

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Ring, Chair
Senator Siplin, Vice Chair

MEETING DATE: Thursday, January 26, 2012

TIME: 3:45 —5:45 p.m.

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

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 552 Dockery (Identical H 359)	Ethics; Defining the term "special private gain or loss"; prohibiting a member of the Legislature from voting upon or participating in any legislation inuring to the personal gain or loss of the member or his or her relative; prohibiting a member of the Legislature from participating in any legislation inuring to the personal gain or loss of a business associate, employer, board on which the member sits, principal by whom the member is retained, or parent corporation or subsidiary of such principal; requiring that members of the Legislature vote on the General Appropriations Act and disclose conflicts of interest with any line-item appropriation, etc. GO 01/26/2012 Favorable JU EE RC BC	Favorable Yeas 10 Nays 0
2	SB 584 Richter (Identical H 811)	Public Records/Dental Workforce Surveys; Providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing exceptions to the exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act, etc. HR 01/12/2012 Favorable GO 01/26/2012 Favorable	Favorable Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 616 Flores (Similar H 655, Compare CS/H 657, Link S 1856)	Biomedical Research; Revising the number of years that the balance of an appropriation from the Biomedical Research Trust Fund may be carried forward following the effective date of the original appropriation; revising the terms of appointment for certain members of the Biomedical Research Advisory Council within the Department of Health (DOH); specifying the name of an affiliate chapter of the American Heart Association as it relates to the membership of the advisory council within the Florida Center for Universal Research to Eradicate Disease; requiring that the DOH, rather than the State Surgeon General, in consultation with the council, appoint a peer review panel of independent, scientifically qualified individuals to review the scientific merit of each proposal and establish its scientific priority score under the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program, etc. HR 01/12/2012 Favorable GO 01/26/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0
4	SB 656 Hays (Identical H 4009)	Repealing Budget Provisions; Deleting certain budget summary requirements, etc. GO 01/26/2012 Favorable BC	Favorable Yeas 10 Nays 0
5	CS/SB 682 Children, Families, and Elder Affairs / Richter (Identical CS/H 473)	Alzheimer's Disease; Establishing the Purple Ribbon Task Force within the Department of Elderly Affairs; providing that members shall serve without compensation or reimbursement for per diem or travel expenses; requiring the department to provide administrative support; authorizing the task force to hold meetings by teleconference or other electronic means, or in person without compensation or reimbursement for per diem or travel expenses; requiring the task force to submit a report in the form of an Alzheimer's disease state plan to the Governor and Legislature, etc. CF 01/12/2012 Fav/CS GO 01/26/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 798 Commerce and Tourism	OGSR/Florida Opportunity Fund and the Institute for the Commercialization of Public Research; Amending provisions which provide exemptions from public records and open meeting requirements for the Florida Opportunity Fund and the Institute for the Commercialization of Public Research; reorganizing the exemptions by removing references to the Institute for the Commercialization of Public Research and transferring the exemptions relating to the institute to a new statute; clarifying that the exemptions pertaining to the Florida Opportunity Fund apply to prospective investments, alternative investments, and certain confidential proprietary information provided by a proprietor; reducing the time period during which proprietary confidential business information is confidential and exempt from disclosure; imposing criminal penalties on a person who willfully and knowingly violates the public records or public meetings exemptions pertaining to the institute, etc. CM 01/09/2012 Favorable GO 01/26/2012 Favorable BC	Favorable Yeas 10 Nays 0
7	SB 810 Environmental Preservation and Conservation (Identical H 7015)	OGSR/Donor Information/House Museums Designated as National Historic Landmarks; Amending provisions relating to an exemption from public records requirements provided for information that identifies a donor or prospective donor to publicly owned house museums designated by the United States Department of Interior as National Historic Landmarks who desires to remain anonymous; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption, etc. EP 01/09/2012 Favorable GO 01/26/2012 Favorable	Favorable Yeas 10 Nays 0
8	SB 880 Ring (Identical H 1417)	State Investments; Increasing the amount of money that may be invested in alternative investments by the State Board of Administration; reducing the amount of the Lawton Chiles Endowment Fund which is available for biomedical research; specifying the real value of the net assets of the fund as of a certain date, etc. GO 01/09/2012 Temporarily Postponed GO 01/26/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0

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Governmental Oversight and Accountability

Thursday, January 26, 2012, 3:45 —5:45 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 1084 Garcia (Identical H 541)	Administrative Procedures; Revising provisions with respect to the revision and publication of the Florida Administrative Code to provide that the Department of State is not required to publish a printed version of the code but may contract with a publishing firm for a printed publication; providing that the electronic version of the code is the official compilation of the administrative rules of the state; providing for adopted rules and material incorporated by reference to be filed in electronic forms; renaming the "Florida Administrative Weekly" as the "Florida Administrative Register"; requiring a continuous revision and publication of the Florida Administrative Register on an Internet website managed by the Department of State; deleting a requirement to provide printed copies of the Florida Administrative Register to certain federal and state entities, etc. GO 01/26/2012 Favorable BC	Favorable Yeas 10 Nays 0
10	SB 1312 Gaetz (Compare H 4055, H 4133, H 7055)	Administrative Authority of the Executive Branch; Affirming that Executive Orders 11-72 and 11-211 are consistent with the law and public policy of this state; providing that gubernatorial appointees are generally subject to the oversight, direction, and control of the Governor; specifying that an agency head who is appointed by and serves at the pleasure of the Governor remains subject to the supervision, direction, and control of the Governor; specifying that certain acts of an agency head who serves at the pleasure of an appointing authority are official acts, notwithstanding the authority of an appointing authority to direct and supervise the agency head, etc. GO 01/26/2012 Favorable JU BC	Favorable Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 1464 Gaetz (Identical H 1305)	Public Records/Public Meetings/Application to Officers-elect; Declaring that it is the policy of this state that the provisions of ch. 119, F.S., apply to officers-elect upon their election to public office; requiring that such officers-elect adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in ch. 119, F.S.; requiring that the public records of an officer-elect be maintained in accordance with the policies and procedures of the public office to which the officer has been elected; requiring that online and electronic communication and recordkeeping systems preserve the records on such systems so as to not impair the ability of the public to inspect or copy such public records; revising public meeting requirements to apply the requirements to meetings with or attended by officers-elect, etc. GO 01/26/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0
12	SB 1470 Norman (Identical H 7029)	Repeal of Administrative Rules; Providing for repeal of administrative rules upon the repeal of the law implemented; providing a process for summary repeal of administrative rules that are no longer in effect; nullifying specific administrative rules adopted by the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, Southwest Florida Water Management District, South Florida Water Management District, the former Department of Commerce, the former Department of Health and Rehabilitative Services, Health Program Office, the former Advisory Council on Intergovernmental Relations, or the former Department of Labor and Employment Security; directing the Department of Health and the Department of Education to initiate necessary rulemaking before the effective date of specified rule nullifications, etc. GO 01/26/2012 Favorable BC	Favorable Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 1498 Ring (Identical H 1215)	State Technology; Abolishing the Agency for Enterprise Information Technology; creating the Agency for State Technology; directing the agency to create a road map for enterprise information technology service consolidation and a comprehensive transition plan; revising duties of primary data centers; establishing the Fletcher Shared Resource Center within the Department of Financial Services to provide enterprise information technology services; directing the agency to develop a plan for statewide voice-over-Internet protocol services, etc. GO 01/26/2012 Temporarily Postponed BI BC RC	Temporarily Postponed
14	SB 2024 Governmental Oversight and Accountability	State Retirement; Specifying that a retiree who is elected or appointed for the first time to an elective office may not be enrolled as a renewed member; specifying that a retiree who is reemployed in a regularly established position as an elected official may not renew membership in the Senior Management Service Class or an annuity program; providing exceptions from the prohibition against paying benefits for certain purposes under the pension plan; specifying the age of eligibility to participate in DROP for members enrolled after a certain date; providing exceptions from the prohibition against paying benefits for certain purposes under the Florida Retirement System Investment Plan, etc. GO 01/26/2012 Fav/CS BC	Fav/CS Yeas 9 Nays 0
Consideration of proposed committee bill (Mandatory Review 2012-306 - Open Government Sunset Review of Section 627.3121, F.S., Florida Workers' Compensation Joint Underwriting Association, Inc.):			
15	SPB 7190	OGSR/Florida Workers' Compensation Joint Underwriting Association, Inc.; Amending provisions which provide an exemption from public records requirements for records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., and an exemption from public meetings requirements for meetings of the association's board of governors, or a subcommittee of the association's board, at which confidential and exempt records are discussed; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions, etc.	Submitted as Committee Bill

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed committee bill (Mandatory Review 2012-307 - Open Government Sunset Review of Section 364.107, F.S., Personal Identifying Information of Lifeline Assistance Plan Participants):			
16	SPB 7192	OGSR/Lifeline Assistance Plan Participants; Amending provisions relating to an exemption from public records requirements for personal identifying information of Lifeline Assistance Plan participants; providing a penalty for intentional disclosure of confidential and exempt information by an officer or employee of the Public Service Commission; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption, etc.	Submitted as Committee Bill
Consideration of proposed committee bill (Mandatory Review 2012-308 - Open Government Sunset Review of Section 119.071(1)(g), F.S., U.S. Census Bureau Address Information):			
17	SPB 7194	OGSR/United States Census Bureau Address Information; Repealing a provision which provides a public records exemption for United States Census Bureau address information, etc.	Submitted as Committee Bill
Consideration of proposed committee bill:			
18	SPB 7196	State Employment; Revising provisions relating to the establishment of the State Personnel System; revising provisions relating to educational opportunities for employees; revising provisions relating to bonuses and other awards; revising provisions relating to tax-sheltered and special compensation benefits; providing a declaration of policy with respect to the establishment of the Civil Service; revising provisions relating to the list of positions that are exempted from the Civil Service; providing for a uniform classification system for civil service positions; providing a pay plan for civil service positions, etc.	Submitted as Committee Bill
Consideration of proposed committee bill:			
19	SPB 7198	State Agencies; Repealing provisions relating to the Florida State Employee Wellness Council, the Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council, the Small Business Regulatory Advisory Council, the Statewide Intermodal Transportation Advisory Council, and the Developmental Disabilities Compact Workgroup; amending provisions relating to rule adoption by state agencies, etc.	Submitted as Committee Bill

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Consideration of proposed committee bill:			
20	SPB 7200	Municipal Police Pensions; Revising the definition of the term "compensation" or "salary," etc.	Submitted as Committee Bill
Other Related Meeting Documents			



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES

Majority Whip
38th District

January 26, 2012

The Honorable Jeremy Ring
Chair of Committee on Governmental Oversight and Accountability
210 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Ring:

I respectfully request to be excused from the Committee on Governmental Oversight and Accountability. In my absence Senator Rene Garcia will present SB 616 Biomedical research..

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Anitere Flores".

Anitere Flores

CC: Ms. Dawn Roberts, Staff Director, Committee on Governmental Oversight and Accountability, 525 Knott Building

REPLY TO:

- ☐ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case:

Caption: Senate Committee on Governmental Oversight and Accountability

Type:

Judge:

Started: 1/26/2012 3:46:55 PM

Ends: 1/26/2012 5:20:17 PM

Length: 01:33:23

3:46:58 PM	Call to Order
3:47:03 PM	Roll call
3:48:14 PM	Senator Dockery introduces
3:48:29 PM	SB 552
3:49:16 PM	No questions
3:49:23 PM	Brian Pitts, Justice-2-Jesus
3:51:14 PM	Debate
3:51:24 PM	Senator Dockery closes
3:51:35 PM	Call Roll
3:51:40 PM	SB 552 reports favorably
3:52:10 PM	SB 584 presented by Becky Kokkinos
3:52:54 PM	Questions?
3:52:59 PM	Brian Pitts, Justice-2-Jesus
3:53:19 PM	Ms. Kokkinos waives close
3:54:12 PM	Call Role
3:54:18 PM	SB 584 reports favorable
3:54:29 PM	Tab 5 CS for SB 682
3:54:41 PM	Presented by Becky Kokkinos
3:55:08 PM	Admentment barcode 929828 withdrawn
3:55:25 PM	Amendment barcode? presented by Senator Latvala
3:56:21 PM	Senator Siplin moves amendment adopted
3:56:37 PM	Laura Cantwell, AARP waives in support
3:56:42 PM	Natalie Kelly, Alzheimer's Association waives in support
3:56:49 PM	Brian Pitts, Justice-2-Jesus waives in support
3:57:00 PM	Call Roll
3:57:10 PM	CS/SB 6832 reports favorable
3:57:35 PM	Tab 4 SB 656, Paul Runk presents
3:57:45 PM	Senator Latvala asks a question
3:58:45 PM	Mr. Runk responds
3:58:49 PM	Senator Latvala asks a question
3:59:41 PM	Call Role
3:59:48 PM	SB 656 reports favorably
4:00:12 PM	Tab 10 SB 1312
4:00:17 PM	Presented by Eric Edwards
4:00:43 PM	Senator Latvala asks a question
4:02:27 PM	Mr. Edwards explains bill further
4:02:56 PM	Chairman Ring comments
4:03:19 PM	Senator Latvala comments
4:03:36 PM	Questions?
4:03:42 PM	Leticia Adams, Florida Chamber of Commerce, waives in support
4:03:57 PM	Cindy Huddleston, Florida Legal Services
4:06:59 PM	Senator Siplin asks a question
4:07:11 PM	Ms. Huddleston responds
4:07:18 PM	Senator Siplin asks a question
4:07:28 PM	Senator Latvala responds
4:08:00 PM	Senator Siplin asks a question
4:08:11 PM	John Seay answers
4:08:29 PM	Chairman Ring comments
4:08:43 PM	Brian Pitts, Justice-2-Jesus
4:10:34 PM	Senator Latvala asks a question
4:11:13 PM	Senator Bogdonoff comments
4:12:30 PM	Chairman Ring asks a question

4:12:43 PM	Dawn Roberts comments
4:13:08 PM	Chairman Ring comments
4:13:19 PM	Senator Siplin asks a question
4:13:48 PM	Chairman Ring comments
4:13:59 PM	John Seay responds
4:14:33 PM	Chairman Ring comments
4:14:40 PM	Senator Siplins asks a question
4:14:51 PM	Senator Bogdanoff responds
4:15:28 PM	Dawn Roberts comments
4:16:12 PM	Debate?
4:16:29 PM	Senator Gaetz closes
4:16:49 PM	Senator Siplin asks a question
4:17:04 PM	Senator Gaetz responds
4:18:34 PM	Call roll
4:18:36 PM	SB 1312 reports favorably
4:19:03 PM	Senator Margolis records her votes
4:19:14 PM	Tab 11 SB 1464
4:19:34 PM	Presented by Senator Gaetz
4:20:25 PM	Late filed amendment barcode 718642
4:20:46 PM	Amendment adopted
4:20:52 PM	Brian Pitts waives in support
4:21:03 PM	Senator Gaetz closes
4:21:11 PM	Roll Called
4:21:16 PM	SB 1464 reports favorably
4:21:38 PM	Tab 6 SB 798
4:21:47 PM	Presented by Senator Detert
4:22:32 PM	Questions?
4:22:54 PM	No speaker cards
4:22:58 PM	Call roll
4:23:03 PM	SB 798 reports favorably
4:23:21 PM	Tab 12 SB 1470, presented by Senator Norman
4:23:39 PM	Letitia Adams, Florida Chamber of Commerce, waives in support
4:30:41 PM	Patricia Nelson, Executive Office of the Government Office of Fiscal Accountability and Regulatory Reform
4:30:54 PM	SB 1470 reports favorably
4:30:55 PM	Tab 3 SB 616, Senator Garcia Presents
4:30:55 PM	Amendment barcode 629632 adopted
4:30:56 PM	Michael Fisher, Joe Morris waive in support
4:30:57 PM	Brain Pitts, Justice-2-Jesus
4:31:03 PM	Senator Latvala asks a question, Caitlin Jenkins responds
4:31:04 PM	CS/SB 616 reports favorably
4:31:06 PM	SB 1084, presented by Senator Garcia
4:31:18 PM	Pierce Schuessler, Florida Department of State
4:31:23 PM	Debate?
4:31:25 PM	Call Roll
4:31:29 PM	SB 1084 reports favorably
4:31:48 PM	Tab 7 SB 810
4:31:59 PM	Presented by Senator Dean
4:32:43 PM	Call Roll
4:32:53 PM	SB 810 reports favorably
4:33:12 PM	Senator Margolis asks a question
4:33:20 PM	Senator Dean answers
4:34:13 PM	Tab 8 SB 880
4:34:20 PM	Chair turned over to Senator Siplin
4:34:31 PM	Senator Ring presents
4:35:07 PM	Amendment barcode 941038
4:35:23 PM	Senator Wise asks a question
4:35:38 PM	Senator Ring responds
4:35:45 PM	Senator Wise asks a question
4:35:55 PM	Senator Ring responds
4:36:05 PM	Senator Wise asks a question
4:36:17 PM	Ash Williams responds

4:36:53 PM Senator Wise asks a question
4:37:00 PM Mr. Williams responds
4:37:04 PM Senator Wise asks a question
4:37:15 PM Mr. Williams responds
4:37:22 PM Amendment adopted
4:37:28 PM Questions
4:37:33 PM Slater Bayliss, Florida Alternative Investment Association, waives in support
4:37:46 PM CS/SB 880
4:37:51 PM Call Roll
4:37:55 PM CS/SB 880 reports favorably
4:38:17 PM Tab 14 SB 2024
4:38:44 PM Amendment barcode 209596
4:39:00 PM Amendment adopted
4:39:10 PM Late filed amendment barcode 930296
4:39:36 PM Sentaor Latvala presents
4:40:19 PM Amendment adopted
4:41:24 PM Late filed amendment 342150
4:41:40 PM Senator Latvala presents
4:41:47 PM Amendment adopted
4:42:29 PM Senator Ring presents
4:43:14 PM Letitia Adams, Florida Chamber of Commerce, waives in support
4:43:25 PM Senator Wise asks a question
4:44:21 PM Division of retirement
4:44:29 PM SarahBeth Snuggs, Division of Retirement
4:45:02 PM Senator Wise asks a question
4:45:20 PM Ms. Snuggs responds
4:46:25 PM Senator Wise asks a question
4:47:12 PM Ms. Snuggs responds
4:47:45 PM Senator Margolis asks a question
4:48:02 PM Ms. Snuggs responds
4:48:29 PM Senator Margolis asks a question
4:48:36 PM Ms. Snuggs responds
4:48:48 PM Senator Montford asks a question
4:49:01 PM Ms. Snuggs responds
4:50:01 PM CS adopted
4:50:07 PM Roll call
4:50:10 PM CS/SB 2024 reports favorably
4:50:46 PM Introduce proposed committee bills
4:51:00 PM SPB 7190 introduced by John Seay
4:51:51 PM Senator Wise motions
4:51:59 PM Motion adopted
4:52:05 PM SPB 7192 presented by John Seay
4:52:32 PM Senator Wise motions
4:53:10 PM Motion adopted
4:53:14 PM SPB 7194 presented by John Seay
4:53:33 PM SPB 7194 presented by John Seay
4:54:03 PM Senator Benacquisto
4:54:11 PM Motion adopted
4:54:24 PM Tab 19 SBP 7198
4:54:35 PM Presented by Senator Ring
4:55:15 PM Patricia Nelson, Executive Office of The Governor, Office of Fiscal Accountability and Regulatory Reform
4:55:37 PM Motion adopted
4:55:43 PM Tab 20 SPB 7200
4:56:02 PM Presented by Senator Ring
4:56:37 PM Kraig Conn, Florida League of Cities
4:56:47 PM Lisa Henning, Fraternal Order of Police
4:57:28 PM David Murrell, Florida PBA
4:57:58 PM Senator Margolis motions
4:58:04 PM motion adopted
4:58:10 PM SPB 7196
4:58:25 PM Presented Senator Ring
5:00:06 PM Senator Latvala asks a question

5:00:34 PM	Sharon Larson, Director of Division of Human Resource Management
5:02:13 PM	Senator Latvala asks a question
5:02:27 PM	Ms. Larson answers
5:03:09 PM	Senator Montford asks a question
5:03:17 PM	Ms. Larson answers
5:03:25 PM	Senator Montford asks a question
5:03:47 PM	Ms. Larson answers
5:04:11 PM	Senator Montford asks a question
5:04:22 PM	Ms. Larson answers
5:05:16 PM	Senator Montford asks a question
5:05:28 PM	Ms. Larson answers
5:06:44 PM	Senator Montford asks a question
5:06:52 PM	Ms. Larson answers
5:07:03 PM	Senator Montford responds
5:07:25 PM	Senator Dean asks a question
5:07:37 PM	Ms. Larson responds
5:07:47 PM	Senator Margolis asks a question
5:08:30 PM	Ms. Larson answers
5:08:47 PM	Senator Wise asks a question
5:09:12 PM	Ms. Larson answers
5:09:34 PM	Senator Wise asks a question
5:09:42 PM	Ms. Larson answers
5:09:50 PM	Senator Wise asks a question
5:10:00 PM	Ms. Larson answers
5:10:34 PM	Senator Montford asks a question
5:11:05 PM	Ms. Larson responds
5:11:38 PM	Senator Montford asks a question
5:11:49 PM	Ms. Larson answers
5:12:03 PM	Butch Cromwell, waives in opposition
5:12:15 PM	Larry Dupree waives in opposition
5:12:26 PM	Glynda Linton waives in opposition
5:12:36 PM	Anthony Marciano waives in opposition
5:12:42 PM	Doug Martin, AFSCME FL Council 79 waives in opposition
5:13:00 PM	Gail Marie Perry, Communication Workers of America, waives in opposition
5:13:12 PM	Gail Roberts waives in opposition
5:13:18 PM	Robert Suarez, Florida Professional Firefighters, waives in opposition
5:13:24 PM	Rich Templin, FL AFL-CIO
5:14:19 PM	Senator Ring comments
5:15:34 PM	Ken Williams waives in opposition
5:15:45 PM	TJ Williams and Dean Parhenson withdraw their cards
5:16:20 PM	Brian Pitts, Justice-2-Jesus
5:18:18 PM	Senator Ring comments
5:18:54 PM	Senator Siplin comments
5:19:10 PM	Questions?
5:19:14 PM	Senator Wise moves
5:19:23 PM	Motion adopted
5:19:30 PM	Senator Margolis asks a question
5:19:48 PM	Senator Siplin comments
5:20:02 PM	Senator Wise moves we rise
5:20:09 PM	dismissed

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 552

INTRODUCER: Senator Dockery and others

SUBJECT: Voting Conflicts

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	GO	Favorable
2.			JU	
3.			EE	
4.			RC	
5.			BC	
6.				

I. Summary:

This bill prohibits a member of the Legislature from participating in, and/or voting upon, legislation that results in a special private gain or loss. The bill requires the member of the Legislature to publicly state to the body or the committee to which the member belongs, prior to consideration of the legislation, the interests that give rise to the voting conflict. The bill requires disclosure of the specific nature of those interests in a memorandum filed with either the Secretary of the Senate or Clerk of the House of Representatives and placed in the journal of the house of which the legislator is a member.

This bill substantially amends Section 112.3143 and creates Section 112.31435 of the Florida Statutes.

II. Present Situation:

Under Section 112.3143(2), F.S., no state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting. The law does not prohibit a state public officer from participating in any matter.

Conversely, county, municipal, and other local officers are prohibited from voting on any measure which would inure to his/her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained, other than an agency; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the officer. In the event of a conflict, the county, municipal, and other local officers are required to publicly state to the assembly the nature of the officer's interests in the matter from which he or she is abstaining prior to the vote being taken. County, municipal, and other local officers are required to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting. Appointed public officers are also prohibited from participating in a matter when the matter would inure to the special private gain or loss of one of the enumerated people unless the appointed public officer first discloses his or her interest in the matter.¹

Violations of the voting conflicts laws are subject to the penalties contained in s. 112.317, F.S. Those penalties range from censure to removal from office and may also include a civil penalty not to exceed \$10,000.

III. Effect of Proposed Changes:

Section 1 amends s. 112.3143, F.S., defining “special private gain or loss” as a gain or loss that inures *only* to the benefit or detriment of a public officer or his or her relative, principal, corporate parent or subsidiary of a corporate principal, or a gain or loss that inures to the benefit or detriment of an enumerated beneficiary differently than the rest of those affected by the matter. This section also creates an exception to the general rule in s. 112.3143(2), F.S., that state public officers may vote in an official capacity on any matter.

Section 2 creates s. 112.31435, F.S., providing specific definitions for “participate”, “relative”, and “special private gain or loss” as used in this section; prohibiting a member of the Legislature from participating in or voting on any legislation that would inure to his or her special private gain or loss or that he or she *knows* would inure to the special private gain or loss of his or her relative; requiring the member to publicly state to the body or committee all of his or her interests in the legislation or all of the relative's interests in the legislation before consideration of the legislation; requiring the member to disclose the specific nature of interests as a public record in a memorandum filed with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after the date on which a vote on the legislation occurs; requiring the member's memorandum to be spread upon the pages of the journal of the house of which the legislator is a member; prohibiting a member of the Legislature from participating in any legislation that he or she *knows* would inure to the special private gain or loss of a principal by whom he or she is retained, the parent organization or subsidiary of a corporate principal by which he or she is retained, a business associate, an employer, or a board upon which the member sits; requiring the member to publicly state to the body or committee all of the interests of a corporate principal, business associates, employers, or a board *known* to the member before consideration of the legislation; requiring the member to disclose the specific nature of interests

¹ Section 112.3143(4), F.S.

as a public record in a memorandum filed with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after the date on which a vote on the legislation occurs; requiring the member's memorandum to be spread upon the pages of the journal of the house of which the legislator is a member; requiring members to vote on the General Appropriations Act and disclose any conflict with a line-item appropriation.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By Senator Dockery

15-00228D-12

2012552__

1 A bill to be entitled
 2 An act relating to ethics; amending s. 112.3143, F.S.;
 3 defining the term "special private gain or loss";
 4 providing an exception to provisions relating to
 5 voting conflicts, to conform to changes made by the
 6 act; creating s. 112.31435, F.S.; providing
 7 definitions; prohibiting a member of the Legislature
 8 from voting upon or participating in any legislation
 9 inuring to the personal gain or loss of the member or
 10 his or her relative; prohibiting a member of the
 11 Legislature from participating in any legislation
 12 inuring to the personal gain or loss of a business
 13 associate, employer, board on which the member sits,
 14 principal by whom the member is retained, or parent
 15 corporation or subsidiary of such principal; requiring
 16 that a member disclose all such interests to the
 17 applicable legislative body or committee before the
 18 legislation is considered; requiring that the member
 19 disclose the specific nature of any such interests
 20 within a specified period after the date on which a
 21 vote on the legislation occurs; requiring that such
 22 disclosure be made by written memorandum and filed
 23 with the Secretary of the Senate or the Clerk of the
 24 House of Representatives; requiring that the
 25 memorandum be recorded in the journal of the house of
 26 which the legislator is a member; requiring that
 27 members of the Legislature vote on the General
 28 Appropriations Act and disclose conflicts of interest
 29 with any line-item appropriation; providing an

Page 1 of 5

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

15-00228D-12

2012552__

30 effective date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Subsections (1) and (2) of section 112.3143,
 35 Florida Statutes, are amended to read:
 36 112.3143 Voting conflicts.—
 37 (1) As used in this section:
 38 (a) "Public officer" includes any person elected or
 39 appointed to hold office in any agency, including any person
 40 serving on an advisory body.
 41 (b) "Relative" means any father, mother, son, daughter,
 42 husband, wife, brother, sister, father-in-law, mother-in-law,
 43 son-in-law, or daughter-in-law.
 44 (c) "Special private gain or loss" means a gain or loss
 45 that inures only to the benefit or detriment of a public officer
 46 or his or her relative, principal, or corporate parent or
 47 subsidiary of a corporate principal, or a gain or loss that
 48 inures to the benefit or detriment of an enumerated beneficiary
 49 differently than the rest of those affected by the matter.
 50 (2) Except as provided in s. 112.31435, no state public
 51 officer is prohibited from voting in an official capacity on any
 52 matter. However, any state public officer voting in an official
 53 capacity upon any measure ~~that which~~ would inure to the
 54 officer's special private gain or loss; ~~that which~~ he or she
 55 knows would inure to the special private gain or loss of any
 56 principal by whom the officer is retained or of ~~to~~ the parent
 57 organization or subsidiary of a corporate principal by which the
 58 officer is retained; or ~~that which~~ the officer knows would inure

Page 2 of 5

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

15-00228D-12

2012552

to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Section 2. Section 112.31435, Florida Statutes, is created to read:

112.31435 Voting conflicts; state legislators.—

(1) As used in this section, the term:

(a) "Participate" means any attempt, other than casting a vote, to influence the passage, defeat, or amendment of legislation by oral or written communication made by a legislator or at the legislator's direction.

(b) "Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(c) "Special private gain or loss" means a gain or loss that inures only to the benefit or detriment of a public officer or his or her relative, principal, or corporate parent or subsidiary of a corporate principal, or a gain or loss that inures to the benefit or detriment of an enumerated beneficiary differently than the rest of those affected by the matter.

(2) A member of the Legislature may not vote upon or participate in any legislation that would inure to his or her special private gain or loss or that he or she knows would inure to the special private gain or loss of his or her relative. The member must, before any consideration of the legislation by the legislative body of which he or she is a member or any committee

15-00228D-12

2012552

on which he or she sits, publicly state to the body or committee all of his or her interests in the legislation or all of the relative's interests in the legislation which are known to the member and, within 15 days after the date on which a vote on the legislation occurs, disclose the specific nature of those interests as a public record in a memorandum filed with the Secretary of the Senate, if the member is a Senator, or filed with the Clerk of the House of Representatives, if the member is a Representative. The memorandum shall be spread upon the pages of the journal of the house of which the legislator is a member.

