.
11 (c) ~~(a)~~ Section 415.111, relating to abuse, neglect, or
12 exploitation of a vulnerable adult.
13 (d) ~~(b)~~ Section 782.04, relating to murder.
14 (e) ~~(c)~~ Section 782.07, relating to manslaughter,
15 aggravated manslaughter of an elderly person or disabled
16 adult, or aggravated manslaughter of a child.
17 (f) ~~(d)~~ Section 782.071, relating to vehicular
18 homicide.
19 (g) ~~(e)~~ Section 782.09, relating to killing of an
20 unborn child by injury to the mother.
21 (h) ~~(f)~~ Section 784.011, relating to assault, if the
22 victim of the offense was a minor.
23 (i) ~~(g)~~ Section 784.021, relating to aggravated
24 assault.
25 (j) ~~(h)~~ Section 784.03, relating to battery, if the
26 victim of the offense was a minor.
27 (k) ~~(i)~~ Section 784.045, relating to aggravated
28 battery.
29 (l) ~~(j)~~ Section 787.01, relating to kidnapping.
30 (m) ~~(k)~~ Section 787.02, relating to false imprisonment.
31 (n) ~~(l)~~ Section 794.011, relating to sexual battery.

1 (o) {m} Former s. 794.041, relating to prohibited acts
2 of persons in familial or custodial authority.
3 (p) {n} Chapter 796, relating to prostitution.
4 (q) {o} Section 798.02, relating to lewd and lascivious
5 behavior.
6 (r) {p} Chapter 800, relating to lewdness and indecent
7 exposure.
8 (s) {q} Section 806.01, relating to arson.
9 (t) {r} Chapter 812, relating to theft, robbery, and
10 related crimes, if the offense was a felony.
11 (u) {s} Section 817.563, relating to fraudulent sale of
12 controlled substances, only if the offense was a felony.
13 (v) {t} Section 825.102, relating to abuse, aggravated
14 abuse, or neglect of an elderly person or disabled adult.
15 (w) {u} Section 825.1025, relating to lewd or
16 lascivious offenses committed upon or in the presence of an
17 elderly person or disabled adult.
18 (x) {v} Section 825.103, relating to exploitation of an
19 elderly person or disabled adult, if the offense was a felony.
20 (y) {w} Section 826.04, relating to incest.
21 (z) {x} Section 827.03, relating to child abuse,
22 aggravated child abuse, or neglect of a child.
23 (aa) {y} Section 827.04, relating to contributing to
24 the delinquency or dependency of a child.
25 (bb) {z} Former s. 827.05, relating to negligent
26 treatment of children.
27 (cc) {aa} Section 827.071, relating to sexual
28 performance by a child.
29 (dd) {bb} Chapter 847, relating to obscene literature.
30 (ee) {cc} Chapter 893, relating to drug abuse
31 prevention and control, only if the offense was a felony or if

1 any other person involved in the offense was a minor.
2 (ff) Section 916.0175, relating to sexual misconduct
3 with certain forensic clients and reporting of such sexual
4 misconduct.
5 Section 48. Subsection (2) of section 435.04, Florida
6 Statutes, is amended to read:
7 435.04 Level 2 screening standards.--
8 (2) The security background investigations under this
9 section must ensure that no persons subject to the provisions
10 of this section have been found guilty of, regardless of
11 adjudication, or entered a plea of nolo contendere or guilty
12 to, any offense prohibited under any of the following
13 provisions of the Florida Statutes or under any similar
14 statute of another jurisdiction:
15 (a) Section 393.135, relating to sexual misconduct
16 with certain developmentally disabled clients and reporting of
17 such sexual misconduct.
18 (b) Section 394.4593, relating to sexual misconduct
19 with certain mental health patients and reporting of such
20 sexual misconduct.
21 (c) ~~(a)~~ Section 415.111, relating to adult abuse,
22 neglect, or exploitation of aged persons or disabled adults.
23 (d) ~~(b)~~ Section 782.04, relating to murder.
24 (e) ~~(c)~~ Section 782.07, relating to manslaughter,
25 aggravated manslaughter of an elderly person or disabled
26 adult, or aggravated manslaughter of a child.
27 (f) ~~(d)~~ Section 782.071, relating to vehicular
28 homicide.
29 (g) ~~(e)~~ Section 782.09, relating to killing of an
30 unborn child by injury to the mother.
31 (h) ~~(f)~~ Section 784.011, relating to assault, if the

victim of the offense was a minor.

(i) ~~(g)~~ Section 784.021, relating to aggravated assault.

(j) ~~(h)~~ Section 784.03, relating to battery, if the victim of the offense was a minor.

(k) ~~(i)~~ Section 784.045, relating to aggravated battery.

(l) ~~(j)~~ Section 784.075, relating to battery on a detention or commitment facility staff.

(m) ~~(k)~~ Section 787.01, relating to kidnapping.

(n) ~~(l)~~ Section 787.02, relating to false imprisonment.

(o) ~~(m)~~ Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.

(p) ~~(n)~~ Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.

(q) ~~(o)~~ Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

(r) ~~(p)~~ Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.

(s) ~~(q)~~ Section 794.011, relating to sexual battery.

(t) ~~(r)~~ Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

(u) ~~(s)~~ Chapter 796, relating to prostitution.

(v) ~~(t)~~ Section 798.02, relating to lewd and lascivious behavior.

(w) ~~(u)~~ Chapter 800, relating to lewdness and indecent exposure.

1 (x) ~~(v)~~ Section 806.01, relating to arson.
2 (y) ~~(w)~~ Chapter 812, relating to theft, robbery, and
3 related crimes, if the offense is a felony.
4 (z) ~~(x)~~ Section 817.563, relating to fraudulent sale of
5 controlled substances, only if the offense was a felony.
6 (aa) ~~(y)~~ Section 825.102, relating to abuse, aggravated
7 abuse, or neglect of an elderly person or disabled adult.
8 (bb) ~~(z)~~ Section 825.1025, relating to lewd or
9 lascivious offenses committed upon or in the presence of an
10 elderly person or disabled adult.
11 (cc) ~~(aa)~~ Section 825.103, relating to exploitation of
12 an elderly person or disabled adult, if the offense was a
13 felony.
14 (dd) ~~(bb)~~ Section 826.04, relating to incest.
15 (ee) ~~(cc)~~ Section 827.03, relating to child abuse,
16 aggravated child abuse, or neglect of a child.
17 (ff) ~~(dd)~~ Section 827.04, relating to contributing to
18 the delinquency or dependency of a child.
19 (gg) ~~(ee)~~ Former s. 827.05, relating to negligent
20 treatment of children.
21 (hh) ~~(ff)~~ Section 827.071, relating to sexual
22 performance by a child.
23 (ii) ~~(gg)~~ Section 843.01, relating to resisting arrest
24 with violence.
25 (jj) ~~(hh)~~ Section 843.025, relating to depriving a law
26 enforcement, correctional, or correctional probation officer
27 means of protection or communication.
28 (kk) ~~(ii)~~ Section 843.12, relating to aiding in an
29 escape.
30 (ll) ~~(jj)~~ Section 843.13, relating to aiding in the
31 escape of juvenile inmates in correctional institutions.

1 (mm) ~~(kk)~~ Chapter 847, relating to obscene literature.
2 (nn) ~~(ll)~~ Section 874.05(1), relating to encouraging or
3 recruiting another to join a criminal gang.
4 (oo) ~~(mm)~~ Chapter 893, relating to drug abuse
5 prevention and control, only if the offense was a felony or if
6 any other person involved in the offense was a minor.
7 (pp) Section 916.0175, relating to sexual misconduct
8 with certain forensic clients and reporting of such sexual
9 misconduct.
10 (qq) ~~(nn)~~ Section 944.35(3), relating to inflicting
11 cruel or inhuman treatment on an inmate resulting in great
12 bodily harm.
13 (rr) ~~(oo)~~ Section 944.46, relating to harboring,
14 concealing, or aiding an escaped prisoner.
15 (ss) ~~(pp)~~ Section 944.47, relating to introduction of
16 contraband into a correctional facility.
17 (tt) ~~(qq)~~ Section 985.4045, relating to sexual
18 misconduct in juvenile justice programs.
19 (uu) ~~(rr)~~ Section 985.4046, relating to contraband
20 introduced into detention facilities.
21 Section 49. Section 943.0585, Florida Statutes, is
22 amended to read:
23 943.0585 Court-ordered expunction of criminal history
24 records.--The courts of this state have jurisdiction over
25 their own procedures, including the maintenance, expunction,
26 and correction of judicial records containing criminal history
27 information to the extent such procedures are not inconsistent
28 with the conditions, responsibilities, and duties established
29 by this section. Any court of competent jurisdiction may order
30 a criminal justice agency to expunge the criminal history
31 record of a minor or an adult who complies with the

1 requirements of this section. The court shall not order a
2 criminal justice agency to expunge a criminal history record
3 until the person seeking to expunge a criminal history record
4 has applied for and received a certificate of eligibility for
5 expunction pursuant to subsection (2). A criminal history
6 record that relates to a violation of s. 393.135, s. 394.4593,
7 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
8 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
9 s. 847.0145, s. 893.135, s. 916.1075, or a violation
10 enumerated in s. 907.041 may not be expunged, without regard
11 to whether adjudication was withheld, if the defendant was
12 found guilty of or pled guilty or nolo contendere to the
13 offense, or if the defendant, as a minor, was found to have
14 committed, or pled guilty or nolo contendere to committing,
15 the offense as a delinquent act. The court may only order
16 expunction of a criminal history record pertaining to one
17 arrest or one incident of alleged criminal activity, except as
18 provided in this section. The court may, at its sole
19 discretion, order the expunction of a criminal history record
20 pertaining to more than one arrest if the additional arrests
21 directly relate to the original arrest. If the court intends
22 to order the expunction of records pertaining to such
23 additional arrests, such intent must be specified in the
24 order. A criminal justice agency may not expunge any record
25 pertaining to such additional arrests if the order to expunge
26 does not articulate the intention of the court to expunge a
27 record pertaining to more than one arrest. This section does
28 not prevent the court from ordering the expunction of only a
29 portion of a criminal history record pertaining to one arrest
30 or one incident of alleged criminal activity. Notwithstanding
31 any law to the contrary, a criminal justice agency may comply

1 with laws, court orders, and official requests of other
2 jurisdictions relating to expunction, correction, or
3 confidential handling of criminal history records or
4 information derived therefrom. This section does not confer
5 any right to the expunction of any criminal history record,
6 and any request for expunction of a criminal history record
7 may be denied at the sole discretion of the court.
8 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY
9 RECORD.--Each petition to a court to expunge a criminal
10 history record is complete only when accompanied by:
11 (a) A certificate of eligibility for expunction issued
12 by the department pursuant to subsection (2).
13 (b) The petitioner's sworn statement attesting that
14 the petitioner:
15 1. Has never, prior to the date on which the petition
16 is filed, been adjudicated guilty of a criminal offense or
17 comparable ordinance violation or adjudicated delinquent for
18 committing a felony or a misdemeanor specified in s.
19 943.051(3)(b).
20 2. Has not been adjudicated guilty of, or adjudicated
21 delinquent for committing, any of the acts stemming from the
22 arrest or alleged criminal activity to which the petition
23 pertains.
24 3. Has never secured a prior sealing or expunction of
25 a criminal history record under this section, former s.
26 893.14, former s. 901.33, or former s. 943.058, or from any
27 jurisdiction outside the state.
28 4. Is eligible for such an expunction to the best of
29 his or her knowledge or belief and does not have any other
30 petition to expunge or any petition to seal pending before any
31 court.

1

2 Any person who knowingly provides false information on such
3 sworn statement to the court commits a felony of the third
4 degree, punishable as provided in s. 775.082, s. 775.083, or
5 s. 775.084.
6 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior
7 to petitioning the court to expunge a criminal history record,
8 a person seeking to expunge a criminal history record shall
9 apply to the department for a certificate of eligibility for
10 expunction. The department shall, by rule adopted pursuant to
11 chapter 120, establish procedures pertaining to the
12 application for and issuance of certificates of eligibility
13 for expunction. The department shall issue a certificate of
14 eligibility for expunction to a person who is the subject of a
15 criminal history record if that person:
16 (a) Has obtained, and submitted to the department, a
17 written, certified statement from the appropriate state
18 attorney or statewide prosecutor which indicates:
19 1. That an indictment, information, or other charging
20 document was not filed or issued in the case.
21 2. That an indictment, information, or other charging
22 document, if filed or issued in the case, was dismissed or
23 nolle prosequi by the state attorney or statewide prosecutor,
24 or was dismissed by a court of competent jurisdiction.
25 3. That the criminal history record does not relate to
26 a violation of s. 393.135, s. 394.4593, s. 787.025, chapter
27 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s.
28 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
29 s. 893.135, s. 916.1075, or a violation enumerated in s.
30 907.041, where the defendant was found guilty of, or pled
31 guilty or nolo contendere to any such offense, or that the

1 defendant, as a minor, was found to have committed, or pled
2 guilty or nolo contendere to committing, such an offense as a
3 delinquent act, without regard to whether adjudication was
4 withheld.
5 (b) Remits a $75 processing fee to the department for
6 placement in the Department of Law Enforcement Operating Trust
7 Fund, unless such fee is waived by the executive director.
8 (c) Has submitted to the department a certified copy
9 of the disposition of the charge to which the petition to
10 expunge pertains.
11 (d) Has never, prior to the date on which the
12 application for a certificate of eligibility is filed, been
13 adjudicated guilty of a criminal offense or comparable
14 ordinance violation or adjudicated delinquent for committing a
15 felony or a misdemeanor specified in s. 943.051(3)(b).
16 (e) Has not been adjudicated guilty of, or adjudicated
17 delinquent for committing, any of the acts stemming from the
18 arrest or alleged criminal activity to which the petition to
19 expunge pertains.
20 (f) Has never secured a prior sealing or expunction of
21 a criminal history record under this section, former s.
22 893.14, former s. 901.33, or former s. 943.058.
23 (g) Is no longer under court supervision applicable to
24 the disposition of the arrest or alleged criminal activity to
25 which the petition to expunge pertains.
26 (h) Is not required to wait a minimum of 10 years
27 prior to being eligible for an expunction of such records
28 because all charges related to the arrest or criminal activity
29 to which the petition to expunge pertains were dismissed prior
30 to trial, adjudication, or the withholding of adjudication.
31 Otherwise, such criminal history record must be sealed under

1 this section, former s. 893.14, former s. 901.33, or former s.
2 943.058 for at least 10 years before such record is eligible
3 for expunction.
4 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--
5 (a) In judicial proceedings under this section, a copy
6 of the completed petition to expunge shall be served upon the
7 appropriate state attorney or the statewide prosecutor and
8 upon the arresting agency; however, it is not necessary to
9 make any agency other than the state a party. The appropriate
10 state attorney or the statewide prosecutor and the arresting
11 agency may respond to the court regarding the completed
12 petition to expunge.
13 (b) If relief is granted by the court, the clerk of
14 the court shall certify copies of the order to the appropriate
15 state attorney or the statewide prosecutor and the arresting
16 agency. The arresting agency is responsible for forwarding the
17 order to any other agency to which the arresting agency
18 disseminated the criminal history record information to which
19 the order pertains. The department shall forward the order to
20 expunge to the Federal Bureau of Investigation. The clerk of
21 the court shall certify a copy of the order to any other
22 agency which the records of the court reflect has received the
23 criminal history record from the court.
24 (c) For an order to expunge entered by a court prior
25 to July 1, 1992, the department shall notify the appropriate
26 state attorney or statewide prosecutor of an order to expunge
27 which is contrary to law because the person who is the subject
28 of the record has previously been convicted of a crime or
29 comparable ordinance violation or has had a prior criminal
30 history record sealed or expunged. Upon receipt of such
31 notice, the appropriate state attorney or statewide prosecutor

1 shall take action, within 60 days, to correct the record and
2 petition the court to void the order to expunge. The
3 department shall seal the record until such time as the order
4 is voided by the court.
5 (d) On or after July 1, 1992, the department or any
6 other criminal justice agency is not required to act on an
7 order to expunge entered by a court when such order does not
8 comply with the requirements of this section. Upon receipt of
9 such an order, the department must notify the issuing court,
10 the appropriate state attorney or statewide prosecutor, the
11 petitioner or the petitioner's attorney, and the arresting
12 agency of the reason for noncompliance. The appropriate state
13 attorney or statewide prosecutor shall take action within 60
14 days to correct the record and petition the court to void the
15 order. No cause of action, including contempt of court, shall
16 arise against any criminal justice agency for failure to
17 comply with an order to expunge when the petitioner for such
18 order failed to obtain the certificate of eligibility as
19 required by this section or such order does not otherwise
20 comply with the requirements of this section.
21 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
22 criminal history record of a minor or an adult which is
23 ordered expunged by a court of competent jurisdiction pursuant
24 to this section must be physically destroyed or obliterated by
25 any criminal justice agency having custody of such record;
26 except that any criminal history record in the custody of the
27 department must be retained in all cases. A criminal history
28 record ordered expunged that is retained by the department is
29 confidential and exempt from the provisions of s. 119.07(1)
30 and s. 24(a), Art. I of the State Constitution and not
31 available to any person or entity except upon order of a court

1 of competent jurisdiction. A criminal justice agency may
2 retain a notation indicating compliance with an order to
3 expunge.
4 (a) The person who is the subject of a criminal
5 history record that is expunged under this section or under
6 other provisions of law, including former s. 893.14, former s.
7 901.33, and former s. 943.058, may lawfully deny or fail to
8 acknowledge the arrests covered by the expunged record, except
9 when the subject of the record:
10 1. Is a candidate for employment with a criminal
11 justice agency;
12 2. Is a defendant in a criminal prosecution;
13 3. Concurrently or subsequently petitions for relief
14 under this section or s. 943.059;
15 4. Is a candidate for admission to The Florida Bar;
16 5. Is seeking to be employed or licensed by or to
17 contract with the Department of Children and Family Services
18 or the Department of Juvenile Justice or to be employed or
19 used by such contractor or licensee in a sensitive position
20 having direct contact with children, the developmentally
21 disabled, the aged, or the elderly as provided in s.
22 110.1127(3), s. 393.063 ~~s. 393.063(15)~~, s. 394.4572(1), s.
23 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
24 415.102(4), s. 916.106(10) and (13), s. 985.407, or chapter
25 400; or
26 6. Is seeking to be employed or licensed by the Office
27 of Teacher Education, Certification, Staff Development, and
28 Professional Practices of the Department of Education, any
29 district school board, or any local governmental entity that
30 licenses child care facilities.
31 (b) Subject to the exceptions in paragraph (a), a

1 person who has been granted an expunction under this section,
2 former s. 893.14, former s. 901.33, or former s. 943.058 may
3 not be held under any provision of law of this state to commit
4 perjury or to be otherwise liable for giving a false statement
5 by reason of such person's failure to recite or acknowledge an
6 expunged criminal history record.
7 (c) Information relating to the existence of an
8 expunged criminal history record which is provided in
9 accordance with paragraph (a) is confidential and exempt from
10 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
11 State Constitution, except that the department shall disclose
12 the existence of a criminal history record ordered expunged to
13 the entities set forth in subparagraphs (a)1., 4., 5., and 6.
14 for their respective licensing and employment purposes, and to
15 criminal justice agencies for their respective criminal
16 justice purposes. It is unlawful for any employee of an entity
17 set forth in subparagraph (a)1., subparagraph (a)4.,
18 subparagraph (a)5., or subparagraph (a)6. to disclose
19 information relating to the existence of an expunged criminal
20 history record of a person seeking employment or licensure
21 with such entity or contractor, except to the person to whom
22 the criminal history record relates or to persons having
23 direct responsibility for employment or licensure decisions.
24 Any person who violates this paragraph commits a misdemeanor
25 of the first degree, punishable as provided in s. 775.082 or
26 s. 775.083.
27 (5) STATUTORY REFERENCES.--Any reference to any other
28 chapter, section, or subdivision of the Florida Statutes in
29 this section constitutes a general reference under the
30 doctrine of incorporation by reference.
31 Section 50. Section 943.059, Florida Statutes, is

1 amended to read:
2 943.059 Court-ordered sealing of criminal history
3 records.--The courts of this state shall continue to have
4 jurisdiction over their own procedures, including the
5 maintenance, sealing, and correction of judicial records
6 containing criminal history information to the extent such
7 procedures are not inconsistent with the conditions,
8 responsibilities, and duties established by this section. Any
9 court of competent jurisdiction may order a criminal justice
10 agency to seal the criminal history record of a minor or an
11 adult who complies with the requirements of this section. The
12 court shall not order a criminal justice agency to seal a
13 criminal history record until the person seeking to seal a
14 criminal history record has applied for and received a
15 certificate of eligibility for sealing pursuant to subsection
16 (2). A criminal history record that relates to a violation of
17 s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,
18 s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839,
19 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
20 916.1075, or a violation enumerated in s. 907.041 may not be
21 sealed, without regard to whether adjudication was withheld,
22 if the defendant was found guilty of or pled guilty or nolo
23 contendere to the offense, or if the defendant, as a minor,
24 was found to have committed or pled guilty or nolo contendere
25 to committing the offense as a delinquent act. The court may
26 only order sealing of a criminal history record pertaining to
27 one arrest or one incident of alleged criminal activity,
28 except as provided in this section. The court may, at its sole
29 discretion, order the sealing of a criminal history record
30 pertaining to more than one arrest if the additional arrests
31 directly relate to the original arrest. If the court intends

1 to order the sealing of records pertaining to such additional
2 arrests, such intent must be specified in the order. A
3 criminal justice agency may not seal any record pertaining to
4 such additional arrests if the order to seal does not
5 articulate the intention of the court to seal records
6 pertaining to more than one arrest. This section does not
7 prevent the court from ordering the sealing of only a portion
8 of a criminal history record pertaining to one arrest or one
9 incident of alleged criminal activity. Notwithstanding any law
10 to the contrary, a criminal justice agency may comply with
11 laws, court orders, and official requests of other
12 jurisdictions relating to sealing, correction, or confidential
13 handling of criminal history records or information derived
14 therefrom. This section does not confer any right to the
15 sealing of any criminal history record, and any request for
16 sealing a criminal history record may be denied at the sole
17 discretion of the court.
18 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each
19 petition to a court to seal a criminal history record is
20 complete only when accompanied by:
21 (a) A certificate of eligibility for sealing issued by
22 the department pursuant to subsection (2).
23 (b) The petitioner's sworn statement attesting that
24 the petitioner:
25 1. Has never, prior to the date on which the petition
26 is filed, been adjudicated guilty of a criminal offense or
27 comparable ordinance violation or adjudicated delinquent for
28 committing a felony or a misdemeanor specified in s.
29 943.051(3)(b).
30 2. Has not been adjudicated guilty of or adjudicated
31 delinquent for committing any of the acts stemming from the

1 arrest or alleged criminal activity to which the petition to
2 seal pertains.
3 3. Has never secured a prior sealing or expunction of
4 a criminal history record under this section, former s.
5 893.14, former s. 901.33, former s. 943.058, or from any
6 jurisdiction outside the state.
7 4. Is eligible for such a sealing to the best of his
8 or her knowledge or belief and does not have any other
9 petition to seal or any petition to expunge pending before any
10 court.
11
12 Any person who knowingly provides false information on such
13 sworn statement to the court commits a felony of the third
14 degree, punishable as provided in s. 775.082, s. 775.083, or
15 s. 775.084.
16 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
17 petitioning the court to seal a criminal history record, a
18 person seeking to seal a criminal history record shall apply
19 to the department for a certificate of eligibility for
20 sealing. The department shall, by rule adopted pursuant to
21 chapter 120, establish procedures pertaining to the
22 application for and issuance of certificates of eligibility
23 for sealing. The department shall issue a certificate of
24 eligibility for sealing to a person who is the subject of a
25 criminal history record provided that such person:
26 (a) Has submitted to the department a certified copy
27 of the disposition of the charge to which the petition to seal
28 pertains.
29 (b) Remits a $75 processing fee to the department for
30 placement in the Department of Law Enforcement Operating Trust
31 Fund, unless such fee is waived by the executive director.

1 (c) Has never, prior to the date on which the
2 application for a certificate of eligibility is filed, been
3 adjudicated guilty of a criminal offense or comparable
4 ordinance violation or adjudicated delinquent for committing a
5 felony or a misdemeanor specified in s. 943.051(3)(b).
6 (d) Has not been adjudicated guilty of or adjudicated
7 delinquent for committing any of the acts stemming from the
8 arrest or alleged criminal activity to which the petition to
9 seal pertains.
10 (e) Has never secured a prior sealing or expunction of
11 a criminal history record under this section, former s.
12 893.14, former s. 901.33, or former s. 943.058.
13 (f) Is no longer under court supervision applicable to
14 the disposition of the arrest or alleged criminal activity to
15 which the petition to seal pertains.
16 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--
17 (a) In judicial proceedings under this section, a copy
18 of the completed petition to seal shall be served upon the
19 appropriate state attorney or the statewide prosecutor and
20 upon the arresting agency; however, it is not necessary to
21 make any agency other than the state a party. The appropriate
22 state attorney or the statewide prosecutor and the arresting
23 agency may respond to the court regarding the completed
24 petition to seal.
25 (b) If relief is granted by the court, the clerk of
26 the court shall certify copies of the order to the appropriate
27 state attorney or the statewide prosecutor and to the
28 arresting agency. The arresting agency is responsible for
29 forwarding the order to any other agency to which the
30 arresting agency disseminated the criminal history record
31 information to which the order pertains. The department shall

1 forward the order to seal to the Federal Bureau of
2 Investigation. The clerk of the court shall certify a copy of
3 the order to any other agency which the records of the court
4 reflect has received the criminal history record from the
5 court.
6 (c) For an order to seal entered by a court prior to
7 July 1, 1992, the department shall notify the appropriate
8 state attorney or statewide prosecutor of any order to seal
9 which is contrary to law because the person who is the subject
10 of the record has previously been convicted of a crime or
11 comparable ordinance violation or has had a prior criminal
12 history record sealed or expunged. Upon receipt of such
13 notice, the appropriate state attorney or statewide prosecutor
14 shall take action, within 60 days, to correct the record and
15 petition the court to void the order to seal. The department
16 shall seal the record until such time as the order is voided
17 by the court.
18 (d) On or after July 1, 1992, the department or any
19 other criminal justice agency is not required to act on an
20 order to seal entered by a court when such order does not
21 comply with the requirements of this section. Upon receipt of
22 such an order, the department must notify the issuing court,
23 the appropriate state attorney or statewide prosecutor, the
24 petitioner or the petitioner's attorney, and the arresting
25 agency of the reason for noncompliance. The appropriate state
26 attorney or statewide prosecutor shall take action within 60
27 days to correct the record and petition the court to void the
28 order. No cause of action, including contempt of court, shall
29 arise against any criminal justice agency for failure to
30 comply with an order to seal when the petitioner for such
31 order failed to obtain the certificate of eligibility as

1 required by this section or when such order does not comply
2 with the requirements of this section.
3 (e) An order sealing a criminal history record
4 pursuant to this section does not require that such record be
5 surrendered to the court, and such record shall continue to be
6 maintained by the department and other criminal justice
7 agencies.
8 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
9 criminal history record of a minor or an adult which is
10 ordered sealed by a court of competent jurisdiction pursuant
11 to this section is confidential and exempt from the provisions
12 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
13 and is available only to the person who is the subject of the
14 record, to the subject's attorney, to criminal justice
15 agencies for their respective criminal justice purposes, or to
16 those entities set forth in subparagraphs (a)1., 4., 5., and
17 6. for their respective licensing and employment purposes.
18 (a) The subject of a criminal history record sealed
19 under this section or under other provisions of law, including
20 former s. 893.14, former s. 901.33, and former s. 943.058, may
21 lawfully deny or fail to acknowledge the arrests covered by
22 the sealed record, except when the subject of the record:
23 1. Is a candidate for employment with a criminal
24 justice agency;
25 2. Is a defendant in a criminal prosecution;
26 3. Concurrently or subsequently petitions for relief
27 under this section or s. 943.0585;
28 4. Is a candidate for admission to The Florida Bar;
29 5. Is seeking to be employed or licensed by or to
30 contract with the Department of Children and Family Services
31 or the Department of Juvenile Justice or to be employed or

1 used by such contractor or licensee in a sensitive position
2 having direct contact with children, the developmentally
3 disabled, the aged, or the elderly as provided in s.
4 110.1127(3), s. 393.063 ~~s. 393.063(15)~~, s. 394.4572(1), s.
5 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
6 415.102(4), s. 415.103, s. 916.106(10) and (13), s. 985.407,
7 or chapter 400; or
8 6. Is seeking to be employed or licensed by the Office
9 of Teacher Education, Certification, Staff Development, and
10 Professional Practices of the Department of Education, any
11 district school board, or any local governmental entity which
12 licenses child care facilities.
13 (b) Subject to the exceptions in paragraph (a), a
14 person who has been granted a sealing under this section,
15 former s. 893.14, former s. 901.33, or former s. 943.058 may
16 not be held under any provision of law of this state to commit
17 perjury or to be otherwise liable for giving a false statement
18 by reason of such person's failure to recite or acknowledge a
19 sealed criminal history record.
20 (c) Information relating to the existence of a sealed
21 criminal record provided in accordance with the provisions of
22 paragraph (a) is confidential and exempt from the provisions
23 of s. 119.07(1) and s. 24(a), Art. I of the State
24 Constitution, except that the department shall disclose the
25 sealed criminal history record to the entities set forth in
26 subparagraphs (a)1., 4., 5., and 6. for their respective
27 licensing and employment purposes. It is unlawful for any
28 employee of an entity set forth in subparagraph (a)1.,
29 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
30 to disclose information relating to the existence of a sealed
31 criminal history record of a person seeking employment or

licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.--Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 51. (1) In the Department of Children and Family Services' Economic Self-Sufficiency Services program, the department may provide its eligibility determination functions either with department staff or through contract with at least two private vendors, or with a combination of at least one private vendor and department employees with the following restrictions:

(a) With the exception of information technology, a contract with a private vendor may not be for a geographic area larger than a combined seven districts or combined three zones without the prior approval of the Legislative Budget Commission; and

(b) Department employees must provide the functions in at least one area of the state if their proposed cost is competitive with private vendors.

(2) This section shall take effect upon this act becoming a law.

Section 52. Except as otherwise provided in this act, this act shall take effect July 1, 2004.

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 Delete everything before the enacting clause
4
5 and insert:
6 A bill to be entitled
7 An act relating to the Department of Children
8 and Family Services; amending s. 20.19, F.S.;
9 removing the developmental disabilities program
10 from the Department of Children and Family
11 Services; creating s. 20.197, F.S.;
12 establishing the Agency for Persons with
13 Disabilities for the purpose of providing
14 services to persons with developmental
15 disabilities, including institutional services;
16 directing the agency to execute interagency
17 agreements with the Agency for Health Care
18 Administration for the financial management of
19 the Medicaid waivers and the Department of
20 Children and Family Services for administrative
21 support; amending s. 393.063, F.S.; updating
22 definitions and deleting obsolete definitions;
23 amending s. 393.064, F.S.; deleting
24 requirements that the agency's legislative
25 budget request include funding for prevention;
26 amending s. 393.0655, F.S.; requiring Level 2
27 screening for specified service providers;
28 amending s. 393.066, F.S.; removing requirement
29 that services be administered and approved by
30 the districts; modifying a requirement to
31 provide certain services; deleting a

1 requirement for a 5-year plan relating to
2 community-based services; adding a requirement
3 to assist clients in gaining employment;
4 repealing obsolete requirement authorizing the
5 state to lease or construct residential
6 facilities; deleting authorization to adopt
7 rules ensuring compliance with federal rules;
8 amending s. 393.0661, F.S.; deleting an
9 obsolete provision; modifying provisions
10 relating to an assessment instrument; adding
11 requirements for adoption of rate
12 methodologies; amending s. 393.068, F.S.;
13 making service provision subject to available
14 resources; updating list of services to be
15 provided; deleting provision referring to
16 5-year plans; amending s. 393.0695, F.S.;
17 requiring in-home subsidy amounts to be
18 reassessed annually; amending s. 393.11, F.S.;
19 deleting provisions referring to districts,
20 department programs, and the nonexistent
21 Department of Labor and Employment Security;
22 amending s. 393.13, F.S.; deleting obsolete
23 provisions; adding legislative intent relating
24 to reducing the use of sheltered workshops;
25 amending s. 393.17, F.S.; authorizing the
26 agency to contract for the certification of
27 behavioral analysts; deleting provisions
28 relating to a certification program and
29 provisions allowing fees; amending s. 393.22,
30 F.S.; deleting prohibition preventing transfer
31 of funds and ensuring financial commitment for

1 specified developmental conditions; amending s.
2 393.502, F.S.; removing reference to districts;
3 deleting a provision permitting appointment of
4 family care council members if the Governor
5 does not act; amending ss. 408.301, 408.302,
6 F.S.; amending legislative intent to add the
7 Agency for Persons with Disabilities and the
8 Department of Elderly Affairs as agencies that
9 the Agency for Health Care Administration must
10 enter into interagency agreement with regarding
11 persons with special needs; amending s.
12 409.906, F.S.; clarifying powers of the Agency
13 for Health Care Administration with respect to
14 limiting coverage for certain services;
15 repealing s. 393.14, F.S.; requiring a
16 multiyear plan; repealing s. 393.165, F.S.,
17 relating to ICF/DDs; repealing s. 393.166,
18 F.S., relating to homes for special services;
19 repealing s. 393.505, F.S., relating to
20 comprehensive day treatment service projects;
21 transferring programs and institutions relating
22 to developmental disabilities from the
23 Department of Children and Family Services to
24 the Agency for Persons with Disabilities;
25 providing duties of those agencies as well as
26 the Department of Management Services;
27 providing for substitution of parties in
28 administrative and judicial proceedings;
29 providing duties of the Office of Program
30 Policy Analysis and Government Accountability;
31 providing for a report; amending ss. 92.53,

1 397.405, 400.464, 409.906, 419.001, 914.16,
2 914.17, 918.16, F.S.; conforming
3 cross-references; amending s. 393.067, F.S.;
4 conforming to changes made by the act;
5 providing that a license issued to a
6 residential facility or a comprehensive
7 transitional education program does not create
8 a property right in the recipient; amending ss.
9 393.0641, 393.065, 393.0651, 393.0673,
10 393.0675, 393.0678, 393.071, 393.075, 393.115,
11 393.12, 393.125, 393.15, 393.501, 393.503,
12 393.506, F.S.; creating ss. 393.135, 394.4593,
13 and 916.1075, F.S.; defining the terms
14 "employee," "sexual activity," and "sexual
15 misconduct"; providing that it is a
16 second-degree felony for an employee to engage
17 in sexual misconduct with certain
18 developmentally disabled clients, certain
19 mental health patients, or certain forensic
20 clients; providing certain exceptions;
21 requiring certain employees to report sexual
22 misconduct to the central abuse hotline of the
23 department and to law enforcement; providing
24 for notification to the inspector general of
25 the department or agency; providing that it is
26 a first-degree misdemeanor to knowingly and
27 willfully fail to make a report as required, or
28 to prevent another from doing so, or to submit
29 inaccurate or untruthful information; providing
30 that it is a third-degree felony to coerce or
31 threaten another person to alter testimony or a

1 report with respect to an incident of sexual
2 misconduct; providing criminal penalties;
3 providing that the penalties are in addition to
4 other actions provided in law; amending s.
5 435.03, F.S.; expanding level 1 screening
6 standards to include criminal offenses related
7 to sexual misconduct with certain
8 developmentally disabled clients, mental health
9 patients, or forensic clients and the reporting
10 of such sexual misconduct; amending s. 435.04,
11 F.S.; expanding level 2 screening standards to
12 include the offenses related to sexual
13 misconduct with certain developmentally
14 disabled clients, mental health patients, or
15 forensic clients and the reporting of such
16 sexual misconduct; amending s. 943.0585, F.S.,
17 relating to court-ordered expunction of
18 criminal history records, for the purpose of
19 incorporating the amendment to s. 943.059,
20 F.S., in a reference thereto; providing that
21 certain criminal history records relating to
22 sexual misconduct with developmentally disabled
23 clients, mental health patients, or forensic
24 clients, or the reporting of such sexual
25 misconduct, shall not be expunged; providing
26 that the application for eligibility for
27 expunction certify that the criminal history
28 record does not relate to an offense involving
29 sexual misconduct with certain developmentally
30 disabled clients, mental health patients, or
31 forensic clients, or the reporting of such

1 sexual misconduct; conforming cross-references;
2 amending s. 943.059, F.S., relating to
3 court-ordered sealing of criminal history
4 records, for the purpose of incorporating the
5 amendment to s. 943.0585, F.S., in a reference
6 thereto; providing that certain criminal
7 history records relating to sexual misconduct
8 with developmentally disabled clients, mental
9 health patients, or forensic clients, or the
10 reporting of such sexual misconduct, shall not
11 be sealed; providing that the application for
12 eligibility for sealing certify that the
13 criminal history record does not relate to an
14 offense involving sexual misconduct with
15 certain developmentally disabled clients,
16 mental health patients, or forensic clients, or
17 the reporting of such sexual misconduct;
18 conforming cross-references; authorizing the
19 Department of Children and Family Services'
20 Economic Self-Sufficiency Services Program
21 Office to provide the eligibility determination
22 function through department staff or through
23 contract; providing restrictions; conforming to
24 the changes made by the act; providing an
25 effective date.
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Bill No. CS for SB 1458

Amendment No. 2 033568

CHAMBER ACTION

Senate | House

Senator Wasserman Schultz moved the following amendment:

Senate Amendment (with title amendment)

On page 1, delete everything after the enacting clause

and insert:

Section 1. Subsection (8) is added to section 1002.37, Florida Statutes, to read:

(8) The Florida Virtual School, on a pilot basis, may contract with a Florida-based private virtual school that is accredited by the Southern Association of Colleges and Schools and that is an approved franchise of the Florida Virtual School to provide instruction for up to 60 high school course credits in any fiscal year. The contract shall be limited to courses for students who need to enroll in a virtual course for high school credit that can not be provided in a timely manner by the Florida Virtual School or by the public school district in which the student lives.

(a) Any such contract shall provide for at least the following:

1. The Florida Virtual School shall be responsible for

1 assuring that each course meets the same educational program
2 requirements including curriculum, instructional materials,
3 and instructor qualifications as if the course were provided
4 by the Florida Virtual School.
5 2. Each course provided under such contract shall be
6 reported to the Department of Education in the same manner and
7 with the same information as required for each course provided
8 by the Florida Virtual School. Each such course shall be
9 eligible for funding to be provided to the Florida Virtual
10 School in the same manner as for courses provided by the
11 Florida Virtual School.
12 3. The private provider shall not charge a fee of any
13 kind for a course provided under contract with the Florida
14 Virtual School.
15 4. Payment to the private provider for such course
16 shall be based on successful course completion in the same
17 manner as courses provided by the Florida Virtual School and
18 the amount paid under the contract shall not exceed the amount
19 the Florida Virtual School receives for same course.
20 5. The Florida Virtual School shall determine other
21 requirements which are necessary to support student outcomes,
22 expand services not otherwise available, and to adequately
23 document the contract and the pilot.
24 (b) The Florida Virtual School shall report the
25 results of the pilot to the President of the Senate and the
26 Speaker of the House of Representatives no later than March 1
27 of each year in which the pilot is conducted.
28 Section 2. This act shall take effect upon becoming law.
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1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 1, lines 4-27, delete those lines
4
5 and insert:
6 Florida Virtual School; authorizing a pilot program to
7 contract with a private virtual school in Florida; providing
8 requirements relating to accreditation, curriculum, reporting,
9 fees, and payment; requiring a report; providing an
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Bill No. CS for SB 2722

Amendment No. 2A 682342

CHAMBER ACTION

Senate | House

Senator Lawson moved the following **amendment to amendment** (952234):

Senate Amendment

On page 1, line 21, delete that line

and insert:

(1) An ~~No~~ executive branch department or agency, public

Bill No. CS for SB 2722

Amendment No. 3 693786

CHAMBER ACTION

Senate House

Senator Lawson moved the following amendment:

Senate Amendment

On page 27, line 4, delete that line

and insert:

Section 10. This act shall take effect July 1, 2004, except that the sections of this act which amend chapter 255, Florida Statutes, shall take effect on the date that the Department of Management Services certifies in writing to the presiding officers of the Legislature and the Governor that it has no current contract for the services of a real estate broker or brokers licensed under chapter 475, Florida Statutes, to assist the department in negotiating leases for privately owned buildings on behalf of executive agencies. In no case shall the sections of this act amending chapter 255, Florida Statutes, take effect after July 1, 2005.

Bill No. CS for SB 2722

Amendment No. 4 584454

CHAMBER ACTION

Senate House

Senator Pruitt moved the following amendment:

Senate Amendment (with title amendment)

On page 27, line 4, delete that line

and insert:

Section 10. Subsection (8) of section 14.2015, Florida Statutes, is amended to read:

14.2015 Office of Tourism, Trade, and Economic Development; creation; powers and duties.--

(8) The Office of Tourism, Trade, and Economic Development shall ensure that the contract between the Florida Commission on Tourism and the commission's direct-support organization contains a provision to provide the data on the visitor counts and visitor profiles used in revenue estimating, employing the same methodology used in fiscal year 1995-1996 by the Department of Commerce. The Office of Tourism, Trade, and Economic Development and the Florida Commission on Tourism must advise and consult ~~reach agreement~~ with the Consensus Estimating Conference principals before making any changes in methodology used or information

gathered.

Section 11. Effective July 1, 2005, section 45.062, Florida Statutes, is amended to read:

45.062 Settlements, conditions, or orders when an agency of the executive branch is a party.--

(1) In any civil action in which a state executive branch agency or officer is a party in state or federal court, the officer, agent, official, or attorney who represents or is acting on behalf of such agency or officer may not settle such action, consent to any condition, or agree to any order in connection therewith, if the settlement, condition, or order requires the expenditure of or the obligation to expend any state funds or other state resources, the refund or future loss of state revenues exceeding $10 million, or the establishment of any new program, unless:

(a) The expenditure is provided for by an existing appropriation or program established by law; ~~and~~

(b) At the time settlement negotiations are begun in earnest, written notification is given to the President of the Senate, the Speaker of the House of Representatives, the Senate and House minority leaders, the chairs of the appropriations committees of the Legislature, and the Attorney General; and

(c) ~~(b)~~ Prior written notification is given at least ~~within~~ 5 business days before ~~of~~ the date the settlement or presettlement agreement or order is to be made final to the President of the Senate, the Speaker of the House of Representatives, the Senate and House minority leaders, the chairs of the appropriations committees of the Legislature, and the Attorney General. Such notification is a condition precedent to the agency's authority to enter into the

1 settlement or presettlement agreement and shall be subject to
2 the review and objection procedures of s. 216.177. Such
3 notification shall specify how the agency involved will
4 address the costs in future years within the limits of current
5 appropriations.
6 1. The Division of Risk Management need not give the
7 notification required by this paragraph when settling any
8 claim covered by the state self-insurance program for an
9 amount less than $100,000.
10 2. The notification specified in this paragraph is not
11 required if the only settlement obligation of the state
12 resulting from the claim is to pay court costs in an amount
13 less than $10,000.
14 (2) The state executive branch agency or officer shall
15 negotiate a closure date as soon as possible for the civil
16 action.
17 (3) The state executive branch agency or officer may
18 not pledge any current or future action of another branch of
19 state government as a condition for settling the civil action.
20 (4) Any settlement that commits the state to spending
21 in excess of current appropriations or to policy changes
22 inconsistent with current state law shall be contingent upon
23 and subject to legislative appropriation or statutory
24 amendment. The state agency or officer may agree to use all
25 efforts to procure legislative funding or statutory amendment.
26 (5) When a state agency or officer settles an action
27 or legal claim in which the state asserted a right to recover
28 money, all moneys paid to the state by a party in full or
29 partial exchange for a release of the state's claim shall be
30 placed unobligated into the General Revenue Fund or the
31 appropriate trust fund. A settlement may not authorize or

1 ratify any payment outside the State Treasury, other than to a
2 person, as defined in s. 1.01, suffering an injury arising out
3 of the transaction or course of conduct giving rise to the
4 settled claim. This subsection does not limit the right of a
5 private party to settle a claim independent of the settlement
6 by a public party.
7 (6) ~~(5)~~ State executive branch agencies and officers
8 shall report to each substantive and fiscal committee of the
9 Legislature having jurisdiction over the reporting agency on
10 all potential settlements that may commit the state to:
11 (a) Spend in excess of current appropriations; or
12 (b) Make policy changes inconsistent with current
13 state law.
14
15 The state executive branch agency or officer shall provide
16 periodic updates to the appropriate legislative committees on
17 these issues during the settlement process.
18 (7) In any civil action in which a state executive
19 branch agency or officer is a party in state or federal court,
20 the officer, agent, official, or attorney who represents or is
21 acting on behalf of such agency or officer may not settle such
22 action if the settlement requires the other party to commit
23 funds to a particular purpose as a condition of the
24 settlement, unless at least 5 business days before the date
25 the settlement agreement is to be made final written notice is
26 given to the President of the Senate, the Speaker of the House
27 of Representatives, the Senate and House minority leaders, the
28 chairs of the appropriations committees of the Legislature,
29 and the Attorney General. Such notification is a condition
30 precedent to the agency's authority to enter into the
31 settlement and is subject to the review and objection

1 procedures of s. 216.177.
2 Section 12. Paragraph (b) of subsection (1) of section
3 110.1245, Florida Statutes, is amended to read:
4 110.1245 Savings sharing program; bonus payments;
5 other awards.--
6 (1)
7 (b) Each agency head shall recommend employees
8 individually or by group to be awarded an amount of money,
9 which amount shall be directly related to the cost savings
10 realized. Each proposed award and amount of money must be
11 approved by the Legislative Budget ~~Budgeting~~ Commission.
12 Section 13. Section 215.32, Florida Statutes, is
13 amended to read:
14 215.32 State funds; segregation.--
15 (1) All moneys received by the state shall be
16 deposited in the State Treasury unless specifically provided
17 otherwise by law and shall be deposited in and accounted for
18 by the Chief Financial Officer within the following funds,
19 which funds are hereby created and established:
20 (a) General Revenue Fund.
21 (b) Trust funds.
22 1. In addition to other funds created by law, for each
23 agency, the following trust funds should be used as described
24 in this subparagraph for day-to-day operations:
25 a. Operations or operating trust fund, for use as a
26 depository for funds to be used for program operations funded
27 by program revenues, with the exception of administrative
28 activities if the operations or operating trust fund is a
29 proprietary fund.
30 b. Operations and maintenance trust fund, for use as a
31 depository for client services funded by third-party payors.

c. Administrative trust fund, for use as a depository for funds to be used for management activities that are departmental in nature and funded by indirect cost earnings and assessments against trust funds. Proprietary funds are excluded from the requirement of using an administrative trust fund.

d. Grants and donations trust fund, for use as a depository for funds to be used for allowable grant or donor agreement activities funded by restricted contractual revenue from private and public nonfederal sources.

e. Agency working capital trust fund, for use as a depository for funds to be used pursuant to s. 216.272.

f. Clearing funds trust fund, for use as a depository for funds to account for collections pending distribution to lawful recipients.

g. Federal grant trust fund, for use as a depository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources.

2. To the extent possible, each agency must adjust its internal accounting to use existing trust funds consistent with the requirements of subparagraph 1. If an agency does not have trust funds listed in subparagraph 1. and cannot make such adjustment, the agency must recommend the creation of the necessary trust funds to the Legislature no later than the next scheduled review of the agency's trust funds pursuant to s. 215.3206.

~~(c)--Working-Capital-Fund.~~

(c)~~(d)~~ Budget Stabilization Fund.

(2) The source and use of each of these funds shall be as follows:

(a) The General Revenue Fund shall consist of all

1 moneys received by the state from every source whatsoever,
2 except as provided in paragraphs (b) and (c). Such moneys
3 shall be expended pursuant to General Revenue Fund
4 appropriations acts or transferred as provided in paragraph
5 (c). Annually, at least 5 percent of the estimated increase
6 in General Revenue Fund receipts for the upcoming fiscal year
7 over the current year General Revenue Fund effective
8 appropriations shall be appropriated for state-level capital
9 outlay, including infrastructure improvement and general
10 renovation, maintenance, and repairs.
11 (b)1. The trust funds shall consist of moneys received
12 by the state which under law or under trust agreement are
13 segregated for a purpose authorized by law. The state agency
14 or branch of state government receiving or collecting such
15 moneys shall be responsible for their proper expenditure as
16 provided by law. Upon the request of the state agency or
17 branch of state government responsible for the administration
18 of the trust fund, the Chief Financial Officer may establish
19 accounts within the trust fund at a level considered necessary
20 for proper accountability. Once an account is established
21 within a trust fund, the Chief Financial Officer may authorize
22 payment from that account only upon determining that there is
23 sufficient cash and releases at the level of the account.
24 2. In order to maintain a minimum number of trust
25 funds in the State Treasury, each state agency or the judicial
26 branch may consolidate, if permitted under the terms and
27 conditions of their receipt, the trust funds administered by
28 it; provided, however, the agency or judicial branch employs
29 effectively a uniform system of accounts sufficient to
30 preserve the integrity of such trust funds; and provided,
31 further, that consolidation of trust funds is approved by the

1 Governor or the Chief Justice.
2 3. All such moneys are hereby appropriated to be
3 expended in accordance with the law or trust agreement under
4 which they were received, subject always to the provisions of
5 chapter 216 relating to the appropriation of funds and to the
6 applicable laws relating to the deposit or expenditure of
7 moneys in the State Treasury.
8 4.a. Notwithstanding any provision of law restricting
9 the use of trust funds to specific purposes, unappropriated
10 cash balances from selected trust funds may be authorized by
11 the Legislature for transfer to the Budget Stabilization Fund
12 and General Revenue ~~Working-Capital~~ Fund in the General
13 Appropriations Act.
14 b. This subparagraph does not apply to trust funds
15 required by federal programs or mandates; trust funds
16 established for bond covenants, indentures, or resolutions
17 whose revenues are legally pledged by the state or public body
18 to meet debt service or other financial requirements of any
19 debt obligations of the state or any public body; the State
20 Transportation Trust Fund; the trust fund containing the net
21 annual proceeds from the Florida Education Lotteries; the
22 Florida Retirement System Trust Fund; trust funds under the
23 management of the State Board of Education ~~Board-of-Regents~~,
24 where such trust funds are for auxiliary enterprises,
25 self-insurance, and contracts, grants, and donations, as those
26 terms are defined by general law; trust funds that serve as
27 clearing funds or accounts for the Chief Financial Officer or
28 state agencies; trust funds that account for assets held by
29 the state in a trustee capacity as an agent or fiduciary for
30 individuals, private organizations, or other governmental
31 units; and other trust funds authorized by the State

1 Constitution.
2 (c)1. The Budget Stabilization Fund shall consist of
3 amounts equal to at least 5 percent of net revenue collections
4 for the General Revenue Fund during the last completed fiscal
5 year. The Budget Stabilization Fund's principal balance shall
6 not exceed an amount equal to 10 percent of the last completed
7 fiscal year's net revenue collections for the General Revenue
8 Fund. As used in this paragraph, the term "last completed
9 fiscal year" means the most recently completed fiscal year
10 prior to the regular legislative session at which the
11 Legislature considers the General Appropriations Act for the
12 year in which the transfer to the Budget Stabilization Fund
13 must be made under this paragraph.
14 2. By September 15 of each year, the Governor shall
15 authorize the Chief Financial Officer to transfer, and the
16 Chief Financial Officer shall transfer pursuant to
17 appropriations made by law, to the Budget Stabilization Fund
18 the amount of money needed for the balance of that fund to
19 equal the amount specified in subparagraph 1., less any
20 amounts expended and not restored. The moneys needed for this
21 transfer may be appropriated by the Legislature from any
22 funds.
23 3. Unless otherwise provided in this subparagraph, an
24 expenditure from the Budget Stabilization Fund must be
25 restored pursuant to a restoration schedule that provides for
26 making five equal annual transfers from the General Revenue
27 Fund, beginning in the <u>third</u> fiscal year following that in
28 which the expenditure was made. For any Budget Stabilization
29 Fund expenditure, the Legislature may establish by law a
30 different restoration schedule and such change may be made at
31 any time during the restoration period. Moneys are hereby

appropriated for transfers pursuant to this subparagraph.

4. The Budget Stabilization Fund ~~and the Working Capital Fund~~ may be used as a revolving fund ~~funds~~ for transfers as provided in s. 215.18 ~~s. 17.61~~; however, any interest earned must be deposited in the General Revenue Fund.

5. The Chief Financial Officer and the Department of Management Services shall transfer funds to water management districts to pay eligible water management district employees for all benefits due under s. 373.6065, as long as funds remain available for the program described under s. 100.152.

~~(d) The Working Capital Fund shall consist of moneys in the General Revenue Fund which are in excess of the amount needed to meet General Revenue Fund appropriations for the current fiscal year. Each year, no later than the publishing date of the annual financial statements for the state by the Chief Financial Officer under s. 216.102, funds shall be transferred between the Working Capital Fund and the General Revenue Fund to establish the balance of the Working Capital Fund for that fiscal year at the amount determined pursuant to this paragraph.~~

Section 14. Subsection (5) of section 215.5601, Florida Statutes, is amended to read:

215.5601 Lawton Chiles Endowment Fund.--

(5) AVAILABILITY OF FUNDS; USES.--

(a) Funds from the endowment which are available for legislative appropriation shall be transferred by the board to the Department of Financial Services Tobacco Settlement Clearing Trust Fund, created in s. 17.41, and disbursed in accordance with the legislative appropriation.

1. Appropriations by the Legislature to the Department of Health from endowment earnings from the principal set aside

1 for biomedical research shall be from a category called the
2 James and Esther King Biomedical Research Program and shall be
3 deposited into the Biomedical Research Trust Fund in the
4 Department of Health established in s. 20.435.
5 2. Appropriations by the Legislature to the Department
6 of Children and Family Services, the Department of Health, or
7 the Department of Elderly Affairs from endowment earnings for
8 health and human services programs ~~shall be from a category~~
9 ~~called the Lawton Chiles Endowment Fund Programs and~~ shall be
10 deposited into each department's respective Tobacco Settlement
11 Trust Fund as appropriated.
12 (b) In order to ensure that the expenditure of funds
13 earned from the Lawton Chiles Endowment Fund will be used for
14 the purposes intended by the Legislature, the Legislature
15 shall establish line item categories for the state agencies
16 describing the designated use of the appropriated funds as
17 provided in the General Appropriations Act.
18 (c) The secretaries of the state agencies shall
19 conduct meetings to discuss priorities for endowment funding
20 for health and human services programs for children and elders
21 before submitting their legislative budget requests to the
22 Executive Office of the Governor and the Legislature. The
23 purpose of the meetings is to gain consensus for priority
24 requests and recommended endowment funding levels for those
25 priority requests. No later than September 1 of each year, the
26 secretaries of the state agencies shall also submit their
27 consensus priority requests to the Lawton Chiles Endowment
28 Fund Advisory Council created in subsection (6).
29 (d) Subject to legislative appropriations, state
30 agencies shall use distributions from the endowment to enhance
31 or support increases in clients served or to meet increases in

1 program costs in health and human services program areas.
2 Funds distributed from the endowment may not be used to
3 supplant existing revenues.
4 (e) Notwithstanding s. 216.301 and pursuant to s.
5 216.351, all unencumbered balances of appropriations as of
6 June 30 or undisbursed balances as of December 31 shall revert
7 to the endowment's principal, except that~~.~~ unencumbered or
8 undisbursed balances appropriated for biomedical research
9 shall be retained in the Biomedical Research Trust Fund and
10 the Department of Health may enter into a trust agreement with
11 the State Board of Administration for the investment of cash
12 balances outside the State Treasury ~~revert-to-the-principal-in~~
13 ~~the-separately-reserved-and-accounted-for-portion-of-the~~
14 ~~endowment-established-for-biomedical-research-activities.~~
15 ~~(f)--When-advised-by-the-Revenue-Estimating-Conference~~
16 ~~that-a-deficit-will-occur-with-respect-to-the-appropriations~~
17 ~~from-the-tobacco-settlement-trust-funds-of-the-state-agencies~~
18 ~~in-any-fiscal-year,-the-Governor-shall-develop-a-plan-of~~
19 ~~action-to-eliminate-the-deficit.-Before-implementing-the-plan~~
20 ~~of-action,-the-Governor-must-comply-with-s.-216.177(2).--In~~
21 ~~developing-the-plan-of-action,-the-Governor-shall,-to-the~~
22 ~~extent-possible,-preserve-legislative-policy-and-intent,-and,~~
23 ~~absent-any-specific-directions-to-the-contrary-in-the-General~~
24 ~~Appropriations-Act,-any-reductions-in-appropriations-from-the~~
25 ~~tobacco-settlement-trust-funds-of-the-state-agencies-for-a~~
26 ~~fiscal-year-shall-be-prorated-among-the-specific~~
27 ~~appropriations-made-from-all-tobacco-settlement-trust-funds-of~~
28 ~~the-state-agencies-for-that-year.~~
29 Section 15. Subsection (3) of section 215.93, Florida
30 Statutes, is amended to read:
31 215.93 Florida Financial Management Information

System.--

(3) The Florida Financial Management Information System shall include financial management data and utilize the chart of accounts approved by the Chief Financial Officer. Common financial management data shall include, but not be limited to, data codes, titles, and definitions used by one or more of the functional owner subsystems. The Florida Financial Management Information System shall utilize common financial management data codes. The council shall recommend and the board shall adopt policies regarding the approval and publication of the financial management data. The Chief Financial Officer shall adopt policies regarding the approval and publication of the chart of accounts. The Chief Financial Officer's chart of accounts shall be consistent with the common financial management data codes established by the coordinating council. Further, all systems not a part of the Florida Financial Management Information System which provide information to the system shall use the common data codes from the Florida Financial Management Information System and the Chief Financial Officer's chart of accounts. Data codes that cannot be supplied by the Florida Financial Management Information System and the Chief Financial Officer's chart of accounts and that are required for use by the information subsystems shall be approved by the board upon recommendation of the coordinating council. ~~However, board approval shall not be required for those data codes specified by the Auditor General under the provisions of s. 215.94(6)(c).~~

Section 16. Subsection (6) of section 215.94, Florida Statutes, is amended to read:

215.94 Designation, duties, and responsibilities of functional owners.--

1 (6)(a) Consistent with the provisions of s. 215.86,
2 the respective functional owner of each information subsystem
3 shall be responsible for ensuring ~~The Auditor General shall be~~
4 ~~advised by the functional owner of each information subsystem~~
5 ~~as to the date that the development or significant~~
6 ~~modification of its functional system specifications is to~~
7 ~~begin.~~
8 ~~(b) Upon such notification, the Auditor General shall~~
9 ~~participate with each functional owner to the extent necessary~~
10 ~~to provide assurance~~ that:
11 1. The accounting information produced by the
12 information subsystem adheres to generally accepted accounting
13 principles.
14 2. The information subsystem contains the necessary
15 controls to maintain its integrity, within acceptable limits
16 and at an acceptable cost.
17 3. The information subsystem is auditable.
18 (b) ~~(c)~~ The Auditor General shall be advised by the
19 functional owner of each information subsystem as to the date
20 that the development or significant modification of its
21 functional system specifications is to begin. The Auditor
22 General shall provide technical advice, as allowed by
23 professional auditing standards, on specific issues relating
24 to the design, implementation, and operation of each
25 information subsystem. ~~specify those additional features,~~
26 ~~characteristics, controls, and internal control measures~~
27 ~~deemed necessary to carry out the provisions of this~~
28 ~~subsection. Further, it shall be the responsibility of each~~
29 ~~functional owner to ensure installation and incorporation of~~
30 ~~such specified features, characteristics, controls, and~~
31 ~~internal control measures within each information subsystem.~~

1 Section 17. Section 215.97, Florida Statutes, is
2 amended to read:
3 215.97 Florida Single Audit Act.--
4 (1) The purposes of the section are to:
5 (a) Establish uniform state audit requirements for
6 state financial assistance provided by state agencies to
7 nonstate entities to carry out state projects.
8 (b) Promote sound financial management, including
9 effective internal controls, with respect to state financial
10 assistance administered by nonstate entities.
11 (c) Promote audit economy and efficiency by relying to
12 the extent possible on already required audits of federal
13 financial assistance provided to nonstate entities.
14 (d) Provide for identification of state financial
15 assistance transactions in the appropriations act, state
16 accounting records, and recipient organization records.
17 (e) Promote improved coordination and cooperation
18 within and between affected state agencies providing state
19 financial assistance and nonstate entities receiving state
20 assistance.
21 (f) Ensure, to the maximum extent possible, that state
22 agencies monitor, use, and followup on audits of state
23 financial assistance provided to nonstate entities.
24 (2) Definitions; as used in this section, the term:
25 (a) "Audit threshold" means the threshold amount used
26 to determine ~~to use in determining~~ when a state single audit
27 or project-specific audit of a nonstate entity shall be
28 conducted in accordance with this section. Each nonstate
29 entity that expends a total amount of state financial
30 assistance equal to or in excess of $300,000 in any fiscal
31 year of such nonstate entity shall be required to have a state

single audit, or a project-specific audit performed by an independent auditor, for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Department of Financial Services ~~Chief-Financial Officer~~, and all state awarding agencies ~~that-provide-state financial-assistance-to-nonstate-entities~~, shall review the threshold amount for requiring audits under this section and may adjust such threshold ~~dollar~~ amount consistent with the purposes ~~purpose~~ of this section.

(b) "Auditing standards" means the auditing standards as stated in the rules of the Auditor General as applicable to for-profit organizations, nonprofit organizations, or local governmental entities.

(c) "Catalog of State Financial Assistance" means a comprehensive listing of state projects. The Catalog of State Financial Assistance shall be issued by the Department of Financial Services ~~Executive-Office-of-the-Governor~~ after conferring with the Chief Financial Officer and all state awarding agencies ~~that-provide-state-financial-assistance-to nonstate-entities~~. The Catalog of State Financial Assistance shall include for each listed state project: the responsible state awarding agency; standard state project number identifier; official title; legal authorization; and description of the state project, including objectives, restrictions, application and awarding procedures, and other relevant information determined necessary.