(3) A member of the Legislature may not participate in any legislation that he or she knows would inure to the special private gain or loss of a principal by whom he or she is retained, the parent organization or subsidiary of a corporate principal by which he or she is retained, a business associate, an employer, or a board on which the member sits. The member must, before any consideration of the legislation by the legislative body of which he or she is a member or any committee on which he or she sits, publicly state to the body or committee all of the interests in the legislation of the principals, parent organizations or subsidiaries of a corporate principal, business associates, employers, or boards which are known to the member and, within 15 days after the date on which a vote on the legislation occurs, disclose the specific nature of those interests as a public record in a memorandum filed with the Secretary of the Senate, if the member is a Senator, or filed with the Clerk of the House of Representatives, if the member is a Representative. The memorandum shall be spread upon the pages of the journal of the house of which the legislator is a member.

15-00228D-12

2012552

117 (4) A member of the Legislature must vote on the General
118 Appropriations Act and must disclose any conflict of interest
119 that the legislator may have with a line-item appropriation in
120 the act.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 26 / 2012

Meeting Date

Topic _____ Bill Number 330 (if applicable)

Name BRIAN PITTS Amendment Barcode _____ (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH Phone 727/897-9291
Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record f

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 584

INTRODUCER: Senator Richter

SUBJECT: Public Records/Dental Workforce Surveys

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlanter	Stovall	HR	Favorable
2.	Jenkins	Roberts	GO	Favorable
3.				
4.				
5.				
6.				

I. Summary:

The bill makes confidential and exempt from public records requirements all personal identifying information contained in records provided by dentists or dental hygienists in response to dental workforce surveys and held by the Department of Health (DOH). The bill specifies circumstances under which the confidential and exempt information may be released.

The bill provides for review and repeal of the exemption pursuant to the Open Government Sunset Review Act and provides a statement of the public necessity for the exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill will take effect upon becoming a law.

This bill creates two undesignated sections of law.

II. Present Situation:

Public Records¹

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.² One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

¹ Art I, s. 24(c), State Constitution.

² Section 1390, 1391 F.S. (Rev. 1892).

access to public records to a constitutional level.³ Article I, s. 24, of the State Constitution, provides that:

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

In addition to the State Constitution, the Public Records Act,⁴ which predates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁵ Section 119.07(1)(a), F.S., states:

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

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

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁶

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁷ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁸

Only the Legislature is authorized to create exemptions to open government requirements.⁹ Exemptions must be created by general law, and such law must specifically state the public

³ Art I, s. 24, State Constitution

⁴ Ch. 119, F.S.

⁵ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. See *supra* fn. 3.

⁶ Section 119.011(12), F.S.

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁹ *Supra* fn. 1.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹⁰ A bill enacting an exemption¹¹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹²

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹³ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁵ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁶ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;
- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁷

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?

¹⁰ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

¹¹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹² *Supra* fn. 1.

¹³ Florida Attorney General Opinion 85-62.

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So. 2d 289 (Fla. 1991).

¹⁵ Section 119.15, F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ *Id.*

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

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁸ The Legislature is only limited in its review process by constitutional requirements.

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

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

Workforce Surveys

The DOH currently administers an optional workforce survey which dentists and dental hygienists may complete as part of their licensure renewal. For the 2009-2010 licensing cycle, the first time that this survey was offered, 89 percent of dentists with active licenses responded.¹⁹ The survey was expanded to include dental hygienists for the 2010-2011 licensing cycle, and 87.9 percent responded.²⁰

Physicians are required to respond to physician workforce surveys as a condition of license renewal.²¹ All personal identifying information contained in records provided by physicians in response to these workforce surveys is confidential and exempt under s. 458.3193, F.S., concerning allopathic physicians, and s. 459.0083, F.S., concerning osteopathic physicians.

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law to require that personal identifying information contained in records provided by dentists or dental hygienists in response to dental workforce surveys held by the DOH be confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I

¹⁸ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

¹⁹ DOH, *Report on the 2009-2010 Workforce Survey of Dentists*, available at: http://doh.state.fl.us/Family/dental/OralHealthcareWorkforce/2009_2010_Workforce_Survey_Dentists_Report.pdf (Last visited on December 19, 2011).

²⁰ DOH, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 584*. A copy is on file with the Senate Governmental Oversight and Accountability Committee.

²¹ Section 381.4018, F.S. Language requiring the submission of physician workforce surveys for license renewal can be found in s. 458.3191, F.S., for allopathic physicians and s. 459.0081, F.S., for osteopathic physicians.

of the State Constitution. The bill authorizes disclosure of such information with the written consent of the individual to whom the information pertains or the individual's legally authorized representative, by court order upon a showing of good cause, or to a research entity fulfilling certain conditions.

Access to public records is a substantive right and, therefore, a statute affecting that right is presumptively prospective in its application. There must be a clear legislative intent for a statute affecting substantive rights to apply retroactively.²² Accordingly, this bill may only make confidential and exempt personal identifying information that is received after the effective date of the act.

The bill provides that the public records exemption created in this act is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 creates an undesignated section of law providing justification of public necessity for the exemption. Candid and honest responses to the workforce survey will ensure that timely and accurate information is available to the DOH. The failure to maintain the confidentiality of the personal identifying information would prevent the resolution of important state interests to ensure the availability of dentists or dental hygienists in this state.

Section 3 provides that this public records exemption takes effect upon becoming a law.

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:

Vote Requirement

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

Subject Requirement

Section 24(c), Art. I, of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

²² *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001).

Public Necessity Statement

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

C. Trust Funds Restrictions:

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

None.

B. Private Sector Impact:

This bill will protect personal identifying information of dentists and dental hygienists who respond to the voluntary dental workforce survey.

C. Government Sector Impact:

None.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

²³ *Supra* fn. 20.

By Senator Richter

37-00559-12

2012584

A bill to be entitled

An act relating to public records; providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing exceptions to the exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Confidentiality of certain information contained in dental workforce surveys.—

(1) All personal identifying information that is contained in records provided by dentists or dental hygienists licensed under chapter 466, Florida Statutes, in response to dental workforce surveys and held by the Department of Health is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, except such information shall be disclosed:

(a) With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative.

(b) By court order upon a showing of good cause.

(c) To a research entity, if the entity seeks the records or data pursuant to a research protocol approved by the Department of Health, maintains the records or data in

37-00559-12

2012584

accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4), Florida Statutes. The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the department.

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

Section 2. The Legislature finds that it is a public necessity that personal identifying information concerning a dentist or dental hygienist licensed under chapter 466, Florida Statutes, who responds to a dental workforce survey be made confidential and exempt from disclosure. Candid and honest responses by licensed dentists or dental hygienists to the workforce survey will ensure that timely and accurate information is available to the Department of Health. The Legislature finds that the failure to maintain the confidentiality of such personal identifying information would prevent the resolution of important state interests to ensure the availability of dentists or dental hygienists in this state.

37-00559-12

2012584

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 26 / 2012
Meeting Date

Topic _____ Bill Number 587 (if applicable)
Name BRIAN PITTS Amendment Barcode _____ (if applicable)
Job Title TRUSTEE
Address 1119 NEWTON AVENUE SOUTH Phone 727/897-9291
SAINT PETERSBURG FLORIDA 33705
City State Zip
E-mail JUSTICE2JESUS@YAHOO.COM
Speaking: ☐ For ☒ Against ☒ Information
Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 26 / 12
Meeting Date
Topic Dental Workforce Survey / Public Records Request Bill Number SB 584 (if applicable)
Name Joe Anne Hart Amendment Barcode _____ (if applicable)
Job Title Director of Governmental Affairs
Address 118 E. Jefferson St. Phone (850) 224-1089
Tallahassee FL 32301
City State Zip
E-mail jahart@fla-dental.org
Speaking: ☒ For ☐ Against ☐ Information
Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 616

INTRODUCER: Senator Flores

SUBJECT: Biomedical Research

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Favorable
2.	Jenkins	Roberts	GO	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☒	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☐	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

This bill revises provisions related to the James and Esther King Biomedical Research Program (King Program) and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program).

The bill:

- Carries forward for 2 additional years the balance of any appropriation from the Biomedical Research Trust Fund, which is obligated but not disbursed;
- Renames a member of the Biomedical Research Advisory Council (Council) and the advisory council of the Florida Center for Universal Research to Eradicate Disease (FL CURED);
- Staggers the terms of service for members of the Council;
- Removes the Council's responsibility for developing, supervising, and consulting in the appointment of research peer review panels;
- Clarifies conflict of interest provisions concerning certain councils and peer review panels;
- Removes provisions regarding the public's access to the meetings of certain peer review panels;
- Exempts grant programs under the purview of the Council from rulemaking authority;

- Revises the Council's annual reporting requirement;
- Revises by whom grants are awarded under the Bankhead-Coley Program; and
- Makes the consideration of certain types of applications for grants by the Department of Health (department) discretionary.

This bill amends the following sections of the Florida Statutes: 20.435, 215.5602, 381.855, and 381.922.

II. Present Situation:

The James and Esther King Biomedical Research Program

The purpose of the James and Esther King Biomedical Research Program¹ (King Program) is to provide an annual and perpetual source of funding to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.² The long-term goals of the program are to:

- Improve the health of Floridians by researching better prevention, diagnoses, treatments, and cures for cancer, cardiovascular disease, stroke, and pulmonary disease;
- Expand the foundation of biomedical knowledge relating to the prevention, diagnosis, treatment, and cure of diseases related to tobacco use;
- Improve the quality of the state's academic health centers by bringing the advances of biomedical research into the training of physicians and other health care providers;
- Increase the state's per capita funding for research by undertaking new initiatives in public health and biomedical research that will attract additional funding from outside of Florida; and
- Stimulate economic activity in the state in areas related to biomedical research, such as the research and production of pharmaceuticals, biotechnology, and medical devices.

The King Program offers competitive grants to researchers throughout Florida. Grant applications from any university or established research institute³ in Florida will be considered for biomedical research funding. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding.

The State Surgeon General, after consultation with the Council, is authorized to award grants and fellowships on the basis of scientific merit⁴ within the following three categories:

¹ The Florida Legislature created the Florida Biomedical Research Program in 1999 within the department (ch. 99-167, L.O.F.). The Florida Biomedical Research Program was renamed the James and Esther King Biomedical Research Program during Special Session B of the 2003 Legislature (ch. 2003-414, L.O.F.).

² Section 215.5602, F.S.

³ An "established research institute" is any Florida non-profit or foreign non-profit corporation covered under ch. 617, F.S., with a physical location in Florida, whose stated purpose and power is scientific, biomedical or biotechnological research or development and is legally registered with the Florida Department of State, Division of Corporations. This includes the federal government and non-profit medical and surgical hospitals, including veterans' administration hospitals. See James & Esther King Biomedical Research Program, *Call for Grant Applications: Biomedical, Biotechnological, and Social Scientific Research and Development, Fiscal Year 2009-2010*, page 7, available at: http://forms.floridabiomed.com/jek_call/King%20Call%2009-10.pdf (Last visited on January 12, 2012).

⁴ See the "Grant Application Review and Processing" section of Senate Interim Report 2010-219, page 7, for more information about assessing scientific merit. The report is available at: http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-219hr.pdf

- Investigator-initiated research grants;
- Institutional research grants; and
- Predoctoral and postdoctoral research fellowships.⁵

The King Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature continued the program in 2010 by enacting HB 5311.⁶

The William G. “Bill” Bankhead, Jr., and David Coley Cancer Research Program

The 2006 Legislature created the Bankhead-Coley Program within the department.⁷ The purpose of the program is to advance progress toward cures for cancer through grants awarded for cancer research.

Applications for funding cancer research from any university or established research institute in the state will be considered under the Bankhead-Coley Program. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding. The State Surgeon General, after consultation with the Council, is authorized to award grants and fellowships on the basis of scientific merit⁸ within the following three categories:

- Investigator-initiated research grants;
- Institutional research grants; and
- Collaborative research grants, including those that advance the finding of cures through basic or applied research.

As with the King Program, the Bankhead-Coley Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature also continued this program in 2010 when it enacted HB 5311.⁹

Florida Center for Universal Research to Eradicate Disease

The purpose of the Florida Center for Universal Research to Eradicate Disease (FL CURED) is to coordinate, improve, expand, and monitor all biomedical research programs within Florida; facilitate funding opportunities; and foster improved technology transfer of research findings into clinical trials and widespread public use.¹⁰

The Legislature intended that the FL CURED would help Florida:

- Strive to become the nation’s leader in biomedical research;
- Commit to finding cures for the most deadly and widespread diseases;

http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-219hr.pdf (Last visited on January 12, 2012).

⁵ Section 215.5602(5)(b), F.S.

⁶ Chapter 2010-161, L.O.F.

⁷ Section 381.922, F.S., (ch. 2006-182, L.O.F.).

⁸ *Supra* fn. 5.

⁹ Chapter 2010-161, L.O.F.

¹⁰ *See* s. 381.855, F.S.

- Coordinate efforts among the state's public and private universities and research institutes, and the biomedical/biotechnology industry in Florida; and
- Expand the economy by attracting biomedical researchers and biotechnology businesses to the state.¹¹

Responsibilities of the FL CURED are to hold an annual biomedical technology summit in Florida, encourage clinical trials in Florida, facilitate research partnerships, encourage agricultural colleges and agricultural businesses in Florida to be active in the search for cures and in providing information to the public about disease prevention, encourage the discovery and production in Florida of vaccines that prevent disease, monitor the supply and demand needs of researchers relating to stem cell research and other types of human tissue research, serve as a registry for all biomedical grants, and maintain a website with links to peer-reviewed biomedical research.¹²

Within the FL CURED is a 15-member advisory council that meets at least annually.¹³

Program Funding

Initially, the King Program was funded with income from \$150 million of principal in the Lawton Chiles Endowment Fund.¹⁴ In 2004, the Legislature appropriated additional funding, through a distribution from alcoholic beverage surcharge taxes. In 2006, the Legislature substituted a \$6 million dollar annual appropriation commitment from the General Revenue Fund to fund the Biomedical Research Trust Fund within the DOH for the purposes of the King Program.¹⁵ However, in the January 2009 Special Session A, for fiscal year 2008-2009 and each fiscal year thereafter, the annual appropriation from the General Revenue Fund to the Biomedical Research Trust Fund for purposes of the King Program was reduced to \$4.5 million.¹⁶ During the regular session in 2009, the Legislature eliminated the general revenue appropriation and provided that 2.5 percent of the revenue generated from the additional cigarette surcharge enacted in 2009, not to exceed \$25 million, was to be transferred into the Biomedical Research Trust Fund for the King Program for the 2009-2010 fiscal year.¹⁷

In 2010, when the Legislature reenacted the King Program, it continued funding for the King Program with an annual appropriation of \$20 million.¹⁸ Of the funds appropriated for the King Program, up to \$250,000 per year is designated to operate the FL CURED.

The Bankhead-Coley Program was established with a commitment for an appropriation of \$9 million per year from the General Revenue Fund.¹⁹ However, in the January 2009 Special

¹¹ Florida Center for Universal Research to Eradicate Disease, FL CURED, *2010 Annual Report*, p. V, Executive Summary, available at: <http://flcured.org/docs/AnnualReport2010.pdf> (Last visited on January 12, 2012).

¹² Section 381.855, F.S.

¹³ *Id.*

¹⁴ Section 215.5601, F.S. The Lawton Chiles Endowment Fund's principal originated from a portion of the state settlement received from its lawsuit with tobacco companies.

¹⁵ Chapter 2006-182, L.O.F.

¹⁶ Chapter 2009-5, L.O.F.

¹⁷ Chapter 2009-58, L.O.F.

¹⁸ *Supra* fn. 11.

Session A, for fiscal year 2008-2009 and each fiscal year thereafter, the annual appropriation from the General Revenue Fund to the Biomedical Research Trust Fund for purposes of the Bankhead-Coley Program was reduced to \$6.75 million.²⁰ During the regular session in 2009, the Legislature eliminated the general revenue appropriation and provided that 2.5 percent of the revenue generated from the additional cigarette surcharge enacted in 2009, not to exceed \$25 million, was to be transferred into the Biomedical Research Trust Fund for the Bankhead-Coley Program.²¹

Chapter 2009-58, Laws of Florida, provided that five percent of the revenue deposited into the Health Care Trust Fund pursuant to s. 210.011(9), F.S., related to the cigarette surcharge and s. 210.276(7), F.S., related to the surcharge on tobacco products, are to be reserved for research of tobacco-related or cancer-related illnesses. The sum of the revenue reserved, however, may not exceed \$50 million in any fiscal year. The Legislature did not specify an amount to be appropriated annually, after the 2009-2010 fiscal year, for the King Program or the Bankhead-Coley Program from these reserves. However, in 2010, when the Legislature reenacted the Bankhead-Coley Program along with the King Program, it continued funding for the Bankhead-Coley Program with an annual appropriation of \$20 million.²²

Any cash balance in the Biomedical Research Trust Fund at the end of a fiscal year remains in the trust fund to be available for carrying out the purposes of the trust fund. In addition, any balance of an appropriation from the Biomedical Research Trust Fund which has not been disbursed, but which is obligated, may be used for up to 3 years from the effective date of the original appropriation.

Biomedical Research Advisory Council²³ and Peer Review Panel²⁴

The purpose of the Council is to advise the State Surgeon General as to the direction and scope of the King Program. The Council is also required to consult with the State Surgeon General concerning grant awards for cancer research through the Bankhead-Coley Program.²⁵ Currently there are 11 members on the council, authorized to serve no more than two consecutive, 3-year terms.

In order to ensure that proposals for research funding within the King Program and the Bankhead-Coley Program are appropriate and evaluated fairly on the basis of scientific merit, a peer review panel of independent, scientifically qualified individuals is appointed to review the scientific content of each proposal to establish a “scientific”²⁶ priority score.²⁷ To eliminate

¹⁹ Section 381.922(5), F.S.

²⁰ Chapter 2009-5, L.O.F.

²¹ Chapter 2009-58, L.O.F.

²² *Supra* fn. 11.

²³ Section 215.5602(3), F.S.

²⁴ Section 215.5602(6) and (7), and s. 381.922(3)(b), F.S.

²⁵ Section 381.922(3)(a), F.S. However, s. 215.5602(11), F.S., contains an inconsistency with respect to the responsibility of the Council concerning awarding grants for cancer research.

²⁶ The King Program requires a *scientific* priority score in s. 215.5602(6), F.S. The Bankhead-Coley Program requires a priority score in s. 381.922(3)(b), F.S.

²⁷ A Bridge Grant application is ranked solely by the priority score or percentile assigned to its qualifying federal proposal in an eligible federal review process.

conflicts of interest, peer reviewers come from outside the state of Florida. Reviewers are experts in their fields from universities, government agencies, and private industry who are matched according to application topic and area of expertise. The priority scores must be considered by the Council in determining which proposals will be recommended for funding to the State Surgeon General.

Meetings of the Council and the peer review panel are subject to ch. 119, F.S., relating to public records; s. 286.011, F.S., relating to public meetings; and s. 24, Art. I of the State Constitution relating to access to public meetings and records.

Program Administration and Grant Management

The Office of Public Health Research within the DOH manages both the King Program and the Bankhead-Coley Program with support from the Council and Lytmos Group, LLC (Lytmos), pursuant to contract.²⁸

The law authorizes, but does not require, the department, after consultation with the Council, to adopt rules as necessary to implement these programs.²⁹ The department has not adopted rules to implement these programs. Instead, the department publishes, on its website, the procedures for implementing these two programs.³⁰

The *GrantEase*TM online system is used by grantees to access grant information and submit progress reports, invoices, financial reports, and change requests during the life of the grant. At least once during the grant period, the grantee is subjected to on-site monitoring for both scientific and administrative purposes.

III. Effect of Proposed Changes:

Section 1 amends s. 20.435, F.S., to extend the time, from 3 years to 5 years, that any balance of any appropriation from the Biomedical Research Trust Fund, which is not disbursed but which is obligated pursuant to a contract or committed to be expended, may be carried forward after the effective date of the original appropriation.

Section 2 amends s. 215.5602, F.S., to replace the member of the Council, who is the chief executive officer of the Florida/Puerto Rico Affiliate of the American Heart Association, with the chief executive officer of the Greater Southeast Affiliate of the American Heart Association.³¹ This section also provides for staggered terms of members on the Council by

²⁸ James & Esther King Biomedical Research Program, *Annual Report 2010*, available at: <http://forms.floridabiomed.com/AnnualReports/Annual10.pdf> (Last visited on January 13, 2012).

²⁹ Section 215.5602(9), F.S.

³⁰ See <http://www.doh.state.fl.us/ExecStaff/biomed/ophrsitemap.html>, (Last visited on January 13, 2012).

³¹ The following states and territories are part of the Greater Southeast Affiliate: Alabama, Florida, Georgia, Louisiana, Mississippi, Puerto Rico, and Tennessee. American Heart Association, *Who We Are: Greater Southeast Affiliate*, available at: http://www.heart.org/HEARTORG/Affiliate/Who-We-Are-Greater-Southeast-Affiliate_UCM_303250_SubHomePage.jsp (Last visited on January 13, 2012).

requiring the first two appointments by the Governor and the first appointment by the President of the Senate and the Speaker of the House of Representatives on or after July 1, 2012, to be for a term of 2 years.

In this section, the Council's authority to develop and supervise research peer review panels is removed. Furthermore, the department, rather than the Surgeon General, is no longer required to consult with the Council prior to appointing peer review panels to review the scientific *merit* of research proposals.

This section clarifies that a member of the Council or peer review panel may not participate in any discussion or decision *of the Council or panel*, with respect to a research proposal by an entity with which the member is associated, employed, or contracted, to avoid a conflict of interest.

This section removes the provision that specifies that meetings of the council and peer review panels are subject to Florida's public records laws. However, by operation of ch. 119, F.S., s. 286.011, F.S., and s. 24, Art. I of the State Constitution, the council and peer review panels would still be subject to such public record laws.

This section also exempts grant programs under the purview of the Council from rulemaking authority under ch. 120, F.S., and removes the department's rulemaking authority to implement the section.

This section amends the Council's requirement to submit an annual progress report to the Governor, the State Surgeon General, and the Legislature to require the report to review, for each fiscal year, all programs under the Council's purview. The report is required to be submitted annually by December 15, instead of by February 1. The reporting requirement is also changed to require the Council to include in its annual report the state ranking from the National Institutes of Health, rather than a broader requirement for the total amount of biomedical research funding currently flowing into the state from any source; the progress toward the program's goals; and recommendations that further the program's mission.

Section 3 amends s. 381.855, F.S., to specify that the member of the advisory council of the FL CURED from the American Heart Association must be from the Greater Southeast Affiliate.

Section 4 amends s. 381.922, F.S., to require grants to be awarded by the department, instead of the State Surgeon General.

This section authorizes, rather than requires, the department to consider certain types of applications for funding. This section clarifies that peer review panels are to review the scientific merit, not content, of each research proposal and establish its priority score for the Council to consider.

This section clarifies that a member of the Council or peer review panel may not participate in any discussion or decision *of the Council or panel*, with respect to a research proposal by an entity with which the member is associated, employed, or contracted, to avoid a conflict of interest.

This section removes the provision that specifies that meetings of the council and peer review panels are subject to Florida's public records laws. However, by operation of ch. 119, F.S., s. 286.011, F.S., and s. 24, Art. I of the State Constitution, it is likely that the peer review panels would still be subject to such open meetings and public records laws.

This section deletes the department's annual reporting requirement to the Governor and Legislature, which requires the department to report the progress toward the Bankhead-Coley Program's mission and make recommendations to further the program's purpose. Instead, this requirement is added to section 2 of the bill.

Section 5 provides an effective date of July 1, 2012.

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, Section 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. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Council may realize some cost-savings because it no longer is required to develop and supervise research peer review panels.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although lines 157-159 and 254-256 delete the affirmative statement that meetings of the council and the peer review panels are subject to Florida's public record laws, such meetings are likely to be subject to Florida's open meetings and public records laws by operation of law, notwithstanding striking this provision.

Florida's Government in the Sunshine Law (Sunshine Law), under s. 286.011, F.S., is equally applicable to elected and appointed boards and applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.³²

The three basic requirements of s. 286.011, F.S., are that meetings of public boards or commissions must be open to the public, reasonable notice of such meetings must be given, and minutes of the meetings must be taken. Under s. 24, Art. I of the Florida Constitution, virtually all collegial public bodies are covered by the open meetings mandate, with the exception of the judiciary and the state Legislature.³³

Advisory bodies created pursuant to law are subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them.³⁴ If the advisory body conducts only fact-finding and has no decision-making function, then it may be exempt from the Sunshine Law.³⁵

The bill requires the department and the State Surgeon General to each appoint peer review panels and each panel is required to prioritize research proposals to recommend the funding of such proposals. Because the panels are created by law, appointed by an agency, and do more than merely fact-finding, it is likely that the panels would be deemed subject to Florida's Sunshine Law.

As for the peer review panels' meeting materials and records, they are likely to be subject to Florida's public records law under ch. 119, F.S., because all materials made or received by an agency³⁶ in connection with official business, which are used to perpetuate, communicate, or formalize knowledge are required to be open to public inspection unless the Legislature specifically exempts them from disclosure. Omitting the peer review panel meetings from the statement that such meetings are subject to Florida's open meetings and public records laws is not likely to constitute an exemption by the Legislature. The Legislature must pass a separate bill by a two-thirds vote of each house to enact a public records or public meeting exemption, and the law must state with specificity the public necessity justifying the exemption, which must be no broader than necessary to accomplish the stated purpose of the law.³⁷

³² Government-in-the-Sunshine Manual, Volume 33, 2011 Edition, p. 3.

³³ *Id.*

³⁴ *Id.* at p. 6.

³⁵ *Id.* at p. 7.

³⁶ Advisory boards or committees have been interpreted in case law and by the Attorney General's Office to be subject to the public records law. Government-in-the-Sunshine Manual, Volume 33, 2011 Edition, p. 59.

³⁷ FLA. CONST. art. I, s. 24(c).

SB 1856 has been filed, which also removes the provision that specifies that meetings of peer review panels are subject to Florida's public records laws, and provides a public necessity statement. However, in order for a bill to exempt a record or meeting from the public records or meetings laws it must state that the record or meeting is:

- Exempt from s. 24, Art. I of the State Constitution;
- Exempt from s. 119.07(1) or s. 286.011, F.S.; and
- Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.³⁸

Therefore, SB 1856, is likely still not sufficient to make meetings or records of the peer review panels confidential and exempt from Florida's public records and meetings laws.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on January 26, 2012:

The committee substitute:

- Provides that the Council may develop guidelines (rather than administrative procedures) relating to solicitation, review, and award of research grants and fellowships;
- Requires the task force to appoint multiple peer review panels, as opposed to just one peer review panel, of independent, scientifically qualified individuals to review the scientific merit of each proposal and establish its scientific priority score;
- Omits language providing that meetings of the council are subject to chapter 119, s. 286.011, and s. 24, Art I of the State Constitution.
- Removes a requirement that the State Surgeon General, in consultation with the Council, is to appoint a peer review panel, so that the bill consistently provides that the department shall appoint peer review panels; and
- Makes technical changes.

B. Amendments:

None.

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

³⁸ Section 119.15(4)(a), F.S.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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The Committee on Governmental Oversight and Accountability
(Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 121 - 256
and insert:

(g) Developing guidelines ~~administrative procedures~~
relating to solicitation, review, and award of research grants
and fellowships, to ensure an impartial, high-quality peer
review system.

~~(h) Developing and supervising research peer review panels.~~

(h) ~~(i)~~ Reviewing reports of peer review panels and making
recommendations for research grants and fellowships.

(i) ~~(j)~~ Developing and providing oversight regarding



629632

mechanisms for the dissemination of research results.

(5)

(b) Grants and fellowships shall be awarded by the State Surgeon General, after consultation with the council, on the basis of scientific merit, as determined by the competitively an open, peer-reviewed competitive peer review process to ensure that ensures objectivity, consistency, and high quality. The following types of applications may shall be considered for funding:

1. Investigator-initiated research grants.

2. Institutional research grants.

3. Predoctoral and postdoctoral research fellowships.

(6) To ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit, the department State Surgeon General, in consultation with the council, shall appoint a peer review panels panel of independent, scientifically qualified individuals to review the scientific merit content of each proposal and establish its scientific priority score. The priority scores shall be forwarded to the council and must be considered in determining which proposals shall be recommended for funding.

(7) The council and the peer review panel shall establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest. A member of the council or panel may not participate in any discussion or decision of the council or panel with respect to a research proposal by any firm, entity, or agency with which the member is associated as a member of the governing body or as an employee, or with which the member has entered into a contractual



629632

arrangement. ~~Meetings of the council and the peer review panels shall be subject to the provisions of chapter 119, s. 286.011, and s. 24, Art. I of the State Constitution.~~

(9) The grant programs under the purview of the council are exempt from rulemaking authority under chapter 120 department,
~~after consultation with the council, may adopt rules as necessary to implement this section.~~

(10) The council shall submit an annual progress report for each fiscal year on programs under its purview ~~on the state of biomedical research in this state~~ to the Florida Center for Universal Research to Eradicate Disease and to the Governor, the State Surgeon General, the President of the Senate, and the Speaker of the House of Representatives by December 15 ~~February~~
1. The report must include:

(a) A list of research projects supported by grants or fellowships awarded under the program.

(b) A list of recipients of program grants or fellowships.

(c) A list of publications in peer reviewed journals involving research supported by grants or fellowships awarded under the program.

(d) The state ranking and total amount of biomedical research funding currently flowing into the state from the National Institutes of Health.

(e) New grants for biomedical research which were funded based on research supported by grants or fellowships awarded under the program.

(f) Progress towards programmatic goals, particularly in the prevention, diagnosis, treatment, and cure of diseases related to tobacco use, including cancer, cardiovascular



629632

disease, stroke, and pulmonary disease.