(d) "Coordinating agency" means the state awarding agency that provides the predominant amount of state financial assistance expended by a recipient, as determined by the recipient's Schedule of Expenditures of State Financial

1 Assistance. To provide continuity, the determination of the
2 predominant amount of state financial assistance shall be
3 based upon state financial assistance expended in the
4 recipient's fiscal years ending in 2004, 2007, and 2010, and
5 every third year thereafter.
6 (e) ~~(d)~~ "Financial reporting package" means the
7 nonstate entities' financial statements, Schedule of
8 Expenditures of State Financial Assistance, auditor's reports,
9 management letter, auditee's written responses or corrective
10 action plan, correspondence on followup of prior years'
11 corrective actions taken, and such other information
12 determined by the Auditor General to be necessary and
13 consistent with the purposes of this section.
14 (f) ~~(e)~~ "Federal financial assistance" means financial
15 assistance from federal sources passed through the state and
16 provided to nonstate organizations ~~entities~~ to carry out a
17 federal program. "Federal financial assistance" includes all
18 types of federal assistance as defined in applicable United
19 States Office of Management and Budget circulars.
20 (g) ~~(f)~~ "For-profit organization" means any
21 organization or sole proprietor but is not a local
22 governmental entity or a nonprofit organization.
23 (h) ~~(g)~~ "Independent auditor" means an independent
24 ~~external state or local government auditor or a~~ certified
25 public accountant licensed under chapter 473 ~~who meets the~~
26 ~~independence standards~~.
27 (i) ~~(h)~~ "Internal control over state projects" means a
28 process, effected by a nonstate ~~an~~ entity's management and
29 other personnel, designed to provide reasonable assurance
30 regarding the achievement of objectives in the following
31 categories:

1. Effectiveness and efficiency of operations.

2. Reliability of financial operations.

3. Compliance with applicable laws and regulations.

(j) ~~(i)~~ "Local governmental entity" means a county agency, municipality, or special district or any other entity excluding ~~(other than~~ a district school board, charter school, ~~or~~ community college~~)~~, or public university, however styled, which independently exercises any type of governmental function within the state.

(k) ~~(j)~~ "Major state project" means any state project meeting the criteria as stated in the rules of the Department of Financial Services ~~Executive Office of the Governor~~. Such criteria shall be established after consultation with all ~~the Chief Financial Officer and appropriate~~ state awarding agencies ~~that provide state financial assistance~~ and shall consider the amount of state project expenditures and ~~or~~ expenses or inherent risks. Each major state project shall be audited in accordance with the requirements of this section.

(l) ~~(k)~~ "Nonprofit organization" means any corporation, trust, association, cooperative, or other organization that:

1. Is operated primarily for scientific, educational service, charitable, or similar purpose in the public interest;

2. Is not organized primarily for profit;

3. Uses net proceeds to maintain, improve, or expand the operations of the organization; and

4. Has no part of its income or profit distributable to its members, directors, or officers.

(m) ~~(l)~~ "Nonstate entity" means a local governmental entity, nonprofit organization, or for-profit organization that receives state financial assistance ~~resources~~.

(n) ~~(m)~~ "Recipient" means a nonstate entity that receives state financial assistance directly from a state awarding agency.

(o) ~~(n)~~ "Schedule of of Expenditures of State Financial Assistance" means a document prepared in accordance with the rules of the Department of Financial Services ~~Chief-Financial Officer~~ and included in each financial reporting package required by this section.

(p) ~~(o)~~ "State awarding agency" means a ~~the~~ state agency, as defined in s. 216.011, that provides ~~provided~~ state financial assistance to a ~~the~~ nonstate entity.

(q) ~~(p)~~ "State financial assistance" means ~~financial assistance from~~ state resources, not including federal financial assistance and state matching on federal programs, provided to a nonstate entity ~~entities~~ to carry out a state project. "State financial assistance" includes the ~~all~~ types of state resources ~~assistance as~~ stated in the rules of the Department of Financial Services ~~Executive Office of the Governor~~ established in consultation with all ~~the Chief Financial Officer and appropriate~~ state awarding agencies ~~that provide state financial assistance. It includes~~ State financial assistance may be provided directly by state awarding agencies or indirectly by nonstate entities ~~recipients of state awards or subrecipients~~. State financial assistance ~~It~~ does not include procurement contracts used to buy goods or services from vendors and ~~. Audits of such procurement contracts with vendors are outside of the scope of this section. Also, audits of~~ contracts to operate state-owned ~~state government owned~~ and contractor-operated facilities ~~are excluded from the audit requirements of this section~~.

(r) ~~(q)~~ "State matching" means state resources provided

1 to a nonstate entity ~~entities-to-be-used~~ to meet federal
2 financial participation matching requirements ~~of-federal~~
3 ~~programs~~.
4 (s) "State program" means a set of special purpose
5 activities undertaken to realize identifiable goals and
6 objectives in order to achieve a state agency's mission and
7 legislative intent requiring accountability for state
8 resources.
9 (t) ~~(r)~~ "State project" means a state program that
10 provides ~~all~~ state financial assistance to a nonstate
11 organization and that must be ~~entity~~ assigned a ~~single~~ state
12 project number identifier in the Catalog of State Financial
13 Assistance.
14 (u) ~~(s)~~ "State Projects Compliance Supplement" means a
15 document issued by the Department of Financial Services
16 ~~Executive-Office-of-the-Governor~~, in consultation with ~~the~~
17 ~~Chief-Financial-Officer-and~~ all state awarding agencies ~~that~~
18 ~~provide-state-financial-assistance~~. The State Projects
19 Compliance Supplement shall identify state projects, the
20 significant compliance requirements, eligibility requirements,
21 matching requirements, suggested audit procedures, and other
22 relevant information determined necessary.
23 (v) ~~(t)~~ "State project-specific audit" means an audit
24 of one state project performed in accordance with the
25 requirements of subsection (10) ~~(9)~~.
26 (w) ~~(u)~~ "State single audit" means an audit of a
27 nonstate entity's financial statements and state financial
28 assistance. Such audits shall be conducted in accordance with
29 the auditing standards as stated in the rules of the Auditor
30 General.
31 (x) ~~(v)~~ "Subrecipient" means a nonstate entity that

receives state financial assistance through another nonstate entity.

(y) ~~(w)~~ "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a state project. These goods or services may be for an organization's own use or for the use of beneficiaries of the state project.

(3) The Executive Office of the Governor shall be responsible for notifying the Department of Financial Services of any actions during the budgetary process which impact the Catalog of State Financial Assistance.~~:~~

~~(a)--Upon-conferring-with-the-Chief-Financial-Officer and-all-state-awarding-agencies,-adopt-rules-necessary-to provide-appropriate-guidance-to-state-awarding-agencies, recipients-and-subrecipients,-and-independent-auditors-of state-financial-assistance-relating-to-the-requirements-of this-section,-including:~~

~~1.--The-types-or-classes-of-financial-assistance considered-to-be-state-financial-assistance-which-would-be subject-to-the-requirements-of-this-section.--This-would include-guidance-to-assist-in-identifying-when-the-state agency-or-recipient-has-contracted-with-a-vendor-rather-than with-a-recipient-or-subrecipient.~~

~~2.--The-criteria-for-identifying-a-major-state-project.~~

~~3.--The-criteria-for-selecting-state-projects-for audits-based-on-inherent-risk.~~

~~(b)--Be-responsible-for-coordinating-the-initial preparation-and-subsequent-revisions-of-the-Catalog-of-State Financial-Assistance-after-consultation-with-the-Chief Financial-Officer-and-all-state-awarding-agencies.~~

~~(c)--Be-responsible-for-coordinating-the-initial~~

1 ~~preparation-and-subsequent-revisions-of-the-State-Projects~~
2 ~~Compliance-Supplement,-after-consultation-with-the-Chief~~
3 ~~Financial-Officer-and-all-state-awarding-agencies.~~
4 (4) The Department of Financial Services ~~Chief~~
5 ~~Financial-Officer~~ shall:
6 (a) Upon conferring with the Executive Office of the
7 Governor and all state awarding agencies, adopt rules
8 necessary to provide appropriate guidance to state awarding
9 agencies, nonstate entities, and independent auditors of state
10 financial assistance relating to the requirements of this
11 section, including:
12 1. The types or classes of state resources considered
13 to be state financial assistance that would be subject to the
14 requirements of this section. This would include guidance to
15 assist in identifying when the state awarding agency or a
16 nonstate entity has contracted with a vendor rather than with
17 a recipient or subrecipient.
18 2. The criteria for identifying a major state project.
19 3. The criteria for selecting state projects for
20 audits based on inherent risk.
21 (b) Be responsible for coordinating revisions to the
22 Catalog of State Financial Assistance after consultation with
23 the Executive Office of the Governor and all state awarding
24 agencies.
25 (c) Be responsible for coordinating with the Executive
26 Office of the Governor actions affecting the budgetary process
27 under paragraph (b).
28 (d) Be responsible for coordinating revisions to the
29 State Projects Compliance Supplement, after consultation with
30 the Executive Office of the Governor and all state awarding
31 agencies.

(e) ~~(a)~~ Make enhancements to the state's accounting system to provide for the:

1. Recording of state financial assistance and federal financial assistance appropriations and expenditures within the state awarding agencies' operating funds.

2. Recording of state project number identifiers, as provided in the Catalog of State Financial Assistance, for state financial assistance.

3. Establishment and recording of an identification code for each financial transaction, including awarding state agencies' disbursements of state financial assistance and federal financial assistance, as to the corresponding type or organization that is party to the transaction (e.g., other governmental agencies, nonprofit organizations, and for-profit organizations), and disbursements of federal financial assistance, as to whether the party to the transaction is or is not a nonstate entity ~~recipient or subrecipient~~.

(f) ~~(b)~~ Upon conferring with the Executive Office of the Governor and all state awarding agencies, adopt rules necessary to provide appropriate guidance to state awarding agencies, nonstate entities ~~recipients and subrecipients~~, and independent auditors of state financial assistance relating to the format for the Schedule of Expenditures of State Financial Assistance.

(g) ~~(c)~~ Perform any inspections, reviews, investigations, or audits of state financial assistance considered necessary in carrying out the Department of Financial Services ~~Chief Financial Officer's~~ legal responsibilities for state financial assistance or to comply with the requirements of this section.

(5) Each state awarding agency shall:

other state official.

(d) Be provided one copy of each financial reporting package prepared in accordance with the requirement of this section.

(e) Review the recipient's ~~recipient~~ financial reporting package, including the management letters and corrective action plans, to the extent necessary to determine whether timely and appropriate corrective action has been taken with respect to audit findings and recommendations pertaining to state financial assistance that are specific to ~~provided by~~ the state awarding agency.

(f) Designate within the state awarding agency a division, bureau, or other organizational unit that will be responsible for reviewing financial reporting packages pursuant to paragraph (e).

If the state awarding agency is not the coordinating agency as defined in paragraph (2)(d), the state awarding agency's designated division, bureau, or other organizational unit shall communicate to the coordinating agency the state awarding agency's approval of the recipient's corrective action plan with respect to findings and recommendations that are not specific to the state awarding agency.

(6) Each coordinating agency shall:

(a) Review the recipient's financial reporting package, including the management letter and corrective action plan, to identify audit findings and recommendations that affect state financial assistance which are not specific to a particular state awarding agency.

(b) For any such findings and recommendations determine:

(a) Provide to each ~~a~~ recipient information needed by the recipient to comply with the requirements of this section, including:

1. The audit and accountability requirements for state projects as stated in this section and applicable ~~rules of the Executive Office of the Governor,~~ rules of the Department of Financial Services ~~Chief Financial Officer,~~ and rules of the Auditor General.

2. Information from the Catalog of State Financial Assistance, including the standard state project number identifier; official title; legal authorization; and description of the state project including objectives, restrictions, and other relevant information determined necessary.

3. Information from the State Projects Compliance Supplement, including the significant compliance requirements, eligibility requirements, matching requirements, suggested audit procedures, and other relevant information determined necessary.

(b) Require the recipient, as a condition of receiving state financial assistance, to allow the state awarding agency, the Department of Financial Services ~~Chief Financial Officer~~, and the Auditor General access to the recipient's records and the recipient's independent auditor's working papers as necessary for complying with the requirements of this section.

(c) Notify the recipient that this section does not limit the authority of the state awarding agency to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state awarding agency inspector general, the Auditor General, or any

1. Whether timely and appropriate corrective action has been taken.

2. Promptly inform the state awarding agency's contact, as provided in paragraph (5)(f), of actions taken by the recipient to comply with the approved corrective action plan.

(c) Maintain records of followup actions taken for the use of any succeeding coordinating agency.

(7)~~(6)~~ As a condition of receiving state financial assistance, each nonstate entity ~~recipient~~ that provides state financial assistance to a subrecipient shall:

(a) Provide to each ~~a~~ subrecipient information needed by the subrecipient to comply with the requirements of this section, including:

1. Identification of the state awarding agency.

2. The audit and accountability requirements for state projects as stated in this section and applicable ~~rules of the Executive Office of the Governor,~~ rules of the Department of Financial Services ~~Chief Financial Officer,~~ and rules of the Auditor General.

3. Information from the Catalog of State Financial Assistance, including the standard state project number identifier; official title; legal authorization; and description of the state project, including objectives, restrictions, and other relevant information.

4. Information from the State Projects Compliance Supplement including the significant compliance requirements, eligibility requirements, matching requirements, and suggested audit procedures, and other relevant information determined necessary.

(b) Review the financial reporting package of the

subrecipient ~~audit-reports~~, including the management letter and corrective action plan ~~letters~~, to the extent necessary to determine whether timely and appropriate corrective action has been taken with respect to audit findings and recommendations pertaining to state financial assistance provided by a ~~the~~ state awarding agency or nonstate entity.

(c) Perform any ~~such~~ other procedures ~~as~~ specified in terms and conditions of the written agreement with the state awarding agency or nonstate entity, including any required monitoring of the subrecipient's use of state financial assistance through onsite visits, limited scope audits, or other specified procedures.

(d) Require subrecipients, as a condition of receiving state financial assistance, to permit the independent auditor of the nonstate entity ~~recipient~~, the state awarding agency, Department of Financial Services ~~the-Chief-Financial-Officer~~, and the Auditor General access to the subrecipient's records and the subrecipient's independent auditor's working papers as necessary to comply with the requirements of this section.

(8) ~~(7)~~ Each recipient or subrecipient of state financial assistance shall comply with the following:

(a) Each nonstate entity that ~~receives-state-financial assistance-and~~ meets the audit threshold requirements, in any fiscal year of the nonstate entity, as stated in the rules of the Auditor General, shall have a state single audit conducted for such fiscal year in accordance with the requirements of this act and with additional requirements established in ~~rules of-the-Executive-Office-of-the-Governor,~~ rules of the Department of Financial Services ~~Chief-Financial-Officer,~~ and rules of the Auditor General. If only one state project is involved in a nonstate entity's fiscal year, the nonstate

entity may elect to have only a state project-specific audit ~~of the state project for that fiscal year~~.

(b) Each nonstate entity ~~that receives state financial assistance~~ and does not meet the audit threshold requirements, in any fiscal year of the nonstate entity, as stated in this law or the rules of the Auditor General is exempt for such fiscal year from the state single audit requirements of this section. However, such nonstate entity must meet terms and conditions specified in the written agreement with the state awarding agency or nonstate entity.

(c) Regardless of the amount of the state financial assistance, the provisions of this section do not exempt a nonstate entity from compliance with provisions of law relating to maintaining records concerning state financial assistance to such nonstate entity or allowing access and examination of those records by the state awarding agency, nonstate entity, the Department of Financial Services ~~Chief Financial Officer~~, or the Auditor General.

(d) Audits conducted pursuant to this section shall be performed annually.

(e) Audits conducted pursuant to this section shall be conducted by independent auditors in accordance with auditing standards as stated in rules of the Auditor General.

(f) Upon completion of the audit as required by this section, a copy of the recipient's financial reporting package shall be filed with the state awarding agency and the Auditor General. Upon completion of the audit as required by this section, a copy of the subrecipient's financial reporting package shall be filed with the nonstate entity ~~recipient~~ that provided the state financial assistance and the Auditor General. The financial reporting package shall be filed in

accordance with the rules of the Auditor General.

(g) All financial reporting packages prepared pursuant to the requirements of this section shall be available for public inspection.

(h) If an audit conducted pursuant to this section discloses any significant audit findings relating to state financial assistance, including material noncompliance with individual state project compliance requirements or reportable conditions in internal controls of the nonstate entity, the nonstate entity shall submit as part of the financial reporting ~~audit~~ package to the state awarding agency or nonstate entity a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary.

(i) An audit conducted in accordance with this section is in addition to any audit of federal awards required by the federal Single Audit Act and other federal laws and regulations. To the extent that such federally required audits provide the state awarding agency or nonstate entity with information it requires to carry out its responsibilities under state law or other guidance, the ~~a~~ state awarding agency or nonstate entity shall rely upon and use that information.

(j) Unless prohibited by law, the costs ~~cost~~ of audits pursuant to this section are ~~is~~ allowable charges to state projects. However, any charges to state projects should be limited to those incremental costs incurred as a result of the audit requirements of this section in relation to other audit requirements. The nonstate entity should allocate such incremental costs to all state projects for which it expended state financial assistance.

(k) Audit costs may not be charged to state projects

when audits required by this section have not been made or have been made but not in accordance with this section. If a nonstate entity fails to have an audit conducted consistent with this section, a state awarding agency or nonstate entity ~~agencies~~ may take appropriate corrective action to enforce compliance.

(l) This section does not prohibit the state awarding agency or nonstate entity from including terms and conditions in the written agreement which require additional assurances that state financial assistance meets the applicable requirements of laws, regulations, and other compliance rules.

(m) A state awarding agency or nonstate entity that ~~provides state financial assistance to nonstate entities and~~ conducts or arranges for audits of state financial assistance that are in addition to the audits conducted under this act, including audits of nonstate entities that do not meet the audit threshold requirements, shall, consistent with other applicable law, arrange for funding the full cost of such additional audits.

(9) ~~(8)~~ The independent auditor when conducting a state single audit of a nonstate entity ~~recipients or subrecipients~~ shall:

(a) Determine whether the nonstate entity's financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles.

(b) Determine whether state financial assistance shown on the Schedule of Expenditures of State Financial Assistance is presented fairly in all material respects in relation to the nonstate entity's financial statements taken as a whole.

(c) With respect to internal controls pertaining to each major state project:

1. Obtain an understanding of internal controls;

2. Assess control risk;

3. Perform tests of controls unless the controls are deemed to be ineffective; and

4. Determine whether the nonstate entity has internal controls in place to provide reasonable assurance of compliance with the provisions of laws and rules pertaining to state financial assistance that have a material effect on each major state project.

(d) Determine whether each major state project complied with the provisions of laws, rules, and guidelines as identified in the State Projects Compliance Supplement, or otherwise identified by the state awarding agency, which have a material effect on each major state project. When major state projects are less than 50 percent of the nonstate entity's total expenditures for all state financial assistance, the auditor shall select and test additional state projects as major state projects as necessary to achieve audit coverage of at least 50 percent of the expenditures for all state financial assistance provided to the nonstate entity. Additional state projects needed to meet the 50-percent requirement may be selected on an inherent risk basis as stated in the rules of the Department of Financial Services ~~Executive-Office-of-the-Governor~~.

(e) Report on the results of any audit conducted pursuant to this section in accordance with the ~~rules-of-the Executive-Office-of-the-Governor,~~ rules of the Department of Financial Services ~~Chief-Financial-Officer,~~ and rules of the Auditor General. Financial reporting packages must ~~Audit reports-shall~~ include summaries of the auditor's results regarding the nonstate entity's financial statements; Schedule

of Expenditures of State Financial Assistance; internal controls; and compliance with laws, rules, and guidelines.

(f) Issue a management letter as prescribed in the rules of the Auditor General.

(g) Upon notification by the nonstate entity, make available the working papers relating to the audit conducted pursuant to the requirements of this section to the state awarding agency, the Department of Financial Services ~~Chief Financial Officer~~, or the Auditor General for review or copying.

(10) ~~(9)~~ The independent auditor, when conducting a state project-specific audit of a nonstate entity ~~recipients or subrecipients~~, shall:

(a) Determine whether the nonstate entity's Schedule of Expenditure of State Financial Assistance is presented fairly in all material respects in conformity with stated accounting policies.

(b) Obtain an understanding of internal controls ~~control~~ and perform tests of internal controls ~~control~~ over the state project consistent with the requirements of a major state project.

(c) Determine whether or not the auditee has complied with applicable provisions of laws, rules, and guidelines as identified in the State Projects Compliance Supplement, or otherwise identified by the state awarding agency, which could have a direct and material effect on the state project.

(d) Report on the results of the ~~a~~ state project-specific audit consistent with the requirements of the state single audit and issue a management letter as prescribed in the rules of the Auditor General.

(e) Upon notification by the nonstate entity, make

available the working papers relating to the audit conducted pursuant to the requirements of this section to the state awarding agency, the Department of Financial Services ~~Chief Financial Officer~~, or the Auditor General for review or copying.

(11) ~~(10)~~ The Auditor General shall:

(a) Have the authority to audit state financial assistance provided to any nonstate entity when determined necessary by the Auditor General or when directed by the Legislative Auditing Committee.

(b) Adopt rules that state the auditing standards that independent auditors are to follow for audits of nonstate entities required by this section.

(c) Adopt rules that describe the contents and the filing deadlines for the financial reporting package.

(d) Provide technical advice upon request of the Department of Financial Services ~~Chief Financial Officer, Executive Office of the Governor,~~ and state awarding agencies relating to financial reporting and audit responsibilities contained in this section.

(e) Be provided one copy of each financial reporting package prepared in accordance with the requirements of this section.

(f) Perform ongoing reviews of a sample of financial reporting packages filed pursuant to the requirements of this section to determine compliance with the reporting requirements of this section and applicable ~~rules of the Executive Office of the Governor,~~ rules of the Department of Financial Services ~~Chief Financial Officer,~~ and rules of the Auditor General.

Section 18. Paragraphs (a), (b), (n), (gg), (hh), and

1 (jj) of subsection (1) of section 216.011, Florida Statutes,
2 are amended, paragraph (rr) is added to that subsection, and
3 paragraph (c) is added to subsection (3) of that section, to
4 read:
5 216.011 Definitions.--
6 (1) For the purpose of fiscal affairs of the state,
7 appropriations acts, legislative budgets, and approved
8 budgets, each of the following terms has the meaning
9 indicated:
10 (a) "Annual salary rate" means the monetary
11 compensation authorized to be paid a position on an annualized
12 basis. The term does not include moneys authorized for
13 benefits associated with the position. ~~In-calculating-salary~~
14 ~~rate,-a-vacant-position-shall-be-calculated-at-the-minimum-of~~
15 ~~the-pay-grade-for-that-position.~~
16 (b) "Appropriation" means a legal authorization to
17 make expenditures for specific purposes within the amounts
18 authorized by law ~~in-the-appropriations-act~~.
19 (n) "Expense" means the appropriation category used to
20 fund the usual, ordinary, and incidental expenditures by an
21 agency or the judicial branch, including such items as
22 ~~contractual-services,~~ commodities, ~~and~~ supplies of a
23 consumable nature, current obligations, and fixed charges, and
24 excluding expenditures classified as operating capital outlay.
25 Payments to other funds or local, state, or federal agencies
26 may be included in this category.
27 (gg) "Mandatory reserve" means the reduction of an
28 appropriation by the Governor or the Legislative Budget
29 Commission due to an anticipated deficit in a fund, pursuant
30 to s. 216.221. No action may be taken to restore a mandatory
31 reserve either directly or indirectly. ~~"Performance-based~~

1 ~~program-appropriation"-means-the-appropriation-category-used~~
2 ~~to-fund-a-specific-set-of-activities-or-classification-of~~
3 ~~expenditure-within-an-approved-performance-based-program.~~
4 (hh) "Budget reserve" means the withholding of an
5 appropriation, or portion thereof, as authorized by the
6 Legislature. The need for a budget reserve may exist until
7 certain conditions set by the Legislature are met by the
8 affected agency, or such need may exist due to financial or
9 program changes that have occurred since, and were unforeseen
10 at the time of, passage of the General Appropriations Act.
11 ~~"Performance-based-program-budget"-means-a-budget-that~~
12 ~~incorporates-approved-programs-and-performance-measures.~~
13 (jj) "Program" means a set of services and activities
14 undertaken in accordance with a plan of action organized to
15 realize identifiable goals and objectives based on legislative
16 authorization.
17 (rr) "Activity" means a unit of work which has
18 identifiable starting and ending points, consumes resources,
19 and produces outputs.
20 (3) For purposes of this chapter, the term:
21 (c) "Statutorily authorized entity" means any entity
22 primarily acting as an instrumentality of the state, any
23 regulatory or governing body, or any other governmental or
24 quasi-governmental organization that receives, disburses,
25 expends, administers, awards, recommends expenditure of,
26 handles, manages, or has custody or control of funds
27 appropriated by the Legislature and:
28 1. Is created, organized, or specifically authorized
29 to be created or established by general law; or
30 2. Assists a department, as defined in s. 20.03(2), or
31 other unit of state government in providing programs or

1 services on a statewide basis with a statewide service area or
2 population.
3 Section 19. Subsections (1), (2), (3), and (9) of
4 section 216.013, Florida Statutes, are amended to read:
5 216.013 Long-range program plan.--
6 (1) State agencies shall develop long-range program
7 plans to achieve state goals using an interagency planning
8 process that includes the development of integrated agency
9 program service outcomes. The plan shall cover a period of 5
10 fiscal years and shall become effective July 1 each year.
11 Long-range program plans shall provide the framework for the
12 development of agency budget requests and shall:
13 (a) Identify agency programs and address how agency
14 programs will be used to implement state policy and achieve
15 state goals and program component objectives;
16 (b) Identify and describe agency services and
17 activities ~~functions~~ and how they will be used to achieve
18 designated outcomes;
19 (c) Identify demand, output, total costs, and unit
20 costs for each activity ~~function~~;
21 (d) Provide information regarding performance
22 measurement, which includes, but is not limited to, how data
23 is collected, the methodology used to measure a performance
24 indicator, the validity and reliability of a measure, the
25 appropriateness of a measure, and whether the agency inspector
26 general has assessed the reliability and validity of agency
27 performance measures, pursuant to s. 20.055(2);
28 (e) Identify and justify facility and fixed capital
29 outlay projects and their associated costs; and
30 (f) Identify and justify information technology
31 infrastructure and applications and their associated costs for

information technology projects or initiatives.

(2) All agency activities ~~functions~~ and their costs shall be carefully evaluated and justified by the agency. The justification must clearly demonstrate the needs of agency customers and clients and why the agency is proposing functions and their associated costs to address the needs based on state priorities, the agency mission, and legislative authorization. Further, the justification must show how agency functions are integrated and contribute to the overall achievement of state goals. Facilities, fixed capital outlay and information technology infrastructure, and applications shall be evaluated pursuant to ss. 216.0158, 216.043, and 216.0446, respectively.

(3) Long-range program plans shall be submitted to the Executive Office of the Governor by August 1 of each year, unless an alternative date is approved by the Governor and the chairs of the legislative appropriations committees, in a form and manner prescribed by the ~~Executive Office of the~~ Governor and the chairs of the legislative appropriations committees. Such long-range program plans for the Judicial Branch shall be submitted by the Chief Justice of the Supreme Court to the President of the Senate and the Speaker of the House of Representatives, and a copy shall be provided to the Executive Office of the Governor.

(9) Agencies and the judicial branch shall make appropriate adjustments to their long-range program plans to be consistent with the appropriations and performance measures in the General Appropriations Act and legislation implementing the General Appropriations Act. Agencies and the judicial branch have until June 30 ~~15~~ to make adjustments to their plans and submit the adjusted plans to the Executive Office of

1 the Governor for review.
2 Section 20. Section 216.023, Florida Statutes, is
3 amended to read:
4 216.023 Legislative budget requests to be furnished to
5 Legislature by agencies.--
6 (1) The head of each state agency, except as provided
7 in subsection (2), shall submit a final legislative budget
8 request to the Legislature and to the Governor, as chief
9 budget officer of the state, in the form and manner prescribed
10 in the budget instructions and at such time as specified by
11 the Executive Office of the Governor, based on the agency's
12 independent judgment of its needs. However, no state agency
13 shall submit its complete legislative budget request,
14 including all supporting forms and schedules required by this
15 chapter, later than September 15 of each year, unless an
16 alternative date is approved by the Governor and the chairs of
17 the legislative appropriations committees.
18 (2) The judicial branch and the Division of
19 Administrative Hearings shall submit their complete
20 legislative budget requests directly to the Legislature with a
21 copy to the Governor, as chief budget officer of the state, in
22 the form and manner as prescribed in the budget instructions.
23 However, the complete legislative budget requests, including
24 all supporting forms and schedules required by this chapter,
25 shall be submitted no later than September 15 of each year,
26 unless an alternative date is approved by the Governor and the
27 chairs of the legislative appropriations committees.
28 (3) The Executive Office of the Governor and the
29 appropriations committees of the Legislature shall jointly
30 develop legislative budget instructions for preparing the
31 exhibits and schedules that make up the agency budget from

which each agency and the judicial branch shall prepare their budget request. The budget instructions shall be consistent with s. 216.141 and shall be transmitted to each agency and to the judicial branch no later than June 15 of each year, unless an alternative date is approved by the Governor and the chairs of the legislative appropriations committees. In the event that agreement cannot be reached between the Executive Office of the Governor and the appropriations committees of the Legislature regarding legislative budget instructions, the issue shall be resolved by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(4)(a) The legislative budget request must contain for each program:

1. The constitutional or statutory authority for a program, a brief purpose statement, and approved program components.

2. Information on expenditures for 3 fiscal years (actual prior-year expenditures, current-year estimated expenditures, and agency budget requested expenditures for the next fiscal year) by appropriation category.

3. Details on trust funds and fees.

4. The total number of positions (authorized, fixed, and requested).

5. An issue narrative describing and justifying changes in amounts and positions requested for current and proposed programs for the next fiscal year.

6. Information resource requests.

7. Legislatively approved output and outcome performance measures and any proposed revisions to measures.

8. Proposed performance standards for each performance measure and justification for the standards and the sources of

1 data to be used for measurement.
2 9. Prior-year performance data on approved performance
3 measures and an explanation of deviation from expected
4 performance. Performance data must be assessed for reliability
5 in accordance with s. 20.055.
6 10. Proposed performance incentives and disincentives.
7 11. Supporting information, including applicable
8 cost-benefit analyses, business case analyses, performance
9 contracting procedures, service comparisons, and impacts to
10 performance standards for any requests to outsource or
11 privatize agency functions.
12 12. An evaluation of current outsourcing and
13 privatization initiatives, if any, including an assessment of
14 contractor performance, a comparison of anticipated service
15 levels to actual service levels, and a comparison of estimated
16 savings to actual savings achieved. Consolidated reports
17 issued by the Department of Management Services may be used to
18 satisfy this requirement.
19 (b) It is the intent of the Legislature that total
20 accountability measures, including unit-cost data, serve not
21 only as a budgeting tool but also as a policymaking tool and
22 an accountability tool. Therefore, each state agency and the
23 judicial branch must submit a one-page summary of information
24 for the preceding year in accordance with the legislative
25 budget instructions. Each one-page summary must contain:
26 1. The final budget for the agency and the judicial
27 branch.
28 2. Total funds from the General Appropriations Act.
29 3. Adjustments to the General Appropriations Act.
30 4. The line-item listings of all activities.
31 5. The number of activity units performed or

1 accomplished.
2 6. Total expenditures for each activity, including
3 amounts paid to contractors and subordinate entities.
4 Expenditures related to administrative activities not aligned
5 with output measures must consistently be allocated to
6 activities with output measures prior to computing unit costs.
7 7. The cost per unit for each activity, including the
8 costs allocated to contractors and subordinate entities.
9 8. The total amount of reversions and pass-through
10 expenditures omitted from unit-cost calculations.
11
12 At the regular session immediately following the submission of
13 the agency unit cost summary, the Legislature shall reduce in
14 the General Appropriations Act for the ensuing fiscal year, by
15 an amount equal to at least 10 percent of the allocation for
16 the fiscal year preceding the current fiscal year, the funding
17 of each state agency that fails to submit the report required
18 under this paragraph.
19 ~~(5)--At-the-time-specified-in-the-legislative-budget~~
20 ~~instructions-and-in-sufficient-time-to-be-included-in-the~~
21 ~~Governor's-recommended-budget,-the-judicial-branch-is-required~~
22 ~~to-submit-a-performance-based-program-budget-request.--The~~
23 ~~Chief-Justice-of-the-Supreme-Court-shall-identify-and,-after~~
24 ~~consultation-with-the-Office-of-Program-Policy-Analysis-and~~
25 ~~Government-Accountability,-submit-to-the-President-of-the~~
26 ~~Senate-and-the-Speaker-of-the-House-of-Representatives-a-list~~
27 ~~of-proposed-programs-and-associated-performance-measures.--The~~
28 ~~judicial-branch-shall-provide-documentation-to-accompany-the~~
29 ~~list-of-proposed-programs-and-performance-measures-as-provided~~
30 ~~under-subsection-(4).--The-judicial-branch-shall-submit-a~~
31 ~~performance-based-program-agency-budget-request-using-the~~

~~programs-and-performance-measures-adopted-by-the-Legislature. The-Chief-Justice-may-propose-revisions-to-approved-programs or-performance-measures-for-the-judicial-branch. The Legislature-shall-have-final-approval-of-all-programs-and associated-performance-measures-and-standards-for-the-judicial branch-through-the-General-Appropriations-Act-or-legislation implementing-the-General-Appropriations-Act. By-September-15, 2001, the-Chief-Justice-of-the-Supreme-Court-shall-submit-to the-President-of-the-Senate-and-the-Speaker-of-the-House-of Representatives-a-performance-based-program-budget-request-for programs-of-the-judicial-branch-approved-by-the-Legislature and-provide-a-copy-to-the-Executive-Office-of-the-Governor.~~

(5) ~~(6)~~ Agencies must maintain a comprehensive performance accountability system and provide a list of performance measures maintained by the agency which are in addition to the measures approved by the Legislature.

(6) ~~(7)~~ Annually, by June 30, executive agencies shall submit to the Executive Office of the Governor adjustments to their performance standards based on the amounts appropriated for each program by the Legislature. When such an adjustment is made, all performance standards, including any adjustments made, shall be reviewed and revised as necessary by the Executive Office of the Governor and, upon approval, submitted to the Legislature pursuant to the review and approval process provided in s. 216.177. The Senate and the House of Representatives appropriations committees ~~Senate-Committee-on Fiscal-Policy-and-the-House-of-Representatives-Fiscal Responsibility-Council~~ shall advise Senate substantive committees and House of Representatives substantive committees, respectively, of all adjustments made to performance standards or measures. The Executive Office of the

Governor shall maintain ~~both~~ the official record of adjustments to the performance standards ~~as-part-of-the agency's-approved-operating-budget-and-the-official performance-ledger~~. As used in this section, the term "official record" ~~"performance-ledger"~~ means the official compilation of information about state agency performance-based programs and measures, including approved programs, approved outputs and outcomes, baseline data, approved standards for each performance measure and any approved adjustments thereto, as well as actual agency performance for each measure.

(7) ~~(8)~~ As a part of the legislative budget request, the head of each state agency and the Chief Justice of the Supreme Court for the judicial branch shall include an inventory of all litigation in which the agency is involved that may require additional appropriations to the agency, that may significantly affect revenues received or anticipated to be received by the state, or that may require ~~or~~ amendments to the law under which the agency operates. No later than March 1 following the submission of the legislative budget request, the head of the state agency and the Chief Justice of the Supreme Court shall provide an update of any additions or changes to the inventory. Such inventory shall include information specified annually in the legislative budget instructions.

(8) ~~(9)~~ Annually, by June 30, the judicial branch shall make adjustments to any performance standards for approved programs based on the amount appropriated for each program, which shall be submitted to the Legislature pursuant to the notice and review process provided in s. 216.177. The Senate and the House of Representatives appropriations committees

1 ~~Senate-Committee-on-Fiscal-Policy-and-the-House-Fiscal~~
2 ~~Responsibility-Council~~ shall advise Senate substantive
3 committees and House substantive committees, respectively, of
4 all adjustments made to performance standards or measures.
5 (9) ~~(10)~~ The Executive Office of the Governor shall
6 review the legislative budget request for technical compliance
7 with the budget format provided for in the budget
8 instructions. The Executive Office of the Governor shall
9 notify the agency or the judicial branch of any adjustment
10 required. The agency or judicial branch shall make the
11 appropriate corrections as requested. If the appropriate
12 technical corrections are not made as requested, the Executive
13 Office of the Governor shall adjust the budget request to
14 incorporate the appropriate technical corrections in the
15 format of the request.
16 (10) ~~(11)~~ At any time after the Governor submits his or
17 her ~~and-the-Chief-Justice-submit-their~~ recommended budget
18 ~~budgets~~ to the Legislature, the head of the agency or judicial
19 branch may amend his or her request by transmitting to the
20 Governor and the Legislature an amended request in the form
21 and manner prescribed in the legislative budget instructions.
22 (11) ~~(12)~~ The legislative budget request from each
23 agency and from the judicial branch shall be reviewed by the
24 Legislature. The review may allow for the opportunity to have
25 information or testimony by the agency, the judicial branch,
26 the Auditor General, the Office of Program Policy Analysis and
27 Government Accountability, the Governor's Office of Planning
28 and Budgeting, and the public regarding the proper level of
29 funding for the agency in order to carry out its mission.
30 (12) ~~(13)~~ In order to ensure an integrated state
31 planning and budgeting process, the agency long-range plan

should be reviewed by the Legislature.

Section 21. Section 216.031, Florida Statutes, is amended to read:

216.031 Target budget request.--Either chair of a legislative appropriations committee, or the Executive Office of the Governor for state agencies, may require the agency or the Chief Justice to address major issues separate from those outlined in s. 216.023, this section, and s. 216.043 for inclusion in the requests of the agency or of the judicial branch. The issues shall be submitted to the agency no later than July 30 of each year and shall be displayed in its requests as provided in the budget instructions. The Executive Office of the Governor may request an agency, or the chair of the appropriations committees of the Senate or House of Representatives may request any agency or the judicial branch, to submit ~~no later than September 30 of each year~~ a budget plan with respect to targets established by the Governor or either chair. The target budget shall require each entity to establish an order of priorities for its budget issues and may include requests for multiple options for the budget issues. ~~The target budget may also require each entity to submit a program budget or a performance-based budget in the format prescribed by the Executive Office of the Governor or either chair; provided, however,~~ The target budget format shall be compatible with the planning and budgeting system requirements set out in s. 216.141. Such a request shall not influence the agencies' or judicial branch's independent judgment in making legislative budget requests, as required by law.

Section 22. Subsections (2), (3), (8), and (9) of section 216.052, Florida Statutes, are repealed.

1 Section 23. Subsection (5) of section 216.053, Florida
2 Statutes, is repealed.
3 Section 24. Section 216.065, Florida Statutes, is
4 amended to read:
5 216.065 Fiscal impact statements on actions affecting
6 the budget.--In addition to the applicable requirements of
7 chapter 120, before the Governor, or Governor and Cabinet as a
8 body, performing any constitutional or statutory duty, or
9 before any state agency or statutorily authorized entity takes
10 ~~take~~ any final action that will affect revenues, ~~directly~~
11 require a request for an increased or new appropriation in the
12 following fiscal year, or ~~that will~~ transfer current year
13 funds, it ~~they~~ shall first provide the legislative
14 appropriations committees with a fiscal impact statement that
15 details the effects of such action on the budget. The fiscal
16 impact statement must specify the estimated budget and revenue
17 impacts for the current year and the 2 subsequent fiscal years
18 at the same level of detail required to support a legislative
19 budget request, including amounts by appropriation category
20 and fund.
21 Section 25. Subsection (3) is added to section
22 216.081, Florida Statutes, to read:
23 216.081 Data on legislative and judicial branch
24 expenses.--
25 (3) If the Governor does not receive timely estimates
26 of the financial needs of the legislative branch, the
27 Governor's recommended budget must include the amounts
28 appropriated and budget entity structure established in the
29 most recent General Appropriations Act.
30 Section 26. Subsections (7) and (8) of section
31 216.136, Florida Statutes, are repealed.

1 Section 27. Subsection (1) of section 216.162, Florida
2 Statutes, is amended to read:
3 216.162 Governor's recommended budget to be furnished
4 Legislature; copies to members.--
5 (1) At least 40 ~~45~~ days before the scheduled annual
6 legislative session, the Governor shall furnish each senator
7 and representative a copy of his or her recommended balanced
8 budget for the state, based on the Governor's own conclusions
9 and judgment; provided, however, that in his or her first year
10 in office a new Governor may request, subject to approval of
11 the President of the Senate and the Speaker of the House of
12 Representatives, that his or her recommended balanced budget
13 be submitted at a later time prior to the Governor's first
14 regular legislative session.
15 Section 28. Subsections (1), (2), (3), and (4) of
16 section 216.167, Florida Statutes, are amended to read:
17 216.167 Governor's recommendations.--The Governor's
18 recommendations shall include a financial schedule that
19 provides:
20 (1) The Governor's estimate of the recommended
21 recurring revenues available in the Budget Stabilization Fund~~,~~
22 ~~the Working Capital Fund,~~ and the General Revenue Fund.
23 (2) The Governor's estimate of the recommended
24 nonrecurring revenues available in the Budget Stabilization
25 Fund~~, the Working Capital Fund,~~ and the General Revenue Fund.
26 (3) The Governor's recommended recurring and
27 nonrecurring appropriations from the Budget Stabilization
28 Fund~~, the Working Capital Fund,~~ and the General Revenue Fund.
29 (4) The Governor's estimates of any interfund loans or
30 temporary obligations of the Budget Stabilization Fund, the
31 General Revenue ~~Working Capital~~ Fund, or trust funds, which

loans or obligations are needed to implement his or her recommended budget.

Section 29. Subsection (4) of section 216.168, Florida Statutes, is amended to read:

216.168 Governor's amended revenue or budget recommendations; optional and mandatory.--

(4) If the Governor determines, at any time after he or she has furnished the Legislature with his or her recommendations or amended recommendations, that the revenue estimates upon which the Governor's recommendations were based are insufficient to fund these recommendations, the Governor shall amend his or her revenues or appropriations recommendations to bring the Governor's recommended budget into balance. ~~On or after March 1, if the Governor determines that there is insufficient time to provide the information for the amended recommendations required in ss. 216.164 and 216.166, he or she shall be exempt from such requirement.~~

Section 30. Subsections (1), (2), and (3) of section 216.177, Florida Statutes, are amended to read:

216.177 Appropriations acts, statement of intent, violation, notice, review and objection procedures.--

(1) When an appropriations act is delivered to the Governor after the Legislature has adjourned sine die, as soon as practicable, but no later than the 10th day before the end of the period allowed by law for veto consideration in any year in which an appropriation is made, the chairs of the legislative appropriations committees shall jointly transmit:

(a) The official list of General Revenue Fund appropriations determined in consultation with the Executive Office of the Governor to be nonrecurring; and

(b) The documents set forth in s. 216.0442(2)(a) and

1 (c),
2
3 to the Executive Office of the Governor, the Chief Financial
4 Officer, the Auditor General, the director of the Office of
5 Program Policy Analysis and Government Accountability, the
6 Chief Justice of the Supreme Court, and each state agency. A
7 request for additional explanation and direction regarding the
8 legislative intent of the General Appropriations Act during
9 the fiscal year may be made to the chairs of the
10 appropriations committees of the Legislature ~~chair-and-vice~~
11 ~~chair-of-the-Legislative-Budget-Commission~~ or the President of
12 the Senate and the Speaker of the House of Representatives
13 only by and through the Executive Office of the Governor for
14 state agencies, and by and through the Chief Justice of the
15 Supreme Court for the judicial branch, as is deemed necessary.
16 However, the Chief Financial Officer may also request further
17 clarification of legislative intent pursuant to the Chief
18 Financial Officer's responsibilities related to his or her
19 preaudit function of expenditures.
20 (2)(a) Whenever notice of action to be taken by the
21 Executive Office of the Governor or the Chief Justice of the
22 Supreme Court is required by this chapter, such notice shall
23 be given to the chairs of the appropriations committees of the
24 Legislature ~~chair-and-vice-chair-of-the-Legislative-Budget~~
25 ~~Commission~~ in writing, and shall be delivered at least 14 days
26 prior to the action referred to, unless a shorter period is
27 approved in writing by the chairs ~~chair~~. If the action is
28 solely for the release of funds appropriated by the
29 Legislature, the notice shall be delivered at least 3 days
30 before the effective date of the action. Action shall not be
31 taken on any budget item for which this chapter requires

1 notice to the Legislative Budget Commission or the
2 appropriations committees without such notice having been
3 provided, even though there may be good cause for considering
4 such item.
5 (b) If the chairs of the appropriations committees of
6 the Legislature ~~chair and vice chair of the Legislative Budget~~
7 ~~Commission~~ or the President of the Senate and the Speaker of
8 the House of Representatives timely advise, in writing, the
9 Executive Office of the Governor or the Chief Justice of the
10 Supreme Court that an action or a proposed action, including
11 any expenditure of funds resulting from the settlement of
12 litigation involving a state agency or officer, whether
13 subject to the notice and review requirements of this chapter
14 or not, exceeds the delegated authority of the Executive
15 Office of the Governor for the executive branch or the Chief
16 Justice for the judicial branch, respectively, or is contrary
17 to legislative policy and intent, the Governor or the Chief
18 Justice of the Supreme Court shall void such action and
19 instruct the affected state agency or entity of the judicial
20 branch to change immediately its spending action or spending
21 proposal until the Legislative Budget Commission or the
22 Legislature addresses the issue. The written documentation
23 shall indicate the specific reasons that an action or proposed
24 action exceeds the delegated authority or is contrary to
25 legislative policy and intent.
26 (c) The House of Representatives and the Senate shall
27 provide by rule that any member of the House of
28 Representatives or Senate may request, in writing, of either
29 the President of the Senate or the Speaker of the House of
30 Representatives to initiate the procedures of paragraph (b).
31 (3) The Legislature may annually specify any

1 incentives and disincentives for agencies operating programs
2 under performance-based ~~program~~ budgets pursuant to this
3 chapter in the General Appropriations Act or legislation
4 implementing the General Appropriations Act.
5 Section 31. Subsections (1), (2), (4), (6), (12), and
6 (16) of section 216.181, Florida Statutes, are amended to
7 read:
8 216.181 Approved budgets for operations and fixed
9 capital outlay.--
10 (1) The General Appropriations Act and any other acts
11 containing appropriations shall be considered the original
12 approved operating budgets for operational and fixed capital
13 expenditures. Amendments to the approved operating budgets for
14 operational and fixed capital outlay expenditures from state
15 agencies may be requested only through the Executive Office of
16 the Governor and approved by the Governor and the Legislative
17 Budget Commission as provided in this chapter. Amendments from
18 the judicial branch may be requested only through~~,--and~~
19 ~~approved-by,--the-Chief-Justice-of~~ the Supreme Court <u>and must</u>
20 <u>be approved by the Chief Justice and the Legislative Budget</u>
21 <u>Commission as provided in this chapter</u>. This includes
22 amendments which are necessary to implement the provisions of
23 s. 216.212 or s. 216.221.
24 (2) Amendments to the original approved operating
25 budgets for operational and fixed capital outlay expenditures
26 must comply with the following guidelines in order to be
27 approved by the Governor and the Legislative Budget Commission
28 ~~as-provided-in-this-chapter~~ for the executive branch and the
29 Chief Justice <u>and the Legislative Budget Commission</u> for the
30 judicial branch:
31 (a) The amendment must be consistent with legislative

policy and intent.

(b) The amendment may not initiate or commence a new program, except as authorized by this chapter, or eliminate an existing program.

(c) Except as authorized in s. 216.292 or other provisions of this chapter, the amendment may not provide funding or increased funding for items which were funded by the Legislature in an amount less than that requested by the agency ~~or Governor~~ in the legislative budget request or recommended by the Governor, or which were vetoed by the Governor.

(d) For amendments that involve trust funds, there must be adequate and appropriate revenues available in the trust fund and the amendment must be consistent with the laws authorizing such trust funds and the laws relating to the use of the trust funds. However, a trust fund shall not be increased in excess of the original approved budget, except as provided in subsection (11).

(e) The amendment shall not conflict with any provision of law.

(f) The amendment must not provide funding for any issue which was requested by the agency or branch in its legislative budget request and not funded in the General Appropriations Act.

(g) The amendment must include a written description of the purpose of the proposed change, an indication of why interim budget action is necessary, and the intended recipient of any funds for contracted services.

(h) The amendment must not provide general salary increases which the Legislature has not authorized in the General Appropriations Act or other laws.

1 (4) To the extent possible, individual members of the
2 Senate and the House of Representatives should be advised of
3 budget amendments requested by the executive branch and
4 judicial branch.
5 (6)(a) The Executive Office of the Governor or the
6 Chief Justice of the Supreme Court may require the submission
7 of a detailed plan from the agency or entity of the judicial
8 branch affected, consistent with the General Appropriations
9 Act, special appropriations acts, and statements ~~the statement~~
10 of intent before transferring and releasing the balance of a
11 lump-sum appropriation. ~~The provisions of this paragraph are~~
12 ~~subject to the notice and review procedures set forth in s.~~
13 ~~216.177.~~
14 (b) The Executive Office of the Governor and the Chief
15 Justice of the Supreme Court may amend, without approval of
16 the Legislative Budget Commission, state agency and judicial
17 branch entity budgets, respectively, to reflect the
18 transferred funds and to provide the associated increased
19 salary rate based on the approved plans for lump-sum
20 appropriations. The provisions of this paragraph are subject
21 to the notice and review procedures set forth in s. 216.177.
22
23 The Executive Office of the Governor shall transmit to each
24 state agency and the Chief Financial Officer, and the Chief
25 Justice shall transmit to each judicial branch component and
26 the Chief Financial Officer, any approved amendments to the
27 approved operating budgets.
28 (12) There is appropriated nonoperating budget for
29 refunds, payments to the United States Treasury, payments of
30 the service charge to the General Revenue Fund, and transfers
31 of funds specifically required by law. Such authorized budget,

1 together with related releases, shall be transmitted by the
2 state agency or by the judicial branch to the Chief Financial
3 Officer for entry in his or her records in the manner and
4 format prescribed by the Executive Office of the Governor in
5 consultation with the Chief Financial Officer. A copy of such
6 authorized budgets shall be furnished to the Executive Office
7 of the Governor or the Chief Justice, the chairs of the
8 legislative committees responsible for developing the general
9 appropriations acts, and the Auditor General. The Governor may
10 withhold approval of nonoperating investment authority for
11 certain trust funds when deemed in the best interest of the
12 state. The Governor for the executive branch, and the Chief
13 Justice for the judicial branch, may establish nonoperating
14 budgets, with the approval of the chairs of the Senate and the
15 House of Representatives appropriations committees, for
16 transfers, purchase of investments, special expenses,
17 distributions, and any other nonoperating budget categories
18 they deem necessary and in the best interest of the state and
19 consistent with legislative intent and policy. ~~The-provisions~~
20 ~~of-this-subsection-are-subject-to-the-notice,-review,-and~~
21 ~~objection-procedures-set-forth-in-s.-216.177.~~ For purposes of
22 this section, the term "nonoperating budgets" means
23 nonoperating disbursement authority for purchase of
24 investments, refunds, payments to the United States Treasury,
25 transfers of funds specifically required by law, distributions
26 of assets held by the state in a trustee capacity as an agent
27 of fiduciary, special expenses, and other nonoperating budget
28 categories as determined necessary by the Executive Office of
29 the Governor and the chairs of the Senate and the House of
30 Representatives appropriations committees, not otherwise
31 appropriated in the General Appropriations Act.

1 (16)(a) Funds provided in any specific appropriation
2 in the General Appropriations Act may be advanced if the
3 General Appropriations Act specifically so provides.
4 (b) Any agency, or the judicial branch, that has been
5 authorized by the General Appropriations Act or expressly
6 authorized by other law to make advances for program startup
7 or advances for contracted services, in total or periodically,
8 shall limit such disbursements to other governmental entities
9 and not-for-profit corporations. The amount which may be
10 advanced shall not exceed the expected cash needs of the
11 contractor or recipient within the initial 3 months.
12 Thereafter, disbursements shall only be made on a
13 reimbursement basis. Any agreement that provides for
14 advancements may contain a clause that permits the contractor
15 or recipient to temporarily invest the proceeds, provided that
16 any interest income shall either be returned to the agency or
17 be applied against the agency's obligation to pay the contract
18 amount. This paragraph does not constitute lawful authority
19 to make any advance payment not otherwise authorized by laws
20 relating to a particular agency or general laws relating to
21 the expenditure or disbursement of public funds. The Chief
22 Financial Officer may, after consultation with the legislative
23 appropriations committees, advance funds beyond a 3-month
24 requirement if it is determined to be consistent with the
25 intent of the approved operating budget.
26 ~~(c)--Unless-specifically-prohibited-in-the-General~~
27 ~~Appropriations-Act,-funds-appropriated-to-the-Department-of~~
28 ~~Children-and-Family-Services-and-the-Department-of-Health-may~~
29 ~~be-advanced-for-those-contracted-services-that-were-approved~~
30 ~~for-advancement-by-the-Comptroller-in-fiscal-year-1993-1994,~~
31 ~~including-those-services-contracted-on-a-fixed-price-or~~

1 ~~unit-cost-basis.~~
2 Section 32. Effective July 1, 2005, subsections (8),
3 (9), and (10) of section 216.181, Florida Statutes, are
4 amended to read:
5 216.181 Approved budgets for operations and fixed
6 capital outlay.--
7 (8) As part of the approved operating budget, the
8 Executive Office of the Governor shall furnish to each state
9 agency, and the Chief Justice of the Supreme Court shall
10 furnish to the entity of the judicial branch, an approved
11 annual salary rate for each budget entity containing a salary
12 appropriation. This rate shall be based upon the actual salary
13 rate and shall be consistent with the General Appropriations
14 Act or special appropriations acts. The annual salary rate
15 shall be:
16 (a) Determined by ~~Calculated based on~~ the ~~actual~~
17 salary rate ~~in effect on June 30, and the salary policy and~~
18 ~~the number of authorized positions as~~ specified in the General
19 Appropriations Act and adjusted for reorganizations authorized
20 by law, for any other appropriations made by law, and, subject
21 to s. 216.177, for distributions of lump sum appropriations
22 and administered funds ~~special appropriations acts, or as~~
23 ~~provided pursuant to s. 216.177~~.
24 (b) Controlled by the budget entity ~~department or~~
25 ~~agency~~; except for ~~the Department of Education, which shall be~~
26 ~~controlled by division and for~~ the judicial branch, which
27 shall be controlled at the branch level.
28 (c) Assigned to the number of authorized positions.
29 (9)(a) The calculation for the annual salary rate for
30 vacant and newly authorized positions shall be ~~at no more than~~
31 ~~the midpoint of the range of the pay grade for the position or~~

as provided in the General Appropriations Act.

(b) No agency or the judicial branch may exceed its maximum approved annual salary rate for the fiscal year. However, at any time during the fiscal year, an agency or entity of the judicial branch may exceed its approved rate for all budget entities by no more than 5 percent, provided that, by June 30 of every fiscal year, the agency or entity of the judicial branch has reduced its salary rate so that the salary rate for each budget entity is within the approved rate limit for that budget entity.

(10)(a) The Legislative Budget Commission ~~Executive Office of the Governor and the Chief Justice of the Supreme Court~~ may authorize increases or decreases in ~~increase or decrease~~ the approved salary rate for positions ~~for the purpose of implementing the General Appropriations Act, special appropriations acts, and actions pursuant to s. 216.262 consistent with legislative intent and policy. Other adjustments to approved salary rate must be approved by the Legislative Budget Commission~~ pursuant to the request of the agency filed with the Executive Office of the Governor or pursuant to the request of an entity of the judicial branch filed with the Chief Justice of the Supreme Court, if deemed necessary and in the best interest of the state and consistent with legislative policy and intent. ~~The provisions of this paragraph are subject to the notice and review procedures set forth in s. 216.177.~~

(b) Lump-sum salary bonuses may be provided only if specifically appropriated or provided pursuant to s. 110.1245 or s. 216.1815.

(c) State agencies and the judicial branch shall report, each fiscal quarter, the number of filled positions,

1 the number of vacant positions, and the salary rate associated
2 with each category to the Legislative Budget Commission in a
3 form and manner prescribed by the commission.
4 (d) The salary rate provisions of subsections (8) and
5 (9) and this subsection do not apply to the general office
6 program of the Executive Office of the Governor.
7 Section 33. Sections 216.1825 and 216.183, Florida
8 Statutes, are repealed.
9 Section 34. Section 216.192, Florida Statutes, is
10 amended to read:
11 216.192 Release of appropriations; revision of
12 budgets.--
13 (1) Unless otherwise provided in the General
14 Appropriations Act, on July 1 of each fiscal year, up to 25
15 percent of the original approved operating budget of each
16 agency and of the judicial branch may be released until such
17 time as annual plans for quarterly releases for all
18 appropriations have been developed, approved, and furnished to
19 the Chief Financial Officer by the Executive Office of the
20 Governor for state agencies and by the Chief Justice of the
21 Supreme Court for the judicial branch. The plans, including
22 appropriate plans of releases for fixed capital outlay
23 projects that correspond with each project schedule, shall
24 attempt to maximize the use of trust funds and shall be
25 transmitted to the Chief Financial Officer by August 1 of each
26 fiscal year. Such releases shall at no time exceed the total
27 appropriations available to a state agency or to the judicial
28 branch, or the approved budget for such agency or the judicial
29 branch if less. The Chief Financial Officer shall enter such
30 releases in his or her records in accordance with the release
31 plans prescribed by the Executive Office of the Governor and

1 the Chief Justice, unless otherwise amended as provided by
2 law. The Executive Office of the Governor and the Chief
3 Justice shall transmit a copy of the approved annual releases
4 to the head of the state agency, the chair and vice chair of
5 the Legislative Budget Commission, and the Auditor General.
6 The Chief Financial Officer shall authorize all expenditures
7 to be made from the appropriations on the basis of such
8 releases and in accordance with the approved budget, and not
9 otherwise. Expenditures shall be authorized only in accordance
10 with legislative authorizations. Nothing herein precludes
11 periodic reexamination and revision by the Executive Office of
12 the Governor or by the Chief Justice of the annual plans for
13 release of appropriations and the notifications of the parties
14 of all such revisions.
15 (2) Any department under the direct supervision of a
16 member of the Cabinet or of a board consisting of the Governor
17 and members of the Cabinet which contends that the plan for
18 releases of funds appropriated to it is contrary to the
19 approved operating budget shall have the right to have the
20 issue reviewed by the Administration Commission which shall
21 decide such issue by majority vote. ~~The appropriations~~
22 ~~committees of the Legislature may advise the Administration~~
23 ~~Commission on the issue.~~
24 (3) The Executive Office of the Governor shall make
25 releases within the amounts appropriated and as requested for
26 all appropriations to the legislative branch, and the
27 provisions of subsections (1) and (2) shall not apply to the
28 legislative branch.
29 ~~(4) The legislative appropriations committees may~~
30 ~~advise the Chief Financial Officer, the Executive Office of~~
31 ~~the Governor, or the Chief Justice relative to the release of~~

1 ~~any-funds-under-this-section.~~
2 (4) ~~(5)~~ The annual plans of releases authorized by this
3 section may be considered by the Revenue Estimating Conference
4 in preparation of the statement of financial outlook.
5 (5) In order to implement directives contained in the
6 General Appropriations Act or to prevent deficits pursuant to
7 s. 216.221, the Executive Office of the Governor for the
8 executive branch and the Chief Justice for the judicial branch
9 may place appropriations in budget reserve or mandatory
10 reserve.
11 (6) The provisions of this section are subject to the
12 notice and review procedures set forth in s. 216.177.
13 Section 35. Section 216.195, Florida Statutes, is
14 amended to read:
15 216.195 Impoundment of funds; restricted.--The
16 Executive Office of the Governor, the Chief Justice of the
17 Supreme Court, any member of the Cabinet, or any state agency
18 shall not impound any appropriation except as necessary to
19 avoid or eliminate a deficit pursuant to the provisions of s.
20 216.221. As used in this section, the term "impoundment"
21 means the omission of any appropriation or part of an
22 appropriation in the approved operating plan prepared pursuant
23 to s. 216.181 or in the schedule of releases prepared pursuant
24 to s. 216.192 or the failure of any state agency or the
25 judicial branch to spend an appropriation for the stated
26 purposes authorized in the approved operating budget. ~~The~~
27 ~~provisions-of-this-section-are-subject-to-the-notice-and~~
28 ~~review-procedures-of-s.-216.177.~~ The Governor or either house
29 of the Legislature may seek judicial review of any action or
30 proposed action which violates the provisions of this section.
31 Section 36. Subsections (2), (3), (5), (7), (9), and

1 (10) of section 216.221, Florida Statutes, are amended to
2 read:
3 216.221 Appropriations as maximum appropriations;
4 adjustment of budgets to avoid or eliminate deficits.--
5 (2) The Legislature may annually provide direction in
6 the General Appropriations Act regarding use of any state
7 funds ~~the Budget Stabilization Fund and Working Capital Fund~~
8 to offset General Revenue Fund deficits.
9 (3) For purposes of preventing a deficit in the
10 General Revenue Fund, all branches and agencies of government
11 ~~that receive General Revenue Fund appropriations~~ shall
12 participate in deficit reduction efforts. Absent specific
13 legislative direction ~~in the General Appropriations Act~~, when
14 budget reductions are required in order to prevent a deficit
15 under the provisions of subsection (7), each branch shall
16 reduce its General Revenue Fund appropriations by a
17 proportional amount.
18 (5)(a) If, in the opinion of the Governor, after
19 consultation with the Revenue Estimating Conference, a deficit
20 will occur in the General Revenue Fund, he or she shall so
21 certify to the commission and to the Chief Justice of the
22 Supreme Court. No more than 30 days after certifying that a
23 deficit will occur in the General Revenue Fund, the Governor
24 shall develop for the executive branch, and the Chief Justice
25 of the Supreme Court shall develop for the judicial branch,
26 and provide to the commission and to the Legislature plans of
27 action to eliminate the deficit.
28 (b) If, in the opinion of the President of the Senate
29 and the Speaker of the House of Representatives, after
30 consultation with the Revenue Estimating Conference, a deficit
31 will occur in the General Revenue Fund and the Governor has

not certified the deficit, the President of the Senate and the Speaker of the House of Representatives shall so certify. Within 30 days after such certification, the Governor shall develop for the executive branch and the Chief Justice of the Supreme Court shall develop for the judicial branch, and provide to the commission and to the Legislature, plans of action to eliminate the deficit.

(c) ~~(b)~~ In developing a plan of action to prevent deficits in accordance with subsection (7), the Governor and Chief Justice shall, to the extent possible, preserve legislative policy and intent, and, absent any specific direction to the contrary in the General Appropriations Act, the Governor and Chief Justice shall comply with the following guidelines for reductions in the approved operating budgets of the executive branch and the judicial branch:

~~1.--Entire-statewide-programs-previously-established-by the-Legislature-should-not-be-eliminated.~~

1. ~~2.~~ Education budgets should not be reduced more than provided for in s. 215.16(2).

2. ~~3.~~ The use of nonrecurring funds to solve recurring deficits should be minimized.

3. ~~4.~~ Newly created programs that are not fully implemented and programs with critical audits, evaluations, and reviews should receive first consideration for reductions.

4. ~~5.~~ No agencies or branches of government receiving appropriations should be exempt from reductions.