(g) Recommendations that further the missions of the programs.

Section 3. Paragraph (a) of subsection (5) of section 381.855, Florida Statutes, is amended to read:

381.855 Florida Center for Universal Research to Eradicate Disease.—

(5) There is established within the center an advisory council that shall meet at least annually.

(a) The council shall consist of one representative from a Florida not-for-profit institution engaged in basic and clinical biomedical research and education which receives more than \$10 million in annual grant funding from the National Institutes of Health, to be appointed by the State Surgeon General from a different institution each term, and one representative from and appointed by each of the following entities:

1. Enterprise Florida, Inc.
2. BioFlorida.
3. The Biomedical Research Advisory Council.
4. The Florida Medical Foundation.
5. Pharmaceutical Research and Manufacturers of America.
6. The American Cancer Society, Florida Division, Inc.
7. The American Heart Association, Greater Southeast Affiliate.
8. The American Lung Association of Florida.
9. The American Diabetes Association, South Coastal Region.
10. The Alzheimer's Association.
11. The Epilepsy Foundation.
12. The National Parkinson Foundation.



629632

13. The Florida Public Health Institute, Inc.

14. The Florida Research Consortium.

Section 4. Subsections (3), (4), and (5) of section 381.922, Florida Statutes, are amended to read:

381.922 William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.—

(3)(a) Applications for funding for cancer research may be submitted by any university or established research institute in the state. All qualified investigators in the state, regardless of institutional affiliation, shall have equal access and opportunity to compete for the research funding. Collaborative proposals, including those that advance the program's goals enumerated in subsection (2), may be given preference. Grants shall be awarded by the department ~~State Surgeon General~~, after consultation with the Biomedical Research Advisory Council, on the basis of scientific merit, as determined by the competitively ~~an open, peer-reviewed competitive peer review~~ process to ensure ~~that ensures~~ objectivity, consistency, and high quality. The following types of applications may ~~shall~~ be considered for funding:

1. Investigator-initiated research grants.

2. Institutional research grants.

3. Collaborative research grants, including those that advance the finding of cures through basic or applied research.

(b) In order to ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit, the department ~~State Surgeon General~~, ~~in consultation with the council~~, shall appoint ~~a~~ peer review panels ~~panel~~ of independent, scientifically qualified



629632

individuals to review the scientific merit ~~content~~ of each proposal and establish its priority score. The priority scores shall be forwarded to the council and must be considered in determining which proposals shall be recommended for funding.

(c) The council and the peer review panel shall establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflicts of interest. A member of the council or panel may not participate in any discussion or decision of the council or panel with respect to a research proposal by any firm, entity, or agency with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement. ~~Meetings of the council and the peer review panels are subject to chapter 119, s. 286.011, and s. 24, Art. I of the State Constitution.~~

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

And the title is amended as follows:

Delete lines 21 - 45

and insert:

Biomedical Research Program; deleting a provision that subjects meetings of the council and peer review panels to public records and public meetings requirements; providing that grant programs under the purview of the advisory council are exempt from rulemaking authority; requiring that the council submit an annual progress report for each fiscal year on programs under its purview to certain entities by a specified date; revising the required content of the



629632

report; amending s. 381.855, F.S.; specifying the name of an affiliate chapter of the American Heart Association as it relates to the membership of the advisory council within the Florida Center for Universal Research to Eradicate Disease; amending s. 381.922, F.S.; requiring that the department, rather than the State Surgeon General, in consultation with the council, appoint a peer review panel of independent, scientifically qualified individuals award grants under the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program; providing that certain types of applications may be considered for funding in the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program; requiring that the department, rather than the State Surgeon General, without the consultation of the council, appoint a peer review panel of independent, scientifically qualified individuals to review the scientific merit of each proposal for research funding and establish its priority score; deleting a provision that subjects meetings of the council and peer review panels to public records and public meetings requirements; deleting the

By Senator Flores

38-00293B-12

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1 A bill to be entitled
 2 An act relating to biomedical research; amending s.
 3 20.435, F.S.; revising the number of years that the
 4 balance of an appropriation from the Biomedical
 5 Research Trust Fund may be carried forward following
 6 the effective date of the original appropriation;
 7 amending s. 215.5602, F.S.; revising a reference to an
 8 affiliate chapter of the American Heart Association;
 9 revising the terms of appointment for certain members
 10 of the Biomedical Research Advisory Council within the
 11 Department of Health; revising the responsibilities of
 12 the council; requiring that the department, rather
 13 than the State Surgeon General, in consultation with
 14 the council, appoint a peer review panel of
 15 independent, scientifically qualified individuals to
 16 review the scientific merit of each proposal and
 17 establish its scientific priority score under the
 18 James and Esther King Biomedical Research Program;
 19 providing that certain types of applications may be
 20 considered for funding by the James and Esther King
 21 Biomedical Research Program; deleting a reference to
 22 meetings between peer review panels and the council;
 23 providing that grant programs under the purview of the
 24 advisory council are exempt from rulemaking authority;
 25 requiring that the council submit an annual progress
 26 report for each fiscal year on programs under its
 27 purview to certain entities by a specified date;
 28 revising the required content of the report; amending
 29 s. 381.855, F.S.; specifying the name of an affiliate

Page 1 of 10

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

38-00293B-12

2012616__

30 chapter of the American Heart Association as it
 31 relates to the membership of the advisory council
 32 within the Florida Center for Universal Research to
 33 Eradicate Disease; amending s. 381.922, F.S.;
 34 requiring that the department, rather than the State
 35 Surgeon General, in consultation with the council,
 36 appoint a peer review panel of independent,
 37 scientifically qualified individuals to review the
 38 scientific merit of each proposal and establish its
 39 scientific priority score under the William G. "Bill"
 40 Bankhead, Jr., and David Coley Cancer Research
 41 Program; providing that certain types of applications
 42 may be considered for funding in the William G. "Bill"
 43 Bankhead, Jr., and David Coley Cancer Research
 44 Program; deleting a reference to meetings between peer
 45 review panels and the council; deleting the
 46 requirement that the department submit to the Governor
 47 and the Legislature a report that indicates progress
 48 toward the program's mission and makes recommendations
 49 that further its purpose; providing an effective date.

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

52
 53 Section 1. Paragraph (c) of subsection (8) of section
 54 20.435, Florida Statutes, is amended to read:
 55 20.435 Department of Health; trust funds.—The following
 56 trust funds shall be administered by the Department of Health:
 57 (8) Biomedical Research Trust Fund.
 58 (c) Notwithstanding s. 216.301 and pursuant to s. 216.351,

Page 2 of 10

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38-00293B-12 2012616
 59 any balance of any appropriation from the Biomedical Research
 60 Trust Fund which is not disbursed but which is obligated
 61 pursuant to contract or committed to be expended may be carried
 62 forward for up to 5 3 years following the effective date of the
 63 original appropriation.

64 Section 2. Paragraph (a) of subsection (3), subsection (4),
 65 paragraph (b) of subsection (5), and subsections (6), (7), (9),
 66 and (10) of section 215.5602, Florida Statutes, are amended to
 67 read:

68 215.5602 James and Esther King Biomedical Research
 69 Program.—

70 (3) There is created within the Department of Health the
 71 Biomedical Research Advisory Council.

72 (a) The council shall consist of 11 members, including: the
 73 chief executive officer of the Florida Division of the American
 74 Cancer Society, or a designee; the chief executive officer of
 75 the Greater Southeast Florida/Puerto Rico Affiliate of the
 76 American Heart Association, or a designee; and the chief
 77 executive officer of the American Lung Association of Florida,
 78 or a designee. The remaining 8 members of the council shall be
 79 appointed as follows:

80 1. The Governor shall appoint four members, two members
 81 with expertise in the field of biomedical research, one member
 82 from a research university in the state, and one member
 83 representing the general population of the state.

84 2. The President of the Senate shall appoint two members,
 85 one member with expertise in the field of behavioral or social
 86 research and one representative from a cancer program approved
 87 by the American College of Surgeons.

38-00293B-12 2012616
 88 3. The Speaker of the House of Representatives shall
 89 appoint two members, one member from a professional medical
 90 organization and one representative from a cancer program
 91 approved by the American College of Surgeons.

92
 93 In making these appointments, the Governor, the President of the
 94 Senate, and the Speaker of the House of Representatives shall
 95 select primarily, but not exclusively, Floridians with
 96 biomedical and lay expertise in the general areas of cancer,
 97 cardiovascular disease, stroke, and pulmonary disease. The
 98 appointments shall be for a 3-year term and shall reflect the
 99 diversity of the state's population. An appointed member may not
 100 serve more than two consecutive terms. The first two
 101 appointments by the Governor and the first appointment by the
 102 President of the Senate and the Speaker of the House of
 103 Representatives on or after July 1, 2012, shall be for a term of
 104 2 years.

105 (4) The council shall advise the State Surgeon General as
 106 to the direction and scope of the biomedical research program.
 107 The responsibilities of the council may include, but are not
 108 limited to:

109 (a) Providing advice on program priorities and emphases.

110 (b) Providing advice on the overall program budget.

111 (c) Participating in periodic program evaluation.

112 (d) Assisting in the development of guidelines to ensure
 113 fairness, neutrality, and adherence to the principles of merit
 114 and quality in the conduct of the program.

115 (e) Assisting in the development of appropriate linkages to
 116 nonacademic entities, such as voluntary organizations, health

38-00293B-12 2012616__

care delivery institutions, industry, government agencies, and public officials.

(f) Developing criteria and standards for the award of research grants.

(g) Developing administrative procedures relating to solicitation, review, and award of research grants and fellowships, to ensure an impartial, high-quality peer review system.

~~(h) Developing and supervising research peer review panels.~~

(h) ~~(i)~~ Reviewing reports of peer review panels and making recommendations for research grants and fellowships.

(i) ~~(j)~~ Developing and providing oversight regarding mechanisms for the dissemination of research results.

(5)

(b) Grants and fellowships shall be awarded by the State Surgeon General, after consultation with the council, on the basis of scientific merit, as determined by an open competitive peer review process that ensures objectivity, consistency, and high quality. The following types of applications may ~~shall~~ be considered for funding:

1. Investigator-initiated research grants.
2. Institutional research grants.
3. Predoctoral and postdoctoral research fellowships.

(6) To ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit, the department ~~State Surgeon General~~, ~~in consultation with the council~~, shall appoint a peer review panel of independent, scientifically qualified individuals to review the scientific merit ~~content~~ of each proposal and establish its

38-00293B-12 2012616__

scientific priority score. The priority scores shall be forwarded to the council and must be considered in determining which proposals shall be recommended for funding.

(7) The council and the peer review panel shall establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest. A member of the council or panel may not participate in any discussion or decision of the council or panel with respect to a research proposal by any firm, entity, or agency with which the member is associated as a member of the governing body or as an employee, or with which the member has entered into a contractual arrangement. Meetings of the council are ~~and the peer review panels shall be~~ subject to the ~~provisions of~~ chapter 119, s. 286.011, and s. 24, Art. I of the State Constitution.

(9) The grant programs under the purview of the council are exempt from rulemaking authority under chapter 120 ~~department, after consultation with the council, may adopt rules as necessary to implement this section.~~

(10) The council shall submit an annual progress report for each fiscal year on programs under its purview ~~on the state of biomedical research in this state~~ to the Florida Center for Universal Research to Eradicate Disease and to the Governor, the State Surgeon General, the President of the Senate, and the Speaker of the House of Representatives by December 15 ~~February~~.
4. The report must include:

- (a) A list of research projects supported by grants or fellowships awarded under the program.
- (b) A list of recipients of program grants or fellowships.
- (c) A list of publications in peer reviewed journals

38-00293B-12 2012616

involving research supported by grants or fellowships awarded under the program.

(d) The state ranking and total amount of biomedical research funding currently flowing into the state from the National Institutes of Health.

(e) New grants for biomedical research which were funded based on research supported by grants or fellowships awarded under the program.

(f) Progress toward the program's goals, particularly in the prevention, diagnosis, treatment, and cure of diseases related to tobacco use, including cancer, cardiovascular disease, stroke, and pulmonary disease.

(g) Recommendations that further the program's mission.

Section 3. Paragraph (a) of subsection (5) of section 381.855, Florida Statutes, is amended to read:

381.855 Florida Center for Universal Research to Eradicate Disease.—

(5) There is established within the center an advisory council that shall meet at least annually.

(a) The council shall consist of one representative from a Florida not-for-profit institution engaged in basic and clinical biomedical research and education which receives more than \$10 million in annual grant funding from the National Institutes of Health, to be appointed by the State Surgeon General from a different institution each term, and one representative from and appointed by each of the following entities:

1. Enterprise Florida, Inc.
2. BioFlorida.
3. The Biomedical Research Advisory Council.

38-00293B-12 2012616

4. The Florida Medical Foundation.

5. Pharmaceutical Research and Manufacturers of America.

6. The American Cancer Society, Florida Division, Inc.

7. The American Heart Association, Greater Southeast Affiliate.

8. The American Lung Association of Florida.

9. The American Diabetes Association, South Coastal Region.

10. The Alzheimer's Association.

11. The Epilepsy Foundation.

12. The National Parkinson Foundation.

13. The Florida Public Health Institute, Inc.

14. The Florida Research Consortium.

Section 4. Subsections (3), (4), and (5) of section 381.922, Florida Statutes, are amended to read:

381.922 William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.—

(3) (a) Applications for funding for cancer research may be submitted by any university or established research institute in the state. All qualified investigators in the state, regardless of institutional affiliation, shall have equal access and opportunity to compete for the research funding. Collaborative proposals, including those that advance the program's goals enumerated in subsection (2), may be given preference. Grants shall be awarded by the department ~~State Surgeon General, after consultation with the Biomedical Research Advisory Council~~, on the basis of scientific merit, as determined by an open, competitive peer review process that ensures objectivity, consistency, and high quality. The following types of applications may ~~shall~~ be considered for funding:

38-00293B-12

2012616

233 1. Investigator-initiated research grants.
 234 2. Institutional research grants.
 235 3. Collaborative research grants, including those that
 236 advance the finding of cures through basic or applied research.
 237 (b) In order to ensure that all proposals for research
 238 funding are appropriate and are evaluated fairly on the basis of
 239 scientific merit, the State Surgeon General, in consultation
 240 with the council, shall appoint a peer review panel of
 241 independent, scientifically qualified individuals to review the
 242 scientific merit content of each proposal and establish its
 243 priority score. The priority scores shall be forwarded to the
 244 council and must be considered in determining which proposals
 245 shall be recommended for funding.
 246 (c) The council and the peer review panel shall establish
 247 and follow rigorous guidelines for ethical conduct and adhere to
 248 a strict policy with regard to conflicts of interest. A member
 249 of the council or panel may not participate in any discussion or
 250 decision of the council or panel with respect to a research
 251 proposal by any firm, entity, or agency with which the member is
 252 associated as a member of the governing body or as an employee
 253 or with which the member has entered into a contractual
 254 arrangement. Meetings of the council ~~and the peer review panels~~
 255 are subject to chapter 119, s. 286.011, and s. 24, Art. I of the
 256 State Constitution.
 257 ~~(4) By December 15 of each year, the Department of Health~~
 258 ~~shall submit to the Governor, the President of the Senate, and~~
 259 ~~the Speaker of the House of Representatives a report indicating~~
 260 ~~progress towards the program's mission and making~~
 261 ~~recommendations that further its purpose.~~

Page 9 of 10

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38-00293B-12

2012616

262 ~~(4)(5)~~ The William G. "Bill" Bankhead, Jr., and David Coley
 263 Cancer Research Program is funded pursuant to s. 215.5602(12).
 264 Funds appropriated for the William G. "Bill" Bankhead, Jr., and
 265 David Coley Cancer Research Program shall be distributed
 266 pursuant to this section to provide grants to researchers
 267 seeking cures for cancer and cancer-related illnesses, with
 268 emphasis given to the goals enumerated in this section. From the
 269 total funds appropriated, an amount of up to 10 percent may be
 270 used for administrative expenses. From funds appropriated to
 271 accomplish the goals of this section, up to \$250,000 shall be
 272 available for the operating costs of the Florida Center for
 273 Universal Research to Eradicate Disease.
 274 Section 5. This act shall take effect July 1, 2012.

Page 10 of 10

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

1-26-12
Topic BIOMEDICAL RESEARCH Bill Number 0616
Name Michael Fischer Amendment Barcode _____ (if applicable)
Job Title _____
Address PO BOX 1197 Phone 222-6344
Street _____
City _____ State FL Zip 32303
E-mail mike.fischer@flhhs.com
Speaking: ☒ For ☐ Against ☐ Information
Representing AMERICAN CANCER SOCIETY
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

1/26/12
Topic Biomedical Research Bill Number 6116
Name Jo Morris Amendment Barcode _____ (if applicable)
Job Title Government Analyst
Address 4052 Bald Cypress Way Bin #A01 Phone 850-245-4006
Street _____
City Tallahassee State FL Zip 32311
E-mail _____
Speaking: ☒ For ☐ Against ☐ Information
Representing Florida Department of Health
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1 / 26 / 2012

Meeting Date

Topic _____ Bill Number 616 (if applicable)

Name BRIAN PITTS Amendment Barcode _____ (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH Phone 727/897-9291
Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public recr

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 656

INTRODUCER: Senator Hays

SUBJECT: Repealing Budget Provisions

DATE: January 24, 2012

REVISED: _____

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

I. Summary:

This bill deletes an underutilized provision requiring the submission of unit-cost data in legislative budget requests.

This bill substantially amends sections 216.023, 216.013, and 489.145 of the Florida Statutes.

II. Present Situation:

Section 216.023, F.S., requires the head of each state agency to submit a final legislative budget request to the Legislature and to the Governor based on the agency's independent judgment of its needs by October 15 of each year. The legislative budget request must include specified information for each program such as the authority for the program, details on trust funds and fees, and the total number of positions.

Subsection (4)(b) provides that "it is the intent of the Legislature that total accountability measures, including unit-cost data, serve not only as a budgeting tool but also as a policymaking tool and an accountability tool." Each state agency and the judicial branch are required to submit a one-page summary of information for the preceding year that must contain:

1. The final budget for the agency and the judicial branch.
2. Total funds from the General Appropriations Act.
3. Adjustments to the General Appropriations Act.

4. The line-item listings of all activities.
5. The number of activity units performed or accomplished.
6. Total expenditures for each activity, including amounts paid to contractors and subordinate entities. Expenditures related to administrative activities not aligned with output measures must consistently be allocated to activities with output measures prior to computing unit costs.
7. The cost per unit for each activity, including the costs allocated to contractors and subordinate entities.
8. The total amount of reversions and pass-through expenditures omitted from unit-cost calculations.

If an agency does not submit this information, the Legislature is required to reduce the allocation for the agency in the General Appropriations Act by at least 10 percent.

These reports have not been utilized in making appropriations decisions, or in policy making or accountability analyses. In May 2005, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a report relating to unit costs.¹ The report indicated that the usefulness of the unit cost information was limited because “many agencies are not allocating all of their costs when calculating their unit costs, and agencies are using different methodologies to calculate their direct and indirect activity costs.” According to the report “these differences limit the Legislature’s ability to validly compare the efficiency of similar activities performed by different agencies or to assess changes in agency performance over time.”

In 2006, the Legislature created a working group consisting of representatives from the Governor’s Office, OPPAGA, the Auditor General, the Department of Financial Services, and legislative staff to develop a cost-allocation methodology for agencies to use in the computation of activity and unit costs.²

The workgroup concluded that “to fully achieve the primary goal of creating auditable and comparable unit cost data, the Legislature should consider a number of changes to current cost accounting and indirect cost allocation practices prior to the development of a new unit cost methodology” but indicated that these changes “would likely require significant and potentially costly changes to current agency accounting practices.”³

¹ *More Uniform Methodology Is Needed for State Agencies' Unit Cost Information*, Report No. 05-35, May 2005
<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0535rpt.pdf>

² Chapter 2006-146, s. 18, L. O. F.

³ *Unit Cost Calculation Workgroup Report Required by Chapter 2006-146, Laws of Florida, December 31, 2006*.
See also, *The Legislature Has Taken Steps to Promote the Self-Sufficiency of Regulatory Programs*, Report 07-39, September 2007.

III. Effect of Proposed Changes:

The bill repeals subsection (4)(b) of s. 216.023, F.S., and makes corresponding changes to s. 216.013, F.S., relating to long-range program plans, and conforms a cross-reference in s. 489.145, F.S.

The bill takes effect July 1, 2012.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

By Senator Hays

20-00551-12

2012656

1 A bill to be entitled
 2 An act relating to repealing budget provisions;
 3 amending s. 216.023, F.S.; deleting certain budget
 4 summary requirements; amending ss. 216.013 and
 5 489.145, F.S.; conforming cross-references; providing
 6 an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Subsection (4) of section 216.023, Florida
 11 Statutes, is amended to read:
 12 216.023 Legislative budget requests to be furnished to
 13 Legislature by agencies.—
 14 (4) ~~(a)~~ The legislative budget request must contain for each
 15 program:
 16 (a) 1- The constitutional or statutory authority for a
 17 program, a brief purpose statement, and approved program
 18 components.
 19 (b) 2- Information on expenditures for 3 fiscal years
 20 (actual prior-year expenditures, current-year estimated
 21 expenditures, and agency budget requested expenditures for the
 22 next fiscal year) by appropriation category.
 23 (c) 3- Details on trust funds and fees.
 24 (d) 4- The total number of positions (authorized, fixed, and
 25 requested).
 26 (e) 5- An issue narrative describing and justifying changes
 27 in amounts and positions requested for current and proposed
 28 programs for the next fiscal year.
 29 (f) 6- Information resource requests.

Page 1 of 6

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20-00551-12

2012656

30 (g) 7- Supporting information, including applicable cost-
 31 benefit analyses, business case analyses, performance
 32 contracting procedures, service comparisons, and impacts on
 33 performance standards for any request to outsource or privatize
 34 agency functions. The cost-benefit and business case analyses
 35 must include an assessment of the impact on each affected
 36 activity ~~from those identified in accordance with paragraph (b).~~
 37 Performance standards must include standards for each affected
 38 activity and be expressed in terms of the associated unit of
 39 activity.
 40 (h) 8- An evaluation of any major outsourcing and
 41 privatization initiatives undertaken during the last 5 fiscal
 42 years having aggregate expenditures exceeding \$10 million during
 43 the term of the contract. The evaluation shall include an
 44 assessment of contractor performance, a comparison of
 45 anticipated service levels to actual service levels, and a
 46 comparison of estimated savings to actual savings achieved.
 47 Consolidated reports issued by the Department of Management
 48 Services may be used to satisfy this requirement.
 49 (i) 9- Supporting information for any proposed consolidated
 50 financing of deferred-payment commodity contracts including
 51 guaranteed energy performance savings contracts. Supporting
 52 information must also include narrative describing and
 53 justifying the need, baseline for current costs, estimated cost
 54 savings, projected equipment purchases, estimated contract
 55 costs, and return on investment calculation.
 56 (j) 10- For projects that exceed \$10 million in total cost,
 57 the statutory reference of the existing policy or the proposed
 58 substantive policy that establishes and defines the project's

Page 2 of 6

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20-00551-12

2012656__

governance structure, planned scope, main business objectives that must be achieved, and estimated completion timeframes. Information technology budget requests for the continuance of existing hardware and software maintenance agreements, renewal of existing software licensing agreements, or the replacement of desktop units with new technology that is similar to the technology currently in use are exempt from this requirement.

~~(b) It is the intent of the Legislature that total accountability measures, including unit cost data, serve not only as a budgeting tool but also as a policymaking tool and an accountability tool. Therefore, each state agency and the judicial branch must submit a summary of information for the preceding year in accordance with the legislative budget instructions. Each summary must provide a one page overview and must contain:~~

- ~~1. The final budget for the agency and the judicial branch.~~
- ~~2. Total funds from the General Appropriations Act.~~
- ~~3. Adjustments to the General Appropriations Act.~~
- ~~4. The line item listings of all activities.~~
- ~~5. The number of activity units performed or accomplished.~~
- ~~6. Total expenditures for each activity, including amounts paid to contractors and subordinate entities. Expenditures related to administrative activities not aligned with output measures must consistently be allocated to activities with output measures prior to computing unit costs.~~
- ~~7. The cost per unit for each activity, including the costs allocated to contractors and subordinate entities.~~
- ~~8. The total amount of reversions and pass through expenditures omitted from unit cost calculations.~~

20-00551-12

2012656__

~~At the regular session immediately following the submission of the agency unit cost summary, the Legislature shall reduce in the General Appropriations Act for the ensuing fiscal year, by an amount equal to at least 10 percent of the allocation for the fiscal year preceding the current fiscal year, the funding of each state agency that fails to submit the report required under this paragraph.~~

Section 2. Paragraph (h) of subsection (1) of section 216.013, Florida Statutes, is amended to read:

216.013 Long-range program plan.—State agencies and the judicial branch shall develop long-range program plans to achieve state goals using an interagency planning process that includes the development of integrated agency program service outcomes. The plans shall be policy based, priority driven, accountable, and developed through careful examination and justification of all agency and judicial branch programs.

(1) Long-range program plans shall provide the framework for the development of budget requests and shall identify or update:

(h) Legislatively approved output and outcome performance measures. ~~Each performance measure must identify the associated activity contributing to the measure from those identified in accordance with s. 216.023(4)(b).~~

Section 3. Paragraph (a) of subsection (6) of section 489.145, Florida Statutes, is amended to read:

489.145 Guaranteed energy, water, and wastewater performance savings contracting.—

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The

20-00551-12 2012656
Department of Management Services, with the assistance of the
Office of the Chief Financial Officer, shall, within available
resources, provide technical content assistance to state
agencies contracting for energy, water, and wastewater
efficiency and conservation measures and engage in other
activities considered appropriate by the department for
promoting and facilitating guaranteed energy, water, and
wastewater performance contracting by state agencies. The
Department of Management Services shall review the investment-
grade audit for each proposed project and certify that the cost
savings are appropriate and sufficient for the term of the
contract. The Office of the Chief Financial Officer, with the
assistance of the Department of Management Services, shall,
within available resources, develop model contractual and
related documents for use by state agencies. Prior to entering
into a guaranteed energy, water, and wastewater performance
savings contract, any contract or lease for third-party
financing, or any combination of such contracts, a state agency
shall submit such proposed contract or lease to the Office of
the Chief Financial Officer for review and approval. A proposed
contract or lease shall include:
(a) Supporting information required by s. 216.023(4)(i) ~~or~~
~~216.023(4)(a)9.~~ in ss. 287.063(5) and 287.064(11). For contracts
approved under this section, the criteria may, at a minimum,
include the specification of a benchmark cost of capital and
minimum real rate of return on energy, water, or wastewater
savings against which proposals shall be evaluated.
The Office of the Chief Financial Officer shall not approve any

20-00551-12 2012656
contract submitted under this section from a state agency that
does not meet the requirements of this section.
Section 4. This act shall take effect July 1, 2012.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 682

INTRODUCER: Children, Families, and Elder Affairs Committee, Senator Richter, and others

SUBJECT: Alzheimer's Disease

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Favorable/CS
2.	Jenkins	Roberts	GO	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☒	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☐	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

This bill creates the Purple Ribbon Task Force within the Department of Elder Affairs to develop a comprehensive state plan to address the needs of individuals with Alzheimer's disease and their caregivers.

The purpose of the task force is to: assess the current and future impact of Alzheimer's disease on Florida; examine the existing industries, services, and resources in place that address the needs of individuals with Alzheimer's disease; examine the needs of persons of all cultural backgrounds having Alzheimer's disease; develop a strategy to mobilize a state response to the Alzheimer's disease epidemic; hold public meetings; and provide additional information.

The task force shall consist of 18 members appointed by the Governor, President of the Senate, and Speaker of the House of Representatives, and the task force must submit a report and its recommendations for an Alzheimer's disease state strategy by August 1, 2013.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Alzheimer's Disease

Alzheimer's disease is a progressive, degenerative disorder that attacks the brain's nerve cells and results in loss of memory, thinking, and language skills, and behavioral changes.¹

Alzheimer's disease was named after Dr. Alois Alzheimer, a German physician, who in the early 1900's cared for a 51-year-old woman suffering from severe dementia. Upon the woman's death, Dr. Alzheimer conducted a brain autopsy and found bundles of neurofibers and plaques in her brain, which are distinguishing characteristics of what we call Alzheimer's disease today.²

There are approximately 5.4 million Americans currently living with Alzheimer's disease, and that number is projected to rise to 16 million by 2050.³ As the life expectancy for Americans has continued to rise, so has the number of new cases of Alzheimer's disease. For instance, in 2000 there were an estimated 411,000 new cases of Alzheimer's disease in the United States, and in 2010 that number was estimated to be 454,000 – a 10 percent increase.⁴ That number is expected to rise to 959,000 new cases of Alzheimer's disease by 2050, a 130 percent increase from 2000.⁵ Specifically in Florida, approximately 360,000 people age 65 or older had Alzheimer's disease in 2000 and in 2010 that number had risen to 450,000.⁶

As the number of people with Alzheimer's disease increases, so does the cost of caring for these individuals. In 2011, the aggregate cost for health care, long-term care, and hospice for persons with Alzheimer's and other dementias was estimated to be \$183 billion. That number is projected to be \$1.1 trillion by 2050.⁷ A major contributing factor to the cost of care for persons with Alzheimer's is that these individuals have more hospital stays, skilled nursing home stays, and home healthcare visits than older persons who do not have Alzheimer's. Research shows that 22 percent of individuals with Alzheimer's disease who have Medicare also have Medicaid coverage, which pays for nursing home care and other long-term care services.⁸ The total Medicaid spending for people with Alzheimer's disease (and other dementia) was estimated to be \$37 billion in 2011.⁹

In addition to the cost of health care, there is a significant cost associated with unpaid caregivers. An unpaid caregiver is primarily a family member, but can also be other relatives or friends. Such caregivers often provide assistance with daily activities, such as shopping for groceries, preparing meals, bathing, dressing, grooming, assisting with mobility, helping the person take

¹ Alzheimer's Foundation of America, *About Alzheimer's, Definition of Alzheimer's*, <http://www.alzfdn.org/AboutAlzheimers/definition.html> (last visited Aug. 2, 2011).