5. ~~6.~~ When reductions in positions are required, the focus should be initially on vacant positions.

~~7.--Any-reductions-applied-to-all-agencies-and-branches should-be-uniformly-applied.~~

6. ~~8.~~ Reductions that would cause substantial losses of

1 federal funds should be minimized.
2 ~~9.--To-the-greatest-extent-possible,-across-the-board,~~
3 ~~prorated-reductions-should-be-considered.~~
4 7.~~10.~~ Reductions to statewide programs should occur
5 only after review of programs that provide only local
6 benefits.
7 8.~~11.~~ Reductions in administrative and support
8 functions should be considered before reductions in
9 direct-support services.
10 9.~~12.~~ Maximum reductions should be considered in
11 budgets for expenses including travel and in budgets for
12 equipment replacement, outside consultants, and contracts.
13 10.~~13.~~ Reductions in salaries for elected state
14 officials should be considered.
15 11.~~14.~~ Reductions that adversely affect the public
16 health, safety, and welfare should be minimized.
17 12.~~15.~~ The Budget Stabilization Fund should not be
18 reduced to a level that would impair the financial stability
19 of this state.
20 13.~~16.~~ Reductions in programs that are traditionally
21 funded by the private sector and that may be assumed by
22 private enterprise should be considered.
23 14.~~17.~~ Reductions in programs that are duplicated
24 among state agencies or branches of government should be
25 considered.
26 (7) Deficits in the General Revenue Fund that do not
27 meet the amounts specified by subsection (6) shall be resolved
28 by the Governor ~~Commission-for-the-executive-branch~~ and the
29 Chief Justice of the Supreme Court for the judicial branch.
30 The Governor ~~commission-and-Chief-Justice~~ shall implement any
31 directions provided in the General Appropriations Act related

1 to eliminating deficits and to reducing agency and judicial
2 branch budgets, including the use of those legislative
3 appropriations voluntarily placed in reserve. In addition,
4 the Governor ~~commission~~ shall implement any directions in the
5 General Appropriations Act relating to the resolution of
6 deficit situations. When reducing state agency or judicial
7 branch budgets, the Governor ~~commission~~ or the Chief Justice,
8 respectively, shall use the guidelines prescribed in
9 subsection (5). The Executive Office of the Governor ~~for the~~
10 ~~commission~~, and the Chief Justice for the judicial branch,
11 shall implement the deficit reduction plans through amendments
12 to the approved operating budgets in accordance with s.
13 216.181.
14 (9) If, in the opinion of the Chief Financial Officer,
15 after consultation with the Revenue Estimating Conference, a
16 deficit will occur, he or she shall report his or her opinion
17 to the Governor, the President of the Senate, and the Speaker
18 of the House of Representatives in writing. In the event the
19 Governor does not certify a deficit, or the President of the
20 Senate and the Speaker of the House of Representatives do not
21 certify a deficit, within 10 days after the Chief Financial
22 Officer's report, the Chief Financial Officer shall report his
23 or her findings and opinion to the commission and the Chief
24 Justice of the Supreme Court.
25 (10) When advised by the Revenue Estimating
26 Conference, the Chief Financial Officer, or any agency
27 responsible for a trust fund that a deficit will occur with
28 respect to the appropriations from a specific trust fund in
29 the current fiscal year, the Governor for the executive
30 branch, or the Chief Justice for the judicial branch, shall
31 develop a plan of action to eliminate the deficit. Before

implementing the plan of action, the Governor or the Chief Justice must comply with the provisions of s. 216.177(2), and actions to resolve deficits in excess of $1 million must be approved by the Legislative Budget Commission. In developing the plan of action, the Governor or the Chief Justice shall, to the extent possible, preserve legislative policy and intent~~,--and,--absent-any-specific-directions-to-the-contrary-in the-General-Appropriations-Act,--any-reductions-in appropriations-from-the-trust-fund-for-the-fiscal-year-shall be-prorated-among-the-specific-appropriations-made-from-the trust-fund-for-the-current-fiscal-year~~.

Section 37. Subsection (2) of section 216.231, Florida Statutes, is amended to read:

216.231 Release of certain classified appropriations.--

(2) The release of appropriated funds classified as "deficiency" shall be approved only when a General Revenue Fund appropriation for operations of a state agency or of the judicial branch is inadequate because the workload or cost of the operation exceeds that anticipated by the Legislature and a determination has been made by the Governor ~~commission~~ that the deficiency will result in an impairment of the activities of an agency or of the judicial branch to the extent that the agency is unable to carry out its program as provided by the Legislature in the general appropriations acts. These funds may not be used for creation of any new agency or program, for increases of salary, or for the construction or equipping of additional buildings.

Section 38. Subsections (3), (6), and (11) of section 216.235, Florida Statutes, are amended to read:

216.235 Innovation Investment Program.--

(3) For purposes of this section:

(a) "Agency" means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of the executive branch.

~~(b) "Commission" means the Information Resource Commission.~~

(b) ~~(c)~~ "Committee" means the State Innovation Committee.

(c) ~~(d)~~ "Office" means the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor.

(d) ~~(e)~~ "Review board" means a nonpartisan board composed of private citizens and public employees who evaluate the projects and make funding recommendations to the committee.

(6) Any agency developing an innovative investment project proposal that involves information technology resources may consult with and seek technical assistance from the state technology office ~~commission~~. The office shall consult with the state technology office ~~commission~~ for any project proposal that involves information resource technology. The state technology office ~~commission~~ is responsible for evaluating these projects and for advising the committee and review board of the technical feasibility and any transferable benefits of the proposed technology. In addition to the requirements of subsection (5), the agencies shall provide to the state technology office ~~commission~~ any information requested by the state technology office ~~commission~~ to aid in determining that the proposed technology is appropriate for the project's success.

(11) Funds appropriated for the Innovation Investment Program shall be distributed by the Executive Office of the Governor subject to notice, review, and objection procedures set forth in s. 216.177. The office may transfer funds from the annual appropriation as necessary to administer the program. Proposals considered but not funded by the Legislature as part of an agency legislative budget request or the Governor's budget recommendation are not eligible to receive funding under the Innovation Investment Program.

Section 39. Section 216.241, Florida Statutes, is amended to read:

216.241 Initiation or commencement of new programs; approval; expenditure of certain revenues.--

(1) A state agency or the judicial branch may not initiate or commence any new program, including any new federal program or initiative, or make changes in its current programs, as provided for in the appropriations act, that require additional financing unless funds have been specifically appropriated by the Legislature or unless the Legislative Budget Commission ~~or the Chief Justice of the Supreme Court~~ expressly approves such new program or changes. ~~The commission and the Chief Justice shall give notice as provided in s. 216.177 prior to approving such new program or changes.~~

(2) ~~No~~ Changes that ~~which~~ are inconsistent with the approved ~~operating~~ budget may not ~~shall~~ be made to existing programs unless such changes are recommended to the Legislative Budget Commission by the Governor or the Chief Justice and the Legislative Budget Commission expressly approves such program changes. The provisions of this subsection are subject to the notice, review, and objection

1 procedures set forth in s. 216.177.
2 (3) Any revenues generated by any tax or fee imposed
3 by amendment to the State Constitution after October 1, 1999,
4 shall not be expended by any agency, as defined in s.
5 120.52(1), except pursuant to appropriation by the
6 Legislature.
7 (4) A state agency or the judicial branch may not
8 shift functions or responsibilities from agency staff to the
9 private sector or to another agency's staff, including
10 outsourcing, public-private partnerships, or shared-savings
11 initiatives, without specific approval by the Legislature or,
12 absent such specific approval but consistent with legislative
13 intent and policy, without specific approval by the
14 Legislative Budget Commission. A request for such approval,
15 including a recommendation submitted in an agency's
16 legislative budget request or the Governor's budget
17 recommendation, must include, but need not be limited to,
18 applicable supporting cost-benefit analyses, business case
19 analyses, proposed performance contracting procedures,
20 detailed service comparisons, and impacts to approved
21 performance standards. Adjustments to the approved budget
22 which are not reflected in the General Appropriations Act and
23 which are necessary to implement such shifts of functions and
24 responsibilities must be approved by the Legislative Budget
25 Commission prior to the execution of any related contracts or
26 other agreements.
27 Section 40. Subsection (2) of section 216.251, Florida
28 Statutes, is amended to read:
29 216.251 Salary appropriations; limitations.--
30 (2)(a) The salary for each position not specifically
31 indicated in the appropriations acts shall be as provided in

one of the following subparagraphs:

1. Within the classification and pay plans provided for in chapter 110.

2. Within the classification and pay plans established by the Board of Trustees for the Florida School for the Deaf and the Blind of the Department of Education and approved by the State Board of Education for academic and academic administrative personnel.

3. Within the classification and pay plan approved and administered by the State Board of Education ~~Board of Regents~~ for those positions in the State University System.

4. Within the classification and pay plan approved by the President of the Senate and the Speaker of the House of Representatives, as the case may be, for employees of the Legislature.

5. Within the approved classification and pay plan for the judicial branch.

~~6.--The salary of all positions not specifically included in this subsection shall be set by the commission or by the Chief Justice for the judicial branch.~~

(b) Salary payments shall be made only to employees filling established positions included in the agency's or in the judicial branch's approved budgets and amendments thereto as may be provided by law; provided, however:

1. Reclassification of established positions may be accomplished when justified in accordance with the established procedures for reclassifying positions; or

2. When the Division of Risk Management of the Department of Financial Services has determined that an employee is entitled to receive a temporary partial disability benefit or a temporary total disability benefit pursuant to

the provisions of s. 440.15 and there is medical certification that the employee cannot perform the duties of the employee's regular position, but the employee can perform some type of work beneficial to the agency, the agency may return the employee to the payroll, at his or her regular rate of pay, to perform such duties as the employee is capable of performing, even if there is not an established position in which the employee can be placed. Nothing in this subparagraph shall abrogate an employee's rights under chapter 440 or chapter 447, nor shall it adversely affect the retirement credit of a member of the Florida Retirement System in the membership class he or she was in at the time of, and during, the member's disability.

Section 41. Paragraphs (a) and (c) of subsection (1) of section 216.262, Florida Statutes, are amended to read:

216.262 Authorized positions.--

(1)(a) Unless otherwise expressly provided by law, the total number of authorized positions may not exceed the total provided in the appropriations acts. In the event any state agency or entity of the judicial branch finds that the number of positions so provided is not sufficient to administer its authorized programs, it may file an application with the Executive Office of the Governor or the Chief Justice; and, if the Executive Office of the Governor or Chief Justice certifies that there are no authorized positions available for addition, deletion, or transfer within the agency as provided in paragraph (c) and recommends an increase in the number of positions, the Governor or the Chief Justice may recommend~~, after a public hearing, authorize~~ an increase in the number of positions for the following reasons only:

1. To implement or provide for continuing federal

grants or changes in grants not previously anticipated;

2. To meet emergencies pursuant to s. 252.36;

3. To satisfy new federal regulations or changes therein;

4. To take advantage of opportunities to reduce operating expenditures or to increase the revenues of the state or local government; and

5. To authorize positions which were not fixed by the Legislature through error in drafting the appropriations acts.

Actions recommended pursuant to the provisions of this paragraph are subject to approval by the Legislative Budget Commission ~~the notice and review procedures set forth in s. 216.177. A copy of the application,~~ The certification, and the final authorization shall be provided to ~~filed with~~ the Legislative Budget Commission, the appropriations committees, and ~~with~~ the Auditor General.

(c)1. The Executive Office of the Governor, under such procedures and qualifications as it deems appropriate, shall, upon agency request, delegate to any state agency authority to add and delete authorized positions or transfer authorized positions from one budget entity to another budget entity within the same division, and may approve additions and deletions of authorized positions or transfers of authorized positions within the state agency when such changes would enable the agency to administer more effectively its authorized and approved programs. The additions or deletions must be consistent with the intent of the approved operating budget, must be consistent with legislative policy and intent, and must not conflict with specific spending policies specified in the General Appropriations Act.

1 2. The Chief Justice of the Supreme Court shall have
2 the authority to establish procedures for the judicial branch
3 to add and delete authorized positions or transfer authorized
4 positions from one budget entity to another budget entity, and
5 to add and delete authorized positions within the same budget
6 entity, when such changes are consistent with legislative
7 policy and intent and do not conflict with spending policies
8 specified in the General Appropriations Act.
9 ~~3.a.--A state agency may be eligible to retain salary~~
10 ~~dollars for authorized positions eliminated after July 1,~~
11 ~~2001.--The agency must certify the eliminated positions to the~~
12 ~~Legislative Budgeting Commission.~~
13 ~~b.--The Legislative Budgeting Commission shall~~
14 ~~authorize the agency to retain 20 percent of the salary~~
15 ~~dollars associated with the eliminated positions and may~~
16 ~~authorize retention of a greater percentage.--All such salary~~
17 ~~dollars shall be used for permanent salary increases.~~
18 Section 42. Section 216.292, Florida Statutes, is
19 amended to read:
20 (Substantial rewording of section. See
21 s. 216.292, F.S., for present text.)
22 216.292 Appropriations nontransferable; exceptions.--
23 (1)(a) Funds provided in the General Appropriations
24 Act or as otherwise expressly provided by law shall be
25 expended only for the purpose for which appropriated, except
26 that such moneys may be transferred as provided in this
27 section when it is determined to be in the best interest of
28 the state. Appropriations for fixed capital outlay may not be
29 expended for any other purpose. Appropriations may not be
30 transferred between state agencies, or between a state agency
31 and the judicial branch, unless specifically authorized by

1 law.
2 (b)1. Authorized revisions of the original approved
3 operating budget, together with related changes in the plan
4 for release of appropriations, if any, shall be transmitted by
5 the state agency or by the judicial branch to the Executive
6 Office of the Governor or the Chief Justice, respectively, the
7 chairs of the Senate and the House of Representatives
8 appropriations committees, the Office of Program Policy
9 Analysis and Government Accountability, and the Auditor
10 General. Such authorized revisions must be consistent with the
11 intent of the approved operating budget, must be consistent
12 with legislative policy and intent, and may not conflict with
13 specific spending policies specified in the General
14 Appropriations Act.
15 2. Authorized revisions, together with related
16 changes, if any, in the plan for release of appropriations,
17 shall be transmitted by the state agency or by the judicial
18 branch to the Chief Financial Officer for entry in the Chief
19 Financial Officer's records in the manner and format
20 prescribed by the Executive Office of the Governor in
21 consultation with the Chief Financial Officer.
22 3. The Executive Office of the Governor or the Chief
23 Justice shall forward a copy of the revisions within 7 working
24 days to the Chief Financial Officer for entry in his or her
25 records in the manner and format prescribed by the Executive
26 Office of the Governor in consultation with the Chief
27 Financial Officer.
28 (2) The following transfers are authorized to be made
29 by the head of each department or the Chief Justice of the
30 Supreme Court:
31 (a) The transfer of appropriations funded from

1 identical funding sources, except appropriations for fixed
2 capital outlay, and the transfer of amounts included within
3 the total original approved budget and releases as furnished
4 pursuant to ss. 216.181 and 216.192, as follows:
5 1. Between categories of appropriations within a
6 budget entity, if no category of appropriation is increased or
7 decreased by more than 5 percent of the original approved
8 budget or $250,000, whichever is greater, by all action taken
9 under this subsection.
10 2. Additionally, between budget entities within
11 identical categories of appropriations, if no category of
12 appropriation is increased or decreased by more than 5 percent
13 of the original approved budget or $250,000, whichever is
14 greater, by all action taken under this subsection.
15 (b) After providing notice at least 5 working days
16 prior to implementation:
17 1. The transfer of funds within programs identified in
18 the General Appropriations Act from identical funding sources
19 between the following appropriation categories without
20 limitation so long as such a transfer does not result in an
21 increase to the total recurring general revenue or trust fund
22 cost of the agency or entity of the judicial branch in the
23 subsequent fiscal year: other personal services, expenses,
24 operating capital outlay, food products, state attorney and
25 public defender operations, acquisition of motor vehicles,
26 data processing services, operating and maintenance of patrol
27 vehicles, overtime payments, salary incentive payments,
28 compensation to retired judges, law libraries, and juror and
29 witness payments.
30 2. The transfer of funds and positions from identical
31 funding sources between salaries and benefits appropriation

1 categories within programs identified in the General
2 Appropriations Act. Such transfers must be consistent with
3 legislative policy and intent and may not adversely affect
4 achievement of approved performance outcomes or outputs in any
5 program.
6 (c) The transfer of funds appropriated to accounts
7 established for disbursement purposes upon release of such
8 appropriation upon request of a department and approval by the
9 Chief Financial Officer. Such transfer may only be made to the
10 same appropriation category and the same funding source from
11 which the funds are transferred.
12 (d) The transfer by the Executive Office of the
13 Governor of funds from appropriations for public school
14 operations to a fixed capital outlay appropriation for class
15 size reduction based on recommendations of the Florida
16 Education Finance Program Appropriation Allocation Conference
17 or the Legislative Budget Commission pursuant to s.
18 1003.03(4)(a). Actions by the Governor under this subsection
19 are subject to the notice and review provisions of s. 216.177.
20 (e) The transfer by the Department of Children and
21 Family Services of general revenue funds appropriated for
22 targeted case management services to the Agency for Health
23 Care Administration to fund state match requirements exceeding
24 the amount specified in the General Appropriations Act for
25 Medicaid targeted case management services.
26 (f) The transfer by the Department of Elderly Affairs
27 of funds that are appropriated for the Assisted Living for the
28 Elderly Medicaid waiver and not expended to the agency to fund
29 Medicaid-reimbursed nursing home care.
30 (g) The transfer of funds appropriated to the
31 Department of Children and Family Services for developmental

1 services programs only if the secretary finds that treatment
2 programs for developmental disabilities will not be adversely
3 affected.
4 (3) The following transfers are authorized with the
5 approval of the Executive Office of the Governor, subject to
6 the notice and review provisions of s. 216.177:
7 (a) The transfer of appropriations for operations from
8 trust funds in excess of those provided in subsection (2), up
9 to $1 million.
10 (b) The transfer of positions between budget entities.
11 (4) The following transfers are authorized with the
12 approval of the Legislative Budget Commission. Unless waived
13 by the chair and vice chair of the commission, notice of such
14 transfers must be provided 14 days before the commission
15 meeting:
16 (a) The transfer of appropriations for operations from
17 the General Revenue Fund in excess of those provided in this
18 section but within a state agency or within the judicial
19 branch, as recommended by the Executive Office of the Governor
20 or the Chief Justice of the Supreme Court.
21 (b) The transfer of appropriations for operations from
22 trust funds in excess of those provided in this section which
23 exceed the greater of 5 percent of the original approved
24 budget or $1 million, as recommended by the Executive Office
25 of the Governor or the Chief Justice of the Supreme Court.
26 (c) The transfer of the portion of an appropriation
27 for a named fixed capital outlay project found to be in excess
28 of that needed to complete the project to another project for
29 which there has been an appropriation in the same fiscal year
30 from the same fund and within the same department where a
31 deficiency is found to exist, at the request of the Executive

1 Office of the Governor for state agencies or the Chief Justice
2 of the Supreme Court for the judicial branch. The scope of a
3 fixed capital outlay project may not be changed by any
4 transfer of funds made pursuant to this subsection.
5 (d) The transfers necessary to accomplish the purposes
6 of reorganization within state agencies or the judicial branch
7 authorized by the Legislature when the necessary adjustments
8 of appropriations and positions have not been provided in the
9 General Appropriations Act.
10 (5) No transfer of funds may result in the initiation
11 of a fixed capital outlay project that has not received a
12 specific legislative appropriation; except that federal funds
13 for fixed capital outlay projects for the Department of
14 Military Affairs, which do not carry a continuing commitment
15 on future appropriations by the Legislature, may be approved
16 by the Executive Office of the Governor for the purpose
17 received, subject to the notice, review, and objection
18 procedures set forth in s. 216.177.
19 (6) The Chief Financial Officer shall transfer from
20 any available funds of an agency or the judicial branch the
21 following amounts and shall report all such transfers and the
22 reasons therefor to the legislative appropriations committees
23 and the Executive Office of the Governor:
24 (a) The amount due to the Unemployment Compensation
25 Trust Fund which is more than 90 days delinquent on
26 reimbursements due to the Unemployment Compensation Trust
27 Fund. The amount transferred shall be that certified by the
28 state agency providing unemployment tax collection services
29 under contract with the Agency for Workforce Innovation
30 through an interagency agreement pursuant to s. 443.1316.
31 (b) The amount due to the Division of Risk Management

1 which is more than 90 days delinquent in payment to the
2 Division of Risk Management of the Department of Financial
3 Services for insurance coverage. The amount transferred shall
4 be that certified by the division.
5 (c) The amount due to the Communications Working
6 Capital Trust Fund from moneys appropriated in the General
7 Appropriations Act for the purpose of paying for services
8 provided by the state communications system in the Department
9 of Management Services which is unpaid 45 days after the
10 billing date. The amount transferred shall be that billed by
11 the department.
12 Section 43. Section 216.301, Florida Statutes, is
13 amended to read:
14 216.301 Appropriations; undisbursed balances.--
15 (1)(a) Any balance of any appropriation, except an
16 appropriation for fixed capital outlay, which is not disbursed
17 but which is expended or contracted to be expended shall, at
18 the end of each fiscal year, be certified by the head of the
19 affected state agency or the judicial or legislative branches,
20 on or before August 1 of each year, to the Executive Office of
21 the Governor, showing in detail the obligees to whom obligated
22 and the amounts of such obligations. On or before September 1
23 of each year, the Executive Office of the Governor shall
24 review and approve or disapprove, consistent with legislative
25 policy and intent, any or all of the items and amounts
26 certified by the head of the affected state agency and shall
27 approve all items and amounts certified by the Chief Justice
28 of the Supreme Court for the judicial branch and by the
29 legislative branch and shall furnish the Chief Financial
30 Officer, the legislative appropriations committees, and the
31 Auditor General a detailed listing of the items and amounts

1 approved as legal encumbrances against the undisbursed balance
2 of such appropriation. The review shall assure that trust
3 funds have been fully maximized. Any such encumbered balance
4 remaining undisbursed on December 31 of the same calendar year
5 in which such certification was made shall revert to the fund
6 from which appropriated, except as provided in subsection (3),
7 and shall be available for reappropriation by the Legislature.
8 In the event such certification is not made and an obligation
9 is proven to be legal, due, and unpaid, then the obligation
10 shall be paid and charged to the appropriation for the current
11 fiscal year of the state agency or the legislative or judicial
12 branch affected.
13 (b) Any balance of any appropriation, except an
14 appropriation for fixed capital outlay, for any given fiscal
15 year remaining after charging against it any lawful
16 expenditure shall revert to the fund from which appropriated
17 and shall be available for reappropriation by the Legislature.
18 (c) Each department and the judicial branch shall
19 maintain the integrity of the General Revenue Fund.
20 Appropriations from the General Revenue Fund contained in the
21 original approved budget may be transferred to the proper
22 trust fund for disbursement. Any reversion of appropriation
23 balances from programs which receive funding from the General
24 Revenue Fund and trust funds shall be transferred to the
25 General Revenue Fund within 15 days after such reversion,
26 unless otherwise provided by federal or state law, including
27 the General Appropriations Act. The Executive Office of the
28 Governor or the Chief Justice of the Supreme Court shall
29 determine the state agency or judicial branch programs which
30 are subject to this paragraph. This determination shall be
31 subject to the legislative consultation and objection process

1 in this chapter. The Education Enhancement Trust Fund shall
2 not be subject to the provisions of this section.
3 (2)(a) The balance of any appropriation for fixed
4 capital outlay which is not disbursed but expended,
5 contracted, or committed to be expended prior to February 1 of
6 the second fiscal year of the appropriation, or the third
7 fiscal year if it is for an educational facility as defined in
8 chapter 1013 or for a construction project of a state
9 university, shall be certified by the head of the affected
10 state agency or the legislative or judicial branch on February
11 1 to the Executive Office of the Governor, showing in detail
12 the commitment or to whom obligated and the amount of the
13 commitment or obligation. The Executive Office of the Governor
14 shall review and approve or disapprove, consistent with
15 criteria jointly developed by the Executive Office of the
16 Governor and the legislative appropriations committees, the
17 continuation of such unexpended balances. The Executive Office
18 of the Governor shall, not later than February 20 of each
19 year, furnish the Chief Financial Officer, the legislative
20 appropriations committees, and the Auditor General a report
21 listing in detail the items and amounts reverting under the
22 authority of this subsection, including the fund to which
23 reverted and the agency affected.
24 (b) The certification required in this subsection must
25 be in the form and on the date approved by the Executive
26 Office of the Governor. Any balance that is not certified
27 shall revert to the fund from which it was appropriated and be
28 available for reappropriation.
29 (c) The balance of any appropriation for fixed capital
30 outlay certified forward under paragraph (a) which is not
31 disbursed but expended, contracted, or committed to be

1 expended prior to the end of the second fiscal year of the
2 appropriation, or the third fiscal year if it is for an
3 educational facility as defined in chapter 1013 or for a
4 construction project of a state university, and any subsequent
5 fiscal year, shall be certified by the head of the affected
6 state agency or the legislative or judicial branch on or
7 before August 1 of each year to the Executive Office of the
8 Governor, showing in detail the commitment or to whom
9 obligated and the amount of such commitment or obligation. On
10 or before September 1 of each year, the Executive Office of
11 the Governor shall review and approve or disapprove,
12 consistent with legislative policy and intent, any or all of
13 the items and amounts certified by the head of the affected
14 state agency and shall approve all items and amounts certified
15 by the Chief Justice of the Supreme Court and by the
16 legislative branch and shall furnish the Chief Financial
17 Officer, the legislative appropriations committees, and the
18 Auditor General a detailed listing of the items and amounts
19 approved as legal encumbrances against the undisbursed
20 balances of such appropriations. If such certification is not
21 made and the balance of the appropriation has reverted and the
22 obligation is proven to be legal, due, and unpaid, the
23 obligation shall be presented to the Legislature for its
24 consideration.
25 (3) The President of the Senate and the Speaker of the
26 House of Representatives may notify the Executive Office of
27 the Governor to retain certified-forward balances from
28 legislative budget entities until June 30 of the following
29 fiscal year.
30 ~~(2)(a)--Any balance of any appropriation for fixed~~
31 ~~capital-outlay-not-disbursed-but-expended-or-contracted-or~~

1 ~~committed-to-be-expended-shall,-at-the-end-of-each-fiscal~~
2 ~~year,-be-certified-by-the-head-of-the-affected-state-agency-or~~
3 ~~the-legislative-or-judicial-branch,-on-or-before-August-1-of~~
4 ~~each-year,-to-the-Executive-Office-of-the-Governor,-showing-in~~
5 ~~detail-the-commitment-or-to-whom-obligated-and-the-amount-of~~
6 ~~such-commitment-or-obligation.-On-or-before-September-1-of~~
7 ~~each-year,-the-Executive-Office-of-the-Governor-shall-review~~
8 ~~and-approve-or-disapprove,-consistent-with-legislative-policy~~
9 ~~and-intent,-any-or-all-of-the-items-and-amounts-certified-by~~
10 ~~the-head-of-the-affected-state-agency-and-shall-approve-all~~
11 ~~items-and-amounts-certified-by-the-Chief-Justice-of-the~~
12 ~~Supreme-Court-and-by-the-legislative-branch-and-shall-furnish~~
13 ~~the-Chief-Financial-Officer,-the-legislative-appropriations~~
14 ~~committees,-and-the-Auditor-General-a-detailed-listing-of-the~~
15 ~~items-and-amounts-approved-as-legal-encumbrances-against-the~~
16 ~~undisbursed-balances-of-such-appropriations.-In-the-event-such~~
17 ~~certification-is-not-made-and-the-balance-of-the-appropriation~~
18 ~~has-reverted-and-the-obligation-is-proven-to-be-legal,-due,~~
19 ~~and-unpaid,-then-the-same-shall-be-presented-to-the~~
20 ~~Legislature-for-its-consideration.~~
21 ~~(b)--Such-certification-as-herein-required-shall-be-in~~
22 ~~the-form-and-on-the-date-approved-by-the-Executive-Office-of~~
23 ~~the-Governor.-Any-balance-not-so-certified-shall-revert-to-the~~
24 ~~fund-from-which-appropriated-and-shall-be-available-for~~
25 ~~reappropriation.~~
26 ~~(3)--Notwithstanding-the-provisions-of-subsection-(2),~~
27 ~~the-unexpended-balance-of-any-appropriation-for-fixed-capital~~
28 ~~outlay-subject-to-but-not-under-the-terms-of-a-binding~~
29 ~~contract-or-a-general-construction-contract-prior-to-February~~
30 ~~1-of-the-second-fiscal-year,-or-the-third-fiscal-year-if-it-is~~
31 ~~for-an-educational-facility-as-defined-in-chapter-1013-or-a~~

1 ~~construction-project-of-a-state-university,-of-the~~
2 ~~appropriation-shall-revert-on-February-1-of-such-year-to-the~~
3 ~~fund-from-which-appropriated-and-shall-be-available-for~~
4 ~~reappropriation.-The-Executive-Office-of-the-Governor-shall,~~
5 ~~not-later-than-February-20-of-each-year,-furnish-the-Chief~~
6 ~~Financial-Officer,-the-legislative-appropriations-committees,~~
7 ~~and-the-Auditor-General-a-report-listing-in-detail-the-items~~
8 ~~and-amounts-reverting-under-the-authority-of-this-subsection,~~
9 ~~including-the-fund-to-which-reverted-and-the-agency-affected.~~
10 Section 44. Effective July 1, 2005, subsection (1) of
11 section 216.301, Florida Statutes, as amended by this act, is
12 amended to read:
13 216.301 Appropriations; undisbursed balances.--
14 (1)(a) Any balance of any appropriation, except an
15 appropriation for fixed capital outlay, which is not disbursed
16 but which is expended ~~or-contracted-to-be-expended~~ shall, at
17 the end of each fiscal year, be certified by the head of the
18 affected state agency or the judicial or legislative branches,
19 on or before August 1 of each year, to the Executive Office of
20 the Governor, showing in detail the obligees to whom obligated
21 and the amounts of such obligations. ~~On-or-before-September-1~~
22 ~~of-each-year,-the-Executive-Office-of-the-Governor-shall~~
23 ~~review-and-approve-or-disapprove,-consistent-with-legislative~~
24 ~~policy-and-intent,-any-or-all-of-the-items-and-amounts~~
25 ~~certified-by-the-head-of-the-affected-state-agency-and-shall~~
26 ~~approve-all-items-and-amounts-certified-by-the-Chief-Justice~~
27 ~~of-the-Supreme-Court-for-the-judicial-branch-and-by-the~~
28 ~~legislative-branch-and-shall-furnish-the-Chief-Financial~~
29 ~~Officer,-the-legislative-appropriations-committees,-and-the~~
30 ~~Auditor-General-a-detailed-listing-of-the-items-and-amounts~~
31 ~~approved-as-legal-encumbrances-against-the-undisbursed-balance~~

1 ~~of-such-appropriation.--The-review-shall-assure-that-trust~~
2 ~~funds-have-been-fully-maximized.~~ Any such encumbered balance
3 remaining undisbursed on September 30 ~~December-31~~ of the same
4 calendar year in which such certification was made shall
5 revert to the fund from which appropriated, except as provided
6 in subsection (3), and shall be available for reappropriation
7 by the Legislature. In the event such certification is not
8 made and an obligation is proven to be legal, due, and unpaid,
9 then the obligation shall be paid and charged to the
10 appropriation for the current fiscal year of the state agency
11 or the legislative or judicial branch affected.
12 (b) Any balance of any appropriation, except an
13 appropriation for fixed capital outlay, for any given fiscal
14 year remaining after charging against it any lawful
15 expenditure shall revert to the fund from which appropriated
16 and shall be available for reappropriation by the Legislature.
17 (c) Each department and the judicial branch shall
18 maintain the integrity of the General Revenue Fund.
19 Appropriations from the General Revenue Fund contained in the
20 original approved budget may be transferred to the proper
21 trust fund for disbursement. Any reversion of appropriation
22 balances from programs which receive funding from the General
23 Revenue Fund and trust funds shall be transferred to the
24 General Revenue Fund within 15 days after such reversion,
25 unless otherwise provided by federal or state law, including
26 the General Appropriations Act. The Executive Office of the
27 Governor or the Chief Justice of the Supreme Court shall
28 determine the state agency or judicial branch programs which
29 are subject to this paragraph. This determination shall be
30 subject to the legislative consultation and objection process
31 in this chapter. The Education Enhancement Trust Fund shall

not be subject to the provisions of this section.