² Michael Plontz, *A Brief History of Alzheimer's Disease*, TODAY'S CAREGIVER, http://www.caregiver.com/channels/alz/articles/a_brief_history.htm (last visited Aug. 2, 2011).

³ Alzheimer's Assn., *Fact Sheet: 2011 Alzheimer's Disease Facts and Figures* (March 2011), available at http://www.alz.org/documents_custom/2011_Facts_Figures_Fact_Sheet.pdf (last visited Aug. 3, 2011).

⁴ Alzheimer's Assn., *2011 Alzheimer's Disease Facts and Figures*, 7 ALZHEIMER'S & DEMENTIA (Issue 2) at 17, available at http://www.alz.org/downloads/Facts_Figures_2011.pdf (last visited Jan. 10, 2012).

⁵ *Id.*

⁶ *Id.* at 18.

⁷ *Id.* at 35.

⁸ *Id.*

⁹ *Id.* at 44.

medications, making arrangements for medical care, and performing other household chores. In 2010, nearly 15 million unpaid caregivers provided an estimated 17 billion hours of unpaid care, valued at \$202.6 billion.¹⁰ In 2010, there were 960,037 caregivers in Florida with an estimated value of unpaid care reaching nearly \$13.5 million.¹¹

Alzheimer's Disease Initiative

In 1985, the Florida Legislature put into place the Alzheimer's Disease Initiative (ADI or Initiative). The Initiative has four objectives: (1) to provide supportive services; (2) to establish memory disorder clinics; (3) to provide model day care programs to test new care alternatives; and (4) to establish a research database and brain bank to support research.¹² There are 15 memory disorder clinics throughout the state, 13 of which are state funded.¹³ The purpose of these clinics is to conduct research related to diagnostic technique, therapeutic interventions, and supportive services for persons with Alzheimer's disease and to develop caregiver-training materials.¹⁴ According to ADI, the memory disorder clinics are required to:

- Provide services to persons suspected of having Alzheimer's disease or other related dementia;
- Provide four hours of in-service training during the contract year to all ADI respite and model day care service providers and develop and disseminate training models to service providers and the Department of Elder Affairs;
- Develop training materials and educational opportunities for lay and professional caregivers and provide specialized training for caregivers and caregiver organizations;
- Conduct service-related applied research;
- Establish a minimum of one annual contact with each respite care and model day care service provider to discuss, plan, develop, and conduct service-related research projects; and
- Plan for the public dissemination of research findings through professional papers and to the general public.¹⁵

Individuals diagnosed with or suspected of having Alzheimer's disease are eligible for memory disorder clinic services. In fiscal year 2009-2010, Florida's memory disorder clinics received nearly \$3 million in state funds and served just over 5,000 clients.¹⁶

Model day care programs have been established in conjunction with memory disorder clinics to test therapeutic models and provide day care services. These programs provide a safe environment where Alzheimer's patients can socialize with each other, as well as receive therapeutic interventions designed to maintain or improve their cognitive functioning. Model day care programs also provide training for health care and social service personnel in the care of

¹⁰ This number was established by using an average of 21.9 hours of care a week with a value of \$11.93 per hour. *Id.* at 27.

¹¹ *Id.* at 32.

¹² Fla. Dep't of Elder Affairs, *Alzheimer's Disease Initiative*, <http://elderaffairs.state.fl.us/english/alz.php> (last visited Aug. 16, 2011).

¹³ *Id.*

¹⁴ Section 430.502(2), F.S.

¹⁵ Fla. Dep't of Elder Affairs, *Summary of Programs and Services*, 87-88 (Feb. 2011), available at http://elderaffairs.state.fl.us/english/pubs/pubs/sops2011/Files/2011_SOPS_full%20web.pdf (last visited Aug. 16, 2011).

¹⁶ *Id.* at 91.

individuals with Alzheimer's disease or related memory disorders. There are currently four model day care programs in the state.¹⁷

The ADI also includes respite care services, which includes in-home, facility-based, emergency and extended care respite for caregivers who serve individuals with memory disorders.¹⁸ In addition to respite care services, caregivers and consumers may receive supportive services essential to maintaining individuals with Alzheimer's disease or related dementia in their own homes. The supportive services may include caregiver training and support groups, counseling, consumable medical supplies, and nutritional supplements. Services are authorized by a case manager based on a comprehensive assessment. Alzheimer's Respite Care programs are established in all of Florida's 67 counties.¹⁹

Alzheimer's Disease State Plans²⁰

Currently, 30 states and the District of Columbia have developed, or are in the process of developing, state plans to deal with the Alzheimer's disease epidemic. In 2009, the Alzheimer's Study Group (ASG), an 11 member blue ribbon panel, released a report outlining recommendations to deal with Alzheimer's disease related issues and policy. These recommendations included:

- Expanding the type, pace, and level of funding of Alzheimer's research;
- Instituting value-based payments to reimburse providers who care for individuals with Alzheimer's; and
- Creating an Alzheimer's Solutions Project Office within the federal government to coordinate and oversee implementation of Alzheimer's-related issues and policy.

In response to the ASG report, Congress passed the National Alzheimer's Project Act (NAPA). NAPA requires the federal Department of Health and Human Services to create a national strategic plan to coordinate Alzheimer's disease efforts across the federal government.

Florida does not currently have a state plan in place to deal with the Alzheimer's disease crisis. Developing and implementing a state plan is a four-phase process.²¹ The first phase is a state mandate that puts the weight of state government behind the development of an Alzheimer's disease state plan through the creation of a state plan task force. This bill would accomplish the first phase of the state plan process.

¹⁷ Fla. Dep't of Elder Affairs, *supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Alzheimer's Assn., *Issue Kit: State Government Alzheimer's Disease Plans*, 4 (on file with the Senate Committee on Children, Families, and Elder Affairs).

²¹ The first phase involves creating a state task force to develop an Alzheimer's disease state plan. The second phase involves the development of the state plan as mandated by the task force. Phase three is translating the vision of the state plan into actual public policy. Phase four focuses on executing the programs and enforcement of the policies outlined in the state plan. *Id.* at 5.

III. Effect of Proposed Changes:

This bill creates the Purple Ribbon Task Force within the Department of Elder Affairs (DOEA) to develop a comprehensive state plan to address the needs of individuals with Alzheimer's disease and their caregivers.

The bill requires the task force to:

- Submit an interim study regarding state trends with respect to persons having Alzheimer's disease or a related form of dementia and their needs to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2013;
- Examine the existing industries, services, and resources addressing the needs of persons having Alzheimer's disease or a related form of dementia and their family caregivers;
- Examine the needs of persons of all cultural backgrounds having Alzheimer's disease or a related form of dementia and how their lives are affected by the disease from younger-onset, through mid-stage, to late-stage;
- Develop a strategy to mobilize a state response to Alzheimer's disease; and
- Hold public meetings and employ technological means to gather feedback on the recommendations submitted by persons having Alzheimer's disease or a related form of dementia and their family caregivers and by the general public.

Additionally, the bill requires the task force to provide information regarding state trends with respect to people with Alzheimer's disease or a related form of dementia and their needs, including, but not limited to:

- The role of the state in providing community-based care, long-term care, family caregiver support, and assistance to persons who are in the early stages of Alzheimer's disease, who have younger-onset Alzheimer's disease, or who have a related form of dementia;
- The development of state policy with respect to persons having Alzheimer's disease or a related form of dementia;
- Surveillance of persons having Alzheimer's disease or a related form of dementia for the purpose of accurately estimating the number of such persons in the state;
- Existing services, resources, and capacity;
- The type, cost, and availability of dementia services in the state;
- Policy requirements and effectiveness for dementia-specific training for professionals providing care;
- Quality care measures employed by providers of care;
- The capability of public safety workers and law enforcement officers to respond to persons having Alzheimer's disease or a related form of dementia;
- The availability of home and community-based services and respite care for persons having Alzheimer's disease or a related form of dementia and education and support services to assist their families and caregivers;
- An inventory of long-term care facilities and community-based services serving persons having Alzheimer's disease or a related form of dementia;
- The adequacy and appropriateness of geriatric-psychiatric units for persons having behavior disorders associated with Alzheimer's disease or other dementia;
- Residential assisted living options for persons having Alzheimer's disease or a related form of dementia;

- The level of preparedness of service providers before, during, and after a catastrophic emergency involving a person having Alzheimer's disease or a related form of dementia; and
- Needed state policies or responses.

The task force shall consist of 18 volunteer, culturally diverse members, six of whom shall be appointed by the Governor, six appointed by the President of the Senate, and six appointed by the Speaker of the House of Representatives. The members of the task force shall be as follows:

- A member of the House of Representatives;
- A member of the Senate;
- A representative from the Alzheimer's Association;
- At least one person having Alzheimer's disease or a related form of dementia;
- At least one family caregiver or former family caregiver of a person having Alzheimer's disease or a related form of dementia;
- A representative from the Alzheimer's Disease Advisory Committee;
- A representative of law enforcement with knowledge about the disappearance, abuse, exploitation, and suicide of persons having Alzheimer's disease or a related form of dementia;
- A representative who has knowledge of and experience with the Baker Act and its impact on persons having Alzheimer's disease or a related form of dementia;
- An expert on disaster preparedness and response for persons having Alzheimer's disease or a related form of dementia;
- A representative of a health care facility or hospice that serves persons with Alzheimer's disease;
- A representative of the adult day care services industry;
- A representative of health care practitioners specializing in the treatment of persons having Alzheimer's disease or related dementias;
- A Florida board-certified elder law attorney;
- A representative of the area agencies on aging or aging and disability resource centers;
- A person who is an Alzheimer's disease researcher;
- A representative from a memory disorder clinic;
- A representative of the assisted living facility industry; and
- A representative of the skilled nursing facility industry.

Task force appointments must be made by July 1, 2012, and members of the task force are to serve without compensation and may not receive reimbursement for per diem or travel expenses.

Finally, the task force must submit final date-specific recommendations in the form of an Alzheimer's disease state plan to the Governor and Legislature by August 1, 2013. The task force will terminate on the earlier of the date the report is submitted or August 1, 2013.

The bill shall take effect upon becoming a law.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

This bill creates the Purple Ribbon Task Force comprising of 18 members. These members are to serve on the task force without compensation and may not receive reimbursement for per diem or travel expenses. Accordingly, any costs that may be incurred as a result of participating on the task force will be borne by the individual.

C. Government Sector Impact:

The bill creates the Purple Ribbon Task Force within the Department of Elder Affairs (DOEA or department) and provides that the department shall provide any necessary administrative support for the task force. According to a representative from the department, this bill should have an insignificant impact on DOEA because any potential fiscal impact is expected to be absorbed with existing resources.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²² Health & Human Services. Access Subcommittee, The Florida House of Representatives, *HB 473, Alzheimer's Disease*, 6, available at <http://www.flsenate.gov/Session/Bill/2012/0473/Analyses/YluJKpGJQ1ZB6M7smYBwSel=PL=rCo=%7C11/Public/Bills/0400-0499/0473/Analysis/h0473a.HSAS.PDF> (last visited Jan. 9, 2012).

VIII. Additional Information:

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

CS/CS by Government Oversight and Accountability on January 26, 2012:

The committee substitute:

- Provides that the task force shall consist of 18 volunteer, culturally diverse members.
- Adds a requirement that the task force to submit an interim study regarding state trends with respect to persons having Alzheimer's disease or a related form of dementia and their needs to the Governor, Speaker of the House of Representatives, and the President of the Senate by January 30, 2013.

CS by Children, Families, and Elder Affairs on January 12, 2012:

The committee substitute:

- Specifies additional members of the task force (a representative from a memory disorder clinic, the assisted living facility industry, and the skilled nursing facility industry) and provides hospice and Aging and Disability Resource Centers the opportunity to be represented;
- Requires the task force to examine the needs of persons of all cultural backgrounds having Alzheimer's disease or a related form of dementia;
- Includes reference to alternative avenues of care, such as community-based care, respite, adult day care, and hospice services;
- Clarifies that task force meetings may be held in person (not just electronically or by teleconference);
- Provides in the whereas clauses the most current numbers on the Alzheimer's disease population in the state;
- Changes the effective date from July 1, 2012, to upon becoming a law; and
- Makes technical changes.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/26/2012	.	
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The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 66 - 193
and insert:

(1) The task force shall consist of 18 volunteer members
who reflect the cultural diversity in this state. Six members
shall be appointed by the Governor, six members shall be
appointed by the Speaker of the House of Representatives, and
six members shall be appointed by the President of the Senate,
as follows:

- (a) A member of the House of Representatives.
- (b) A member of the Senate.



929828

13 (c) A representative from the Alzheimer's Association.

14 (d) At least one person having Alzheimer's disease or a
15 related form of dementia.

16 (e) At least one family caregiver or former family
17 caregiver of a person having Alzheimer's disease or a related
18 form of dementia.

19 (f) A representative from the Alzheimer's Disease Advisory
20 Committee.

21 (g) A representative of law enforcement with knowledge
22 about the disappearance and recovery, self-neglect, abuse,
23 exploitation, and suicide of persons having Alzheimer's disease
24 or a related form of dementia.

25 (h) A representative who has knowledge of and experience
26 with the Baker Act and its impact on persons having Alzheimer's
27 disease or a related form of dementia.

28 (i) An expert on disaster preparedness and response for
29 persons having Alzheimer's disease or a related form of
30 dementia.

31 (j) A representative of a health care facility or hospice
32 that serves persons with Alzheimer's disease.

33 (k) A representative of the adult day care services
34 industry.

35 (l) A representative of health care practitioners
36 specializing in the treatment of persons having Alzheimer's
37 disease or a related form of dementia.

38 (m) A Florida board-certified elder law attorney.

39 (n) A representative of the area agencies on aging or aging
40 and disability resource centers.

41 (o) A person who is an Alzheimer's disease researcher.



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(p) A representative from a memory disorder clinic.

(q) A representative of the assisted living facility industry.

(r) A representative of the skilled nursing facility industry.

(2) Initial appointments to the task force shall be made by July 1, 2012. A vacancy on the task force shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(3) Members shall serve on the task force without compensation and may not receive reimbursement for per diem or travel expenses.

(4) The Department of Elderly Affairs shall convene the task force and provide necessary administrative support.

(5) The task force shall:

(a) Assess the current and future impact of Alzheimer's disease and related forms of dementia on the state.

(b) Examine the existing industries, services, and resources addressing the needs of persons having Alzheimer's disease or a related form of dementia and their family caregivers.

(c) Examine the needs of persons of all cultural backgrounds having Alzheimer's disease or a related form of dementia and how their lives are affected by the disease from younger-onset, through mid-stage, to late-stage.

(d) Develop a strategy to mobilize a state response to this public health crisis.

(e) Provide information regarding:

1. State trends with respect to persons having Alzheimer's



929828

disease or a related form of dementia and their needs,
including, but not limited to:

a. The role of the state in providing community-based care, long-term care, and family caregiver support, including respite, education, and assistance to persons who are in the early stages of Alzheimer's disease, who have younger-onset Alzheimer's disease, or who have a related form of dementia.

b. The development of state policy with respect to persons having Alzheimer's disease or a related form of dementia.

c. Surveillance of persons having Alzheimer's disease or a related form of dementia for the purpose of accurately estimating the number of such persons in the state at present and projected population levels.

2. Existing services, resources, and capacity, including, but not limited to:

a. The type, cost, and availability of dementia-specific services throughout the state.

b. Policy requirements and effectiveness for dementia-specific training for professionals providing care.

c. Quality care measures employed by providers of care, including providers of respite, adult day care, assisted living facility, skilled nursing facility, and hospice services.

d. The capability of public safety workers and law enforcement officers to respond to persons having Alzheimer's disease or a related form of dementia, including, but not limited to, responding to their disappearance, search and rescue, abuse, elopement, exploitation, or suicide.

e. The availability of home and community-based services and respite care for persons having Alzheimer's disease or a



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related form of dementia and education and support services to assist their families and caregivers.

f. An inventory of long-term care facilities and community-based services serving persons having Alzheimer's disease or a related form of dementia.

g. The adequacy and appropriateness of geriatric-psychiatric units for persons having behavior disorders associated with Alzheimer's disease or a related form of dementia.

h. Residential assisted living options for persons having Alzheimer's disease or a related form of dementia.

i. The level of preparedness of service providers before, during, and after a catastrophic emergency involving a person having Alzheimer's disease or a related form of dementia and their caregivers and families.

3. Needed state policies or responses, including, but not limited to, directions for the provision of clear and coordinated care, services, and support to persons having Alzheimer's disease or a related form of dementia and their caregivers and families and strategies to address any identified gaps in the provision of services.

(f) Hold public meetings and employ technological means to gather feedback on the recommendations submitted by persons having Alzheimer's disease or a related form of dementia, their caregivers and families, and the general public. Meetings of the task force may be held in person without compensation or reimbursement for travel expenses, by teleconference, or by other electronic means.

(6) The task force shall submit to the Governor, the



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Speaker of the House of Representatives, and the President of
the Senate:

(a) An interim report of its findings 6 months after the
task force's formation; and

(b) Final date-specific recommendations in the form of an
Alzheimer's disease state plan no later than August 1, 2013.

The task force shall terminate on the earlier of the date the
recommendations are submitted or August 1, 2013.

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

And the title is amended as follows:

Delete lines 12 - 14

and insert:

travel expenses; requiring the task force to submit an
interim report and final recommendations in the form
of an Alzheimer's disease state plan to the Governor
and Legislature; providing for



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment

Delete lines 66 - 118
and insert:

(1) The task force shall consist of 18 volunteer,
culturally diverse members, of whom six shall be appointed by
the Governor, six shall be appointed by the Speaker of the House
of Representatives, and six shall be appointed by the President
of the Senate, as follows:

(a) A member of the House of Representatives.

(b) A member of the Senate.

(c) A representative from the Alzheimer's Association.



720238

13 (d) At least one person having Alzheimer's disease or a
14 related form of dementia.

15 (e) At least one family caregiver or former family
16 caregiver of a person having Alzheimer's disease or a related
17 form of dementia.

18 (f) A representative from the Alzheimer's Disease Advisory
19 Committee.

20 (g) A representative of law enforcement with knowledge
21 about the disappearance and recovery, self-neglect, abuse,
22 exploitation, and suicide of persons having Alzheimer's disease
23 or a related form of dementia.

24 (h) A representative who has knowledge of and experience
25 with the Baker Act and its impact on persons having Alzheimer's
26 disease or a related form of dementia.

27 (i) An expert on disaster preparedness and response for
28 persons having Alzheimer's disease or a related form of
29 dementia.

30 (j) A representative of a health care facility or hospice
31 that serves persons with Alzheimer's disease.

32 (k) A representative of the adult day care services
33 industry.

34 (l) A representative of health care practitioners
35 specializing in the treatment of persons having Alzheimer's
36 disease or a related form of dementia.

37 (m) A Florida board-certified elder law attorney.

38 (n) A representative of the area agencies on aging or aging
39 and disability resource centers.

40 (o) A person who is an Alzheimer's disease researcher.

41 (p) A representative from a memory disorder clinic.



720238

42 (q) A representative of the assisted living facility
43 industry.

44 (r) A representative of the skilled nursing facility
45 industry.

46 (2) Initial appointments to the task force shall be made by
47 July 1, 2012. A vacancy on the task force shall be filled for
48 the unexpired portion of the term in the same manner as the
49 original appointment.

50 (3) Members shall serve on the task force without
51 compensation and may not receive reimbursement for per diem or
52 travel expenses.

53 (4) The Department of Elderly Affairs shall convene the
54 task force and provide necessary administrative support.

55 (5) The task force shall:

56 (a) Submit to the Governor, the President of the Senate,
57 and the Speaker of the House of Representatives by January 30,
58 2013, an interim study regarding state trends with respect to
59 persons having Alzheimer's disease or a related form of dementia
60 and their needs.

By the Committee on Children, Families, and Elder Affairs; and
Senators Richter, Sachs, Latvala, Joyner, Bennett, and Gibson

586-01856-12

2012682c1

A bill to be entitled

An act relating to Alzheimer's disease; establishing the Purple Ribbon Task Force within the Department of Elderly Affairs; providing for membership; providing that members shall serve without compensation or reimbursement for per diem or travel expenses; requiring the department to provide administrative support; providing duties of the task force; authorizing the task force to hold meetings by teleconference or other electronic means, or in person without compensation or reimbursement for per diem or travel expenses; requiring the task force to submit a report in the form of an Alzheimer's disease state plan to the Governor and Legislature; providing for termination of the task force; providing an effective date.

WHEREAS, Alzheimer's disease is a slow, progressive disorder of the brain that results in loss of memory and other cognitive functions and eventually death, and

WHEREAS, because Alzheimer's disease is accompanied by memory loss, poor judgment, changes in personality and behavior, and a tendency to wander or become lost, a person with this disease is at an increased risk for accidental injury, abuse, neglect, and exploitation, and

WHEREAS, approximately one in eight Americans 65 years of age or older and almost half of Americans 85 years of age or older develop Alzheimer's disease or a related form of dementia, and

Page 1 of 7

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

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WHEREAS, there are 459,806 probable cases of Alzheimer's disease in this state in 2011, which population is expected to triple by the year 2050, and

WHEREAS, Alzheimer's disease takes an enormous toll on family members, with an estimated one in four family members providing caregiving support for individuals with the disease, and

WHEREAS, caregivers for persons having Alzheimer's disease witness the deteriorating effects of the disease and often suffer more emotional stress, depression, and health problems than caregivers of people having other illnesses, which can negatively affect such caregivers' employment, income, and financial security, and

WHEREAS, younger-onset Alzheimer's disease is a form of Alzheimer's disease that strikes a person who is younger than 65 years of age when symptoms first appear, but younger-onset Alzheimer's disease can strike persons as early as 30, 40, or 50 years of age, with new data showing that there may be as many as 500,000 Americans under the age of 65 who have dementia or cognitive impairment at a level of severity consistent with dementia, and

WHEREAS, the state needs to assess the current and future impact of Alzheimer's disease on Floridians and the state's health care system, programs, resources, and services to ensure the continued development and implementation of a more inclusive, integrated, comprehensive, coordinated, and current strategy to address the needs of the growing number of Floridians having Alzheimer's disease or a related form of dementia and the corresponding needs of their caregivers, NOW,

Page 2 of 7

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

586-01856-12

2012682c1

59 THEREFORE,

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. The Purple Ribbon Task Force.—The Purple Ribbon
64 Task Force is established within the Department of Elderly
65 Affairs.

66 (1) The task force shall consist of 18 volunteer members,
67 of whom six shall be appointed by the Governor, six shall be
68 appointed by the Speaker of the House of Representatives, and
69 six shall be appointed by the President of the Senate, as
70 follows:

71 (a) A member of the House of Representatives.

72 (b) A member of the Senate.

73 (c) A representative from the Alzheimer's Association.

74 (d) At least one person having Alzheimer's disease or a
75 related form of dementia.

76 (e) At least one family caregiver or former family
77 caregiver of a person having Alzheimer's disease or a related
78 form of dementia.

79 (f) A representative from the Alzheimer's Disease Advisory
80 Committee.

81 (g) A representative of law enforcement with knowledge
82 about the disappearance and recovery, self-neglect, abuse,
83 exploitation, and suicide of persons having Alzheimer's disease
84 or a related form of dementia.

85 (h) A representative who has knowledge of and experience
86 with the Baker Act and its impact on persons having Alzheimer's
87 disease or a related form of dementia.

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88 (i) An expert on disaster preparedness and response for
89 persons having Alzheimer's disease or a related form of
90 dementia.

91 (j) A representative of a health care facility or hospice
92 that serves persons with Alzheimer's disease.

93 (k) A representative of the adult day care services
94 industry.

95 (l) A representative of health care practitioners
96 specializing in the treatment of persons having Alzheimer's
97 disease or a related form of dementia.

98 (m) A Florida board-certified elder law attorney.

99 (n) A representative of the area agencies on aging or aging
100 and disability resource centers.

101 (o) A person who is an Alzheimer's disease researcher.

102 (p) A representative from a memory disorder clinic.

103 (q) A representative of the assisted living facility
104 industry.

105 (r) A representative of the skilled nursing facility
106 industry.

107 (2) Initial appointments to the task force shall be made by
108 July 1, 2012. A vacancy on the task force shall be filled for
109 the unexpired portion of the term in the same manner as the
110 original appointment.

111 (3) Members shall serve on the task force without
112 compensation and may not receive reimbursement for per diem or
113 travel expenses.

114 (4) The Department of Elderly Affairs shall convene the
115 task force and provide necessary administrative support.

116 (5) The task force shall:

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(a) Assess the current and future impact of Alzheimer's disease and related forms of dementia on the state.

(b) Examine the existing industries, services, and resources addressing the needs of persons having Alzheimer's disease or a related form of dementia and their family caregivers.

(c) Examine the needs of persons of all cultural backgrounds having Alzheimer's disease or a related form of dementia and how their lives are affected by the disease from younger-onset, through mid-stage, to late-stage.

(d) Develop a strategy to mobilize a state response to this public health crisis.

(e) Provide information regarding:

1. State trends with respect to persons having Alzheimer's disease or a related form of dementia and their needs, including, but not limited to:

a. The role of the state in providing community-based care, long-term care, and family caregiver support, including respite, education, and assistance to persons who are in the early stages of Alzheimer's disease, who have younger-onset Alzheimer's disease, or who have a related form of dementia.

b. The development of state policy with respect to persons having Alzheimer's disease or a related form of dementia.

c. Surveillance of persons having Alzheimer's disease or a related form of dementia for the purpose of accurately estimating the number of such persons in the state at present and projected population levels.

2. Existing services, resources, and capacity, including, but not limited to:

586-01856-12

2012682c1

a. The type, cost, and availability of dementia-specific services throughout the state.

b. Policy requirements and effectiveness for dementia-specific training for professionals providing care.

c. Quality care measures employed by providers of care, including providers of respite, adult day care, assisted living facility, skilled nursing facility, and hospice services.

d. The capability of public safety workers and law enforcement officers to respond to persons having Alzheimer's disease or a related form of dementia, including, but not limited to, responding to their disappearance, search and rescue, abuse, elopement, exploitation, or suicide.

e. The availability of home and community-based services and respite care for persons having Alzheimer's disease or a related form of dementia and education and support services to assist their families and caregivers.

f. An inventory of long-term care facilities and community-based services serving persons having Alzheimer's disease or a related form of dementia.

g. The adequacy and appropriateness of geriatric-psychiatric units for persons having behavior disorders associated with Alzheimer's disease or a related form of dementia.

h. Residential assisted living options for persons having Alzheimer's disease or a related form of dementia.

i. The level of preparedness of service providers before, during, and after a catastrophic emergency involving a person having Alzheimer's disease or a related form of dementia and their caregivers and families.

586-01856-12 2012682c1

175 3. Needed state policies or responses, including, but not
176 limited to, directions for the provision of clear and
177 coordinated care, services, and support to persons having
178 Alzheimer's disease or a related form of dementia and their
179 caregivers and families and strategies to address any identified
180 gaps in the provision of services.

181 (f) Hold public meetings and employ technological means to
182 gather feedback on the recommendations submitted by persons
183 having Alzheimer's disease or a related form of dementia, their
184 caregivers and families, and the general public. Meetings of the
185 task force may be held in person without compensation or
186 reimbursement for travel expenses, by teleconference, or by
187 other electronic means.

188 (6) The task force shall submit a report of its findings
189 and date-specific recommendations in the form of an Alzheimer's
190 disease state plan to the Governor, the Speaker of the House of
191 Representatives, and the President of the Senate no later than
192 August 1, 2013. The task force shall terminate on the earlier of
193 the date the report is submitted or August 1, 2013.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/12
Meeting Date

Topic ALZHEIMER'S STATE PLAN Bill Number CS/SB 682
(if applicable)

Name NATALIE KELLY Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 923 Phone (850) 570-5747
Street

TAMPAHUSSEE, FL 32301 E-mail NATALIE @
City State Zip ACCURATE STRATEGIES . COM

Speaking: ☒ For ☐ Against ☐ Information

Representing ALZHEIMER'S ASSOCIATION

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/2012
Meeting Date

Topic _____ Bill Number 682
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH Phone 727/897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City State Zip

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/26/12

Meeting Date

Topic Alzheimer's Disease

Bill Number 682
(if applicable)

Name ~~Bonnie Brummett~~ Laura Cantwell

Amendment Barcode _____
(if applicable)

Job Title _____

Address 200 West College Avenue, St. 304

Phone 577-5163

Street

Tallahassee

FL

32301

City

State

Zip

E-mail lcantwell@aar.org

Speaking: ☒ For ☐ Against ☐ Information

Representing AARP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/26/12

Meeting Date

Topic _____

Bill Number 682
(if applicable)

Name Meghan Hoza

Amendment Barcode _____
(if applicable)

Job Title _____

Address 10521 SW Village Center Dr

Phone (772) 485-0693

Street

Port St Lucie, FL 34987

City

State

Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Alzheimer's Community Care

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 798

INTRODUCER: Commerce and Tourism Committee

SUBJECT: OGSR/Florida Opportunity Fund and the Institute for the Commercialization of Public Research

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Favorable
2.	Seay	Roberts	GO	Favorable
3.				
4.				
5.				
6.				

I. Summary:

This bill is the result of the Commerce and Tourism Committee's Open Government Sunset Review of the public records and public meetings exemption for the Florida Opportunity Fund and the Institute for the Commercialization of Public Research. The exemptions will expire October 2, 2012, unless saved from repeal through reenactment by the Legislature.

In 2007, the Legislature created the Florida Opportunity Fund (FOF) and the Institute for the Commercialization of Public Research (Institute) to provide certain types of businesses access to capital – both public and private investments – that would assist them in reaching their full potential as job-creators. Additionally, the Legislature created exemptions from the state's public records and public meetings laws, under specified circumstances, for both entities. The Sunset Review recommended re-enactment of the public records exemption and public meetings exemption in s. 288.9626, F.S., with a few changes. The key recommended change is to create a separate statute for the institute's exemptions. These changes will clarify, but not expand, the scope of the current statutory exemptions.

This bill substantially amends section 288.9626, F.S., and creates section 288.9627, F.S.

II. Present Situation:

Florida's Public Records and Public Meetings Laws

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

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

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

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

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

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

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

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

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

³ Chapter 119, F.S.

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

⁵ Section 119.011(12), F.S.

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

Article I, s. 24 of the State Constitution also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

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

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

Open Government Sunset Review Act

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

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

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

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

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

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

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

¹² Attorney General Opinion 85-62.

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

¹⁴ Section 119.15, F.S.

and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁵

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

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

The Act also requires consideration of the following:

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

Background on the Florida Opportunity Fund

Initial Responsibility

Created by the Legislature in 2007, the Florida Opportunity Fund (FOF)¹⁷ was intended to attract venture capital investment into targeted Florida industries by providing a state match.¹⁸ The FOF is organized as a private, not-for-profit corporation under Ch. 617, F.S., with a five-member

¹⁵ Section 119.15(5)(a), F.S.

¹⁶ Section 119.15(4)(b), F.S.

¹⁷ Section 288.9624, F.S. See also Florida Opportunity Fund, <http://www.floridaopportunityfund.com/HomePage.asp> (last visited Jan. 10, 2012).

¹⁸ The State Board of Administration (SBA) has, for many years, invested in so-called “alternative investments” that included Florida-based businesses, and in 2009, pursuant to ch. 2008-31, L.O.F., created the \$250 million Florida Growth Fund for venture-capital private-equity and direct investments within Florida. See also Florida Growth Fund, <http://www.floridagrowthfund.com>. (last visited Jan. 10, 2012). These SBA programs are separate from the FOF.

board of directors selected by an Enterprise Florida, Inc., (EFI) appointments committee.¹⁹ The FOF's administrative staff is provided by EFI, and has a separate investment manager, Florida First Partners, comprised of Florida-based MILCOM Venture Partners and the Credit Suisse Customized Fund Investment Group. The Legislature appropriated \$29.5 million for investment funds in FY 2007-2008.²⁰

Originally, the FOF was established as a "fund-of-funds" program, meaning that it could only invest in investment funds, not directly in individual businesses. Additionally, the investment funds had to match each \$1 in state investment with \$2 of their own. The initial emphasis was on "seed" and "early-stage" investments, because proponents of creating the FOF concluded that these types of companies were least likely to have access to venture funding and traditional financing.²¹ Targeted industries for the FOF investments included, but were not limited to: life sciences; information technology; advanced manufacturing processes; aviation and aerospace; and homeland security and defense. To be eligible for state participation, an investment fund must have an experienced and successful investment manager or team, and must focus on investment opportunities in Florida.

The FOF invested in its first fund in FY 2008-2009: \$594,000 in Element Partners II, according to FOF's financial statements.²² Currently, the FOF has invested \$27 million of the original \$29.5 million appropriation.²³

Recent developments

In 2009, the Florida Legislature amended s. 288.9624, F.S., to allow the FOF to make loans and other direct investments to individual businesses and infrastructure projects; to form or operate other entities; and to accept funds from other public and private sources for use as investments.²⁴ These direct investments must be made in Florida infrastructure projects, or in businesses that are Florida-based or have significant business activities in Florida, and operate in technology sectors that are strategic to Florida, including the original list of industry types. The FOF may not use its original appropriation of \$29.5 million to make direct investments or for any purposes not specified in the original legislation.

In May 2010, the FOF launched a direct investment program with the now-defunct Florida Energy and Climate Commission, which at the time was the lead entity for state energy and climate-change programs and policies.²⁵ This new FOF program is expected to increase the availability of investment capital in Florida for businesses engaged in developing or producing

¹⁹ The current FOF board members are: chairman Kenneth Wright, partner with Baker Hostetler; vice chairman Andrew Hyltin, president of CNL Private Equity Corporation; Thomas Cornish, president and CEO of Seitlin Insurance and Advisory Services; Brian Nicholas, executive with the Acquired Asset Group of BB&T; and Pedro Pizarro, chairman and CEO of eLandia Group.

²⁰ This appropriation was included in Section 4 of the substantive legislation, ch. 2007-189, L.O.F., which created the FOF.

²¹ See Bill Analysis for CS/SB 2420 (2007 Legislative Session), available at <http://archive.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s2420.cm.pdf> (last visited Jan. 10, 2012).

²² The auditor described the \$594,000 investment as a payment of a \$4 million commitment to Element Partners II, which specializes in investments in "cleantech" companies. See <http://www.elementpartners.com> (last visited Jan. 10, 2012).

²³ Information on file with the Senate Commerce and Tourism Committee.

²⁴ Sections 25-26, ch. 2009-51, L.O.F.

²⁵ The commission's statutes were repealed and its responsibilities transferred to the Florida Department of Agriculture and Consumer Services (DACCS) by the Legislature in the 2011 session. See s. 500, ch. 2011-142, L.O.F.

energy-efficient or renewable energy (EE/RE) products or services. The FOF has access initially to \$32.4 million in federal funds through the 2009 American Recovery and Reinvestment Act²⁶ to make loans or investments in qualifying businesses. Under the terms of the federal agreement, these investments are restricted to facility and equipment improvement using EE/RE products; acquisition or demonstration of renewable energy products; and improvement of existing production, manufacturing, assembly, or distribution processes to reduce consumption or increase the efficient use of energy in such processes.

FOF has invested \$12 million of the \$32.4 million in federal funds into three Florida companies, matching \$80 million in private investment.²⁷

Lastly, in mid-2011, EFI entered into an agreement with the Florida Department of Economic Opportunity (DEO) for use of \$43.5 million in federal funds from the U.S. State Small Business Credit Initiative.²⁸ These funds will be used by the FOF to make direct investments in eligible businesses.²⁹ EFI estimates that it can leverage the \$43.5 million into \$652.5 million in private investment. The U.S. Treasury has approved DEO's application to access Florida's full share of \$97.6 million in federal funds, and in September, the Legislative Budget Commission approved the release of a portion of the federal funds.

Background on the Institute

Created in the same legislation as the FOF, the Institute for the Commercialization of Public Research (institute) was envisioned as a matchmaker for venture capitalists and young companies trying to turn research ideas, technology, or patents, developed at public institutions, into marketable products and services.³⁰ The institute's stated purpose is:

To assist in the commercialization of products developed by the research and development activities of publicly supported universities and colleges, research institutes, and other publicly supported organizations within the state.³¹

The institute must support existing commercialization efforts at Florida universities, and may not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.

Governance of the Institute

The institute is a not-for-profit corporation that is eligible for sovereign immunity and is subject to Florida law, but is not an "agency," as defined in s. 20.03(11), F.S. It is governed by a five-member board of directors³² comprised of:

²⁶ The website at <http://www.recovery.gov/pages/default.aspx> has links to the federal law and other program information.

²⁷ Information on file with the Senate Committee on Commerce and Tourism.

²⁸ This initiative is part of the federal Small Business Jobs Act of 2010. See U.S. Dept. of Treasury, State Small Business Credit Initiative, <http://www.treasury.gov/resource-center/sb-programs/Pages/ssbci.aspx> (last visited Jan. 10, 2012).

²⁹ Florida's total share of the federal funding is \$97.6 million. The monies not allocated to EFI for the investment program are earmarked for small business loans, export financing, and credit enhancement programs. More information on file with the Senate Commerce and Tourism Committee.

³⁰ Section 288.9625, F.S. See also Florida Institute for the Commercialization of Public Research, <http://www.florida-institute.com> (last visited Jan. 10, 2012).

³¹ Section 288.9625(2), F.S.

- The chair of EFI or designee;
- The president of the state university where the institute is located or designee, or if jointly sponsored by a number of universities, the presidents of those universities must agree on the designated person to serve on the board; and
- Three appointees by the Governor, to serve staggered 3-year terms to which they may be reappointed.

The institute also has a 15-member Industry Advisory Board, selected by the board of directors, to assist with mentoring companies selected by the institute, reviewing grant applications, and providing other guidance.

Staffing the institute is an interim executive director³³ and an executive assistant. The institute is based in Boca Raton, and is preparing to open a second administrative office in Gainesville.

State Funding for the Institute

In 2007, the Legislature appropriated \$900,000 in general revenue to the institute for its operations.³⁴ An additional \$600,000 was appropriated in 2009, as a transfer from the Florida Small Business Technology Growth Trust Fund administered by EFI.³⁵ In 2010, the institute was authorized to use up to 5 percent of the \$3 million appropriated for the Research Commercialization Matching Grant Program to administer the grants.³⁶ In FY 2011-2012, the institute received a \$10 million general revenue appropriation, which did not specify the uses or amount set aside for the institute's administration.³⁷ The institute and DEO have entered into a contract that specifies how the funds may be spent, including a low-interest loan program for eligible companies.

Responsibilities of the Institute³⁸

To be eligible for the institute's assistance, the company or organization attempting to commercialize its product or service must be accepted by the institute into its program. The institute reviews the business plans and technology information of each company recommended by an institute peer-review board, before making its decision whether to accept a recommended company.

For each company that is accepted, the institute provides mentoring, develops marketing information, and uses its resources to attract capital investment into the company. The institute's other duties are to:

³² The institute's current board members are: chairman Beau Ferrari, Special Assistant to the CEO of Univision Communications, Inc.; vice-chairman David Day, the university designee and director of the Office of Technology Licensing at the University of Florida; treasurer Rhys Williams, president of iTherapeutics, a biotechnology company developing therapies for retinal degenerative disease; John Fraser, executive director of the Office of IP Development and Commercialization at Florida State University; and EFI designee Carl Roston, an attorney with Akerman Senterfitt who specializes in mergers & acquisitions and private equity.

³³ The institute's interim executive director is Jane Teague, who also is the executive director of the Enterprise Development Corporation of South Florida, a public-private partnership that helps recruit investors and acts as a business incubator.

³⁴ Section 4, ch. 2007-189, L.O.F.

³⁵ Section 72, ch. 2009-81, L.O.F.

³⁶ Section 56, ch. 2010-147, L.O.F.

³⁷ Section 39(3), ch. 2011-76, L.O.F.

³⁸ Section 288.9625(8), F.S.

- Maintain a centralized location to showcase companies and their technologies and products;
- Develop an efficient process to inventory and publicize companies and products that have been accepted by the institute for commercialization;
- Routinely communicate with private investors and venture capital organizations regarding the investment opportunities in its showcased companies;
- Facilitate meetings between prospective investors and eligible companies in the institute;
- Develop cooperative relationships with publicly supported organizations all of which work together to provide resources or special knowledge that is likely to be helpful to institute companies; and
- Administer the Florida Research Commercialization Matching Grant Program, created in s. 288.9552, F.S.

The institute is prohibited from developing or accruing any ownership, royalty, or other such rights over, or interest in, companies or products in the institute and must maintain the confidentiality of proprietary information. It also may not charge for services rendered to state universities and affiliated organizations, community colleges, or state agencies.

In 2010, the Legislature created the Research Commercialization Matching Grant Program, to leverage existing federal grant programs for small businesses, and directed the institute to manage it.³⁹ The grant program is intended to assist small or startup companies that take advantage of federal and private financial support to accelerate their growth and market penetration. Program applicants must meet several criteria, such as having attracted funding from non-government sources and achieved certain milestones required by the federal government. As mentioned above, the Legislature appropriated \$3 million for the grant program. Last fall, the institute awarded Phase II grants to 11 Florida companies and Phase I grants to two companies.⁴⁰ A second round of grants is not planned for FY 2011-2012.

Public Records and Public Meetings Exemptions for the FOF and the Institute

The Legislature created a joint public records and public meetings exemption, in s. 288.9626, F.S., for the FOF and the institute in 2007.⁴¹ Covered under the public records exemption in s. 288.9626(2), F.S., are:

- Materials that relate to methods of manufacture or production; potential trade secrets, patentable material, actual trade secrets as defined in s. 688.002, F.S., or proprietary information received, generated, ascertained, or discovered by or through research projects conducted by universities and other publicly supported organizations in Florida;
- Information that would identify investors or potential investors in projects reviewed by the FOF or the institute;

³⁹ Background on the federal programs – the Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer (STTR) Program is available on the website of the U.S. Small Business Administration. Small Business Administration, <http://www.sba.gov/aboutsba/sbaprograms/sbir/index.html> (last visited Jan. 10, 2012).

⁴⁰ See The Office of Program Policy and Government Accountability (OPPAGA), *Research Commercialization Matching Grant Program Underway; Additional Performance Data Needed*, Report 11-20, Nov. 2011, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=11-20> (last visited Jan. 10, 2012).

⁴¹ Chapter 2007-190, L.O.F.

- Any information received from a person or another state or nation, or from the federal government, which is otherwise confidential or exempt from that governmental entity's laws; and
- Proprietary confidential business information regarding alternative investments for 10 years after the termination of the alternative investments.

The term "proprietary confidential business information" is defined to mean information that has been designated by the proprietor when provided to the FOF or the institute as owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private and the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

- Trade secrets as defined in s. 688.002, F.S.;
- Information provided to the FOF or institute regarding a prospective investment in a private equity fund, venture capital fund, angel fund, or portfolio company which is proprietary to the provider of the information;
- Financial statements and auditor reports of an alternative investment vehicle or portfolio company, unless such records have been released by the alternative investment vehicle or portfolio company and are publicly available;
- Meeting materials of an alternative investment vehicle relating to financial, operating, or marketing information of the alternative investment vehicle or portfolio company;
- Information regarding the portfolio positions in which an alternative investment vehicle or the FOF invests;
- Capital call and distribution notices to investors of an alternative investment vehicle or the FOF;
- Alternative investment agreements and related records; and
- Information concerning investors, other than the FOF itself, in an alternative investment vehicle or portfolio company.⁴²

The statute also expressly excludes certain items from the definition of proprietary confidential business information:

- The name, address, and vintage year of an alternative investment vehicle or the FOF, and the identity of principals involved in the management of the alternative investment vehicle or the FOF;
- The dollar amount of the commitment made by the FOF to each alternative investment vehicle since inception;
- The dollar amount and date of cash contributions made by the FOF to each alternative investment vehicle since inception;
- The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the FOF from each alternative investment vehicle;
- The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the FOF, plus the remaining value of alternative-vehicle assets that are attributable to the FOF investment in each alternative investment vehicle;

⁴² Section 288.9626(1)(g)1., F.S.

- The net internal rate of return of each alternative investment vehicle since inception;
- The investment multiple of each alternative investment vehicle since inception; and
- The dollar amount of the total management fees and costs paid on an annual fiscal-year- end basis by the FOF to each alternative investment vehicle on a fiscal-year-end basis.⁴³

Section 288.9626(3), F.S., creates a public meetings exemption for the FOF and the institute. The boards of directors of those entities may close that portion of their otherwise public meetings when they are discussing information that is confidential and exempt, per subsection (2) of that statute. The closed portions of the meetings still must be recorded and transcribed, but this information also is confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a), of the State Constitution.

Pursuant to s. 288.9626(4), F.S., the FOF and the institute may release the protected records to a governmental entity in the performance of its duties upon written request. The confidentiality must be maintained by those receiving entities. Violating s. 288.9626, F.S., is a first-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.⁴⁴

Once a confidential and exempt record becomes legally available or subject to public disclosure for any reason, that record is no longer confidential and exempt, and shall be made available for inspection and copying.

The legislation's "statement of necessity" listed a number of reasons why certain documents and information in the possession of the FOF and the institute should be confidential and exempt:⁴⁵

- Disclosure of proprietary confidential business information to the public would harm the business operations of the proprietor.
- Information received by the FOF or the institute from a person from another state or nation or the Federal Government, which is otherwise exempt or confidential pursuant to the laws of that state or nation or pursuant to federal law, should remain exempt or confidential because the highly confidential nature of research necessitates that it be protected.
- Without these exemptions, the disclosure of confidential and exempt information would jeopardize the effective and efficient administration of the FOF and the institute.
- Disclosure of investor identities may adversely impact the ability of the FOF or the institute to attract investors who desire anonymity.
- Disclosing proprietary confidential business information used in determining how private equity investments are made or managed by private partnerships investing assets on behalf of the FOF would negatively affect the business interests of private partnerships that rely heavily on their information advantage to generate investment returns, and competitor partnerships could gain an unfair competitive advantage if provided access to such information.
- The release of proprietary confidential business information revealing how alternative investments are made could result in inadequate returns and ultimately frustrate attainment of the investment objective of the FOF.

⁴³ Section 299.9626(1)(g)2., F.S.

⁴⁴ Section 288.9626(5), F.S.

⁴⁵ Section 2, ch. 2007-190, L.O.F.

- Portions of meetings of the FOF and institute boards of directors at which records made confidential and exempt by this act are discussed be made exempt from public meetings requirements in order to maintain the confidential and exempt status of this information.

Background on Florida's Trade Secrets Law

Over the years, the Legislature has created a number of specific exemptions from public records for trade secrets.⁴⁶ Chapter 688, F.S., the Uniform Trade Secrets Act, defines a trade secret as:

“... information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”⁴⁷

Chapter 688, F.S., also provides for injunctive relief, damages, and attorneys' fees for misappropriating a trade secret. It permits the courts to enter an injunction for the actual or threatened misappropriation of a trade secret.⁴⁸ Further, the court may, in appropriate circumstances, require affirmative acts to protect trade secrets. A complainant under the act is also entitled to damages, which can include the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In the alternative, royalties can be required.⁴⁹

In an action under the Uniform Trade Secrets Act, the court is required to preserve the secrecy of the alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.⁵⁰

Additionally, s. 812.081(2), F.S., provides that:

Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

⁴⁶ See, e.g., s. 1004.78(2), F.S. (trade secrets produced in technology research within community colleges); s. 365.174, F.S. (proprietary confidential business information and trade secrets submitted by wireless 911 provider to specified agencies); s. 570.544(8), F.S. (trade secrets contained in records of the Division of Consumer Services of the Department of Agriculture and Consumer Services); and s. 627.6699(8)(c), F.S. (trade secrets involving small employer health insurance carriers).

⁴⁷ Section 688.002(4), F.S.

⁴⁸ Section 688.003, F.S.

⁴⁹ Section 688.004, F.S.

⁵⁰ Section 688.006, F.S.

Section 812.081(1)(c), F.S., defines “trade secret” to mean “. . . the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it.” The term “trade secret” includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Additionally, irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, when the owner of a trade secret takes measures to prevent it from becoming available to persons other than those selected by the owner to have access to it, the trade secret is considered to be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.

The Florida Attorney General has concluded that the fact certain information constitutes a trade secret under s. 812.081, F.S., does not, in and of itself, remove it from the requirements of the Public Records Act.⁵¹ When there is no exemption making information confidential or exempt, an agency is therefore under a duty to release public records even though such records may constitute trade secrets.

III. Effect of Proposed Changes:

Section 1 amends s. 288.9626, F.S.; removing references to the Institute for the Commercialization on Public Research; reducing from 10 years to 7 years the period of time that investment, loan, or other confidential and exempt information may be shielded from public review; modifying certain definitions to better reflect the full extent of the FOF’s investment responsibilities, without expanding their scope; and clarifying terminology.

Section 2 creates s. 288.9627, F.S.; transferring provisions of s. 288.9626, F.S. pertaining to public records and public meetings exemptions that apply only to the Institute. The Institute’s current exemptions are maintained and not expanded.

Section 3 provides that this act takes effect upon becoming a law.

Other Potential Implications:

If the Legislature chooses not to retain the public-records exemption for the information obtained by the FOF and the institute, or the public meetings exemption, then they will expire on October 2, 2012. Without the exemption, certain types of proprietary business information, trade secrets, and donor identities will become public, at least, what is not otherwise protected under federal law. The FOF and the institute contend this would hamper their ability to attract private

⁵¹ Attorney General Opinion 92-43.

investments and other participation in their programs, thus reducing their programs' ability to encourage economic and job growth.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism

577-00807-12

2012798__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 288.9626, F.S., which
 4 provides exemptions from public records and open
 5 meeting requirements for the Florida Opportunity Fund
 6 and the Institute for the Commercialization of Public
 7 Research; reorganizing the exemptions by removing
 8 references to the Institute for the Commercialization
 9 of Public Research and transferring the exemptions
 10 relating to the institute to a new statute; saving the
 11 exemptions from repeal under the Open Government
 12 Sunset Review Act; removing the scheduled repeal of
 13 the exemptions; revising definitions; clarifying that
 14 the exemptions pertaining to the Florida Opportunity
 15 Fund apply to prospective investments, alternative
 16 investments, and certain confidential proprietary
 17 information provided by a proprietor; reducing the
 18 time period during which proprietary confidential
 19 business information is confidential and exempt from
 20 disclosure; creating s. 288.9627, F.S.; providing
 21 exemptions from public records and open meetings
 22 requirements relating to the Institute for the
 23 Commercialization of Public Research which were
 24 transferred from s. 288.9626, F.S.; defining terms;
 25 providing exemptions from public records requirements
 26 for information relating to methods of manufacturing,
 27 trade secrets, patents, and research by universities
 28 or other publically supported organizations, materials
 29 supplied by a proprietor, information that would

Page 1 of 14

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577-00807-12

2012798__

30 identify investors or potential investors, and
 31 information that is confidential and exempt under
 32 other laws; reducing the time period during which
 33 proprietary confidential business information is
 34 confidential and exempt from disclosure; requiring the
 35 recording and transcription of closed meetings;
 36 requiring a proprietor of information to prevent the
 37 disclosure of proprietary confidential business
 38 information if a request for the information is made
 39 to the institute; authorizing a person to petition a
 40 court in Palm Beach County or Alachua County for the
 41 release of confidential and exempt information;
 42 requiring a court to make specific findings before the
 43 information may be released; imposing criminal
 44 penalties on a person who willfully and knowingly
 45 violates the public records or public meetings
 46 exemptions pertaining to the institute; providing an
 47 effective date.

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

51 Section 1. Section 288.9626, Florida Statutes, is amended
 52 to read:

53 288.9626 Exemptions from public records and public meetings
 54 requirements for the Florida Opportunity Fund ~~and the Institute~~
 55 ~~for the Commercialization of Public Research.~~

56 (1) DEFINITIONS.—As used in this section, the term:

57 (a) "Alternative investment" means an investment or
 58 prospective investment through a loan, acquisition of an equity

Page 2 of 14

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577-00807-12 2012798

59 interest, or other investment method by the Florida Opportunity
 60 Fund in a private equity fund, venture capital fund, or angel
 61 fund; an investment by the Florida Opportunity Fund or an
 62 alternative investment or a direct investment in a portfolio
 63 company; or an investment through a distribution of securities
 64 to its partners or shareholders by an alternative investment
 65 vehicle.

66 (b) "Alternative investment vehicle" means the limited
 67 partnership, limited liability company, or similar legal fund
 68 structure through which funds of, or funds managed by, the
 69 Florida Opportunity Fund are invested ~~may elect to invest~~ in a
 70 portfolio company.

71 (c) "Florida Opportunity Fund" ~~or "fund"~~ means the Florida
 72 Opportunity Fund as defined in s. 288.9623.

73 ~~(d) "Institute for the Commercialization of Public~~
 74 ~~Research" or "institute" means the institute established by s.~~
 75 ~~288.9625.~~

76 (d)(e) "Portfolio company" means a corporation or other
 77 issuer, any of whose securities or debt obligations are owned,
 78 or are being considered for ownership, by an alternative
 79 investment vehicle or the Florida Opportunity Fund and any
 80 subsidiary of such corporation or other issuer.

81 ~~(e)(f)~~ "Portfolio positions" means individual investments
 82 in portfolio companies that are made by an alternative
 83 investment vehicle or the Florida Opportunity Fund, including
 84 information or specific investment terms associated with any
 85 portfolio company investment.

86 ~~(f)(g)~~1. "Proprietary confidential business information"
 87 means information that has been designated by the proprietor

577-00807-12 2012798

88 when provided to the Florida Opportunity Fund ~~or the Institute~~
 89 ~~for the Commercialization of Public Research~~ as information that
 90 is owned, held, or controlled by a proprietor; that is intended
 91 to be and is treated by the proprietor as private, the
 92 disclosure of which would harm the business operations of the
 93 proprietor and has not been intentionally disclosed by the
 94 proprietor unless pursuant to a private agreement that provides
 95 that the information will not be released to the public except
 96 as required by law or legal process, or pursuant to law or an
 97 order of a court or administrative body; and that concerns:

98 a. Trade secrets as defined in s. 688.002.

99 b. Information provided to the Florida Opportunity Fund ~~or~~
 100 ~~the Institute for the Commercialization of Public Research~~
 101 regarding an existing or a prospective alternative investment in
 102 a private equity fund, venture capital fund, angel fund, or
 103 portfolio company that is proprietary to the provider of the
 104 information.

105 c. Financial statements and auditor reports of an
 106 alternative investment vehicle or portfolio company, unless
 107 publicly released by the alternative investment vehicle or
 108 portfolio company.

109 d. Meeting materials of an alternative investment vehicle
 110 or portfolio company relating to financial, operating, or
 111 marketing information of the alternative investment vehicle or
 112 portfolio company.

113 e. Information regarding the portfolio positions in which
 114 the alternative investment vehicles or Florida Opportunity Fund
 115 invest.

116 f. Capital call and distribution notices to investors or

577-00807-12 2012798__

the Florida Opportunity Fund of an alternative investment vehicle.

g. Alternative investment agreements and related records.

h. Information concerning investors, other than the Florida Opportunity Fund, in an alternative investment vehicle or portfolio company.

2. "Proprietary confidential business information" does not include:

a. The name, address, and vintage year of an alternative investment vehicle or Florida Opportunity Fund and the identity of the principals involved in the management of the alternative investment vehicle or Florida Opportunity Fund.

b. The dollar amount of the commitment made by the Florida Opportunity Fund to each alternative investment vehicle since inception, if any.

c. The dollar amount and date of cash contributions made by the Florida Opportunity Fund to each alternative investment vehicle since inception, if any.

d. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund from each alternative investment vehicle.

e. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund plus the remaining value of alternative-vehicle assets that are attributable to the Florida Opportunity Fund's investment in each alternative investment vehicle.

f. The net internal rate of return of each alternative investment vehicle since inception.

g. The investment multiple of each alternative investment

577-00807-12 2012798__

vehicle since inception.

h. The dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the Florida Opportunity Fund to each alternative investment vehicle.

i. The dollar amount of cash profit received by the Florida Opportunity Fund from each alternative investment vehicle on a fiscal-year-end basis.

(g) (h) "Proprietor" means an alternative investment vehicle ~~or, a~~ portfolio company in which an ~~the~~ alternative investment vehicle or Florida Opportunity Fund invests, or is considering for investment ~~is invested~~, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, that controls or owns information.

(2) PUBLIC RECORDS EXEMPTION.—

(a) The following records held by the Florida Opportunity Fund ~~or the Institute for the Commercialization of Public Research~~ are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information Materials that relates ~~relate~~ to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects and that is included in materials provided by a proprietor conducted by universities and other publicly supported organizations in this state.

2. Information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the Florida Opportunity Fund ~~or institute~~.

3. ~~Any information received from a person from another~~

577-00807-12

2012798

~~state or nation or the Federal Government which is otherwise
confidential or exempt pursuant to the laws of that state or
nation or pursuant to federal law.~~

3.4 Proprietary confidential business information
regarding alternative investments for 7 ~~10~~ years after the
termination of the alternative investment.

(b) At the time any record made confidential and exempt by
this subsection, or portion thereof, is legally available or
subject to public disclosure for any other reason, that record,
or portion thereof, shall no longer be confidential and exempt
and shall be made available for inspection and copying.

(3) PUBLIC MEETINGS EXEMPTION.—

(a) That portion of a meeting of the board of directors of
the Florida Opportunity Fund ~~or the board of directors of the
Institute for the Commercialization of Public Research~~ at which
information is discussed which is confidential and exempt under
subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of
the State Constitution.

(b) Any exempt portion of a meeting shall be recorded and
transcribed. The board ~~boards~~ of directors shall record the
times of commencement and termination of the meeting, all
discussion and proceedings, the names of all persons present at
any time, and the names of all persons speaking. An exempt
portion of any meeting may not be off the record.

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

(4) REQUEST TO INSPECT OR COPY A RECORD.—

(a) Records made confidential and exempt by this section

Page 7 of 14

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577-00807-12

2012798

may be released, upon written request, to a governmental entity
in the performance of its official duties and responsibilities.

(b) Notwithstanding the provisions of paragraph (2)(a), a
request to inspect or copy a public record that contains
proprietary confidential business information shall be granted
if the proprietor of the information fails, within a reasonable
period of time after the request is received by the Florida
Opportunity Fund ~~or the Institute for the Commercialization of
Public Research~~, to verify the following to the Florida
Opportunity Fund through a written declaration in the manner
provided by s. 92.525:

1. That the requested record contains proprietary
confidential business information and the specific location of
such information within the record;

2. If the proprietary confidential business information is
a trade secret, a verification that it is a trade secret as
defined in s. 688.002;

3. That the proprietary confidential business information
is intended to be and is treated by the proprietor as private,
is the subject of efforts of the proprietor to maintain its
privacy, and is not readily ascertainable or publicly available
from any other source; and

4. That the disclosure of the proprietary confidential
business information to the public would harm the business
operations of the proprietor.