Section 45. Section 216.341, Florida Statutes, is amended to read:

216.341 Disbursement of Department of Health ~~county health department~~ trust funds; appropriation of authorized positions.--

(1) County health department trust funds may be expended by the Department of Health for the respective county health departments in accordance with budgets and plans agreed upon by the county authorities of each county and the Department of Health.

(2) The requirement ~~limitations on appropriations~~ provided in s. 216.262(1) does ~~shall~~ not apply to positions within the Department of Health funded by:

(a) County health department trust funds; or

(b) The United States Trust Fund ~~county health department trust funds~~.

Section 46. Subsection (3) of section 218.60, Florida Statutes, is repealed.

Section 47. Subsection (2) of section 252.37, Florida Statutes, is amended to read:

252.37 Financing.--

(2) It is the legislative intent that the first recourse be made to funds regularly appropriated to state and local agencies. If the Governor finds that the demands placed upon these funds in coping with a particular disaster declared by the Governor as a state of emergency are unreasonably great, she or he may make funds available by transferring and expending moneys appropriated for other purposes, by transferring and expending moneys out of any unappropriated surplus funds, or from the Budget Stabilization Fund ~~or~~

1 ~~Working-Capital-Fund~~. Following the expiration or termination
2 of the state of emergency, the Governor may process a budget
3 amendment under the notice and review procedures set forth in
4 s. 216.177 to transfer moneys to satisfy the budget authority
5 granted for such emergency.
6 Section 48. Subsection (3) of section 265.55, Florida
7 Statutes, is amended to read:
8 265.55 Claims.--
9 (3) The authorization for payment delineated in
10 subsection (2) shall be forwarded to the Chief Financial
11 Officer. The Chief Financial Officer shall take appropriate
12 action to execute authorized payment of the claim from
13 unobligated, unappropriated moneys in the General Revenue
14 ~~Working-Capital~~ Fund, as defined in s. 215.32.
15 Section 49. Section 288.1234, Florida Statutes, is
16 repealed.
17 Section 50. Subsection (5) of section 320.20, Florida
18 Statutes, is amended to read:
19 320.20 Disposition of license tax moneys.--The revenue
20 derived from the registration of motor vehicles, including any
21 delinquent fees and excluding those revenues collected and
22 distributed under the provisions of s. 320.081, must be
23 distributed monthly, as collected, as follows:
24 (5)(a) Except as provided in paragraph (c), the
25 remainder of such revenues must be deposited in the State
26 Transportation Trust Fund.
27 (b) The Chief Financial Officer each month shall
28 deposit in the State Transportation Trust Fund an amount,
29 drawn from other funds in the State Treasury which are not
30 immediately needed or are otherwise in excess of the amount
31 necessary to meet the requirements of the State Treasury,

which when added to such remaining revenues each month will equal one-twelfth of the amount of the anticipated annual revenues to be deposited in the State Transportation Trust Fund under paragraph (a) as determined by the Chief Financial Officer after consultation with the ~~estimated by the most recent~~ revenue estimating conference held pursuant to s. 216.136(3). The transfers required hereunder may be suspended by action of the Legislative Budget Commission in the event of a significant shortfall of state revenues.

(c) In any month in which the remaining revenues derived from the registration of motor vehicles exceed one-twelfth of those anticipated annual remaining revenues as determined by the Chief Financial Officer after consultation with the revenue estimating conference, the excess shall be credited to those state funds in the State Treasury from which the amount was originally drawn, up to the amount which was deposited in the State Transportation Trust Fund under paragraph (b). A final adjustment must be made in the last months of a fiscal year so that the total revenue deposited in the State Transportation Trust Fund each year equals the amount derived from the registration of motor vehicles, less the amount distributed under subsection (1). For the purposes of this paragraph and paragraph (b), the term "remaining revenues" means all revenues deposited into the State Transportation Trust Fund under paragraph (a) and subsections (2) and (3). In order that interest earnings continue to accrue to the General Revenue Fund, the Department of Transportation may not invest an amount equal to the cumulative amount of funds deposited in the State Transportation Trust Fund under paragraph (b) less funds credited under this paragraph as computed on a monthly basis.

The amounts to be credited under this and the preceding paragraph must be calculated and certified to the Chief Financial Officer by the Executive Office of the Governor.

Section 51. Paragraph (a) of subsection (2) and subsections (6) and (7) of section 339.135, Florida Statutes, are amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.--

(2) SUBMISSION OF LEGISLATIVE BUDGET REQUEST AND REQUEST FOR LIST OF ADDITIONAL TRANSPORTATION PROJECTS.--

(a) The department shall file the legislative budget request in the manner required by chapter 216, setting forth the department's proposed revenues and expenditures for operational and fixed capital outlay needs to accomplish the objectives of the department in the ensuing fiscal year. The right-of-way, construction, preliminary engineering, maintenance, and all grants and aids programs of the department shall be set forth only in program totals. The legislative budget request must include a balanced 36-month forecast of cash and expenditures and a 5-year finance plan. The legislative budget request shall be amended to conform to the tentative work program. The department may <u>not</u> amend ~~its legislative budget request and~~ the tentative work program <u>to include increased revenues</u> based on the most recent estimating conference estimate of revenues and the most recent federal aid apportionments <u>until such increased amounts are appropriated by the Legislature</u>.

(6) EXECUTION OF THE BUDGET.--

(a) The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract

which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of $25,000 and which have a term for a period of more than 1 year.

(b) In the operation of the State Transportation Trust Fund, the department shall have on hand at the close of business, which closing shall not be later than the 10th calendar day of the month following the end of each quarter of the fiscal year, an available cash balance (which shall include cash on deposit with the treasury and short-term investments of the department) equivalent to not less than $50 million, or 5 percent of the unpaid balance of all State Transportation Trust Fund obligations at the close of such quarter, whichever amount is less. In the event that this cash position is not maintained, no further contracts or other fund commitments shall be approved, entered into, awarded, or executed until the cash balance, as defined above, has been regained.

(c) Notwithstanding the provisions of ss. 216.301(3) and 216.351, any unexpended balance remaining at the end of

1 the fiscal year in the appropriations to the department for
2 special categories; aid to local governments; lump sums for
3 project phases which are part of the adopted work program, and
4 for which contracts have been executed or bids have been let;
5 and for right-of-way land acquisition and relocation
6 assistance for parcels from project phases in the adopted work
7 program for which appraisals have been completed and approved,
8 may be certified forward as fixed capital outlay under the
9 provisions of s. 216.301(2)(a). Any project phases in the
10 adopted work program not certified forward under the
11 provisions of s. 216.301(2)(a) shall be available for roll
12 forward for the next fiscal year of the adopted work program.
13 Spending authority associated with such project phases may be
14 rolled forward to the next fiscal year upon approval by the
15 Legislative Budget Commission ~~pursuant to paragraph (f)~~.
16 Increases in spending authority shall be limited to amounts of
17 unexpended balances by appropriation category. Any project
18 phase certified forward for which bids have been let but
19 subsequently rejected shall be available for roll forward in
20 the adopted work program for the next fiscal year. Spending
21 authority associated with such project phases may be rolled
22 forward into the current year from funds certified forward
23 pursuant to paragraph (f). The amount certified forward may
24 include contingency allowances for right-of-way acquisition
25 and relocation, asphalt and petroleum product escalation
26 clauses, and contract overages, which allowances shall be
27 separately identified in the certification detail.
28 Right-of-way acquisition and relocation and contract overages
29 contingency allowances shall be based on documented historical
30 patterns. These contingency amounts shall be incorporated in
31 the certification for each specific category, but when a

category has an excess and another category has a deficiency, the Executive Office of the Governor is authorized to transfer the excess to the deficient account.

(d) The department shall allocate resources provided in the General Appropriations Act to the districts prior to July 31 of each year. The allocation shall be promptly reported to the Executive Office of the Governor and the legislative appropriations committees, and all subsequent amendments shall be reported promptly to the secretary of the department.

(e) This subsection does not apply to any bonds issued on behalf of the department pursuant to the State Bond Act.

~~(f)--Notwithstanding-the-provisions-of-ss.-216.181(1),-216.292,-and-216.351,-the-Executive-Office-of-the-Governor-may-amend-that-portion-of-the-department's-original-approved-fixed-capital-outlay-budget-which-comprises-the-work-program-pursuant-to-subsection-(7).---Increase-in-spending-authority-in-paragraph-(c)-shall-be-limited-to-amounts-of-unexpended-balances-by-appropriation-category.~~

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.--

~~(a)--Notwithstanding-the-provisions-of-ss.-216.181(1),-216.292,-and-216.351,-the-adopted-work-program-may-be-amended-only-pursuant-to-the-provisions-of-this-subsection.~~

(a) ~~(b)~~ The department may not transfer any funds for any project or project phase between department districts. However, a district secretary may agree to a loan of funds to another district, if:

1. The funds are used solely to maximize the use or amount of funds available to the state;

2. The loan agreement is executed in writing and is signed by the district secretaries of the respective

1 districts;
2 3. Repayment of the loan is to be made within 3 years
3 after the date on which the agreement was entered into; and
4 4. The adopted work program of the district loaning
5 the funds would not be substantially impaired if the loan were
6 made, according to the district secretary.
7
8 The loan constitutes an amendment to the adopted work program
9 and is subject to the procedures specified in paragraph (b)
10 ~~(c)~~.
11 (b) ~~(c)~~ The department may amend the adopted work
12 program to transfer appropriations within the department,
13 except that the following amendments shall be subject to the
14 procedures in paragraph (c) ~~(d)~~:
15 1. Any amendment which deletes any project or project
16 phase;
17 2. Any amendment which adds a project estimated to
18 cost over $150,000 in funds appropriated by the Legislature;
19 3. Any amendment which advances or defers to another
20 fiscal year, a right-of-way phase, a construction phase, or a
21 public transportation project phase estimated to cost over
22 $500,000 in funds appropriated by the Legislature, except an
23 amendment advancing or deferring a phase for a period of 90
24 days or less; or
25 4. Any amendment which advances or defers to another
26 fiscal year, any preliminary engineering phase or design phase
27 estimated to cost over $150,000 in funds appropriated by the
28 Legislature, except an amendment advancing or deferring a
29 phase for a period of 90 days or less.
30 (c) ~~(d)~~1. Whenever the department proposes any
31 amendment to the adopted work program, which amendment is

defined in subparagraph (b)1. ~~(c)1.~~, subparagraph (b)2. ~~(c)2.~~, subparagraph (b)3. ~~(c)3.~~, or subparagraph (b)4. ~~(c)4.~~, it shall submit the proposed amendment to the Governor for approval and shall immediately notify the chairs of the legislative appropriations committees, the chairs of the legislative transportation committees, each member of the Legislature who represents a district affected by the proposed amendment, each metropolitan planning organization affected by the proposed amendment, and each unit of local government affected by the proposed amendment. Such proposed amendment shall provide a complete justification of the need for the proposed amendment.

2. The Governor shall not approve a proposed amendment until 14 days following the notification required in subparagraph 1.

3. If either of the chairs of the legislative appropriations committees or the President of the Senate or the Speaker of the House of Representatives objects in writing to a proposed amendment within 14 days following notification and specifies the reasons for such objection, the Governor shall disapprove the proposed amendment ~~or shall submit the proposed amendment to the Administration Commission. The proposed amendment may be approved by the Administration Commission by a two-thirds vote of the members present with the Governor voting in the affirmative. In the absence of approval by the commission, the proposed amendment shall be automatically disapproved.~~

(d) ~~(e)~~ Notwithstanding the requirements in paragraph (c) ~~(d)~~ and ss. 216.177(2) and 216.351, the secretary may request the Executive Office of the Governor to amend the adopted work program when an emergency exists, as defined in

1 s. 252.34(3), and the emergency relates to the repair or
2 rehabilitation of any state transportation facility. The
3 Executive Office of the Governor may approve the amendment to
4 the adopted work program and amend that portion of the
5 department's approved budget in the event that the delay
6 incident to the notification requirements in paragraph (c) ~~(d)~~
7 would be detrimental to the interests of the state. However,
8 the department shall immediately notify the parties specified
9 in paragraph (c) ~~(d)~~ and shall provide such parties written
10 justification for the emergency action within 7 days of the
11 approval by the Executive Office of the Governor of the
12 amendment to the adopted work program and the department's
13 budget. In no event may the adopted work program be amended
14 under the provisions of this subsection without the
15 certification by the comptroller of the department that there
16 are sufficient funds available pursuant to the 36-month cash
17 forecast and applicable statutes.
18 (e) ~~(f)~~ The department may authorize the investment of
19 the earnings accrued and collected upon the investment of the
20 minimum balance of funds required to be maintained in the
21 State Transportation Trust Fund pursuant to paragraph (a) ~~(b)~~.
22 Such investment shall be limited as provided in s.
23 288.9607(7).
24 Section 52. Subsection (3) of section 381.0303,
25 Florida Statutes, is amended to read:
26 381.0303 Health practitioner recruitment for special
27 needs shelters.--
28 (3) REIMBURSEMENT TO HEALTH CARE PRACTITIONERS.--The
29 Department of Health shall reimburse, subject to the
30 availability of funds for this purpose, health care
31 practitioners, as defined in s. 456.001, provided the

1 practitioner is not providing care to a patient under an
2 existing contract, and emergency medical technicians and
3 paramedics licensed pursuant to chapter 401 for medical care
4 provided at the request of the department in special needs
5 shelters or at other locations during times of emergency or
6 major disaster. Reimbursement for health care practitioners,
7 except for physicians licensed pursuant to chapter 458 or
8 chapter 459, shall be based on the average hourly rate that
9 such practitioners were paid according to the most recent
10 survey of Florida hospitals conducted by the Florida Hospital
11 Association. Reimbursement shall be requested on forms
12 prepared by the Department of Health. If a Presidential
13 Disaster Declaration has been made, and the Federal Government
14 makes funds available, the department shall use such funds for
15 reimbursement of eligible expenditures. In other situations,
16 or if federal funds do not fully compensate the department for
17 reimbursement made pursuant to this section, the department
18 shall process ~~submit to the Cabinet or Legislature, as~~
19 ~~appropriate,~~ a budget amendment to obtain reimbursement from
20 unobligated, unappropriated moneys in the General Revenue
21 ~~working capital~~ Fund. Travel expense and per diem costs shall
22 be reimbursed pursuant to s. 112.061.
23 Section 53. Subsection (1) of section 393.22, Florida
24 Statutes, is repealed.
25 Section 54. Subsection (5) of section 409.906, Florida
26 Statutes, is amended to read:
27 409.906 Optional Medicaid services.--Subject to
28 specific appropriations, the agency may make payments for
29 services which are optional to the state under Title XIX of
30 the Social Security Act and are furnished by Medicaid
31 providers to recipients who are determined to be eligible on

1 the dates on which the services were provided. Any optional
2 service that is provided shall be provided only when medically
3 necessary and in accordance with state and federal law.
4 Optional services rendered by providers in mobile units to
5 Medicaid recipients may be restricted or prohibited by the
6 agency. Nothing in this section shall be construed to prevent
7 or limit the agency from adjusting fees, reimbursement rates,
8 lengths of stay, number of visits, or number of services, or
9 making any other adjustments necessary to comply with the
10 availability of moneys and any limitations or directions
11 provided for in the General Appropriations Act or chapter 216.
12 If necessary to safeguard the state's systems of providing
13 services to elderly and disabled persons and subject to the
14 notice and review provisions of s. 216.177, the Governor may
15 direct the Agency for Health Care Administration to amend the
16 Medicaid state plan to delete the optional Medicaid service
17 known as "Intermediate Care Facilities for the Developmentally
18 Disabled." Optional services may include:
19 (5) CASE MANAGEMENT SERVICES.--The agency may pay for
20 primary care case management services rendered to a recipient
21 pursuant to a federally approved waiver, and targeted case
22 management services for specific groups of targeted
23 recipients, for which funding has been provided and which are
24 rendered pursuant to federal guidelines. The agency is
25 authorized to limit reimbursement for targeted case management
26 services in order to comply with any limitations or directions
27 provided for in the General Appropriations Act.
28 ~~Notwithstanding s.--216.292,-the-Department-of-Children-and~~
29 ~~Family-Services-may-transfer-general-funds-to-the-Agency-for~~
30 ~~Health-Care-Administration-to-fund-state-match-requirements~~
31 ~~exceeding-the-amount-specified-in-the-General-Appropriations~~

1 ~~Act-for-targeted-case-management-services.~~
2 Section 55. Paragraph (b) of subsection (11) of
3 section 409.912, Florida Statutes, is repealed.
4 Section 56. Subsection (2) of section 468.392, Florida
5 Statutes, is amended to read:
6 468.392 Auctioneer Recovery Fund.--There is created
7 the Auctioneer Recovery Fund as a separate account in the
8 Professional Regulation Trust Fund. The fund shall be
9 administered by the Florida Board of Auctioneers.
10 (2) All payments and disbursements from the Auctioneer
11 Recovery Fund shall be made by the Chief Financial Officer
12 upon a voucher signed by the Secretary of Business and
13 Professional Regulation or the secretary's designee. ~~Amounts~~
14 ~~transferred-to-the-Auctioneer-Recovery-Fund-shall-not-be~~
15 ~~subject-to-any-limitation-imposed-by-an-appropriation-act-of~~
16 ~~the-Legislature.~~
17 Section 57. Subsection (6) of section 475.484, Florida
18 Statutes, is amended to read:
19 475.484 Payment from the fund.--
20 (6) All payments and disbursements from the Real
21 Estate Recovery Fund shall be made by the Chief Financial
22 Officer upon a voucher signed by the secretary of the
23 department. ~~Amounts-transferred-to-the-Real-Estate-Recovery~~
24 ~~Fund-shall-not-be-subject-to-any-limitation-imposed-by-an~~
25 ~~appropriation-act-of-the-Legislature.~~
26 Section 58. Paragraph (b) of subsection (9) of section
27 921.001, Florida Statutes, is amended to read:
28 921.001 Sentencing Commission and sentencing
29 guidelines generally.--
30 (9)
31 (b) On or after January 1, 1994, any legislation

which:

1. Creates a felony offense;

2. Enhances a misdemeanor offense to a felony offense;

3. Moves a felony offense from a lesser offense severity level to a higher offense severity level in the offense severity ranking chart in s. 921.0012; or

4. Reclassifies an existing felony offense to a greater felony classification

must provide that such a change result in a net zero sum impact in the overall prison population, as determined by the Legislature, considering the most recent estimates of the Criminal Justice Estimating Conference, unless the legislation contains a funding source sufficient in its base or rate to accommodate such change or a provision which specifically abrogates the application of this paragraph.

Section 59. Paragraph (a) of subsection (1) of section 1009.536, Florida Statutes, is amended to read:

1009.536 Florida Gold Seal Vocational Scholars award.--The Florida Gold Seal Vocational Scholars award is created within the Florida Bright Futures Scholarship Program to recognize and reward academic achievement and career and technical preparation by high school students who wish to continue their education.

(1) A student is eligible for a Florida Gold Seal Vocational Scholars award if the student meets the general eligibility requirements for the Florida Bright Futures Scholarship Program and the student:

(a) Completes the secondary school portion of a sequential program of studies that requires at least three secondary school career and technical credits taken over at

1 least 2 academic years, and is continued in a planned, related
2 postsecondary education program. If the student's school does
3 not offer such a two-plus-two or tech-prep program, the
4 student must complete a job-preparatory career education
5 program selected by ~~the Workforce Estimating Conference or~~
6 Workforce Florida, Inc., for its ability to provide high-wage
7 employment in an occupation with high potential for employment
8 opportunities. On-the-job training may not be substituted for
9 any of the three required career and technical credits.
10 Section 60. Any undisbursed appropriations made from
11 the Working Capital Fund, previously created in section
12 215.32, Florida Statutes, are reappropriated from unallocated
13 moneys in the General Revenue Fund; any appropriations made to
14 the Working Capital Fund are reappropriated to the General
15 Revenue Fund; and any references to the Working Capital Fund
16 in proviso language or in House Bill 1837, or similar
17 legislation, shall be replaced with "the General Revenue
18 Fund." This section expires July 1, 2005.
19 Section 61. Except as otherwise expressly provided in
20 this act, and except for sections 1-8 of this act, which shall
21 take effect July 1, 2004, this act shall take effect upon
22 becoming a law.
23
24
25 ========== T I T L E A M E N D M E N T ==========
26 And the title is amended as follows:
27 On page 1, line 2, through
28 page 2, line 25, delete those lines
29
30 and insert:
31 An act relating to the management of state

1 financial matters; amending s. 255.248, F.S.;
2 creating and revising definitions; providing
3 exceptions; amending s. 255.249, F.S.; removing
4 a requirement; providing that the Department of
5 Management Services, rather than agencies
6 acting on their own behalf, can lease space for
7 agencies; providing that the department may
8 retain a real estate broker; providing
9 requirements for real estate broker services
10 and for leases negotiated by a broker;
11 providing for review by the Legislative Budget
12 Commission; providing exceptions; authorizing
13 the department to assign an agency to space
14 vacated by another agency; providing conditions
15 under which an agency may reject a proposed
16 move; providing for competitive solicitation of
17 leases; providing procedures; providing
18 exceptions; providing conditions for space
19 allocation; requiring adoption of a quality
20 standard; requiring an annual report for
21 department's enterprise plan; amending s.
22 255.25, F.S.; removing a requirement that the
23 department act as a mediator; authorizing the
24 department to participate in large-scale
25 leases; changing the requirement for
26 competitive bidding for leases of real property
27 for agencies to a requirement for competitive
28 solicitation; specifying requirements for
29 extension of a lease; increasing the bond
30 requirement for protests of a lease
31 solicitation; removing requirements for review

1 by the State Fire Marshal; removing
2 requirements for a flood plain analysis;
3 removing an exception regarding specialized
4 educational facilities; amending s. 255.25001,
5 F.S.; changing competitive bidding to
6 competitive solicitation; amending s. 255.2501,
7 F.S.; providing criteria for leasing space
8 financed by local government obligations;
9 amending s. 255.45, F.S.; requiring the
10 department to submit building plans to the
11 State Fire Marshal for a fire safety review;
12 requiring the department to review building
13 plans for compliance with flood plain
14 management; reenacting s. 633.085(1)(b), F.S.,
15 relating to fire safety in state office
16 buildings, to incorporate the amendment to s.
17 255.45, F.S., in a reference thereto; repealing
18 s. 270.27, F.S., relating to the sale of unused
19 public lands; providing for the future repeal
20 of s. 255.249(2)(b), F.S., relating to
21 authorization for the department to contract
22 for certain real estate broker services;
23 amending s. 14.2015, F.S.; requiring the Office
24 of Tourism, Trade, and Economic Development and
25 the Florida Commission on Tourism to advise and
26 consult with the Consensus Estimating
27 Conference principals concerning certain
28 duties; amending s. 45.062, F.S.; requiring
29 that certain legislative officers and the
30 Attorney General receive prior notice
31 concerning settlement negotiations and

1 presettlement agreements or orders; specifying
2 that such notice is a condition precedent to an
3 agency's authority to enter into such an
4 agreement; providing certain exceptions;
5 requiring that moneys paid in settlement of a
6 legal action be placed unobligated into the
7 General Revenue Fund or an appropriate trust
8 fund; prohibiting payment outside the State
9 Treasury except in settlement of a personal
10 injury claim; requiring that certain
11 legislative officers and the Attorney General
12 receive prior notice concerning certain
13 settlements involving a state agency or
14 officer; amending s. 110.1245, F.S., relating
15 to a savings sharing program; correcting a
16 reference; amending s. 215.32, F.S.; requiring
17 state agencies to use trust funds for specified
18 purposes, to the extent possible; authorizing
19 an agency to request the creation of a
20 necessary trust fund; revising requirements and
21 uses of the Working Capital Fund; amending s.
22 215.5601, F.S., relating to the Lawton Chiles
23 Endowment Fund; revising provisions governing
24 appropriations to the fund; requiring that
25 certain undisbursed balances be retained in the
26 Biomedical Research Trust Fund; amending ss.
27 215.93 and 215.94, F.S., relating to the
28 Florida Financial Management Information
29 System; revising duties of the Financial
30 Management Information Board and the functional
31 owners of the information subsystems; requiring

1 the Auditor General to provide technical
2 advice; amending s. 215.97, F.S., relating to
3 the Florida Single Audit Act; revising and
4 providing definitions; revising the uniform
5 state audit requirements for state financial
6 assistance that is provided by state agencies
7 to nonstate entities; requiring the Department
8 of Financial Services to adopt rules and
9 perform additional duties with respect to the
10 provision of financial assistance to carry out
11 state projects; specifying duties of
12 coordinating agencies; amending s. 216.011,
13 F.S.; revising definitions applicable to the
14 fiscal affairs of the state; defining the terms
15 "mandatory reserve," "budget reserve,"
16 "activity," and "statutorily authorized
17 entity"; amending s. 216.013, F.S.; revising
18 requirements for the long-range program plans
19 developed by state agencies; providing for
20 submitting such plans on an alternate date
21 under certain circumstances; revising the date
22 for making adjustments; amending s. 216.023,
23 F.S., relating to legislative budget requests;
24 providing alternate dates for submitting such
25 requests under certain circumstances; providing
26 requirements for a request to outsource or
27 privatize agency functions; deleting certain
28 requirements for performance-based program
29 budget requests; amending s. 216.031, F.S.;
30 revising requirements for target budget
31 requests; repealing s. 216.052(2), (3), (8),

1 and (9), F.S., relating to community budget
2 requests and a revolving loan program;
3 repealing s. 216.053(5), F.S., relating to
4 summary information concerning
5 performance-based program budgets; amending s.
6 216.065, F.S.; requiring that a fiscal impact
7 statement provided to the legislative
8 appropriations committees contain information
9 concerning subsequent fiscal years; amending s.
10 216.081, F.S.; providing data requirements for
11 the Governor's recommended budget under certain
12 circumstances; repealing s. 216.136(7) and (8),
13 F.S., relating to the Child Welfare System
14 Estimating Conference and the Juvenile Justice
15 Estimating Conference; amending s. 216.162,
16 F.S.; revising the date for the Governor to
17 submit the recommended budget for the state;
18 amending s. 216.167, F.S.; deleting references
19 to the Working Capital Fund to conform to
20 changes made by the act; amending s. 216.168,
21 F.S.; deleting provisions exempting the
22 Governor from a requirement to submit amended
23 recommendations; amending s. 216.177, F.S.;
24 revising requirements for a request for
25 additional information concerning the
26 legislative intent of appropriations acts and
27 for notifying the Legislature of actions taken
28 under ch. 216, F.S., and funds expended in
29 settlement of agency litigation; amending s.
30 216.181, F.S.; requiring approval of certain
31 amendments to an approved operating budget by

1 the Legislative Budget Commission; clarifying
2 provisions with respect to the notice required
3 for the transfer of lump-sum appropriations;
4 revising requirements for determining salary
5 rates; authorizing the Legislative Budget
6 Commission to approve salary rates; deleting
7 certain notice requirements; requiring that the
8 legislative appropriations committees approve
9 certain nonoperating budgets; deleting certain
10 notice requirements; deleting a provision
11 authorizing the advancement of specified funds
12 appropriated to the Department of Children and
13 Family Services and the Department of Health;
14 repealing ss. 216.1825 and 216.183, F.S.,
15 relating to the use of zero-based budgeting
16 principles and performance-based program
17 budgets; amending s. 216.192, F.S.; deleting
18 provisions authorizing the legislative
19 appropriations committees to provide advice
20 regarding the release of funds; authorizing the
21 Executive Office of the Governor and the Chief
22 Justice to place appropriations in mandatory
23 reserve or budget reserve; amending s. 216.195,
24 F.S.; deleting certain notice and review
25 requirements for the impoundment of funds;
26 amending s. 216.221, F.S.; authorizing the
27 Legislature to direct the use of any state
28 funds in an appropriations act; revising
29 requirements for adjusting budgets in order to
30 avoid or eliminate a deficit; revising
31 procedures for certifying a budget deficit;

1 revising requirements for the Governor and the
2 Chief Justice in developing plans of action;
3 requiring that the Legislative Budget
4 Commission implement certain reductions in
5 appropriations; revising requirements for
6 resolving deficits; requiring that certain
7 actions to resolve a deficit be approved by the
8 Legislative Budget Commission; amending s.
9 216.231, F.S., relating to the release of
10 classified appropriations; conforming
11 provisions to changes made by the act; amending
12 s. 216.235, F.S., relating to the Innovation
13 Investment Program; correcting references;
14 limiting the funding of certain proposals under
15 the program; amending s. 216.241, F.S.;
16 requiring that the initiation or commencement
17 of new programs be approved by the Legislative
18 Budget Commission; deleting certain notice
19 requirements; limiting certain other actions
20 and budget adjustments by a state agency or the
21 judicial branch without the approval of the
22 Legislature or the Legislative Budget
23 Commission; amending s. 216.251, F.S.;
24 correcting a reference; revising requirements
25 for establishing certain salaries; amending s.
26 216.262, F.S.; requiring the Legislative Budget
27 Commission to approve certain increases in the
28 number of positions; deleting provisions
29 authorizing an agency to retain salary dollars
30 under certain circumstances; amending s.
31 216.292, F.S.; revising provisions limiting the

1 transferability of appropriations; prohibiting
2 spending fixed capital outlay for other
3 purposes; prohibiting transferring
4 appropriations except as otherwise provided by
5 law; providing certain exceptions; amending s.
6 216.301, F.S.; revising requirements for
7 continuing unexpended balances of
8 appropriations for fixed capital outlay;
9 requiring approval by the Executive Office of
10 the Governor; authorizing the President of the
11 Senate and the Speaker of the House of
12 Representatives to provide for the retention of
13 certain balances from legislative budget
14 entities; amending s. 216.341, F.S.; exempting
15 certain positions within the Department of
16 Health from limitations on the number of
17 authorized positions; repealing s. 218.60(3),
18 F.S., relating to estimates made by the revenue
19 estimating conference and provided to local
20 governments; amending ss. 252.37 and 265.55,
21 F.S.; deleting certain references to the
22 Working Capital Fund to conform to changes made
23 by the act; repealing s. 288.1234, F.S.,
24 relating to the Olympic Games Guaranty Account
25 within the Economic Development Trust Fund;
26 amending s. 320.20, F.S.; providing duties of
27 the Chief Financial Officer with respect to the
28 deposit of certain trust fund moneys based on
29 anticipated annual revenues; amending s.
30 339.135, F.S.; revising requirements for the
31 tentative work programs submitted by state

1 agencies; requiring that the Legislative Budget
2 Commission approve certain extensions of
3 spending authority; revising requirements for
4 amending certain work programs; amending s.
5 381.0303, F.S.; authorizing the Department of
6 Health to obtain reimbursement for special
7 needs shelters from unappropriated moneys in
8 the General Revenue Fund; repealing s.
9 393.22(1), F.S., relating to a prohibition on
10 transferring certain funds appropriated for
11 developmental services programs; amending s.
12 409.906, F.S.; deleting provisions authorizing
13 the Department of Children and Family Services
14 to transfer certain funds in excess of the
15 amount specified in the General Appropriations
16 Act; repealing s. 409.912(11)(b), F.S.,
17 relating to the transfer of certain funds from
18 the Department of Elderly Affairs to the Agency
19 for Health Care Administration; amending ss.
20 468.392 and 475.484, F.S.; deleting provisions
21 exempting funds in the Auctioneer Recovery Fund
22 and the Real Estate Recovery Fund from
23 limitations imposed by an appropriation act;
24 amending s. 921.001, F.S.; requiring the
25 Legislature to make certain determinations with
26 respect to legislation that affects the prison
27 population; amending s. 1009.536, F.S.;
28 deleting duties of the Workforce Estimating
29 Conference with respect to certain career
30 education programs; providing for references to
31 the Working Capital Fund in certain

appropriations and proviso language to be replaced with a reference to the General Revenue Fund; providing effective dates.

Bill No. CS for SB 2842

Amendment No. 5 675296

CHAMBER ACTION

Senate House

Senator Webster moved the following amendment:

Senate Amendment

On page 39, between lines 13 and 14,

insert:

Section 19. The Department of Highway Safety and Motor Vehicles shall determine the level of funding necessary to implement sections 17 and 18 of this act with department resources. If the department determines that such services could be provided more effectively or efficiently, the department may consider outsourcing proposals through competitive processes. Notwithstanding the provisions of Chapter 287, Florida Statutes, in the event that less than four responsive bids are received, the department shall continue implementation with in-house resources.

Section 20. There is hereby appropriated $250,000 from the Highway Safety Operating Trust Fund for initial development start-up costs related to sections 17 and 18 of this act. The Department shall submit a budget amendment for approval by the Legislative Budget Commission, pursuant to

chapter 216, Florida Statutes, upon determination of the additional budget amounts by appropriation category that are necessary for full implementation.

Bill No. CS for SB 2842

Amendment No. 6 355298

CHAMBER ACTION

Senate House

Senator Jones moved the following amendment:

Senate Amendment (with title amendment)

On page 17, line 6, through

page 19, line 8, delete those lines

and insert:

Section 7. Section 395.402, Florida Statutes, is amended to read:

395.402 Trauma service areas; number and location of trauma centers.--

(1) The Legislature recognizes the need for a statewide, cohesive, uniform, and integrated trauma system. Within the trauma service areas, ~~that~~ Level I and Level II trauma centers shall ~~should~~ each be capable of annually treating a minimum of 1,000 and 500 patients, respectively, with an injury severity score (ISS) of 9 or greater. Level II trauma centers in counties with a population of more than 500,000 shall have the capacity to care for a minimum of 1,000 patients per year. ~~Further, the Legislature finds that, based on the numbers and locations of trauma victims with these~~

1 ~~injury-severity-scores,-there-should-be-19-trauma-service~~
2 ~~areas-in-the-state,-and,-at-a-minimum,-there-should-be-at~~
3 ~~least-one-trauma-center-in-each-service-area.~~
4 ~~(2)--It-is-the-intent-of-the-Legislature-that,-as-a~~
5 ~~planning-guideline,-Level-I-and-Level-II-trauma-centers-should~~
6 ~~generally-each-provide-care-annually-to-a-minimum-of-1,000-and~~
7 ~~500-patients,-respectively.-Level-II-trauma-centers-in~~
8 ~~counties-of-more-than-500,000-population-are-expected-to-be~~
9 ~~able-to-care-for-1,000-patients-per-year,-as-a-planning~~
10 ~~guideline.~~
11 (2) ~~(3)~~ Trauma service areas as described in this
12 section are to be utilized until the Department of Health
13 completes an assessment of the trauma system and reports its
14 findings to the Governor, the President of the Senate, the
15 Speaker of the House of Representatives, and the substantive
16 legislative committees. The report shall be submitted by
17 December 1, 2004. The department shall review the existing
18 trauma system and determine whether it is effective in
19 providing trauma care uniformly throughout the state. The
20 assessment shall:
21 (a) Consider aligning trauma service areas within the
22 trauma region boundaries as established in July 2004.
23 (b) Review the number and level of trauma centers
24 needed for each trauma service area to provide a statewide
25 integrated trauma system.
26 (c) Establish criteria for determining the number and
27 level of trauma centers needed to serve the population in a
28 defined trauma service area or region.
29 (d) Consider including a criteria within trauma center
30 verification standards based upon the number of trauma victims
31 served within a service area.

1 (3) In conducting this assessment and subsequent
2 annual reviews, the department shall consider:
3 (a) The recommendations made as part of the regional
4 trauma system plans submitted by regional trauma agencies.
5 (b) Stakeholder recommendations.
6 (c) The geographical composition of an area to ensure
7 rapid access to trauma care by patients.
8 (d) Historical patterns of patient referral and
9 transfer in an area.
10 (e) Inventories of available trauma care resources,
11 including professional medical staff.
12 (f) Population growth characteristics.
13 (g) Transportation capabilities, including ground and
14 air transport.
15 (h) Medically appropriate ground and air travel times.
16 (i) Recommendations of the Regional Domestic Security
17 Task Force.
18 (j) The actual number of trauma victims currently
19 being served by each trauma center.
20 (k) Other appropriate criteria.
21 (4) Annually thereafter, ~~used.~~ the department shall
22 ~~periodically~~ review the assignment of the 67 counties to
23 trauma service areas, in addition to the requirements of
24 paragraphs (2)(b)-(e) and subsection (3). County ~~These~~
25 assignments are made for the purpose of developing a system of
26 trauma centers. Revisions made by the department shall ~~should~~
27 take into consideration the recommendations made as part of
28 the regional trauma system plans approved by the department,
29 and ~~as well as~~ the recommendations made as part of the state
30 trauma system plan. In cases where a trauma service area is
31 located within the boundaries of more than one trauma region,

the trauma service area's needs, response capability, and system requirements shall be considered by each trauma region served by that trauma service area in its regional system plan ~~These areas must, at a minimum, be reviewed in the year 2000 and every 5 years thereafter~~. Until the department completes the December 2004 assessment ~~its initial review~~, the assignment of counties shall remain as established in this section ~~pursuant to chapter 90-284, Laws of Florida~~.

(a) The following trauma service areas are hereby established:

1. Trauma service area 1 shall consist of Escambia, Okaloosa, Santa Rosa, and Walton Counties.

2. Trauma service area 2 shall consist of Bay, Gulf, Holmes, and Washington Counties.

3. Trauma service area 3 shall consist of Calhoun, Franklin, Gadsden, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.

4. Trauma service area 4 shall consist of Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.

5. Trauma service area 5 shall consist of Baker, Clay, Duval, Nassau, and St. Johns Counties.

6. Trauma service area 6 shall consist of Citrus, Hernando, and Marion Counties.

7. Trauma service area 7 shall consist of Flagler and Volusia Counties.

8. Trauma service area 8 shall consist of Lake, Orange, Osceola, Seminole, and Sumter Counties.

9. Trauma service area 9 shall consist of Pasco and Pinellas Counties.

10. Trauma service area 10 shall consist of

1 Hillsborough County.
2 11. Trauma service area 11 shall consist of Hardee,
3 Highlands, and Polk Counties.
4 12. Trauma service area 12 shall consist of Brevard
5 and Indian River Counties.
6 13. Trauma service area 13 shall consist of DeSoto,
7 Manatee, and Sarasota Counties.
8 14. Trauma service area 14 shall consist of Martin,
9 Okeechobee, and St. Lucie Counties.
10 15. Trauma service area 15 shall consist of Charlotte,
11 Glades, Hendry, and Lee Counties.
12 16. Trauma service area 16 shall consist of Palm Beach
13 County.
14 17. Trauma service area 17 shall consist of Collier
15 County.
16 18. Trauma service area 18 shall consist of Broward
17 County.
18 19. Trauma service area 19 shall consist of Dade and
19 Monroe Counties.
20 (b) Each trauma service area should have at least one
21 Level I or Level II trauma center. The department shall
22 allocate, by rule, the number of trauma centers needed for
23 each trauma service area.
24 ~~(c)--There-shall-be-no-more-than-a-total-of-44~~
25 ~~state-sponsored-trauma-centers-in-the-state.~~
26
27
28 ========== T I T L E A M E N D M E N T ==========
29 And the title is amended as follows:
30 On page 1, line 29, through
31 page 2, line 7, delete those lines

1 and insert:
2 amending s. 395.402, F.S.; providing additional
3 legislative intent with respect to trauma
4 service areas; providing a treatment capacity
5 for certain trauma centers; providing that
6 current trauma service areas shall be used
7 until the Department of Health completes an
8 assessment of the trauma system; requiring a
9 report; providing guidelines for such
10 assessment; requiring annual review; amending
11 s. 395.4025, F.S.;
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Bill No. CS for SB 2842

Amendment No. 7 122316

CHAMBER ACTION

Senate | House

Senator Peaden moved the following amendment:

Senate Amendment

On page 28, line 18, delete that line

and insert:

(3) For fiscal year 2005-06 and thereafter, the department shall allocate funds not disbursed under subsection (1)

Bill No. CS for SB 2842

Amendment No. 8 324780

CHAMBER ACTION

Senate House

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 39, between lines 13 and 14, insert a new section:

Section 19. Of the funds received in the Administrative Trust Fund, the Department of Health shall retain 91.67 percent of monthly collections in the Administrative Trust Fund. The remaining 8.33 percent of monthly collections shall be distributed to the Rape Crisis Program Trust Fund, up to a maximum annual distribution of $4,000,000. Once the $4,000,000 cap is reached for the Rape Crisis Program Trust Fund, 100 percent of collections shall be retained in the Administrative Trust Fund in the Department of Health. Annual collections in excess of $60,000,000 shall be transferred to the General Revenue Fund.

Section 20. There is hereby appropriated from the Administrative Trust Fund in the Department of Health the sum of $31,591,454 to provide funding for verified and provisional trauma centers, and $4,000,000 from the Rape Crisis Program

1 Trust Fund in the Department of Health for the purpose of
2 providing services for victims of sexual assault.
3
4 (Redesignate subsequent sections.)
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7 ========== T I T L E A M E N D M E N T ==========
8 And the title is amended as follows:
9 On page 4, line 25, after the semicolon, insert:
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11 and insert:
12 providing for distribution of collections in the
13 Administrative Trust Fund; providing an appropriation;
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Bill No. CS for SB 2842

Amendment No. 9 264462

CHAMBER ACTION

Senate House

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 35, between lines 18 and 19, insert a new section:

Section 12. The department shall establish a task force by August 1, 2004 for the purpose of studying and making recommendations regarding the formula for the distribution of funds deposited in the Administrative Trust Fund for distribution pursuant to s. 295.403, and alternative financing options. The task force shall include representatives of the Governor's Office, the Department of Health, the Agency for Health Care Administration, and representatives from Level I, Level II, and pediatric trauma centers, and at least two surgeons. The report of the task force shall be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by January 15, 2005.

Section 13. Trauma Center Matching Grant Program.-- It is the intent of the Legislature to promote the development of at least one trauma center in every trauma service area. The Trauma Center matching grant program shall be established and

1 administered by the Department of Health. The purpose of the
2 program is to provide start-up funds as an incentive to
3 encourage development of new trauma centers. The grant
4 program shall function as a partnership between state and
5 local governments and private sector health care providers.
6 Private providers shall provide $1 in local matching funds for
7 each $1 grant payment made by the state. Hospitals may apply
8 for matching grant funds by submitting a grant application to
9 the department. Applications are to be competitively reviewed
10 by an independent panel appointed by the secretary of the
11 department. The Department may use up to $2,000,000 annually
12 from the Administrative Trust Fund for this program.
13
14 (Redesignate subsequent sections.)
15
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17 ========== T I T L E A M E N D M E N T ==========
18 And the title is amended as follows:
19 On page 3, line 13, after the first semicolon insert:
20 delete
21
22 and insert:
23 establishing a task force on distribution of funds; providing
24 for a trauma center matching grant program;
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Bill No. CS for SB 2842

Amendment No. 10 360830

CHAMBER ACTION

Senate | House

LATE FILED

Senator Jones moved the following amendment:

Senate Amendment (with title amendment)

On page 35, line 19, through
page 37, line 29, delete those lines

and insert:

Section 12. Subsection (5) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.--

(5) Any person electing to appear before the designated official or who is required so to appear shall be deemed to have waived his or her right to the civil penalty provisions of s. 318.18. The official, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed $500, except that in cases involving unlawful speed in a school zone or~~,~~ involving unlawful speed in a construction zone, ~~or involving a death,~~ the civil penalty may not exceed $1,000; or

1 require attendance at a driver improvement school, or both. If
2 the person is required to appear before the designated
3 official pursuant to s. 318.19(1) and is found to have
4 committed the infraction, the designated official shall impose
5 a civil penalty of $1,000 in addition to any other penalties.
6 If the person is required to appear before the designated
7 official pursuant to s. 318.19(2) and is found to have
8 committed the infraction, the designated official shall impose
9 a civil penalty of $500 in addition to any other penalties. If
10 the official determines that no infraction has been committed,
11 no costs or penalties shall be imposed and any costs or
12 penalties that have been paid shall be returned. Moneys
13 received from the mandatory civil penalties imposed pursuant
14 to this subsection upon persons required to appear before a
15 designated official pursuant to s. 318.19(1) or (2) shall be
16 remitted to the Department of Revenue and distributed into the
17 Administrative Trust Fund of the Department of Health.
18 Section 13. Subsection (13) is added to section
19 318.21, Florida Statutes, to read:
20 318.21 Disposition of civil penalties by county
21 courts.--All civil penalties received by a county court
22 pursuant to the provisions of this chapter shall be
23 distributed and paid monthly as follows:
24 (13)(a) Notwithstanding subsections (1) and (2), the
25 proceeds from the mandatory civil penalties imposed pursuant
26 to s. 318.14(5) shall be distributed as provided in that
27 section.
28 (b) Notwithstanding subsections (1) and (2), the
29 proceeds from the fines imposed under s. 318.18(13) and (14)
30 shall be distributed as provided in that section.
31 Section 14. Section 322.0261, Florida Statutes, is

1 amended to read:

2 322.0261 **Mandatory** Driver improvement course;
3 requirement to maintain driving privileges; failure to
4 complete; department approval of course ~~certain crashes~~.--

5 (1) The department shall screen crash reports received
6 under s. 316.066 or s. 324.051 to identify crashes involving
7 the following:

8 (a) A crash involving death or a bodily injury
9 requiring transport to a medical facility; or

10 (b) A second crash by the same operator within the
11 previous 2-year period involving property damage in an
12 apparent amount of at least $500.

13 (2) With respect to an operator convicted of, or who
14 pleaded nolo contendere to, a traffic offense giving rise to a
15 crash identified pursuant to subsection (1), the department
16 shall require that the operator, in addition to other
17 applicable penalties, attend a department-approved
18 ~~departmentally-approved~~ driver improvement course in order to
19 maintain driving privileges. If the operator fails to complete
20 the course within 90 days of receiving notice from the
21 department, the operator's driver's license shall be canceled
22 by the department until the course is successfully completed.

23 (3) The department shall identify any operator
24 convicted of, or who pleaded nolo contendere to, a second
25 violation of s. 316.075(1)(c)1. or s. 316.074(1), which
26 violation occurred within 12 months after the first violation,
27 and shall require that operator, in addition to other
28 applicable penalties, to attend a department-approved driver
29 improvement course in order to maintain driving privileges. If
30 the operator fails to complete the course within 90 days after
31 receiving notice from the department, the operator's driver's

1 license shall be canceled by the department until the course
2 is successfully completed.
3 (4) ~~(3)~~ In determining whether to approve a driver
4 improvement course for the purposes of this section, the
5 department shall consider course content designed to promote
6 safety, driver awareness, crash avoidance techniques, and
7 other factors or criteria to improve driver performance from a
8 safety viewpoint.
9 Section 15. Paragraph (d) of subsection (3) of section
10 322.27, Florida Statutes, is amended to read:
11 322.27 Authority of department to suspend or revoke
12 license.--
13 (3) There is established a point system for evaluation
14 of convictions of violations of motor vehicle laws or
15 ordinances, and violations of applicable provisions of s.
16 403.413(6)(b) when such violations involve the use of motor
17 vehicles, for the determination of the continuing
18 qualification of any person to operate a motor vehicle. The
19 department is authorized to suspend the license of any person
20 upon showing of its records or other good and sufficient
21 evidence that the licensee has been convicted of violation of
22 motor vehicle laws or ordinances, or applicable provisions of
23 s. 403.413(6)(b), amounting to 12 or more points as determined
24 by the point system. The suspension shall be for a period of
25 not more than 1 year.
26 (d) The point system shall have as its basic element a
27 graduated scale of points assigning relative values to
28 convictions of the following violations:
29 1. Reckless driving, willful and wanton--4 points.
30 2. Leaving the scene of a crash resulting in property
31 damage of more than $50--6 points.

1 3. Unlawful speed resulting in a crash--6 points.
2 4. Passing a stopped school bus--4 points.
3 5. Unlawful speed:
4 a. Not in excess of 15 miles per hour of lawful or
5 posted speed--3 points.
6 b. In excess of 15 miles per hour of lawful or posted
7 speed--4 points.
8 6. A violation of a traffic control signal device as
9 provided in s. 316.075(1)(c)1.--4 points.
10 7.~~6.~~ All other moving violations (including parking on
11 a highway outside the limits of a municipality)--3 points.
12 However, no points shall be imposed for a violation of s.
13 316.0741 or s. 316.2065(12).
14 8.~~7.~~ Any moving violation covered above, excluding
15 unlawful speed, resulting in a crash--4 points.
16 9.~~8.~~ Any conviction under s. 403.413(5)(b)--3 points.
17 Section 16. Subsections (13), (14), and (15) are added
18 to section 318.18, Florida Statutes, to read:
19 318.18 Amount of civil penalties.--The penalties
20 required for a noncriminal disposition pursuant to s. 318.14
21 are as follows:
22 (13) One hundred ten dollars for a violation of s.
23 316.075(1)(c)1. or s. 316.074(1), of which $60 shall be
24 distributed as provided in s. 318.21 and the remaining $50
25 shall be remitted to the Department of Revenue for deposit
26 into the Administrative Trust Fund created under s. 20.435 to
27 be used by the Department of Health as required under s.
28 395.403.
29 (14) Two hundred sixty dollars for any infraction that
30 results in a crash that causes any bodily injury other than
31 "serious bodily injury" as defined in s. 316.1933(1), of which

1 $60 shall be distributed as provided in s. 318.21 and the
2 remaining $200 shall be remitted to the Department of Revenue
3 for deposit into the Administrative Trust Fund created under
4 s. 20.435 to be used by the Department of Health as required
5 under s. 395.403.
6 (15) Notwithstanding any law to the contrary, the
7 clerk of the court shall collect an additional $10 for each
8 civil violation of chapter 316; $20 for each offense
9 specifically enumerated in s. 318.17; and $20 for any other
10 offense in chapter 316 which is classified as a criminal
11 violation. The fees collected under this subsection shall be
12 remitted to the Department of Revenue for deposit in the
13 Administrative Trust Fund under s. 20.435 to be used by the
14 Department of Health as required under s. 395.403.
15 Section 17. Section 322.751, Florida Statutes, is
16 created to read:
17 322.751 Annual surcharge for points.--
18 (1) Each year the department shall assess a surcharge
19 on each person who has accumulated eight or more points
20 against his or her driver's license during the preceding
21 36-month period.
22 (2) The amount of a surcharge under this section is
23 $100 for the first eight points and $25 for each additional
24 point.
25 (3) The department shall notify the holder of a
26 driver's license of the assignment of a fourth point on that
27 license by first-class mail sent to the person's most recent
28 address as shown on the records of the department.
29 (4) This section does not apply to a conviction that
30 becomes final before July 1, 2004.
31 (5) All moneys due under this section shall be billed

1 and collected by the Department of Highway Safety and Motor
2 Vehicles or its designee for deposit in the Highway Safety
3 Operating Trust Fund. Of the moneys collected annually, the
4 department shall retain the actual cost of developing,
5 implementing, and administering the driver responsibility
6 program. The remainder shall be transferred at least quarterly
7 to the Administrative Trust Fund.
8 Section 18. Paragraph (a) of subsection (2) of section
9 316.193, Florida Statutes, is amended to read:
10 316.193 Driving under the influence; penalties.--
11 (2)(a) Except as provided in paragraph (b), subsection
12 (3), or subsection (4), any person who is convicted of a
13 violation of subsection (1) shall be punished:
14 1. By a fine of:
15 a. Not less than $250 or more than $500 for a first
16 conviction.
17 b. Not less than $500 or more than $1,000 for a second
18 conviction; and
19 2. By imprisonment for:
20 a. Not more than 6 months for a first conviction.
21 b. Not more than 9 months for a second conviction.
22 3. For a second conviction, by mandatory placement for
23 a period of at least 1 year, at the convicted person's sole
24 expense, of an ignition interlock device approved by the
25 department in accordance with s. 316.1938 upon all vehicles
26 that are individually or jointly leased or owned and routinely
27 operated by the convicted person, when the convicted person
28 qualifies for a permanent or restricted license. The
29 installation of such device may not occur before July 1, 2003.
30 4. In addition to the fines and penalties established
31 in this subsection, the court shall impose a surcharge, to be

1 collected by the department and to be subject to a court's
2 determination of financial ability to pay, as follows:
3 a. Each year the department shall assess a surcharge
4 on each person who has a final conviction during the preceding
5 36-month period for an offense relating to s. 316.193.
6 b. The amount of a surcharge under this section is
7 $500 per year, except that the amount of the surcharge is:
8 (I) Seven hundred fifty dollars per year for a second
9 or subsequent conviction within a 36-month period; and
10 (II) One thousand dollars for a first or subsequent
11 conviction if the blood-alcohol level of the person was 0.20
12 or higher at the time the analysis was performed.
13 c. A surcharge under this section for the same
14 conviction may not be assessed in more than 3 years.
15 d. This section does not apply to a conviction that
16 becomes final before July 1, 2004.
17 e. All moneys due under this subparagraph shall be
18 billed and collected by the Department of Highway Safety and
19 Motor Vehicles or its designee for deposit in the Highway
20 Safety Operating Trust Fund. Of the moneys collected annually,
21 the department shall retain the actual cost of developing,
22 implementing, and administering the driver responsibility
23 program. The remainder shall be transferred at least quarterly
24 to the Administrative Trust Fund.
25 Section 19. Section 794.056, Florida Statutes, is
26 amended to read:
27 794.056 Rape Crisis Program Trust Fund.--
28 (1) The Rape Crisis Program Trust Fund is created
29 within the Department of Health for the purpose of providing
30 funds for rape crisis centers in this state. Trust fund moneys
31 shall be used exclusively for the purpose of providing

1 services for victims of sexual assault. Funds deposited in the
2 trust fund shall include revenues as provided by law, moneys
3 as appropriated by the Legislature, and grants from public or
4 private entities. Funds credited to the trust fund consist of
5 those funds collected as an additional court assessment in
6 each case in which a defendant pleads guilty or nolo
7 contendere to, or is found guilty of, regardless of
8 adjudication, an offense defined in s. 784.011, s. 784.021, s.
9 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s.
10 784.08, s. 784.081, s. 784.082, s. 784.083, s. 785.085, or s.
11 794.011.
12 (2) The Department of Health shall establish by rule,
13 consistent with s. 794.055(3)(a), criteria for distributing
14 moneys from the trust fund to the statewide nonprofit
15 association the primary purpose of which is to represent and
16 provide technical assistance to rape crisis centers for
17 distribution to rape crisis centers.
18 (3) In accordance with s. 19(f)(2), Art. III of the
19 State Constitution, the Rape Crisis Program Trust Fund shall
20 be terminated on July 1, 2007, unless terminated sooner.
21 Before its scheduled termination, the trust fund shall be
22 reviewed as provided in s. 215.3206(1) and (2).
23
24 (Redesignate subsequent sections.)
25
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 On page 3, line 13, through
30 page 4, line 10, delete those lines
31

1 and insert:
2 part II of ch. 395, F.S.; amending s. 318.14,
3 F.S.; providing additional civil penalties for
4 certain traffic infractions; providing for
5 disposition of such penalties; amending s.
6 318.21, F.S.; providing for disposition of
7 mandatory civil penalties; amending s.
8 322.0261, F.S.; revising provisions relating to
9 driver-improvement courses; amending s. 322.27,
10 F.S.; prescribing points for violation of a
11 traffic-control signal; amending s. 318.18,
12 F.S.; providing penalty for specified violation
13 of traffic control signal devices and for
14 failure to submit to test for impairment or
15 intoxication; providing for distribution of
16 moneys collected; directing the clerk of court
17 to collect a fee for each civil and criminal
18 violation of ch. 316, F.S.; creating s.
19 322.751, F.S.; directing the Department of
20 Highway Safety and Motor Vehicles to assess
21 specified annual surcharges against a motor
22 vehicle licensee who accumulates eight or more
23 points against his or her license within the
24 previous 36 months; requiring the department to
25 notify a licensee by first-class mail upon
26 receipt of four points against his or her
27 license; directing the department to remit all
28 such penalties to the Administrative Trust
29 Fund; amending s. 316.193, F.S.; directing the
30 department to assess specified annual
31 surcharges against motor vehicle licensees who

1 have a final conviction within the previous 36
2 months for a DUI offense; directing the
3 department to remit all such penalties to the
4 Administrative Trust Fund; amending s. 794.056,
5 F.S.; providing that funds credited to the Rape
6 Crisis Program Trust Fund shall include both
7 funds collected as an additional court
8 assessment in certain cases and certain funds
9 deposited in the Administrative Trust Fund;
10 revising a requirement relating to the
11 distribution of moneys from the trust fund
12 pursuant to a rule by the Department of Health;
13 creating s. 322.7525, F.S.; requiring the
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Bill No. CS for CS for SB 2884

Amendment No. 2 910462

CHAMBER ACTION

Senate House

Senator Carlton moved the following amendment:

Senate Amendment (with title amendment)

On page 13, between lines 3 and 4,

insert:

Section 7. Section 1004.451, Florida Statutes, is created to read:

1004.451 Center for the Performing Arts direct-support organization.--

(1) Florida State University shall create a direct-support organization for the Florida State University Center for the Performing Arts for the purposes described in this section. The board of directors of the direct-support organization shall consist of eleven members. The core members of the board of directors shall be the President of Florida State University, the Chair of the Board of Trustees for Florida State University, the Dean of Florida State University School of Theater, the Dean of Florida State University School of Visual Arts and Dance, the Director of Florida State University Conservatory for Actor Training in

1 Sarasota, and two members nominated by Asolo Theater, Inc.,
2 and approved by the President of Florida State University.
3 The seven core members of the board shall appoint two
4 additional members to serve on the board of directors with the
5 approval of the President of Florida State University. The
6 President of Florida State University shall appoint two
7 members from the Sarasota community, or, at the President's
8 discretion, may appoint two members nominated by the Sarasota
9 Ballet, Inc. Upon appointment of all members of the board of
10 directors, the direct-support organization shall develop a
11 charter and bylaws to govern its operation. The charter,
12 bylaws, and any modifications of such, shall be subject to
13 approval by Florida State University.
14 (2) The direct-support organization, operating under
15 its charter and bylaws, shall acquire from Florida State
16 University, own and operate the Florida State University
17 Center for the Performing Arts, and shall promote a resident
18 professional repertory program to work in conjunction with,
19 complement and support the Conservatory's graduate educational
20 theater program of Florida State University in Sarasota. It
21 shall engage in fundraising to support its activities and
22 support the independent fundraising efforts of the Asolo and
23 the Conservatory. The direct-support organization shall
24 operate and maintain the building in coordination with the
25 Florida State University Ringling Cultural Center. All
26 agreements between the University and Asolo in force on the
27 effective date of this statute shall remain binding on the
28 parties.
29 (3) The direct support organization shall provide for
30 an annual financial audit in accordance with s. 1004.28(5),
31 Florida Statutes. The audit shall be addressed to the direct

1 support organization, Florida State University, the Asolo and,
2 if it has members serving on the Board of Directors, the
3 Ballet, each of whom are authorized to require and receive
4 from the direct-support organization, or from its independent
5 auditor, any detail or supplemental data relative to the
6 operati on of such organization.
7 (4) An employee or member of the direct-support
8 organization may not receive, nor any member of their
9 immediate family receive, a commission, fee, or financial
10 benefit in connection with services or goods associated with
11 the direct-support organization and may not be a business
12 associate of any individual, firm, or organization involved in
13 the sale or exchange of goods or services within the
14 direct-support organization.
15 (5) In all other respects, the direct-support
16 organization shall act as a direct-support organization
17 authorized and governed by the provisions of s. 1004.28.
18 (6) Florida State University shall transfer the Center
19 for the Performing Arts to the direct-support organization
20 when Florida State University has approved the charter and
21 bylaws of the direct-support organization.
22
23
24 ========== T I T L E A M E N D M E N T ==========
25 And the title is amended as follows:
26 On page 2, line 4 after the semi-colon,
27
28 insert:
29 creating the Florida State University Center for the
30 Performing Arts Direct Support Organization;
31

Bill No. CS for CS for CS for SB 2910

Amendment No. 34 303132

CHAMBER ACTION

Senate | House

Senator Hill moved the following amendment:

Senate Amendment (with title amendment)

On page 118, between lines 13 and 14,

insert:

Section 46. The Auditor General shall conduct a study of nursing home finances which shall examine the following:

(1) Profits of nursing home licensees, nursing home management companies, related-party businesses, and owners of real estate that is leased to nursing home operators in this state;

(2) Salaries of nonfacility-based nursing home executives, nursing home operators, management companies, and real estate entities; and

(3) Home office costs and related party costs that are reported to the Agency for Health Care Administration by a nursing home.