(c)1. Any person may petition a court of competent
jurisdiction for an order for the public release of those
portions of any record made confidential and exempt by
subsection (2).

Page 8 of 14

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577-00807-12

2012798

2. Any action under this subsection must be brought in Orange County, and the petition or other initial pleading shall be served on the Florida Opportunity Fund ~~or the institute, whichever is applicable~~, and, if determinable upon diligent inquiry, on the proprietor of the information sought to be released.

3. In any order for the public release of a record under this subsection, the court shall make a finding that:

a. The record or portion thereof is not a trade secret as defined in s. 688.002;

b. A compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and

c. The release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, or the fund, or any trust fund the assets of which are invested by the Florida Opportunity Fund.

(5) PENALTIES.—Any person who willfully and knowingly violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

~~(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Section 288.9627, Florida Statutes, is created to read:

288.9627 Exemptions from public records and public meetings

577-00807-12

2012798

requirements for the Institute for the Commercialization of Public Research.—

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

(a) "Institute for the Commercialization of Public Research" or "institute" means the institute established by s. 288.9625.

(b)1. "Proprietary confidential business information" means information that has been designated by the proprietor when provided to the institute as information that is owned, held, or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

a. Trade secrets as defined in s. 688.002.

b. Financial statements and internal or external auditor reports of a proprietor corporation, partnership, or person requesting confidentiality under this statute, unless publicly released by the proprietor.

c. Meeting materials related to financial, operating, investment, or marketing information of the proprietor corporation, partnership, or person.

d. Information concerning private investors in the proprietor corporation, partnership, or person.

2. "Proprietary confidential business information" does not include:

577-00807-12

2012798

- 291 a. The identity and primary address of the proprietor's
 292 principals.
- 293 b. The dollar amount and date of the financial commitment
 294 or contribution made by the institute.
- 295 c. The dollar amount, on a fiscal-year-end basis, of cash
 296 repayments or other fungible distributions received by the
 297 institute from each proprietor.
- 298 d. The dollar amount, if any, of the total management fees
 299 and costs paid on an annual fiscal-year-end basis by the
 300 institute.
- 301 (c) "Proprietor" means a corporation, partnership, or
 302 person that has applied for or received assistance, financial or
 303 otherwise, from the institute and that controls or owns the
 304 proprietary confidential business information.
- 305 (2) PUBLIC RECORDS EXEMPTION.—
- 306 (a) The following records held by the institute are
 307 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 308 of the State Constitution:
- 309 1. Information that relates to methods of manufacture or
 310 production, potential trade secrets, or patentable material
 311 received, generated, ascertained, or discovered during the
 312 course of research or through research projects conducted by
 313 universities and other publicly supported organizations in this
 314 state and that is included in materials provided to the
 315 institute by a proprietor.
- 316 2. Information that would identify an investor or potential
 317 investor who desires to remain anonymous in projects reviewed by
 318 the institute for assistance.
- 319 3. Any information received from a person from another

Page 11 of 14

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577-00807-12

2012798

- 320 state or nation or the Federal Government which is otherwise
 321 confidential or exempt pursuant to the laws of that state or
 322 nation or pursuant to federal law.
- 323 4. Proprietary confidential business for 7 years after the
 324 termination of the institute's financial commitment to the
 325 company.
- 326 (b) At the time any record made confidential and exempt by
 327 this subsection, or portion thereof, is legally available or
 328 subject to public disclosure for any other reason, that record,
 329 or portion thereof, shall no longer be confidential and exempt
 330 and shall be made available for inspection and copying.
- 331 (3) PUBLIC MEETINGS EXEMPTION.—
- 332 (a) That portion of a meeting of the institute's board of
 333 directors at which information is discussed which is
 334 confidential and exempt under subsection (2) is exempt from s.
 335 286.011 and s. 24(b), Art. I of the State Constitution.
- 336 (b) Any exempt portion of a meeting shall be recorded and
 337 transcribed. The board of directors shall record the times of
 338 commencement and termination of the meeting, all discussion and
 339 proceedings, the names of all persons present at any time, and
 340 the names of all persons speaking. An exempt portion of any
 341 meeting may not be off the record.
- 342 (c) A transcript and minutes of exempt portions of meetings
 343 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 344 I of the State Constitution.
- 345 (4) REQUEST TO INSPECT OR COPY A RECORD.—
- 346 (a) Records made confidential and exempt by this section
 347 may be released, upon written request, to a governmental entity
 348 in the performance of its official duties and responsibilities.

Page 12 of 14

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577-00807-12 2012798

(b) Notwithstanding the provisions of paragraph (2) (a), a request to inspect or copy a public record that contains proprietary confidential business information shall be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the institute, to verify the following to the institute through a written declaration in the manner provided by s. 92.525:

1. That the requested record contains proprietary confidential business information and the specific location of such information within the record;

2. If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in s. 688.002;

3. That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and

4. That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.

(c) 1. Any person may petition a court of competent jurisdiction for an order for the public release of those portions of any record made confidential and exempt by subsection (2).

2. Any action under this subsection must be brought in Palm Beach County or Alachua County, and the petition or other initial pleading shall be served on the institute and, if determinable upon diligent inquiry, on the proprietor of the

577-00807-12 2012798

information sought to be released.

3. In any order for the public release of a record under this subsection, the court shall make a finding that:

a. The record or portion thereof is not a trade secret as defined in s. 688.002;

b. A compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and

c. The release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, or the institute.

(5) PENALTIES.—Any person who willfully and knowingly violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 810

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: OGSR/Publicly Owned House Museums/Donor Information

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	Favorable
2.	Seay	Roberts	GO	Favorable
3.				
4.				
5.				
6.				

I. Summary:

This bill is the result of the Environmental Preservation and Conservation Committee's Open Government Sunset Review of the public records exemption for information that identifies a donor or prospective donor to publicly owned house museums designated by the U.S. Department of Interior as National Historic Landmarks if the donor desires to remain anonymous. The exemption will expire on October 2, 2012, unless saved from repeal through reenactment by the Legislature. This bill reenacts this public records exemption.

This bill substantially amends section 267.076 of the Florida Statutes.

II. Present Situation:

Public Records Law

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

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body,

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

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

officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

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

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

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

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

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

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to

³ Chapter 119, F.S.

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

⁵ Section 119.011(11), F.S.

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

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

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

accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

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

Open Government Sunset Review Act

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

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

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

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

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

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

¹² Attorney General Opinion 85-62.

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

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(5)(a), F.S.

¹⁶ Section 119.15(4)(b), F.S.

The Act also requires consideration of the following:

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

Publicly Owned House Museums as National Historic Landmarks in Florida

According to the Florida Department of State, there are only two National Historic Landmarks publicly owned house museums in Florida that are eligible for the exemption. The two houses are the Marjorie Kinnan Rawlings home in Cross Creek (between Gainesville and Ocala) that is owned by the Florida Department of Environmental Protection (DEP) and the Vizcaya Museum and Gardens (often referred to as Vizcaya) that is owned by Miami-Dade County and is located in the north Coconut Grove area of the City of Miami, overlooking Biscayne Bay.¹⁷

Public Records Exemption Under Review

The professional staff of the Senate Committee on Environmental Preservation and Conservation surveyed the Marjorie Kinnan Rawlings Historic State Park through the Department of Environmental Protection's legislative staff to determine how often donors had requested anonymity when donating to the park. The survey also requested specifics regarding the amount of donations and if the park had a system in place to provide anonymity to its donors. Based on survey results provided, a park donor has never requested anonymity since the exemption was originally enacted in 2007. However, the survey did reveal that the agency was unaware of the anonymity exemption prior to completing the survey. The donations to the park between 2007 and 2010 totaled approximately \$13,000. In 2011, the park received two donations totaling approximately \$15,000.

Senate professional staff also surveyed the Vizcaya Museum and Gardens. The response to the survey was prepared and submitted by the Vizcayans, Inc., the private support organization for Vizcaya Museum and Gardens. The Vizcaya Museum and Gardens described their private support program for the publicly owned and operated museum as robust. According to Vizcayans, Inc., the exemption from disclosure of information on actual or prospective donors who request anonymity was sought from the Florida Legislature to ensure:

- that Vizcaya professional staff can pursue donations unhampered;
- the museum's ability to comply with donor privacy requirements of the Better Business Bureau (BBB); and
- encourage the charitable giving program at Vizcaya to fairly compete with programs for privately owned and operated museums.

¹⁷ Vizcaya Museum and Gardens General Information, www.vizcayamuseum.com/plan-general.asp (last visited Jan. 11, 2012).

There is an operational requirement for Vizcaya under the (BBB) Wise Giving Alliance Standards for Charity Accountability.¹⁸ Compliance with these standards is mandated and required under the terms of the Vizcayans' operating agreement with the Vizcaya Museum and Gardens Trust. The policy states that both new and continuing donors must have an annual option to inform the charity if they do not want their name and address shared. The charity must make the privacy policy available to donors and clearly state what information, if any, is shared with another organization and the charity must specify the security measures the charity has in place to protect personal information.

From 2010 to 2011, Vizcaya received approximately eight donations totaling \$483,941. According to the completed survey, one donor has asserted and consistently maintained their request for anonymity between 2008 and 2011. The total amount of donation that this person/entity donated is less than \$100,000. However, it is the Vizcayan's belief that future contributions from this donor may amount to millions of dollars as long as the museum can offer the option of anonymity. Further, according to the survey, many other prospective donors have stated that they are not willing to have their identities released publicly.

The exemption only affects donors who choose to donate anonymously to the Marjorie Kinnan Rawlings Historic State Park and Vizcaya Museum and Gardens. Although the Marjorie Kinnan Rawlings Historic State Park staff has not utilized the anonymous donor option, the Vizcaya Museum and Gardens has built their fundraising campaign around this exclusive option. As a result, the Environmental Preservation and Conservation Committee staff recommended that this public record exemption be reenacted.

III. Effect of Proposed Changes:

Section 1 amends s. 267.076, F.S., reenacting the public records exemption allowing a donor or prospective donor to publicly owned house museums designated by the U.S. Department of Interior as a National Historic Landmark to maintain anonymity if they desire to do so.

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

Other Potential Implications:

If the Legislature chooses not to retain the public records exemption for information identifying donors or prospective donors to publicly owned house museums designated as National Historic Landmarks, the exemption will expire on October 2, 2012. Without the exemption, information identifying donors or prospective donors will become public.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁸ Better Business Bureau, Standards for Charity Accountability, <http://www.bbb.org/us/Charity-Standards> (last visited Jan. 11, 2012.)

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Donors or prospective donors made for the benefit of publicly owned house museums designated as National Historic Landmarks would continue to have the option of requesting anonymity, which may encourage private entities to donate.

C. Government Sector Impact:

Continuing the exemption may encourage donations and therefore result in a financial gain to publicly owned house museums designated as National Historic Landmarks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation

592-00824-12

2012810__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 267.076, F.S., relating to an exemption from public records requirements provided for information that identifies a donor or prospective donor to publicly owned house museums designated by the United States Department of Interior as National Historic Landmarks who desires to remain anonymous; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 267.076, Florida Statutes, is amended to read:

267.076 Confidentiality of certain donor information related to publicly owned house museums designated as National Historic Landmarks.—Information that would identify a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark who desires to remain anonymous is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 880

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Ring

SUBJECT: State Investments

DATE: January 26, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☒	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☐	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

This bill increases the amount of money the State Board of Administration can invest in alternative investments from 10 percent to 20 percent.

This bill substantially amends section 215.47 of the Florida Statutes.

II. Present Situation:

The State Board of Administration

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

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan and the FRS Investment Plan, which represent approximately \$128 billion, or 86 percent, of the \$149 billion in assets managed by the SBA, as of October 31, 2011. The Pension Plan is a defined benefit plan and the Investment Plan is a defined contribution plan that employees

choose in lieu of the Pension Plan. The SBA also manages 33 other investment portfolios, with combined assets of \$21 billion, including the Florida Hurricane Catastrophe Fund (CAT Fund), the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues¹.

In investing assets, the SBA follows the Florida Statutes' fiduciary standards of care, subject to certain limitations.² Pursuant to s. 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type. Some of the key guidelines in the "legal list" specific to the investment of FRS Pension Plan assets include:

- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than 3 percent of equity assets should be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets can be invested in the equity securities of any one corporation.
- No more than 80 percent of assets should be placed in corporate fixed income securities.
- No more than 25 percent of assets should be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 20 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 35 percent of assets should be invested in foreign securities.
- No more than 10 percent³ of assets should be invested in alternative investments,⁴ alternative investment vehicles,⁵ and other non publicly-traded investments.

Alternative Investments⁶

According to information provided by staff of the SBA, the increase in authority for such investments is needed to implement the recommendations contained in Hewitt EnnisKnupp asset liability studies conducted in 2010 and 2011 for the FRS Pension Plan Trust, and would have the benefit of lowering long-term employer cost. The FRS Pension Plan's relatively low allocation to alternative investments (compared to other large and leading public and corporate pension plans)

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

² Section 215.44, F.S.

³ The cap on alternative investments was last changed in 2008, when it was raised from 5% to 10% by Ch. 2008-31, L.O.F.

⁴ An "alternative investment" is defined in s. 215.4401(3)(a)1., F.S., as "an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager."

⁵ An "alternative investment vehicle" is defined in s. 215.4401(3)(a)2., F.S., as the "limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company."

⁶ All information in this section comes from an SBA analysis of SB 880, on file with the Committee on Governmental Oversight and Accountability.

has detracted from performance during the severe global stock market declines experienced in 2000-02 and 2007-09.

Hewitt EnnisKnupp's recommendations to modestly increase the allocation to alternative investments were approved by the SBA Investment Advisory Council and Trustees in 2010 and 2011. The SBA Trustees directed the Executive Director to seek expanded statutory authority to invest in alternative investments (and other securities or investments that are not publicly traded and are not otherwise authorized under s. 217.47, F.S.) beyond the current limit of 10%. It would take several years to actually implement an expanded allocation to such investments. As of October 31, 2011, the FRS pension plan had \$5.7 billion in private equity, and \$4.7 billion in strategic investments.⁷

III. Effect of Proposed Changes:

The bill amends s. 215.47, F.S., to allow the SBA to invest up to 20 percent of any fund in alternative investments, up from the current 10 percent.

The bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

⁷ SBA "Monthly Performance Report to the Trustees" as of October 31, 2011.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on January 26, 2012:

The CS removes from the bill provisions that would have “reset” the principal amount in the Lawton Chiles Endowment Fund.

- B. Amendments:

None.



941038

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 28 - 63.

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

And the title is amended as follows:

Delete lines 5 - 9

and insert:

Board of Administration; providing an effective

By Senator Ring

32-00784-12

2012880

A bill to be entitled

An act relating to state investments; amending s. 215.47, F.S.; increasing the amount of money that may be invested in alternative investments by the State Board of Administration; amending s. 215.5601, F.S.; reducing the amount of the Lawton Chiles Endowment Fund which is available for biomedical research; specifying the real value of the net assets of the fund as of a certain date; providing an effective date.

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

Section 1. Subsection (15) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(15) With no more, in the aggregate, than 20 ~~10~~ percent of any fund in alternative investments, ~~as defined in s. 215.4401(3)(a)1.~~, through participation in an alternative investment vehicle as those terms are the vehicles defined in s. 215.4401(3)(a)2-, or in securities or investments that are not publicly traded and ~~are~~ not otherwise authorized by this section.

Section 2. Paragraph (d) of subsection (3) and paragraph (b) of subsection (4) of section 215.5601, Florida Statutes, are

32-00784-12

2012880

amended to read:

215.5601 Lawton Chiles Endowment Fund.—

(3) LAWTON CHILES ENDOWMENT FUND; CREATION; PRINCIPAL.—

(d) For the 2012-2013 fiscal year ~~2001-2002~~, \$50 ~~\$150~~ million of the existing principal in the endowment shall be reserved and accounted for within the endowment, the income from which shall be used solely for ~~the funding for~~ biomedical research activities as provided in s. 215.5602. The income from the remaining principal shall be used solely as the source of funding for health and human services programs for children and elders as provided in subsection (5). The separate account for biomedical research shall be dissolved and the entire principal in the endowment ~~shall be~~ used exclusively for health and human services programs when cures have been found for tobacco-related cancer, heart, and lung disease.

(4) ADMINISTRATION.—

(b) The endowment shall be managed as an annuity. The investment objective is the long-term preservation of the real value of the net assets of the fund on June 30, 2009, which was \$434,354,314, contributed principal and a specified regular annual cash outflow for appropriation, as nonrecurring revenue. From the annual cash outflow, a pro rata share shall be used solely for biomedical research activities as provided in paragraph (3)(d), until such time as cures are found for tobacco-related cancer and heart and lung disease. ~~Five percent of the annual cash outflow dedicated to the biomedical research portion of the endowment shall be reinvested and applied to that portion of the endowment's principal, with the remainder to be spent on biomedical research activities consistent with this~~

32-00784-12

2012880

59 ~~section.~~ The schedule of annual cash outflow must be included
60 within the investment plan adopted under paragraph (a).
61 Withdrawals other than specified regular cash outflow are
62 considered reductions in contributed principal for the purposes
63 of this subsection.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-26-12

Meeting Date

Topic STATE INVESTMENTS Bill Number 880
Name SLATER BATLISS Amendment Barcode _____ (if applicable)
Job Title _____
Address 215 S. MONROE ST #602 Phone 850-222-8900
Street
City TALLAHASSEE State FL Zip 32301 E-mail SWB@cardenas
partners.com
Speaking: ☒ For ☐ Against ☐ Information
Representing FLORIDA ALTERNATIVE INVESTMENT ASSOCIATION
Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/26/12

Meeting Date

Topic 5880 / SBA in Authority Bill Number 5880
Name ASH Williams Amendment Barcode _____ (if applicable)
Job Title Exec Director / CEO, SBA
Address 1801 Hermitage Blvd Phone 850 413 1250
Street
City Tallahassee State FL Zip _____ E-mail ash.williams@
SBA Fla.com
Speaking: ☐ For ☐ Against ☒ Information
Representing FL SBA
Appearing at request of Chair: ☒ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1084

INTRODUCER: Senator Garcia

SUBJECT: Administrative Procedures

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	GO	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill revises statutory provisions relating to the Florida Administrative Code and the Florida Administrative Weekly. The bill removes the requirement that the Department of State must publish a printed version of the Florida Administrative Code. The bill also provides that the electronic version of the Florida Administrative Code is the official version for the state.

Additionally, the bill changes the name of the Florida Administrative Weekly to the Florida Administrative Register. The bill provides that the electronic version of the Florida Administrative Register is the official version for the state. The bill removes the requirement that the Department of State provide free print copies of the Florida Administrative Register to various federal and state government entities. The bill also provides that the Department of State is no longer responsible for reviewing agency submissions to the Florida Administrative Register for various errors. The bill also includes a directive to the Division of Statutory Revision to prepare a reviser's bill for the 2013 Regular Session to substitute the term Florida Administrative Register for the term Florida Administrative Weekly throughout the Florida Statutes.

This bill substantially amends section 120.55 of the Florida Statutes.

II. Present Situation:

The *Florida Administrative Code* (FAC) is the official compilation of administrative rules for the State of Florida. The Department of State (DOS) oversees the publishing of the FAC and the monthly supplements. The online, unofficial version of the FAC is updated weekly on the department's rulemaking website.

DOS is required to publish the FAC, which contains all rules adopted by agencies, together with references to rulemaking authority and history notes.¹ The FAC must be supplemented at least monthly.² DOS currently contracts with LexisNexis for the printing of the FAC.³ Current law provides that the printed version of the FAC is the official version.⁴

Under current law, DOS is required to publish notices and various other materials filed by the state's administrative agencies in the *Florida Administrative Weekly* (FAW).^{5,6} The FAW must contain:

- Notice of adoption of, and an index to, all rules filed during the preceding week;
- All notices required by s. 120.54(3)(a), F.S., concerning agency rulemaking, showing the text of all rules proposed for consideration or a reference to the location in the FAW where the text of the proposed rules is published;
- All notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained;
- A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules;
- Notice of petitions for declaratory statements or administrative determinations;
- A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week; and
- Any other material required or authorized by law or deemed useful by the department.⁷

Responsibility for the grammatical editing of the FAW is statutorily assigned to DOS.⁸ Additionally, DOS is required to adopt rules prescribing the style and form required for rules submitted for filing and establishing the form for rule certification.⁹

DOS contracts with LexisNexis for publication of the FAW in a printed format.¹⁰ The FAW is published on Fridays and distributed for free to administrative agencies, courts, libraries, law schools, and legislative offices.¹¹ According to DOS, the FAW has approximately 191 paid

¹ Section 120.55(1)(a)1., F.S.

² *Id.*

³ E-mail from Pierce Schuessler, Legislative Affairs Director, Department of State (Jan. 11, 2012) (on file with the Committee on Governmental Oversight and Accountability).

⁴ Section 120.55(1)(a)1., F.S.

⁵ Section 120.55(1)(b), F.S.

⁶ According to DOS, approximately 300 entities in the state publish notices in the Florida Administrative Weekly. These entities include state agencies, other units of state and local government, and nongovernmental entities.

⁷ Section 120.55(1)(b), F.S.

⁸ Section 120.55(1)(e), F.S.

⁹ Section 120.55(1)(d), F.S.

¹⁰ E-mail from Pierce Schuessler, Legislative Affairs Director, Department of State (Jan. 11, 2012) (on file with the Committee on Governmental Oversight and Accountability).

¹¹ Section 120.55(7)(a)1., F.S., requires the department to furnish the FAW, without charge and upon request, as follows:

- One subscription to each federal and state court having jurisdiction over the residents of the state, the Legislative Library, each state university library, the State Library, each depository library designated pursuant to s. 257.05, F.S., and each standing committee of the Senate and House of Representatives and each state legislator;
- Two subscriptions to each state department;
- Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives; and

subscribers, who pay an annual subscription fee of \$307 per year.¹² In addition to producing the paper version of the FAW, DOS posts copies of the FAW at www.flrules.org, which may be accessed by the public for free.¹³

Current law requires all fees and moneys collected by DOS under the Administrative Procedure Act (APA)¹⁴ to be deposited in the Records Management Trust Fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by the department in administering the APA's requirements.¹⁵ The unencumbered balance at the beginning of each fiscal year, which exceeds \$300,000, must be transferred to the General Revenue Fund.¹⁶

The following fees and moneys were collected by DOS under the APA in FY 2010-11:

- DOS collected \$552,563 for the space rate, also known as the line charge. The current charge is \$1.24 per line.
- DOS collected \$51,238 for royalties from the sale of the FAC. Currently, copies of the FAC are sold by LexisNexis. The majority of revenues from the sale of the FAC are retained by the company as compensation for printing the code. DOS receives a small amount in royalties.¹⁷

Subscription fees charged to FAW subscribers are retained by the publisher as compensation for printing the FAW.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 120.55, F.S., deleting requirement that the Department of State (DOS) must publish a printed version of the Florida Administrative Code (FAC); providing that the electronic version of the FAC is the official version for the state; allowing DOS to contract with a publisher to provide a printed publication of the FAC; requiring that adopted rules and material incorporated by reference be filed in an electronic format; changing the name of the Florida Administrative Weekly (FAW) to the Florida Administrative Register (FAR); providing that the electronic version of the FAR is the official version for the state; requiring DOS to continually revise the FAR; deleting requirement that the FAR must contain notices of adoption of, and an index to, all rules filed during the preceding week; deleting requirement that the FAR must contain a cumulative list of all rules that have been proposed but not filed for adoption; allowing DOS to contract with a publisher to provide a printed publication of the FAR; providing that a printed copy of the FAR may be made available on an annual subscription basis; providing that DOS is not responsible for reviewing agency submissions to the FAR for various errors; deleting

-
- Ten subscriptions to the committee.

¹² E-mail from Pierce Schuessler, Legislative Affairs Director, Department of State (Jan. 11, 2012) (on file with the Committee on Governmental Oversight and Accountability).

¹³ Section 120.55(2), F.S.

¹⁴ Chapter 120, F.S.

¹⁵ Section 120.55(8)(a), F.S.

¹⁶ Section 120.55(8)(b), F.S.

¹⁷ E-mail from Pierce Schuessler, Legislative Affairs Director, Department of State (Jan. 11, 2012) (on file with the Committee on Governmental Oversight and Accountability).

¹⁸ *Id.*

requirement that DOS furnish free print copies of the FAR to federal and state government entities; and replacing references to the FAW to FAR.

Section 2 directs the Division of Statutory Revision to prepare a reviser's bill for the 2013 Regular Session to substitute the term Florida Administrative Register for the term Florida Administrative Weekly throughout the Florida Statutes.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Garcia

40-01075-12

20121084

A bill to be entitled

An act relating to administrative procedures; amending s. 120.55, F.S.; revising provisions with respect to the revision and publication of the Florida Administrative Code to provide that the Department of State is not required to publish a printed version of the code but may contract with a publishing firm for a printed publication; providing that the electronic version of the code is the official compilation of the administrative rules of the state; providing for adopted rules and material incorporated by reference to be filed in electronic forms; renaming the "Florida Administrative Weekly" as the "Florida Administrative Register"; requiring a continuous revision and publication of the Florida Administrative Register on an Internet website managed by the Department of State; revising content and website search requirements; deleting a requirement to provide printed copies of the Florida Administrative Register to certain federal and state entities; providing a directive to the Division of Statutory Revision; providing an effective date.

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

Section 1. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

Page 1 of 7

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

40-01075-12

20121084

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department ~~shall publish a printed version of the Florida Administrative Code and~~ may contract with a publishing firm for a ~~such~~ printed publication; however, the department shall retain responsibility for the code as provided in this section. ~~Supplementation of the printed code shall be made as often as practicable, but at least monthly.~~ The electronic printed publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with

Page 2 of 7

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

40-01075-12 20121084
 an agency that files copies of its rules with the department,
 the department shall publish the address and telephone number of
 the executive offices of each agency, the manner by which the
 agency indexes its rules, a listing of all rules of that agency
 excluded from publication in the code, and a statement as to
 where those rules may be inspected.

4. Forms shall not be published in the Florida
 Administrative Code; but any form which an agency uses in its
 dealings with the public, along with any accompanying
 instructions, shall be filed with the committee before it is
 used. Any form or instruction which meets the definition of
 "rule" provided in s. 120.52 shall be incorporated by reference
 into the appropriate rule. The reference shall specifically
 state that the form is being incorporated by reference and shall
 include the number, title, and effective date of the form and an
 explanation of how the form may be obtained. Each form created
 by an agency which is incorporated by reference in a rule notice
 of which is given under s. 120.54(3)(a) after December 31, 2007,
 must clearly display the number, title, and effective date of
 the form and the number of the rule in which the form is
 incorporated.

5. The department shall allow adopted rules and material
 incorporated by reference to be filed in electronic form as
 prescribed by department rule. When a rule is filed for adoption
 with incorporated material in electronic form, the department's
 publication of the Florida Administrative Code on its Internet
 website must contain a hyperlink from the incorporating
 reference in the rule directly to that material. The department
 may not allow hyperlinks from rules in the Florida

40-01075-12 20121084
 Administrative Code to any material other than that filed with
 and maintained by the department, but may allow hyperlinks to
 incorporated material maintained by the department from the
 adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed
 by the department a continuous revision and weekly publication
 entitled the "Florida Administrative Register Weekly," which
 shall serve as the official ~~Internet website for such~~
 publication and must contain:

~~1. Notice of adoption of, and an index to, all rules filed
 during the preceding week.~~

~~1.2-~~ All notices required by s. 120.54(3)(a), showing the
 text of all rules proposed for consideration.

~~2.3-~~ All notices of public meetings, hearings, and
 workshops conducted in accordance with ~~the provisions of~~ s.
 120.525, including a statement of the manner in which a copy of
 the agenda may be obtained.

~~3.4-~~ A notice of each request for authorization to amend or
 repeal an existing uniform rule or for the adoption of new
 uniform rules.

~~4.5-~~ Notice of petitions for declaratory statements or
 administrative determinations.

~~5.6-~~ A summary of each objection to any rule filed by the
 Administrative Procedures Committee ~~during the preceding week.~~

~~7. A cumulative list of all rules that have been proposed
 but not filed for adoption.~~

~~6.8-~~ Any other material required or authorized by law or
 deemed useful by the department.

40-01075-12 20121084

The department may contract with a publishing firm for a printed publication ~~shall publish a printed version~~ of the Florida Administrative Register Weekly and make copies available on an annual subscription basis. ~~The department may contract with a publishing firm for printed publication of the Florida Administrative Weekly.~~

~~(e) Review notices for compliance with format and numbering requirements before publishing them on the Florida Administrative Weekly Internet website.~~

(c) ~~(d)~~ Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

~~(e) Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules, after having obtained the advice and consent of the appropriate agency, and insert history notes.~~

(d) ~~(f)~~ Charge each agency using the Florida Administrative Register Weekly a space rate to cover the costs related to the Florida Administrative Register Weekly and the Florida Administrative Code.

(e) ~~(g)~~ Maintain a permanent record of all notices published in the Florida Administrative Register Weekly.

(2) The Florida Administrative Register Weekly Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with

40-01075-12 20121084

~~weekly~~ publication of the ~~printed and~~ electronic Florida Administrative Register Weekly. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register Weekly Internet website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register Code or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(6) Access to the Florida Administrative Register Weekly Internet website and its contents, including the e-mail notification service, shall be free for the public.

~~(7)(a) Each year the Department of State shall furnish the Florida Administrative Weekly, without charge and upon request, as follows:~~

~~1. One subscription to each federal and state court having jurisdiction over the residents of the state; the Legislative~~

40-01075-12 20121084

Library; each state university library; the State Library; each depository library designated pursuant to s. 257.05; and each standing committee of the Senate and House of Representatives and each state legislator.

2. ~~Two subscriptions to each state department.~~

3. ~~Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives.~~

4. ~~Ten subscriptions to the committee.~~

~~(b) The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to each clerk of the circuit court and each state department, for posting for public inspection.~~

(7)(8)(a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed \$300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

Section 2. The Division of Statutory Revision of the Office of Legislative Services is requested to prepare a reviser's bill for the 2013 Regular Session of the Legislature to substitute the term "Florida Administrative Register" for the term "Florida Administrative Weekly" throughout the Florida Statutes.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-26-11

Meeting Date

Topic _____ Bill Number SB 1084
(if applicable)
Name Pierce Schuessler Amendment Barcode _____
(if applicable)
Job Title Legislative Affairs Director
Address 500 S. Bronough St Phone 245-6509
Street Tallahassee FL 32399 E-mail _____
City State Zip
Speaking: ☒ For ☐ Against ☐ Information
Representing FL Department of State
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/26/12

Meeting Date

Topic Florida Administrative Weekly Bill Number SB1084
(if applicable)
Name Chris Snow Amendment Barcode _____
(if applicable)
Job Title Senior Director of Government Relations
Address 1580 Waldo Palmer Lane Phone 3214749754
Street Tallahassee FL _____ E-mail csnow@spaceflorida.gov
City State Zip
Speaking: ☒ For ☐ Against ☐ Information
Representing Space Florida
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1312

INTRODUCER: Senator Gaetz

SUBJECT: Administrative Authority of the Executive Branch

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	GO	Favorable
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill clarifies legislative intent of the extent of the executive branch's administrative authority in response to the Florida Supreme Court's ruling in *Whiley v. Scott*. The bill authorizes the Division of Statutory Revision to include duplicative, redundant, or unused rulemaking authority in revisers bill recommendations. This bill repeals unused rulemaking delegations to state agencies.

This bill substantially amends sections 20.02, 20.03, 20.05, 120.52, 14.34, 15.16, 15.18, 16.60, 17.0416, 17.59, 39.0137, 39.824, 63.167, 97.026, 97.0555, 97.061, 101.56062, 103.101, 106.165, 110.1099, 110.1228, 110.12301, 112.1915, 118.12, and 121.085 of the Florida Statutes. This bill creates section 120.515 of the Florida Statutes. This bill repeals sections 25.371, 28.43, 35.07, and 88.9051 of the Florida Statutes.

II. Present Situation:

Rulemaking under Florida's Administrative Procedures Act

Rulemaking is a legislative function which may be delegated to an agency by the Legislature¹ by general law. The Legislature must provide an express grant of authority in order for an agency to implement a specific law by rulemaking,² as well as specific standards and guidelines sufficient

¹ Section 1, Art. III, Fla. Const.; *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000); *Dept. of Revenue v. Novoa*, 745 So. 2d 378, 380 (Fla. 1st DCA 1999).

² *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001); *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1979).

to preclude the agency from exercising unbridled discretion in creating policy or applying the law.³

All agencies with delegated rulemaking authority must follow the process and procedure set out in the Administrative Procedures Act (APA) contained in Chapter 120, F.S., unless otherwise provided by law. The APA ensures a uniform procedure to protect the rights of the public when dealing with agencies. The Act contains a general mandate to commence rulemaking within 180 days of the effective date of a new law requiring the promulgation of rules,⁴ but does not control the initial process an agency follows to consider, review, research, or otherwise choose among alternative approaches to formulate a rule implementing law.

Unless the proposal is to repeal an existing rule, the agency must publish a notice of rule development and may schedule workshops to allow public input.⁵ Once an internal decision is made and the agency head approves the adoption of a specific proposed rule, the agency must publish notice of intended rule adoption and the complete text of the proposal.⁶ After completing public hearings (if requested),⁷ resolving changes requested by the Joint Administrative Procedures Committee (JAPC),⁸ providing a statement of estimated regulatory costs both to those who provided proposed lower cost alternatives to the rule and to the public,⁹ or the entry of a final order on a petition challenging the proposed rule,¹⁰ with the approval of the agency head the rule may be filed for adoption with the Department of State.¹¹ The rule then goes into effect 20 days after filing, or at a later date if specified in the original notice of rulemaking, or upon ratification by the Legislature.¹²

Former Governors including Bob Martinez, Lawton Chiles, and Charlie Crist have used executive orders in varying capacities to direct and supervise the policies implemented by their appointed agency heads relating to the exercise of statutorily-created rulemaking authority.¹³

Executive Orders 11-01 and 11-72

Upon taking office, Governor Rick Scott issued Executive Order 11-01 creating the Office of Fiscal Accountability and Regulatory Reform (OFARR) within the Executive Office of the Governor.¹⁴ The executive order also directed all agencies under the direction of the Governor to immediately suspend all rulemaking.¹⁵ Agencies not supervised directly by the Governor were

³ Section 120.52(8) & s. 120.536(1), F.S.

⁴ Section 120.54(1)(b), F.S.

⁵ Section 120.54(2), F.S.

⁶ Section 120.54(3)(a)1., F.S.

⁷ Section 120.54(3)(c), F.S.

⁸ Sections 120.54(3)(d), 120.545(3)(a), F.S.

⁹ Section 120.541, F.S.

¹⁰ Section 120.56, F.S.

¹¹ Section 120.54(3)(e), F.S.

¹² Section 120.54(3)(e)6., F.S.

¹³ See Staff Analysis for PCB 12-02, Rulemaking and Regulation Subcommittee, Florida House of Representatives (for a comprehensive discussion of the historical use of executive orders to supervise agency rulemaking).

¹⁴ Office of the Governor, Executive Order Number 11-01, *available at* <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2011/11-01-rulemaking.pdf> [hereinafter Exec. Order 11-01].

¹⁵ *Id.*

requested to suspend all rulemaking activities.¹⁶ OFARR was given specific duties pertaining to agency rulemaking, including reviewing proposed rules under specific policy guidelines set in the order. The main emphasis was to ensure that “agency-created rules do not hinder government performance and that they are fiscally responsible.”¹⁷ The order also established the schedule to be followed by state agencies in submitting proposed or amended rules to OFARR.¹⁸ In April 2011, the Governor issued Executive Order 11-72 superseding Executive Order 11-01. The new order also required the suspension of agency rulemaking until approval was received from OFARR.¹⁹

Whiley v. Scott

In *Whiley*, the Florida Supreme Court heard a petition challenging the Governor’s authority to direct and supervise delegated rulemaking by appointed agency heads serving at his pleasure. On August 16, 2011, the majority of Supreme Court ruled that portions of the executive order violated the Administrative Procedure Act (APA) by “suspending and terminating rulemaking by precluding notice publication and other compliance with Chapter 120 absent prior approval by OFARR.”²⁰ The majority of the court more narrowly interpreted the “supreme executive power” vested in the Governor by article IV, section 6 of the Florida Constitution. Although executive agency heads serve at the pleasure of the Governor, the court concluded that “the power to remove is not analogous to the power to control [an agency].” The majority opinion noted that the Legislature may, and has in several cases, delegate particular responsibilities in the oversight of rulemaking to the Executive Office of the Governor.²¹

In his dissent, Chief Justice Canady found that Florida law imposes no restriction on the authority of the Governor to supervise and direct policy choices made by subordinate executive officials with respect to rulemaking. In a separate dissent, Justice Polston found that “nothing in the APA prohibits the Governor from performing executive oversight to ensure that the rulemaking process at his agencies results in effective and efficient rules that accord with Florida law.”²² Both dissenting justices adopted a more expansive reading of article IV, section 6 of the Florida Constitution granting the Governor authority to suspend executive agency rulemaking.

Responding to the Court’s ruling in *Whiley*, the Governor issued Executive Order 11-211. The order provided that appointed agency heads can voluntarily cooperate with OFARR’s role in overseeing proposed rulemaking.

Unused Rulemaking Delegations

Legislative grants of rulemaking authority provide agencies with flexibility to address issues arising in the administration of a statute. A number of provisions authorizing agency rulemaking have been in statute for more than five years but have never been used. In instances where

¹⁶ *Id.*

¹⁷ *Whiley v. Scott*, -- So. 3d --, 2011 Lexis 1900, 36 Fla. L. Weekly S 451 (Fla. 2011).

¹⁸ Exec. Order 11-01, *supra* note 14.

¹⁹ *Id.*

²⁰ *Whiley*, *supra* note 17, at *27.

²¹ *Whiley*, *supra* note 17, at *35; *see, e.g.*, section 14.2015, F.S., section 288.7015, F.S.

²² *Whiley*, *supra* note 17 at *60-61.

agencies have been able to administer statutory programs without relying on rulemaking, the grant of rulemaking authority appears unnecessary.

III. Effect of Proposed Changes:

Section 1 affirms that Executive Orders 11-72 and 11-211 are consistent with law and public policy of the state.

Section 2 clarifies legislative intent that the placement of an agency head appointed by serving at the pleasure of the governor does not intend to restrict the Governor's authority to direct and supervise the implementation of executive policy by these appointees unless expressly stated otherwise in law.

Section 3 creates s. 20.02(3), F.S., providing that an agency head appointed by and serving at the pleasure of the Governor remains under the oversight, direction, and supervisory authority of the Governor unless expressly stated otherwise in law.

Section 4 amends ss. 20.03(4)-(5), F.S. and creates s. 20.03(15), amending the definition of "agency head"; amending the definition of "Secretary"; and creating a new definition to expressly define the phrase "to serve at the pleasure."

Section 5 amends s. 20.05, F.S., making the authority of any agency head subject to the allocation of executive power under Article IV of the State Constitution.

Section 6 creates s. 120.515, F.S., providing that Chapter 120 (the APA) does not limit the allocation of executive power under Article IV of the State Constitution; and clarifying that the APA does not limit the authority to direct or supervise rulemaking decisions by appointed agency heads.

Section 7 amends s. 120.52, F.S., confirming that all actions taken by appointed agency heads under the APA are official acts.

Section 8 repeals s. 14.34, F.S., removing rulemaking authority to the Executive Office of the Governor to adopt rules relating to the Governor's Medal of Merit. The rulemaking authority was first granted in 2004 and appears to have never been used.

Section 9 amends s. 15.16(7), F.S., removing rulemaking authority to the Department of State to adopt rules relating to international processes for validating and verifying documents. The Department of State has not found it necessary to adopt rules for implementing this provision and has not expressed objection to the rulemaking repeal.

Section 10 repeals s. 15.18(7), F.S., removing rulemaking authority to the Department of State to adopt rules relating to contracts for professional services and events funded by donations. The Department of State has never adopted rules under this provision, which was last amended in 2002. The department has expressed no objection to the rulemaking repeal.

Section 11 amends s. 16.60, F.S., removing rulemaking authority to the Office of the Attorney General to adopt rules of procedure relating to a mediation program that resolves public records disputes. The Attorney General's office has never adopted rules under this provision, which was last amended in 2000. The office has expressed no objection to the removal of the rulemaking authority.

Section 12 amends s. 17.0416, F.S., removing rulemaking authority to the Department of Financial Services (DFS) to adopt rules to implement the section authorizing DFS to provide services on a fee basis to other public bodies and officers. DFS has not adopted rules under this provision, which was created in 2004. DFS does not object to the repeal of this rulemaking authority.

Section 13 amends s. 17.59, F.S., removing rulemaking authority to the Chief Financial Officer (CFO) to adopt rules for the management of safekeeping services. The CFO has not adopted rules under this provision, which was last amended in 2004. The CFO has expressed no objection to the repeal of this rulemaking provision.

Section 14 repeals s. 25.371, F.S., providing that Supreme Court rules override a statute in the case of a conflict.

Section 15 repeals s. 28.43, F.S., removing rulemaking authority to the Department of Revenue and the Department of Financial Services to adopt rules relating to the funding and budgeting of court clerks. Neither department has objected to the repeal of this rulemaking authority.

Section 16 repeals s. 35.07, F.S., providing that District Courts of Appeal may make rules and regulations for the internal management of the court.

Section 17 amends s. 39.0137, F.S., removing rulemaking authority to the Department of Children and Family Services to adopt rules to facilitate implementation of the federal Indian Child Welfare Act. This rulemaking power is unnecessary because it is duplicative of s. 39.012, F.S., authorizing the Department of Children and Family Services to make rules to implement the entire chapter.

Section 18 amends s. 39.824, F.S., removing a 1989 request to the Supreme Court to adopt rules of procedure to implement part of Chapter 39, F.S.

Section 19 amends s. 63.167, F.S., removing rulemaking authority relating to the state adoption information center. This provision was last amended in 2003 and no rules appear to have been adopted by the Department of Children and Family Services based on this provision.

Section 20 repeals s. 88.9051, F.S., relating to the Uniform Interstate Family Support Act. Chapter 88, F.S. currently does not contain a definition identifying the department empowered by the section. No rule appears to be in effect that relies on the section.

Section 21 amends s. 97.026, F.S., removing rulemaking authority allowing the Department of State to adopt rules relating to the availability of elections-related forms in alternate formats and via the internet. The Department of State has rulemaking authority under s. 97.012, F.S., to

implement s. 97.026, F.S. No rule appears to have been promulgated by the language currently in s. 97.026, F.S. The Department has indicated that it does not object to the repeal.

Section 22 amends s. 97.0555, F.S., removing rulemaking authority allowing the Department of State to adopt rules relating to late voter registration by uniformed servicepersons and their accompanying family members. The Department of State has rulemaking authority under s. 97.012, F.S., to implement s. 97.0555, F.S. No rule appears to have been promulgated by the language currently in s. 97.0555, F.S. The Department has indicated that it does not object to the repeal.

Section 23 amends s. 97.061, F.S., removing rulemaking authority allowing the Department of State to adopt rules relating to procedures for registering persons requiring assistance. The Department of State has rulemaking authority under s. 97.012, F.S., to implement s. 97.061, F.S. No rule appears to have been promulgated by the language currently in s. 97.061, F.S. The Department has indicated that it does not object to the repeal.

Section 24 amends s. 101.56062, F.S., removing rulemaking authority allowing the Department of State to adopt rules relating to standards for accessible voting systems. The Department of State has rulemaking authority under s. 97.012, F.S., to implement s. 101.56062, F.S. No rule appears to have been promulgated by the language currently in s. 101.56062, F.S. The Department has indicated that it does not object to the repeal.

Section 25 amends s. 103.101, F.S., removing rulemaking authority allowing the Department of State to adopt rules relating to the presidential preference primary. No rule appears to have been adopted in reliance on the provision. The Department of State has expressed that it does not intend to adopt rules under this section and does not object to the repeal.

Section 26 amends s. 106.165, F.S., removing rulemaking authority relating to the use of closed captioning in electioneering broadcasts. The Division of Elections currently has rulemaking authority under s. 106.22(9), F.S., to implement s. 106.165, F.S. No rule appears to have been promulgated by the Department of State in reliance on the rulemaking authority currently in s. 106.165, F.S. The Department has indicated that it does not object to the repeal.

Section 27 amends s. 110.1099, F.S., removing rulemaking authority allowing the Department of Management Services to adopt rules relating to education and training opportunities for state employees. The Department of Management Services has rulemaking authority under s. 110.1055, F.S., to implement s. 110.1099(5), F.S.

Section 28 amends s. 110.1228, F.S., removing rulemaking authority allowing the Department of Management Services to adopt rules relating to participation of small political subdivisions in the state group health plan. The Department of Management Services has rulemaking authority under s. 110.1055, F.S., to implement s. 110.1228(7), F.S.

Section 29 amends s. 110.12301, F.S., removing rulemaking authority allowing the Department of Management Services to adopt rules relating to postpayment claims review and dependent eligibility.

Section 30 amends s. 112.1915, F.S., removing rulemaking authority allowing the State Board of Education to adopt rules to implement a special death benefit for teachers and school administrators. The Board does not appear to have adopted rules under the provision which has not been amended since 2004.

Section 31 amends s. 118.12, F.S., removing rulemaking authority allowing the Department of State to adopt rules relating to the certification of civil-law notaries and apostilles. The Department of State has not used the rulemaking authority for implementation of the section and does not object to its appeal.

Section 32 amends s. 121.085, F.S., removing rulemaking authority allowing the Department of State to adopt rules establishing procedures to establish claims of creditable service under the Florida Retirement System.

Section 33 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By Senator Gaetz

4-01009-12

20121312__

1 A bill to be entitled
 2 An act relating to the administrative authority of the
 3 executive branch; affirming that Executive Orders 11-
 4 72 and 11-211 are consistent with the law and public
 5 policy of this state; providing legislative intent;
 6 amending s. 20.02, F.S.; providing that gubernatorial
 7 appointees are generally subject to the oversight,
 8 direction, and control of the Governor; amending s.
 9 20.03, F.S.; redefining the term "agency head";
 10 specifying that an agency head who is appointed by and
 11 serves at the pleasure of the Governor remains subject
 12 to the supervision, direction, and control of the
 13 Governor; defining the term "serve at the pleasure";
 14 specifying that an appointee who serves at the
 15 pleasure of an appointing authority remains subject to
 16 the direction, supervision, and control of the
 17 appointing authority; amending s. 20.05, F.S.;
 18 specifying that certain statutory directives to heads
 19 of department are subject to the allocation of
 20 executive power under the State Constitution; creating
 21 s. 120.515, F.S.; specifying that ch. 120, F.S., does
 22 not limit or impinge upon the authority of an
 23 appointing authority to direct and supervise an
 24 appointee serving at the pleasure of the appointing
 25 authority; amending s. 120.52, F.S.; specifying that
 26 certain acts of an agency head who serves at the
 27 pleasure of an appointing authority are official acts,
 28 notwithstanding the authority of an appointing
 29 authority to direct and supervise the agency head;

Page 1 of 27

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4-01009-12

20121312__

30 amending s. 14.34, F.S.; deleting the authority of the
 31 Executive Office of the Governor to adopt rules
 32 relating to the award of the Governor's Medal of
 33 Merit; amending s. 15.16, F.S.; deleting the authority
 34 of the Department of State to adopt rules relating to
 35 apostilles conforming to the Hague Convention of 1961;
 36 amending s. 15.18, F.S.; deleting the authority of the
 37 Secretary of State to adopt rules relating to
 38 contracts that are primarily for promotional services
 39 and events; deleting a requirement that appropriated
 40 funds be expended in accordance with part I of ch.
 41 287, F.S.; amending s. 16.60, F.S.; deleting the
 42 authority of the Attorney General to adopt rules of
 43 procedure to govern its mediation proceedings;
 44 amending s. 17.0416, F.S.; deleting the authority of
 45 the Department of Financial Services to adopt rules
 46 relating to contractual agreements to provide
 47 accounting and payroll services on a fee basis;
 48 amending s. 17.59, F.S.; deleting the authority of the
 49 Chief Financial Officer to adopt rules for the
 50 management and maintenance of the collateral
 51 management service; repealing s. 25.371, F.S., which
 52 relates to the effect of rules adopted by the Supreme
 53 Court; repealing s. 28.43, F.S., which relates to the
 54 authority of the Department of Revenue to adopt rules
 55 relating to the clerks of court; repealing s. 35.07,
 56 F.S., which relates to the power of the district
 57 courts of appeal to make rules and regulations;
 58 amending s. 39.0137, F.S.; deleting the authority of

Page 2 of 27

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4-01009-12

20121312__

59 the Department of Children and Family Services to
 60 adopt rules to ensure that the requirements of the
 61 Indian Child Welfare Act and the Multi-Ethnic
 62 Placement Act of 1994 are enforced; amending s.
 63 39.824, F.S.; deleting a request that the Supreme
 64 Court adopt rules of juvenile procedure; amending s.
 65 63.167, F.S.; deleting the authority of the Department
 66 of Children and Family Services to adopt rules
 67 relating to the establishment and operation of the
 68 state adoption information center; repealing s.
 69 88.9051, F.S., which relates to the authority of the
 70 Department of Children and Family Services to adopt
 71 rules to implement ch. 88, F.S.; amending s. 97.026,
 72 F.S.; deleting the authority of the Department of
 73 State to adopt rules relating to the provision of
 74 forms and ballots in alternative formats; amending s.
 75 97.0555, F.S.; deleting the authority of the
 76 Department of State to adopt rules specifying
 77 documentation that is sufficient for certain
 78 individuals to qualify for late registration to vote;
 79 amending s. 97.061, F.S.; deleting the authority of
 80 the Department of State to adopt rules relating to
 81 registration of persons to vote who are unable to read
 82 or write or who are disabled; amending s. 101.56062,
 83 F.S.; deleting the authority of the Department of
 84 State to adopt rules relating to standards for
 85 accessible voting systems; amending s. 103.101, F.S.;
 86 deleting the authority of the Department of State to
 87 promulgate rules relating to the conduct of the

Page 3 of 27

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4-01009-12

20121312__

88 presidential preference primary ballot; amending s.
 89 106.165, F.S.; deleting the authority of the
 90 Department of State to adopt rules relating to
 91 requirements to use closed captioning and descriptive
 92 narratives in certain television broadcasts; amending
 93 s. 110.1099, F.S.; deleting the authority of the
 94 Department of Management Services to adopt rules
 95 relating to educational and training opportunities for
 96 state employees; amending s. 110.1228, F.S.; deleting
 97 the authority of the Department of Management Services
 98 to adopt rules relating to the participation of small
 99 counties, small municipalities, and district school
 100 boards located in small counties to participate in the
 101 state group health insurance program; amending s.
 102 110.12301, F.S.; deleting the authority of the
 103 Department of Management Services to adopt rules
 104 providing a process for verifying dependent
 105 eligibility in the state group insurance program;
 106 amending s. 112.1915, F.S.; deleting the authority of
 107 the State Board of Education to adopt rules relating
 108 to death benefits for teachers and school
 109 administrators; amending s. 118.12, F.S.; deleting the
 110 authority of the Department of State to adopt rules
 111 relating to the certification of a civil notary's
 112 authority; amending s. 121.085, F.S.; deleting the
 113 authority of the Department of Management Services to
 114 adopt rules relating to the submission of information
 115 necessary to establish a member's claim for creditable
 116 service; providing an effective date.

Page 4 of 27

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4-01009-12

20121312__

WHEREAS, for the preservation of liberty and the protection of individual rights, the people of this state adopted a republican form of government delegating and limiting sovereign power to be exercised by their representatives in three separate, but equal, branches: the legislative, the executive, and the judicial, and

WHEREAS, under Article IV of the State Constitution the people vested supreme executive power in the Governor and apportioned specific substantive powers among the other elected officers designated in that article, including the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, and

WHEREAS, Alexander Hamilton stated in the Federalist No. 70 that energy in the executive is a leading character in the definition of good government, and

WHEREAS, Alexander Hamilton further stated in the Federalist No. 70 that a feeble executive implies a feeble execution of the government; that a feeble execution is but another phrase for a bad execution; and that a government ill-executed, whatever it may be in theory, must be in practice a bad government, and

WHEREAS, since the framing of Florida's first constitution in 1838, the people have adhered to the principles expressed by Mr. Hamilton in the vesting of supreme executive power directly in the Governor but choosing to vest other specific executive powers directly in other denominated officials or entities, and

WHEREAS, in uninterrupted consistency with their longstanding vesting of the supreme executive power in the

4-01009-12

20121312__

Governor, the people in 1968 adopted s. 6, Art. IV of the State Constitution, generally directing and limiting the Legislature to allot the functions of the executive branch among not more than 25 departments and to place the administration of each department under the direct supervision of the Governor, the Lieutenant Governor, the Governor and Cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the Governor, and

WHEREAS, each officer of state government is obligated to construe the language of the State Constitution consistent with its express and clearly implied intent, must give words their ordinary and customary meaning unless the context indicates otherwise, must construe all parts together to give them their full effect, and must not construe the terms of the State Constitution to yield an absurd result, and

WHEREAS, consistent with s. 6, Art. IV of the State Constitution, the Legislature adopted and the Governor signed into law chapter 69-106, Laws of Florida, which restructured the executive branch into not more than 25 departments and designated their direct administration, and

WHEREAS, at the time of adopting chapter 69-106, Laws of Florida, the Legislature was informed that, in submitting s. 6, Art. IV of the 1968 Constitution to the people for approval, the Legislature intended that the proposal ensure that the administration and policies of each executive branch department would be under the final authority and control of the Governor or one or more elected constitutional officers, and

WHEREAS, in construing together ss. 1(a) and 6, Art. IV of the State Constitution, the Legislature understands that these

4-01009-12 20121312__

sections create a general legal presumption against the creation of a class of unelected, subordinate officers exercising executive power independent of the direction and supervision of the Governor or one or more specified elected constitutional officers, and

WHEREAS, s. 6, Art. IV of the State Constitution has not been amended since its ratification by the people of this state on November 5, 1968, and

WHEREAS, an officer appointed by and serving at the pleasure of the Governor to administer a department exercises a portion of the sovereign power allocated under the State Constitution to the executive branch and remains subject to the direction and supervision of one or more elected constitutional officers who have the ultimate accountability to the people for the faithful discharge of such responsibility, and

WHEREAS, Justice Polston stated in a dissenting opinion in *Whiley v. Scott*, 2011 WL 3568804, at *17 (Fla. 2011), that the Governor has the constitutional authority to act as this state's chief administrative officer as well as the constitutional duty to faithfully execute this state's laws and to manage and hold agencies under his charge accountable to state laws, including the Administrative Procedure Act, and that the Governor is given broad authority to fulfill his duty in taking care that the laws are faithfully executed, and

WHEREAS, Chief Justice Canady stated in a dissenting opinion in *Whiley v. Scott*, 2011 WL 3568804, at *11 (Fla. 2011), that if the phrase "supreme executive power," as used in s. 6, Art. IV of the State Constitution, "means anything, it must mean that the Governor can supervise and direct the policy-making

4-01009-12 20121312__

choices - within the range of choices permitted by law - of the subordinate executive branch officers who serve at his pleasure," and

WHEREAS, the Legislature has not insulated discretionary executive policy decisions from the constitutional structure of accountability to elected officials established in Article IV of the State Constitution, and

WHEREAS, the Legislature finds that exercise of delegated quasi-legislative power within the parameters of the Administrative Procedure Act and related statutes involves discretionary policy choices by executive branch officers, and that in the exercise of this power, the Legislature has imposed no restriction on the authority of the Governor or any other constitutional officer or collegial body to supervise and direct such policy choices made by subordinate executive branch officials in rulemaking, and

WHEREAS, Florida law provides no specific process for carrying out the Governor's executive duties with respect to holding his executive agencies accountable in their rulemaking functions, and

WHEREAS, Chief Justice Canady correctly stated in a dissenting opinion in *Whiley v. Scott*, 2011 WL 3568804, at *11 (Fla. 2011), "Given the constitutional structure establishing the power and responsibilities of the Governor, it is unjustified to conclude . . . that by assigning rulemaking power to agency heads, the Legislature implicitly divested the Governor of the supervisory power with respect to executive officials who serve at his pleasure," and

WHEREAS, a Governor's actions are presumed to be in accord

4-01009-12

20121312__

with the duties of that office, and

WHEREAS, a statutory definition of "agency head" is not intended or effective to change the fundamental general principles of Article IV of the State Constitution that executive branch power may be exercised only under the direct or indirect supervision of one or more elected constitutional officers, and that the supervision of any executive agency not expressly allocated to one or more particular constitutional officers remains under the Governor's supreme executive power, and

WHEREAS, the Administrative Procedure Act is a uniform procedural statute ensuring full public access and participation in any exercise of delegated legislative authority by executive branch entities, and

WHEREAS, the delegation of rulemaking authority by substantive statute and establishment of uniform procedures under the Administrative Procedure Act were intended by the Legislature to conform and comply with the separation of powers required under s. 3, Art. II of the State Constitution, with no general intrusion into the role and authority of the elected executive branch officers as established in Article IV of the State Constitution, and

WHEREAS, continual review and assessment of existing and proposed rules is reasonably necessary to ensure that the laws of this state are faithfully executed without unduly burdening the state's economy and imposing needless costs and requirements on residents, businesses, and local governments, and

WHEREAS, fiscal accountability by all agencies is reasonably necessary to ensure integrity in state government,

4-01009-12

20121312__

and

WHEREAS, while agency heads and personnel bring expertise to a particular subject matter, they are not directly accountable to the electorate and do not necessarily have an incentive to take a systemic approach to regulatory problems, to budget constraints, or to the overall regulatory burden imposed by the state on residents and businesses, and

WHEREAS, the elected constitutional officers of this state have a democratic mandate, are directly answerable to the people, and have the duty and power to assess the overall legality, efficiency, and operation of government within their constitutional and statutory jurisdictions, and

WHEREAS, review and oversight of agency rulemaking are encompassed by the Governor's powers and duties under ss. 1(a) and 6, Art. IV of the State Constitution to "take care that the laws be faithfully executed" and to serve as "the chief administrative officer of the state responsible for the planning and budgeting for the state," and

WHEREAS, the State Constitution and the Florida Statutes establish that many agencies of state government are administered by an officer appointed by and serving at the pleasure of the Governor, and in order to determine whether an officer continues to serve at the Governor's pleasure, it is necessary for the Governor to set expectations and standards for that officer, and to measure agency performance against those expectations and standards, and

WHEREAS, Executive Orders 11-01 and 11-72 established the Office of Fiscal Accountability and Regulatory Reform to ensure that agency rules, proposed and existing, are efficient, are not

4-01009-12 20121312

291 overly burdensome, and faithfully adhere to statutes as enacted
292 by the Legislature, and

293 WHEREAS, upon establishment of the Office of Fiscal
294 Accountability and Regulatory Reform, all agencies under the
295 direction of the Governor were required to obtain review by the
296 office and receive approval before developing new rules or
297 amending or repealing existing rules, and

298 WHEREAS, the review process under the Office of Fiscal
299 Accountability and Regulatory Reform has facilitated the
300 Governor's exercise of his power and duty to serve as the chief
301 executive and administrative officer of the state, and

302 WHEREAS, the review process of the Office of Fiscal
303 Accountability and Regulatory Reform has facilitated the
304 Governor's planning and budgeting for the state, and

305 WHEREAS, the Office of Fiscal Accountability and Regulatory
306 Reform has reviewed thousands of rules and regulations and
307 helped agencies identify more than 1,000 unnecessary and
308 unauthorized rules and regulations and recommend that they be
309 repealed, and

310 WHEREAS, since January 4, 2011, the Office of Fiscal
311 Accountability and Regulatory Reform has reviewed hundreds of
312 proposed agency rulemaking actions, and

313 WHEREAS, the review process of the Office of Fiscal
314 Accountability and Regulatory Reform has thus far been
315 successful in helping to ensure the efficient and effective
316 performance of state government, and

317 WHEREAS, a majority of five of the seven justices of the
318 Supreme Court of Florida held in *Whiley v. Scott*, 2011 WL
319 3568804, at *1 (Fla. 2011), that Executive Orders 11-01 and 11-

4-01009-12 20121312

320 72 "impermissibly suspended agency rulemaking to the extent that
321 [they] include a requirement that the Office of Fiscal
322 Accountability and Regulatory Reform must first permit an agency
323 to engage in the rulemaking that has been delegated by the
324 Florida Legislature," and

325 WHEREAS, the majority opinion in *Whiley* failed to address
326 and apply the plain meaning of ss. 1 and 6, Art. IV of the State
327 Constitution, and thereby may be read to restrain the power of
328 the Governor under general law with respect to the supervision
329 of agency heads, and

330 WHEREAS, the majority opinion in *Whiley* failed to address
331 the implications of the Court's precedent in *Jones v. Chiles*,
332 638 So.2d 48 (Fla. 1994), which recognized the proper scope of
333 executive power under the State Constitution, and

334 WHEREAS, the majority opinion in *Whiley* failed to address
335 the precedent set by dozens of executive orders issued by
336 previous Florida governors, and

337 WHEREAS, the majority opinion in *Whiley* failed to address
338 the Court's holding in *Chiles v. Children A, B, C, D, E, and F*,
339 589 So.2d 260, 263 (Fla. 1991), that "[t]he principles
340 underlying the governmental separation of powers antedate our
341 Florida Constitution and were collectively adopted by the union
342 of states in our federal constitution," and, in light of that
343 precedent, failed to consider that Executive Orders 11-01 and
344 11-72 cannot be meaningfully distinguished from similar
345 executive orders issued by the last four presidents of the
346 United States and the governors of a least 29 other states, and

347 WHEREAS, the majority opinion in *Whiley* unreasonably relied
348 on a 1983 opinion of the Attorney General, which the Attorney

4-01009-12 20121312

General distinguished and limited to its facts in an *amicus* brief in *Whiley*, and

WHEREAS, the opinions of the two dissenting justices in *Whiley* state the correct interpretation of the State Constitution and present persuasive reasoning and arguments in support of that interpretation, and

WHEREAS, the Supreme Court withheld the writ sought by the plaintiff in *Whiley*, and

WHEREAS, notwithstanding the other provisions of this preamble, the majority opinion in *Whiley* is to be afforded the deference due an advisory opinion of the Supreme Court as no writ or other final order was entered, NOW, THEREFORE,

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

Section 1. Executive Orders 11-72 and 11-211 are affirmed as being consistent with the law and public policy of the state.