The Auditor General shall report the overall profits of all nursing home licensees and associated business entities,

1 including home office operators, management companies, real
2 estate entities, and related party organizations. The Auditor
3 General shall report on the retained earnings for nonprofit
4 facilities and any home office, management, real estate
5 entities, and related party organizations. The Auditor General
6 shall report the total amount of executive salaries, home
7 office costs, and related party costs for the most recently
8 completed cost-reporting period. The Auditor General shall
9 report its findings to the Governor, the President of the
10 Senate, and the Speaker of the House of Representatives by
11 December 15, 2004.
12 Section 47. The Agency for Health Care Administration
13 shall conduct a survey of all nursing home operators to
14 determine:
15 (1) The number of nursing home operators offering
16 health insurance to their employees, and the requirements for
17 this coverage;
18 (2) The number of nursing home employees not meeting
19 the employer's requirements for health insurance coverage;
20 (3) The number of nursing home employees enrolled in
21 employer-sponsored health insurance plans and the actual
22 number of employees not enrolled in an employer-sponsored
23 health insurance plan;
24 (4) The number of nursing home employees who have
25 employee-only coverage and the actual number of employees who
26 have dependent coverage; and
27 (5) The number of nursing home employees whose
28 dependents are enrollees in KidCare, Healthy Kids, and
29 Medicaid.
30
31 The agency shall report its findings to the Governor, the

1 President of the Senate, and the Speaker of the House of
2 Representatives by December 15, 2004.
3
4 (Redesignate subsequent sections.)
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6
7 ========== T I T L E A M E N D M E N T ==========
8 And the title is amended as follows:
9 On page 11, line 16, after the semicolon,
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11 insert:
12 requiring the Auditor General to conduct a
13 study of nursing home finances; specifying the
14 issues to be studied; directing the Auditor
15 General to report its findings to the Governor,
16 the President of the Senate, and the Speaker of
17 the House of Representatives by a specified
18 date; requiring the Agency for Health Care
19 Administration to conduct a survey of all
20 nursing home operators; detailing the contents
21 of the data survey; directing the agency to
22 report its findings to the Governor, the
23 President of the Senate, and the Speaker of the
24 House of Representatives by a specified date;
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Bill No. CS for CS for CS for SB 2910

Amendment No. 35 872944

CHAMBER ACTION

Senate | House

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11 Senator Peaden moved the following amendment:
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13 **Senate Amendment (with title amendment)**
14 On page 118, between lines 13 and 14,
15
16 insert:
17 Section 46. Paragraph (c) of subsection (4) of section
18 381.026, Florida Statutes, is amended to read:
19 381.026 Florida Patient's Bill of Rights and
20 Responsibilities.--
21 (4) RIGHTS OF PATIENTS.--Each health care facility or
22 provider shall observe the following standards:
23 (c) Financial information and disclosure.--
24 1. A patient has the right to be given, upon request,
25 by the responsible provider, his or her designee, or a
26 representative of the health care facility full information
27 and necessary counseling on the availability of known
28 financial resources for the patient's health care.
29 2. A health care provider or a health care facility
30 shall, upon request, disclose to each patient who is eligible
31 for Medicare, in advance of treatment, whether the health care

provider or the health care facility in which the patient is receiving medical services accepts assignment under Medicare reimbursement as payment in full for medical services and treatment rendered in the health care provider's office or health care facility.

3. A health care provider or a health care facility shall, upon request, furnish a patient, prior to provision of medical services, a reasonable estimate of charges for such services. Such reasonable estimate shall not preclude the health care provider or health care facility from exceeding the estimate or making additional charges based on changes in the patient's condition or treatment needs.

4. Each licensed facility not operated by the state shall make available to the public on its Internet website or by other electronic means a description of and a link to the performance outcome and financial data that is published by the agency pursuant to s. 408.05(3)(l). The facility shall place a notice in the reception areas that such information is available electronically and the website address. The licensed facility may indicate that the pricing information is based on a compilation of charges for the average patient and that each patient's bill may vary from the average depending upon the severity of illness and individual resources consumed. The licensed facility may also indicate that the price of service is negotiable for eligible patients based upon the patient's ability to pay.

5.~~4.~~ A patient has the right to receive a copy of an itemized bill upon request. A patient has a right to be given an explanation of charges upon request.

Section 47. Subsections (1), (2), and (3) of section 395.301, Florida Statutes, are amended, and subsections (7),

1 (8), (9), (10), and (11) are added to that section, to read:
2 395.301 Itemized patient bill; form and content
3 prescribed by the agency.--
4 (1) A licensed facility not operated by the state
5 shall notify each patient during admission and at discharge of
6 his or her right to receive an itemized bill upon request.
7 Within 7 days following the patient's discharge or release
8 from a licensed facility not operated by the state, ~~or within~~
9 ~~7 days after the earliest date at which the loss or expense~~
10 ~~from the service may be determined,~~ the licensed facility
11 providing the service shall, upon request, submit to the
12 patient, or to the patient's survivor or legal guardian as may
13 be appropriate, an itemized statement detailing in language
14 comprehensible to an ordinary layperson the specific nature of
15 charges or expenses incurred by the patient, which in the
16 initial billing shall contain a statement of specific services
17 received and expenses incurred for such items of service,
18 enumerating in detail the constituent components of the
19 services received within each department of the licensed
20 facility and including unit price data on rates charged by the
21 licensed facility, as prescribed by the agency.
22 (2)(a) Each such statement submitted pursuant to this
23 section:
24 1.~~(a)~~ May not include charges of hospital-based
25 physicians if billed separately.
26 2.~~(b)~~ May not include any generalized category of
27 expenses such as "other" or "miscellaneous" or similar
28 categories.
29 3.~~(c)~~ Shall list drugs by brand or generic name and
30 not refer to drug code numbers when referring to drugs of any
31 sort.

1 4. ~~(d)~~ Shall specifically identify therapy treatment as
2 to the date, type, and length of treatment when therapy
3 treatment is a part of the statement.
4 (b) Any person receiving a statement pursuant to this
5 section shall be fully and accurately informed as to each
6 charge and service provided by the institution preparing the
7 statement.
8 (3) On each ~~such~~ itemized statement submitted pursuant
9 to subsection (1) there shall appear the words "A FOR-PROFIT
10 (or NOT-FOR-PROFIT or PUBLIC) HOSPITAL (or AMBULATORY SURGICAL
11 CENTER) LICENSED BY THE STATE OF FLORIDA" or substantially
12 similar words sufficient to identify clearly and plainly the
13 ownership status of the licensed facility. Each itemized
14 statement must prominently display the phone number of the
15 medical facility's patient liaison who is responsible for
16 expediting the resolution of any billing dispute between the
17 patient, or his or her representative, and the billing
18 department.
19 (7) Each licensed facility not operated by the state
20 shall provide, prior to provision of any nonemergency medical
21 services, a written good-faith estimate of reasonably
22 anticipated charges for the facility to treat the patient's
23 condition upon written request of a prospective patient. The
24 estimate shall be provided to the prospective patient within 7
25 business days of the receipt of the request. The estimate may
26 be the average charges for that diagnosis related group or the
27 average charges for that procedure. Upon request, the facility
28 shall notify the patient of any revision to the good-faith
29 estimate. Such estimate shall not preclude the actual charges
30 from exceeding the estimate. The facility shall place a notice
31 in reception areas that such information is available. Failure

1 to provide the estimate within the provisions established
2 pursuant to this section shall result in a fine of $500 for
3 each instance of the facility's failure to provide the
4 requested information.
5 (8) A licensed facility shall make available to a
6 patient all records necessary for verification of the accuracy
7 of the patient's bill within 30 business days after the
8 request for such records. The verification information must be
9 made available in the facility's offices. Such records shall
10 be available to the patient prior to and after payment of the
11 bill or claim. The facility may not charge the patient for
12 making such verification records available; however, the
13 facility may charge its usual fee for providing copies of
14 records as specified in s. 395.3025.
15 (9) Each facility shall establish a method for
16 reviewing and responding to questions from patients concerning
17 the patient's itemized bill. Such response shall be provided
18 within 30 days after the date a question is received. If the
19 patient is not satisfied with the response, the facility must
20 provide the patient with the address of the agency to which
21 the issue may be sent for review.
22 (10) Each licensed facility shall make available on
23 its Internet website a link to the performance outcome and
24 financial data that is published by the Agency for Health Care
25 Administration pursuant to s. 408.05(3)(l). The facility shall
26 place a notice in the reception area that the information is
27 availability electronically and the website address.
28 (11) Each rural hospital as defined in s. 395.602
29 which has fewer than 50 beds is exempt from subsection (10).
30 The agency shall evaluate the most cost-efficient method for
31 collecting and reporting data for these qualifying rural

1 hospitals and shall, by December 1, 2005, submit a report to
2 the Governor, the President of the Senate, and the Speaker of
3 the House of Representatives.
4 Section 48. Subsection (1) of section 408.061, Florida
5 Statutes, is amended to read:
6 408.061 Data collection; uniform systems of financial
7 reporting; information relating to physician charges;
8 confidential information; immunity.--
9 (1) The agency shall ~~may~~ require the submission by
10 health care facilities, health care providers, and health
11 insurers of data necessary to carry out the agency's duties.
12 Specifications for data to be collected under this section
13 shall be developed by the agency with the assistance of
14 technical advisory panels including representatives of
15 affected entities, consumers, purchasers, and such other
16 interested parties as may be determined by the agency.
17 (a) Data ~~to be~~ submitted by health care facilities,
18 including the facilities as defined in chapter 395, shall ~~may~~
19 include, but are not limited to: case-mix data, patient
20 admission and ~~or~~ discharge data, hospital emergency department
21 data shall include the number of patients treated in the
22 emergency department of a licensed hospital reported by
23 patient acuity level, data on hospital-acquired infections as
24 specified by rule, data on complications as specified by rule,
25 data on readmissions as specified by rule, with patient and
26 provider-specific identifiers included, actual charge data by
27 diagnostic groups, financial data, accounting data, operating
28 expenses, expenses incurred for rendering services to patients
29 who cannot or do not pay, interest charges, depreciation
30 expenses based on the expected useful life of the property and
31 equipment involved, and demographic data. The agency shall

1 adopt nationally recognized risk adjustment methodologies or
2 software consistent with the standards of the Agency for
3 Healthcare Research and Quality for all data submitted as
4 required by this section. Data may be obtained from documents
5 such as, but not limited to: leases, contracts, debt
6 instruments, itemized patient bills, medical record abstracts,
7 and related diagnostic information. Reported data elements
8 shall be reported electronically in accordance with Rule
9 59E-7.012, Florida Administrative Code. Data submitted shall
10 be certified by the chief executive officer or an appropriate
11 and duly authorized representative or employee of the licensed
12 facility that the information is true and accurate.
13 (b) Data to be submitted by health care providers may
14 include, but are not limited to: Medicare and Medicaid
15 participation, types of services offered to patients, amount
16 of revenue and expenses of the health care provider, and such
17 other data which are reasonably necessary to study utilization
18 patterns. Data submitted shall be certified as true and
19 accurate by the health care provider or by an appropriate and
20 duly authorized representative or employee of the health care
21 provider.
22 (c) Data to be submitted by health insurers may
23 include, but are not limited to: claims, premium,
24 administration, and financial information. Data submitted
25 shall be certified as by the appropriate and duly authorized
26 representative, or employee of the insurer that the
27 information submitted is true and accurate.
28 (d) Data required to be submitted by health care
29 facilities, health care providers, or health insurers shall
30 not include specific provider contract reimbursement
31 information. However, such specific provider reimbursement

1 data shall be reasonably available for onsite inspection by
2 the agency as is necessary to carry out the agency's
3 regulatory duties. Any such data obtained by the agency as a
4 result of onsite inspections may not be used by the state for
5 purposes of direct provider contracting and are confidential
6 and exempt from the provisions of s. 119.07(1) and s. 24(a),
7 Art. I of the State Constitution.
8 (e) A requirement to submit data shall be adopted by
9 rule if the submission of data is being required of all
10 members of any type of health care facility, health care
11 provider, or health insurer. Rules are not required, however,
12 for the submission of data for a special study mandated by the
13 Legislature or when information is being requested for a
14 single health care facility, health care provider, or health
15 insurer.
16 Section 49. Subsections (1) and (4) of section
17 408.062, Florida Statutes, are amended, and subsection (5) is
18 added to that section, to read:
19 408.062 Research, analyses, studies, and reports.--
20 (1) The agency shall ~~have the authority to~~ conduct
21 research, analyses, and studies relating to health care costs
22 and access to and quality of health care services as access
23 and quality are affected by changes in health care costs. Such
24 research, analyses, and studies shall include, but not be
25 limited to~~,--research and analysis relating to~~:
26 (a) The financial status of any health care facility
27 or facilities subject to the provisions of this chapter.
28 (b) The impact of uncompensated charity care on health
29 care facilities and health care providers.
30 (c) The state's role in assisting to fund indigent
31 care.

1 (d) In conjunction with the Office of Insurance
2 Regulation, the availability and affordability of health
3 insurance for small businesses.
4 (e) Total health care expenditures in the state
5 according to the sources of payment and the type of
6 expenditure.
7 (f) The quality of health services, using techniques
8 such as small area analysis, severity adjustments, and
9 risk-adjusted mortality rates.
10 (g) The development of physician information ~~payment~~
11 systems which are capable of providing data for health care
12 consumers taking into account the amount of resources
13 consumed, including at licensed facilities as defined in
14 chapter 395, and the outcomes produced in the delivery of
15 care.
16 (h) The collection of a statistically valid sample of
17 data on the retail prices charged by pharmacies for the 50
18 most frequently prescribed medicines from any pharmacy
19 licensed by this state as a special study authorized by the
20 Legislature to be performed by the agency quarterly. If the
21 drug is available generically, price data shall be reported
22 for the generic drug and price data of a brand-named drug for
23 which the generic drug is the equivalent shall be reported.
24 The agency shall make available on its Internet website for
25 each pharmacy, no later than October 1, 2005, drug prices for
26 a 30-day supply at a standard dose. The data collected shall
27 be reported for each drug by pharmacy and by metropolitan
28 statistical area or region and updated quarterly. ~~The impact~~
29 ~~of subacute admissions on hospital revenues and expenses for~~
30 ~~purposes of calculating adjusted admissions as defined in s.~~
31 ~~408.07.~~

1 (i) The use of emergency department services by
2 patient acuity level and the implication of increasing
3 hospital cost by providing nonurgent care in emergency
4 departments. The agency shall submit an annual report based on
5 this monitoring and assessment to the Governor, the President
6 of the Senate, and the Speaker of the House of
7 Representatives, and the substantive legislative committees
8 with the first report due January 1, 2006.
9 (j) Making available on its Internet website no later
10 than October 1, 2004, and in a hard-copy format upon request,
11 patient charge, volumes, length of stay, and performance
12 outcome indicators collected from health care facilities
13 pursuant to s. 408.061(1)(a) for not less than 50 inpatient
14 and 50 outpatient procedures provided in inpatient and
15 outpatient facilities as determined by the agency. In making
16 the determination of specific medical conditions, surgeries,
17 and procedures to include, the agency shall consider such
18 factors as volume, severity of the illness, urgency of
19 admission, individual and societal costs, and whether the
20 condition is acute or chronic. Performance outcome indicators
21 shall re risk adjusted or severity adjusted, as applicable,
22 using nationally recognized risk adjustment methodologies or
23 software consistent with the standards of the Agency for
24 Healthcare Research and Quality and as selected by the agency.
25 The website shall also provide an interactive search that
26 allows consumers to view and compare the information for
27 specific facilities, a map that allows consumers to select a
28 county or region, definitions of all of the data, descriptions
29 of each procedure, and an explanation about why the data may
30 differ from facility to facility. Such public data shall be
31 updated quarterly. The agency shall submit an annual status

1 report on the collection of data and publication of
2 performance outcome indicators to the Governor, the Speaker of
3 the House of Representatives, the President of the Senate, and
4 the substantive legislative committees with the first status
5 report due January 1, 2005.
6 (4)(a) The agency shall ~~may~~ conduct data-based studies
7 and evaluations and make recommendations to the Legislature
8 and the Governor concerning exemptions, the effectiveness of
9 limitations of referrals, restrictions on investment interests
10 and compensation arrangements, and the effectiveness of public
11 disclosure. Such analysis shall ~~may~~ include, but need not be
12 limited to, utilization of services, cost of care, quality of
13 care, and access to care. The agency may require the
14 submission of data necessary to carry out this duty, which may
15 include, but need not be limited to, data concerning
16 ownership, Medicare and Medicaid, charity care, types of
17 services offered to patients, revenues and expenses,
18 patient-encounter data, and other data reasonably necessary to
19 study utilization patterns and the impact of health care
20 provider ownership interests in health-care-related entities
21 on the cost, quality, and accessibility of health care.
22 (b) The agency may collect such data from any health
23 facility or licensed health care provider as a special study.
24 (5) The agency shall develop and implement a strategy
25 for the adoption and use of electronic health records. The
26 agency may develop rules to facilitate the functionality and
27 protect the confidentiality of electronic health records. The
28 agency shall report to the Governor, the President of the
29 Senate, and the Speaker of the House of Representatives on
30 legislative recommendations to protect the confidentiality of
31 electronic health records.

1 Section 50. Paragraph (1) is added to subsection (3)
2 of section 408.05, Florida Statutes, and paragraph (a) of
3 subsection (8) of that section is amended, to read:
4 408.05 State Center for Health Statistics.--
5 (3) COMPREHENSIVE HEALTH INFORMATION SYSTEM.--In order
6 to produce comparable and uniform health information and
7 statistics, the agency shall perform the following functions:
8 (1) Develop, in conjunction with the State
9 Comprehensive Health Information System Advisory Council, and
10 implement a long-range plan for making available performance
11 outcome and financial data that will allow consumers to
12 compare health care services. The performance outcomes and
13 financial data the agency must make available shall include,
14 but is not limited to, pharmaceuticals, physicians, health
15 care facilities, and health plans and managed care entities.
16 The agency shall submit the initial plan to the Governor, the
17 President of the Senate, and the Speaker of the House of
18 Representatives by March 1, 2005, and shall update the plan
19 and report on the status of its implementation annually
20 thereafter. The agency shall also make the plan and status
21 report available to the public on its Internet website. As
22 part of the plan, the agency shall identify the process and
23 timeframes for implementation, any barriers to implementation,
24 and recommendations of changes in the law that may be enacted
25 by the Legislature to eliminate the barriers. As preliminary
26 elements of the plan, the agency shall:
27 1. Make available performance outcome and patient
28 charge data collected from health care facilities pursuant to
29 s. 408.061(1)(a) and (2). The agency shall determine which
30 conditions and procedures, performance outcomes, and patient
31 charge data to disclose based upon input from the council.

1 When determining which conditions and procedures are to be
2 disclosed, the council and the agency shall consider variation
3 in costs, variation in outcomes, and magnitude of variations
4 and other relevant information. When determining which
5 performance outcomes to disclose, the agency:
6 a. Shall consider such factors as volume of cases;
7 average patient charges; average length of stay; complication
8 rates; mortality rates; and infection rates, among others,
9 which shall he adjusted for case mix and severity, if
10 applicable.
11 b. May consider such additional measures that are
12 adopted by the Centers for Medicare and Medicaid Studies,
13 National Quality Forum, the Joint Commission on Accreditation
14 of Healthcare Organizations, the Agency for Healthcare
15 Research and Quality, or a similar national entity that
16 establishes standards to measure the performance of health
17 care providers, or by other states.
18
19 When determining which patient charge data to disclose, the
20 agency shall consider such measures as average charge, average
21 net revenue per adjusted patient day, average cost per
22 adjusted patient day, and average cost per admission, among
23 others.
24 2. Make available performance measures, benefit
25 design, and premium cost data from health plans licensed
26 pursuant to chapter 627 or chapter 641. The agency shall
27 determine which performance outcome and member and subscriber
28 cost data to disclose, based upon input from the council. When
29 determining which data to disclose, the agency shall consider
30 information that may be required by either individual or group
31 purchasers to assess the value of the product, which may

1 include membership satisfaction, quality of care, current
2 enrollment or membership, coverage areas, accreditation
3 status, premium costs, plan costs, premium increases, range of
4 benefits, copayments and deductibles, accuracy and speed of
5 claims payment, credentials of physicians, number of
6 providers, names of network providers, and hospitals in the
7 network. Health plans shall make available to the agency any
8 such data or information that is not currently reported to the
9 agency or the office.
10 3. Determine the method and format for public
11 disclosure of data reported pursuant to this paragraph. The
12 agency shall make its determination based upon input from the
13 Comprehensive Health Information System Advisory Council. At a
14 minimum, the data shall be made available on the agency's
15 Internet website in a manner that allows consumers to conduct
16 an interactive search that allows them to view and compare the
17 information for specific providers. The website must include
18 such additional information as is determined necessary to
19 ensure that the website enhances informed decision-making
20 among consumers and health care purchasers, which shall
21 include, at a minimum, appropriate guidance on how to use the
22 data and an explanation of why the data may vary from provider
23 to provider. The data specified in subparagraph 1. shall be
24 released no later than March 1, 2005. The data specified in
25 subparagraph 2. shall be released no later than March 1, 2006.
26 (8) STATE COMPREHENSIVE HEALTH INFORMATION SYSTEM
27 ADVISORY COUNCIL.--
28 (a) There is established in the agency the State
29 Comprehensive Health Information System Advisory Council to
30 assist the center in reviewing the comprehensive health
31 information system and to recommend improvements for such

system. The council shall consist of the following members:

1. An employee of the Executive Office of the Governor, to be appointed by the Governor.

2. An employee of the Office of Insurance Regulation ~~Department of Financial Services~~, to be appointed by the Chief Financial Officer.

3. An employee of the Department of Education, to be appointed by the Commissioner of Education.

4. Ten persons, to be appointed by the Secretary of Health Care Administration, representing other state and local agencies, state universities, the Florida Association of Business/Health Coalitions, local health councils, professional health-care-related associations, consumers, and purchasers.

Section 51. Subsection (3) of section 409.9066, Florida Statutes, is amended to read:

409.9066 Medicare prescription discount program.--

(3) The Agency for Health Care Administration shall publish, on a free website available to the public, the most recent average wholesale prices for the 200 drugs most frequently dispensed ~~to the elderly~~ and~~,~~ ~~to the extent possible,~~ shall provide a mechanism that consumers may use to calculate the retail price and the price that should be paid after the discount required in subsection (1) is applied. The agency shall provide retail information by geographic area and retail information by provider within geographical areas.

Section 52. Section 465.0244, Florida Statutes, is created to read:

465.0244 Information disclosure.--Every pharmacy shall make available on its Internet website a link to the financial data that is published by the Agency for Health Care

1 Administration pursuant to ss. 408.06(2)(1) and 409.9066 and
2 shall place in the area where customers receive filled
3 prescriptions notice that such information is available
4 electronically and the address of its Internet website.
5 Section 53. Section 627.6499, Florida Statutes, is
6 amended to read:
7 627.6499 Reporting by insurers and third-party
8 administrators.--
9 (1) The office may require any insurer, third-party
10 administrator, or service company to report any information
11 reasonably required to assist the board in assessing insurers
12 as required by this act.
13 (2) Each health insurance issuer shall make available
14 on its Internet website a link to the performance outcome and
15 financial data that is published by the Agency for Health Care
16 Administration pursuant to s. 408.05(3)(1) and shall include
17 in every policy delivered or issued for delivery to any person
18 in the state or any materials provided as required by s.
19 627.64725 notice that such information is available
20 electronically and the address of its Internet website.
21 Section 54. Subsections (6) and (7) are added to
22 section 641.54, Florida Statutes, to read:
23 641.54 Information disclosure.--
24 (6) Each health maintenance organization shall make
25 available to its subscribers the estimated co-pay, coinsurance
26 percentage, or deductible, whichever is applicable, for any
27 covered services, the status of the subscriber's maximum
28 annual out-of-pocket payments for a covered individual or
29 family, and the status of the subscriber's maximum lifetime
30 benefit. Such estimate shall not preclude the actual co-pay,
31 coinsurance percentage, or deductible, whichever is

1 applicable, from exceeding the estimate.
2 (7) Each health maintenance organization shall make
3 available on its Internet website a link to the performance
4 outcome and financial data that is published by the Agency for
5 Health Care Administration pursuant to s. 408.05(3)(l) and
6 shall include in every policy delivered or issued for delivery
7 to any person in the state or any materials provided as
8 required by s. 627.64725 notice that such information is
9 available electronically and the address of its Internet
10 website.
11 Section 55. The Agency for Health Care Administration
12 shall adopt all rules necessary to implement this act no later
13 than January 1, 2005.
14
15 (Redesignate subsequent sections.)
16
17
18 ========== T I T L E A M E N D M E N T ==========
19 And the title is amended as follows:
20 On page 11, line 16, after the second semicolon,
21
22 insert:
23 amending s. 381.026, F.S.; requiring certain
24 licensed facilities to provide public Internet
25 access to certain financial information;
26 amending s. 395.301, F.S.; requiring certain
27 licensed facilities to provide prospective
28 patients certain estimates of charges for
29 services; requiring such facilities to provide
30 patients with certain bill verification
31 information; providing for a fine for failure

1 to provide such information; providing charge
2 limitations; requiring such facilities to
3 establish a patient question review and
4 response methodology; providing requirements;
5 requiring certain licensed facilities to
6 provide public Internet access to certain
7 financial information; providing an exception
8 for specified rural hospitals; amending s.
9 408.061, F.S.; requiring the Agency for Health
10 Care Administration to require health care
11 facilities, health care providers, and health
12 insurers to submit certain information;
13 providing requirements; requiring the agency to
14 adopt certain risk and severity adjustment
15 methodologies; requiring the agency to adopt
16 certain rules; requiring certain information to
17 be certified; amending s. 408.062, F.S.;
18 requiring the agency to conduct certain health
19 care costs and access research, analyses, and
20 studies; expanding the scope of such studies to
21 include collection of pharmacy retail price
22 data, use of emergency departments, physician
23 information, and Internet patient charge
24 information availability; requiring publication
25 of information collected on the Internet;
26 requiring a report; requiring the agency to
27 conduct additional data-based studies and make
28 recommendations to the Legislature; requiring
29 the agency to develop and implement a strategy
30 to adopt and use electronic health records;
31 authorizing the agency to develop rules to

1 protect electronic records confidentiality;
2 requiring a report to the Governor and
3 Legislature; amending s. 408.05, F.S.;
4 requiring the agency to develop a plan to make
5 performance outcome and financial data
6 available to consumers for health care services
7 comparison purposes; requiring submittal of the
8 plan to the Governor and Legislature; requiring
9 the agency to update the plan; requiring the
10 agency to make the plan available
11 electronically; providing plan requirements;
12 amending s. 409.9066, F.S.; requiring the
13 agency to provide certain information relating
14 to the Medicare prescription discount program;
15 creating s. 465.0244, F.S.; requiring each
16 pharmacy to make available on its Internet
17 website a link to certain performance outcome
18 and financial data of the Agency for Health
19 Care Administration and a notice of the
20 availability of such information; amending s.
21 627.6499, F.S.; requiring each health insurer
22 to make available on its Internet website a
23 link to certain performance outcome and
24 financial data of the Agency for Health Care
25 Administration and a notice in policies of the
26 availability of such information; amending s.
27 641.54, F.S.; requiring health maintenance
28 organizations to make certain insurance
29 financial information available to subscribers;
30 requiring health maintenance organizations to
31 make available on its Internet website a link

1 to certain performance outcome and financial
2 data of the Agency for Health Care
3 Administration and a notice in policies of the
4 availability of such information; authorizing
5 rule adoption;
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Bill No. CS for CS for CS for SB 2910

Amendment No. 36 105644

CHAMBER ACTION

Senate | House

LATE FILED

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 23 between lines 8 and 9, insert:

(5) The agency shall develop and implement a strategy for the adoption and use of electronic health records. The agency may develop rules to facilitate the functionality and protect the confidentiality of electronic health records. The agency shall report to the Governor, the Speaker of the House of Representatives, and the President of the Senate on legislative recommendations to protect the confidentiality of electronic health records.

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

And the title is amended as follows:

On page 2, line 14, following the semicolon:

Insert:

requiring the agency to implement a strategy for the use of electronic health records and make recommendation to the

1 legislature to protect the confidentiality of such records;

Bill No. CS for CS for CS for SB 2910

Amendment No. 37 064350

CHAMBER ACTION

Senate | House

LATE FILED

Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 118, between lines 13 and 14, insert a new section:

Section 46. The sum of $2 million in nonrecurring general revenue funds is appropriated to the Agency for Health Care Administration for its activities during the 2004-2005 fiscal year related to developing and implementing a strategy for the adoption and use of electronic health records.

(Redesignate subsequent sections.)

Bill No. CS for SB 2994

Amendment No. 4 604330

CHAMBER ACTION

Senate | House

Senator Clary moved the following amendment:

Senate Amendment (with title amendment)

On page 13, line 29, through
page 14, line 3, delete those lines

and insert:

Section 7. Subsections (4) and (11) of section 112.215, Florida Statutes, are amended to read:

112.215 Government employees; deferred compensation program.--

(4)(a) The Chief Financial Officer, with the approval of the State Board of Administration, shall establish such plan or plans of deferred compensation for state employees, including all such investment vehicles or products incident thereto, as may be available through, or offered by, qualified companies or persons, and may approve one or more such plans for implementation by and on behalf of the state and its agencies and employees. Municipal, county, public community college, and public university employees may be included in such plans.

(b) If the Chief Financial Officer deems it advisable, he or she shall have the power, with the approval of the State Board of Administration, to create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred at the request of employees ~~of the state or its agencies~~ and for the administration of such program.

(c) The Chief Financial Officer, with the approval of the State Board of Administration, may delegate responsibility for administration of the plan to a person the Chief Financial Officer determines to be qualified, compensate such person, and, directly or through such person or pursuant to a collective bargaining agreement, contract with a private corporation or institution to provide such services as may be part of any such plan or as may be deemed necessary or proper by the Chief Financial Officer or such person, including, but not limited to, providing consolidated billing, individual and collective recordkeeping and accountings, asset purchase, control, and safekeeping, and direct disbursement of funds to employees or other beneficiaries. The Chief Financial Officer may authorize a person, private corporation, or institution to make direct disbursement of funds under the plan to an employee or other beneficiary.

(d) In accordance with such approved plan, and upon contract or agreement with an eligible employee, deferrals of compensation may be accomplished by payroll deductions made by the appropriate officer or officers of the state, with such funds being thereafter held and administered in accordance with the plan.

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 1, line 29, after the second semicolon,
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5 insert:
6 providing that municipal, county, public
7 community college, and public university
8 employees may participate in certain deferred
9 compensation plans;
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Bill No. CS for SB 2994

Amendment No. 5 483478

CHAMBER ACTION

Senate House

Senator Carlton moved the following amendment:

Senate Amendment (with title amendment)

On page 15, line 10, through page 16, line 5, delete all of Section 8

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

And the title is amended as follows:

On page 2, lines 4-9, delete those lines

and insert:

option provider"; amending s.

Bill No. CS for SB 2994

Amendment No. 6 924760

CHAMBER ACTION

Senate | House

Senator Clary moved the following amendment:

Senate Amendment (with title amendment)

On page 79, between lines 19 and 20,

insert:

Section 82. Subsection (2) of section 112.215, Florida Statutes, as amended by section 8. of chapter 2003-399, Laws of Florida, is amended to read:

112.215 Government employees; deferred compensation program.--

(2) For the purposes of this section, the term "employee" means any person, whether appointed, elected, or under contract, providing services for the state; any state agency or county or other political subdivision of the state; any municipality; <u>any state university board of trustees;</u> or any constitutional county officer under s. 1(d), Art. VIII of the State Constitution for which compensation or statutory fees are paid.

(Redesignate subsequent sections.)

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 4, line 26, after the semicolon,
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5 insert:
6 amending s. 112.215, F.S.; redefining the term
7 "employee" to include any state university
8 board of trustees;
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Bill No. CS for SB 2994

Amendment No. 7 773522

CHAMBER ACTION

Senate | House

Senator Crist moved the following amendment:

Senate Amendment (with title amendment)

On page 79, between lines 19 and 20,

insert:

Section 82. Section 17.0416, Florida Statutes, is created to read:

17.0416 Authority to provide services on a fee basis.--

(1) The Chief Financial Officer, through the Department of Financial Services, may provide accounting and payroll services on a fee basis under contractual agreement with eligible entities, including, but not limited to, state universities, community colleges, units of local government, constitutional officers, and any other person or entity having received any property, funds, or moneys from the state. All funds collected by the department under these contracts shall be deposited into the General Revenue Fund. The department shall request a budget amendment from the Legislative Budgeting Committee to recover the expenses incurred by the

department in providing services under these contracts.

(2) The Department of Financial Services may adopt rules necessary to administer this section.

(Redesignate subsequent sections.)

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

And the title is amended as follows:

On page 4, line 26, after the semicolon,

insert:

creating s. 17.0416, F.S.; authorizing the Chief Financial Officer to provide certain services on a fee basis under certain circumstances; requiring the Department of Financial Services to deposit fees collected into the General Revenue Fund; authorizing the department to recover expenses by a budget amendment; authorizing the department to adopt rules;