Section 2. The Legislature intends that the amendments to ss. 20.02, 20.03, and 20.05, Florida Statutes, made by this act which apply to the organizational structure of the executive branch, and that the creation of s. 120.515, Florida Statutes, and the amendment to s. 120.52, Florida Statutes, made by this act which apply to administrative procedure are to clarify that the placement of an executive department under the direct administration of an officer or board appointed by and serving at the pleasure of the Governor does not implicitly limit or restrict the Governor's authority and responsibility to direct and supervise the actions, policies, and process of such officer or board. The Legislature further intends that the statutory

4-01009-12 20121312

changes serve as a rejection of any interpretation of the State Constitution or the Florida Statutes which concludes that an unelected agency head has authority to act independently of the direction and supervision of the Governor, except as may be clearly, expressly, and specifically provided by general law.

Section 3. Present subsections (3) through (7) of section 20.02, Florida Statutes, are renumbered as subsections (4) through (8), respectively, and a new subsection (3) is added to that section, to read:

20.02 Declaration of policy.—

(3) Unless otherwise expressly provided in this chapter, the administration of any executive branch department or entity placed under the direct supervision of an officer or board appointed by and serving at the pleasure of the Governor shall remain at all times under the executive authority of the Governor, pursuant to ss. 1(a) and 6, Art. IV of the State Constitution, and subject to the oversight, direction, and supervision of the Governor.

Section 4. Subsections (4) and (5) of section 20.03, Florida Statutes, are amended, and subsection (13) is added to that section, to read:

20.03 Definitions.—To provide uniform nomenclature throughout the structure of the executive branch, the following definitions apply:

(4) "Head of the department" means the individual to whom or board to which direct administration is allocated by statute. An agency head who is appointed by and serves at the pleasure of the Governor remains subject to the Governor's supervision, direction, and control

4-01009-12

20121312

under s. 1(a), Art. IV of the State Constitution.

(5) "Secretary" means an individual who is appointed by the Governor to head a department and who is not otherwise named in the State Constitution.

(13) "Serve at the pleasure" refers to an appointee who serves in the office until removed by the appointing authority. Consistent with ss. 1 and 6, Art. IV of the State Constitution, an appointee serving at the pleasure of the appointing authority remains subject to the direction, supervision, and control of the appointing authority and does not exercise any independent executive power, except as is clearly, expressly, and specifically provided by law. Unless otherwise expressly provided by law, the exercise of statutory authority by such appointee does not require approval of the appointing authority unless expressly required by the directive of the appointing authority.

Section 5. Subsection (1) of section 20.05, Florida Statutes, is amended to read:

20.05 Heads of departments; powers and duties.—

(1) Each head of a department, subject to the allocation of executive power under Art. IV of the State Constitution, and except as otherwise provided by law, must:

(a) Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department must not be construed to limit this authority and this responsibility;

(b) Have authority, without being relieved of

4-01009-12

20121312

responsibility, to execute any of the powers, duties, and functions vested in the department or in any administrative unit thereof through administrative units and through assistants and deputies designated by the head of the department from time to time, unless the head of the department is explicitly required by law to perform the same without delegation;

(c) Compile annually a comprehensive program budget reporting all program and fiscal matters related to the operation of his or her department, including each program, subprogram, and activity, and other matters as required by law;

(d) Reimburse the members of advisory bodies, commissions, and boards of trustees for their actual and necessary expenses incurred in the performance of their duties in accordance with s. 112.061;

(e) Subject to the requirements of chapter 120, exercise existing authority to adopt rules pursuant and limited to the powers, duties, and functions transferred to the department;

(f) Exercise authority on behalf of the department to accept gifts, grants, bequests, loans, and endowments for purposes consistent with the powers, duties, and functions of the department. All such funds must be deposited in the State Treasury and appropriated by the Legislature for the purposes for which they were received by the department;

(g) If a department is under the direct supervision of a board, including a board consisting of the Governor and Cabinet, however designated, employ an executive director to serve at its pleasure; and

(h) Make recommendations concerning more effective internal structuring of the department to the Legislature. Unless

4-01009-12

20121312

otherwise required by law, such recommendations must be provided to the Legislature at least 30 days before the first day of the regular session at which they are to be considered, when practicable.

Section 6. Section 120.515, Florida Statutes, is created to read:

120.515 Declaration of policy.—This chapter does not limit or impinge upon the allocation of executive power under Art. IV of the State Constitution, including the authority of an appointing authority to direct and supervise an appointee serving at the pleasure of the appointing authority.

Section 7. Subsection (3) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action. While an agency head appointed by and serving at the pleasure of an appointing authority remains subject to the direction and supervision of the appointing authority, actions taken by the agency head as authorized by law are official acts.

Section 8. Subsection (3) of section 14.34, Florida Statutes, is amended to read:

14.34 Governor's Medal of Merit.—

~~(3) The Executive Office of the Governor, in consultation with the Adjutant General and other appropriate entities, may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.~~

Section 9. Subsection (7) of section 15.16, Florida

4-01009-12

20121312

Statutes, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(7) The Secretary of State may issue apostilles conforming to the requirements of the international treaty known as the Hague Convention of 1961 and may charge a fee for the issuance of apostilles not to exceed \$10 per apostille. The Secretary of State has the sole authority in this state to establish, in accordance with the laws of the United States, the requirements and procedures for the issuance of apostilles. ~~The Department of State may adopt rules to implement this subsection.~~

Section 10. Subsection (7) of section 15.18, Florida Statutes, is amended to read:

15.18 International and cultural relations.—The Divisions of Cultural Affairs, Historical Resources, and Library and Information Services of the Department of State promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity. The Secretary of State, as the head administrator of these divisions, shall hereafter be known as "Florida's Chief Cultural Officer." As this officer, the Secretary of State is encouraged to initiate and develop relationships between the state and foreign cultural officers, their representatives, and other foreign governmental officials in order to promote Florida as the center of American creativity. The Secretary of State shall coordinate international activities pursuant to this section with Enterprise Florida, Inc., and any other organization the secretary deems appropriate. For the accomplishment of this

4-01009-12

20121312

purpose, the Secretary of State shall have the power and authority to:

~~(7) Notwithstanding the provisions of part I of chapter 287, promulgate rules for entering into contracts which are primarily for promotional services and events, which may include commodities involving a service. Such rules shall include the authority to negotiate costs with the offerors of such services and commodities who have been determined to be qualified on the basis of technical merit, creative ability, and professional competency. The rules shall only apply to the expenditure of funds donated for promotional services and events. Expenditures of appropriated funds shall be made only in accordance with part I of chapter 287.~~

Section 11. Paragraph (a) of subsection (3) of section 16.60, Florida Statutes, is amended to read:

16.60 Public records mediation program within the Office of the Attorney General; creation; duties.—

(3) The Office of the Attorney General shall:

(a) Employ one or more mediators to mediate disputes involving access to public records. A person may not be employed by the department as a mediator unless that person is a member in good standing of The Florida Bar. ~~The Office of the Attorney General may adopt rules of procedure to govern its mediation proceedings.~~

Section 12. Section 17.0416, Florida Statutes, is amended 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

4-01009-12

20121312

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.

~~(2) The Department of Financial Services may adopt rules necessary to administer this section.~~

Section 13. Subsection (3) of section 17.59, Florida Statutes, is amended, and present subsections (4) through (6) of that section are renumbered as subsections (3) through (5), respectively, to read:

17.59 Safekeeping services.—

~~(3) The Chief Financial Officer may adopt rules for the proper management and maintenance of the collateral management service.~~

Section 14. Section 25.371, Florida Statutes, is repealed.

Section 15. Section 28.43, Florida Statutes, is repealed.

Section 16. Section 35.07, Florida Statutes, is repealed.

Section 17. Subsection (2) of section 39.0137, Florida Statutes, is amended to read:

39.0137 Federal law; rulemaking authority.—

~~(2) The department shall adopt rules no later than July 1, 2007, to ensure that the provisions of these federal laws are enforced in this state.~~ The department is encouraged to enter into agreements with recognized American Indian tribes in order to facilitate the implementation of the Indian Child Welfare Act.

4-01009-12

20121312

581 Section 18. Section 39.824, Florida Statutes, is amended to
582 read:

583 39.824 Procedures and jurisdiction.—

584 ~~(1) The Supreme Court is requested to adopt rules of~~
585 ~~juvenile procedure by October 1, 1989, to implement this part.~~
586 ~~All procedures, including petitions, pleadings, subpoenas,~~
587 ~~summonses, and hearings in cases for the appointment of a~~
588 ~~guardian advocate shall be according to the Florida Rules of~~
589 ~~Juvenile Procedure unless otherwise provided by law.~~

590 ~~(2)~~ The circuit court shall have exclusive original
591 jurisdiction of a proceeding in which appointment of a guardian
592 advocate is sought. The court shall retain jurisdiction over a
593 child for whom a guardian advocate is appointed until
594 specifically relinquished by court order.

595 Section 19. Subsection (3) of section 63.167, Florida
596 Statutes, is amended to read:

597 63.167 State adoption information center.—

598 (3) The department shall ensure equitable distribution of
599 referrals to licensed child-placing agencies, ~~and may promulgate~~
600 ~~rules as necessary for the establishment and operation of the~~
601 ~~state adoption information center.~~

602 Section 20. Section 88.9051, Florida Statutes, is repealed.

603 Section 21. Section 97.026, Florida Statutes, is amended to
604 read:

605 97.026 Forms to be available in alternative formats and via
606 the Internet.—It is the intent of the Legislature that all forms
607 required to be used in chapters 97-106 shall be made available
608 upon request, in alternative formats. Such forms shall include
609 absentee ballots as alternative formats for such ballots become

4-01009-12

20121312

610 available and the Division of Elections is able to certify
611 systems that provide them. ~~The department may, pursuant to ss.~~
612 ~~120.536(1) and 120.54, adopt rules to administer this section.~~
613 Whenever possible, such forms, with the exception of absentee
614 ballots, shall be made available by the Department of State via
615 the Internet. Sections that contain such forms include, but are
616 not limited to, ss. 97.051, 97.052, 97.053, 97.057, 97.058,
617 97.0583, 97.071, 97.073, 97.1031, 98.075, 99.021, 100.361,
618 100.371, 101.045, 101.171, 101.20, 101.6103, 101.62, 101.64,
619 101.65, 101.657, 105.031, 106.023, and 106.087.

620 Section 22. Section 97.0555, Florida Statutes, is amended
621 to read:

622 97.0555 Late registration.—An individual or accompanying
623 family member who has been discharged or separated from the
624 uniformed services or the Merchant Marine, or from employment
625 outside the territorial limits of the United States, after the
626 book-closing date for an election pursuant to s. 97.055 and who
627 is otherwise qualified may register to vote in such election
628 until 5 p.m. on the Friday before that election in the office of
629 the supervisor of elections. Such persons must produce
630 sufficient documentation showing evidence of qualifying for late
631 registration pursuant to this section. ~~The Department of State~~
632 ~~shall adopt rules specifying documentation that is sufficient to~~
633 ~~determine eligibility.~~

634 Section 23. Subsection (1) of section 97.061, Florida
635 Statutes, is amended to read:

636 97.061 Special registration for electors requiring
637 assistance.—

638 (1) Any person who is eligible to register and who is

4-01009-12 20121312

unable to read or write or who, because of some disability, needs assistance in voting shall upon that person's request be registered under the procedure prescribed by this section and shall be entitled to receive assistance at the polls under the conditions prescribed by this section. ~~The department may adopt rules to administer this section.~~

Section 24. Subsection (3) of section 101.56062, Florida Statutes, is amended to read:

101.56062 Standards for accessible voting systems.—

~~(3) The Department of State may adopt rules in accordance with s. 120.54 which are necessary to administer this section.~~

Section 25. Subsection (5) of section 103.101, Florida Statutes, is amended to read:

103.101 Presidential preference primary.—

(5) The state executive committee of each party, by rule adopted at least 60 days before ~~prior to~~ the presidential preference primary election, shall determine the number, and establish procedures to be followed in the selection, of delegates and delegate alternates from among each candidate's supporters. A copy of any rule adopted by the executive committee shall be filed with the Department of State within 7 days after its adoption and shall become a public record. The Department of State shall review the procedures and shall notify the state executive committee of each political party of any ballot limitations. ~~The Department of State may promulgate rules for the orderly conduct of the presidential preference primary ballot.~~

Section 26. Section 106.165, Florida Statutes, is amended to read:

4-01009-12 20121312

106.165 Use of closed captioning and descriptive narrative in all television broadcasts.—Each candidate, political party, affiliated party committee, and political committee must use closed captioning and descriptive narrative in all television broadcasts regulated by the Federal Communications Commission that are on behalf of, or sponsored by, a candidate, political party, affiliated party committee, or political committee or must file a written statement with the qualifying officer setting forth the reasons for not doing so. Failure to file this statement with the appropriate qualifying officer constitutes a violation of the Florida Election Code and is under the jurisdiction of the Florida Elections Commission. ~~The Department of State may adopt rules in accordance with s. 120.54 which are necessary to administer this section.~~

Section 27. Subsection (5) of section 110.1099, Florida Statutes, is amended to read:

110.1099 Education and training opportunities for state employees.—

~~(5) The Department of Management Services, in consultation with the agencies and, to the extent applicable, with Florida's public community colleges, public career centers, and public universities, shall adopt rules to administer this section.~~

Section 28. Subsection (7) of section 110.1228, Florida Statutes, is amended to read:

110.1228 Participation by small counties, small municipalities, and district school boards located in small counties.—

~~(7) The Department of Management Services may adopt rules necessary to administer this section.~~

4-01009-12 20121312__

697 Section 29. Section 110.12301, Florida Statutes, is amended
698 to read:

699 110.12301 Competitive procurement of postpayment claims
700 review services.—The Division of State Group Insurance is
701 directed to competitively procure the following:

702 (1) Postpayment claims review services for the state group
703 health insurance plans established pursuant to s. 110.123.
704 Compensation under the contract shall be paid from amounts
705 identified as claim overpayments that are made by or on behalf
706 of the health plans and that are recovered by the vendor. The
707 vendor may retain that portion of the amount recovered as
708 provided in the contract. The contract must require the vendor
709 to maintain all necessary documentation supporting the amounts
710 recovered, retained, and remitted to the division. ~~and~~

711 (2) A contingency-based contract for dependent eligibility
712 verification services for the state group insurance program;
713 however, compensation under the contract may not exceed
714 historical claim costs for the prior 12 months for the dependent
715 populations disenrolled as a result of the vendor's services.
716 The division may establish a 3-month grace period and hold
717 subscribers harmless for past claims of ineligible dependents.
718 The Department of Management Services shall submit budget
719 amendments pursuant to chapter 216 in order to obtain budget
720 authority necessary to expend funds from the State Employees'
721 Group Health Self-Insurance Trust Fund for payments to the
722 vendor as provided in the contract. ~~The Department of Management~~
723 ~~Services shall adopt rules providing a process for verifying~~
724 ~~dependent eligibility.~~

725 Section 30. Subsections (4) and (5) of section 112.1915,

4-01009-12 20121312__

726 Florida Statutes, are amended to read:

727 112.1915 Teachers and school administrators; death
728 benefits.—Any other provision of law to the contrary
729 notwithstanding:

730 ~~(4) The State Board of Education shall adopt rules and~~
731 ~~procedures necessary to implement the provisions of this~~
732 ~~section, pursuant to ss. 120.536(1) and 120.54.~~

733 (4)(5) State funding shall be provided annually in the
734 General Appropriations Act.

735 Section 31. Section 118.12, Florida Statutes, is amended to
736 read:

737 118.12 Certification of civil-law notary's authority;
738 apostilles.—If certification of a civil-law notary's authority
739 is necessary for a particular document or transaction, it must
740 be obtained from the Secretary of State. Upon the receipt of a
741 written request from a civil-law notary and the fee prescribed
742 by the Secretary of State, the Secretary of State shall issue a
743 certification of the civil-law notary's authority, in a form
744 prescribed by the Secretary of State, which shall include a
745 statement explaining the legal qualifications and authority of a
746 civil-law notary in this state. The fee prescribed for the
747 issuance of the certification under this section or an apostille
748 under s. 15.16 may not exceed \$10 per document. ~~The Department~~
749 ~~of State may adopt rules to implement this section.~~

750 Section 32. Section 121.085, Florida Statutes, is amended
751 to read:

752 121.085 Creditable service.—~~The following provisions shall~~
753 ~~apply to creditable service as defined in s. 121.021(17):~~

754 ~~(1) The department shall adopt rules establishing~~

4-01009-12

20121312__

755 ~~procedures for the submission of evidence or information~~
756 ~~necessary to establish a member's claim of creditable service.~~
757 ~~(2) No~~ Creditable service that remains ~~which remained~~
758 unclaimed at retirement may not be claimed or purchased after a
759 retirement benefit payment has been cashed or deposited.
760 Section 33. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

1/26/12

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

Meeting Date

Topic _____

Bill Number 1312
(if applicable)

Name Leticia Adams

Amendment Barcode _____
(if applicable)

Job Title Director of Governance Policy

Address 136 S. Bronough St.

Phone 850 521 1279

Street

Tall FL 32301

E-mail ladams@flchamber.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

1/26/2012

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

Meeting Date

Topic Rulemaking

Bill Number 1312
(if applicable)

Name Cindy Sheddleston

Amendment Barcode _____
(if applicable)

Job Title attorney

Address 2425 Torrey Dr

Phone 850-385-7900

Street

TL FL 32303

E-mail Cindy@floridalegal.org

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

Representing 71 Legal Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1 / 26 / 2012

Meeting Date

Topic _____ Bill Number 1312 (if applicable)

Name BRIAN PITTS Amendment Barcode _____ (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH Phone 727/897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAH00.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1464

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Gaetz

SUBJECT: Public Records/Public Meetings/Application to Officers-Elect

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	GO	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☒	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☐	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

This bill requires that officers-elect adopt and implement reasonable measures to ensure compliance with the public records requirements established by Chapter 119, F.S. The bill requires that officers-elect maintain public records in accordance with the policies and procedures of the office to which they have been elected. The bill defines officers-elect as the Governor, Lieutenant Governor, Attorney General, Chief Financial Officer and Commissioner of Agriculture. The bill requires that transition records stored online or electronically be preserved to allow for public inspection. The bill requires an officer-elect to deliver transition records to their office as soon as practicable upon taking the oath of office. This bill clarifies that officers-elect are subject to the public meetings requirements established in Chapter 286, F.S.

This bill creates s. 119.035, amends s. 286.011, and reenacts s. 112.3215(8)(b) of the Florida Statutes.

II. Present Situation:

Florida Public Records and Meetings Laws

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

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

Article I, s. 24 of the State Constitution also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

Only the Legislature is authorized to create exemptions to open government requirements.³ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.⁴ A bill enacting an exemption⁵ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁶

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

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

³ Art. I, s. 24(c), Fla. Constitution.

⁴ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁵ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁶ Art. I, s. 24(c), Fla. Constitution.

Application of Public Records and Meetings Requirements to Officers-Elect

Officers-elect have been held subject to public records and meetings requirements upon certification of their election.⁷ Although not explicitly stated in statute, this principle has been adopted through case law.⁸ *Hough* stated that members-elect of boards, commissions, agencies and other governing bodies are subject to the public meetings requirements.⁹ However, case law has not specifically ruled on the requirement to have written communications of officers-elect open to public inspection. Despite ambiguity in the law, the Department of State has routinely archived transition records for incoming governors since 1971.

III. Effect of Proposed Changes:

Section 1 creates s. 119.035, F.S., specifying that officers-elect are subject to the public records requirements contained in Ch. 119, F.S.; requiring that public records of an officer-elect are to be maintained according to the policies and procedures of the public office to which the officer has been elected; requiring that an officer-elect maintain transition records contained in an online or electronic communication or recordkeeping system; requiring the officer-elect to deliver public records created during the transition to the person or persons responsible for records in such office upon taking the oath of office; providing a definition for officers-elect.

Section 2 amends s. 286.011, F.S., providing that meetings with or attended by an officer-elect at which official acts are to take place are considered public meetings open to the public and must be reasonably noticed.

Section 3 reenacts s. 112.3215(8)(b), F.S., incorporating the amendment to s. 286.011, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ See Attorney General Opinion 74-40.

⁸ See *Hough v. Stembridge*, 278 So.2d 288 (Fla. 3d DCA 1973).

⁹ *Id.* at 289.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Governmental Oversight and Accountability on January 26, 2012:

The CS adds a definition of “officers-elect” as applied to Section 119.035, F.S.

B. Amendments:

None.



718642

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 55 and 56
insert:

(5) For the purposes of this section, the term "officers-
elect" means the Governor, Lieutenant Governor, and the Cabinet,
collectively the Attorney General, the Chief Financial Officer,
and the Commissioner of Agriculture.

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

And the title is amended as follows:



718642

13 Delete line 21
14 and insert:
15
16 during the period following election to public office;
17 defining the term "officers-elect";

By Senator Gaetz

4-01268B-12

20121464__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 119.035, F.S.; declaring that it is the policy of this
 4 state that the provisions of ch. 119, F.S., apply to
 5 officers-elect upon their election to public office;
 6 requiring that such officers-elect adopt and implement
 7 reasonable measures to ensure compliance with the
 8 public records obligations set forth in ch. 119, F.S.;
 9 requiring that the public records of an officer-elect
 10 be maintained in accordance with the policies and
 11 procedures of the public office to which the officer
 12 has been elected; requiring that online and electronic
 13 communication and recordkeeping systems preserve the
 14 records on such systems so as to not impair the
 15 ability of the public to inspect or copy such public
 16 records; requiring that the officer-elect, as soon as
 17 practicable upon taking the oath of office, deliver to
 18 the person or persons responsible for records and
 19 information management, all public records kept or
 20 received in the transaction of official business
 21 during the period following election to public office;
 22 amending s. 286.011, F.S.; revising public meeting
 23 requirements to apply the requirements to meetings
 24 with or attended by officers-elect; reenacting s.
 25 112.3215(8)(b), F.S., relating to lobbying before the
 26 executive branch or the Constitution Revision
 27 Commission, to incorporate the amendment made to s.
 28 286.011, F.S., in a reference thereto; providing an
 29 effective date.

Page 1 of 4

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

4-01268B-12

20121464__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 119.035, Florida Statutes, is created to
 34 read:
 35 119.035 Officers-elect.—
 36 (1) It is the policy of this state that the provisions of
 37 this chapter apply to officers-elect upon their election to
 38 public office. Such officers-elect shall adopt and implement
 39 reasonable measures to ensure compliance with the public records
 40 obligations set forth in this chapter.
 41 (2) Public records of an officer-elect shall be maintained
 42 in accordance with the policies and procedures of the public
 43 office to which the officer has been elected.
 44 (3) If an officer-elect, individually or as part of a
 45 transition process, creates or uses an online or electronic
 46 communication or recordkeeping system, all public records
 47 maintained on such system shall be preserved so as not to impair
 48 the ability of the public to inspect or copy such public
 49 records.
 50 (4) Upon taking the oath of office, the officer-elect
 51 shall, as soon as practicable, deliver to the person or persons
 52 responsible for records and information management in such
 53 office all public records kept or received in the transaction of
 54 official business during the period following election to public
 55 office.
 56 Section 2. Subsection (1) of section 286.011, Florida
 57 Statutes, is amended to read:
 58 286.011 Public meetings and records; public inspection;

Page 2 of 4

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4-01268B-12

20121464

criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by an officer-elect, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Section 3. For the purpose of incorporating the amendment made by this act to section 286.011, Florida Statutes, in a reference thereto, paragraph (b) of subsection (8) of section 112.3215, Florida Statutes, is reenacted to read:

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(8)

(b) All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of s. 286.011(1) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

Page 3 of 4

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4-01268B-12

20121464

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

Page 4 of 4

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/26/2012

Meeting Date

Topic _____ Bill Number 1964 (if applicable)

Name BRIAN PITTS Amendment Barcode _____ (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH Phone 727/897-9291
Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1470

INTRODUCER: Senator Norman

SUBJECT: Repeal of Administrative Rules

DATE: January 24, 2012 REVISED: 1/25/2012

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jenkins	Roberts	GO	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill amends the Administrative Procedure Act¹ by codifying the legal rule that the repeal of a substantive statute also acts to repeal the administrative rules adopted to implement that statute. The bill also creates a summary process for the Department of State to repeal rules which are no longer in full force and effect; this process includes legal review by the Attorney General, notice requirements, and an opportunity for anyone to challenge a proposed summary rule repeal which cannot be effective until the challenge has been resolved.

The bill also provides for the nullification and repeal of 270 existing rules which are no longer needed or for which the specific law implemented has been repealed.

This bill substantially amends the following sections of the Florida Statutes: s. 120.536, F.S., and s. 120.555, F.S.

II. Present Situation:

Rulemaking and the Administrative Procedure Act

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency.² Rulemaking authority is delegated by the Legislature³ through statute and authorizes an agency to “adopt,

¹ Ch. 120, F.S.

² s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

³ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

develop, establish, or otherwise create”⁴ a rule. Agencies do not have discretion whether or not to engage in rulemaking.⁵ To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.⁶ The grant of rulemaking authority itself need not be detailed.⁷ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.⁸

A rule is binding and operative from its effective date until modified or superseded by subsequent legislation.⁹ The Administrative Procedure Act (APA), found in chapter 120, F.S., sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. The APA is silent on how to treat rules adopted to implement or interpret specific powers and duties in a substantive law when that law is subsequently repealed. The courts have determined that repeal of the specific law implemented by a rule *de facto* repeals the rule, since the rule no longer has a substantive basis.¹⁰

The Florida Administrative Code and the Department of State’s Continuous Revision System

The purpose of the rulemaking process is to provide public notice of the generally-applicable policies implementing or interpreting specific laws.¹¹ Publication of all rules in the Florida Administrative Code (FAC) is designed to provide a central resource for the public to find rules adopted by any agency having a regional or statewide jurisdiction.¹²

The Department of State (DOS) is required to conduct a continuous revision system as part of maintaining and publishing the FAC.¹³ There is uncertainty regarding how the DOS is to deal with rules still published in the FAC for which the promulgating agency was abolished, the rulemaking authority was repealed, or the laws implemented by the rules were repealed.¹⁴ The current statutes provide for the preservation and continuation of administrative rules when a program is transferred completely from one agency to another.¹⁵ They do not, however, directly

⁴ s. 120.52(17), F.S.

⁵ s. 120.54(1)(a), F.S.

⁶ s. 120.52(8) & s. 120.536(1), F.S.

⁷ *Save the Manatee Club, Inc.*, supra at 599.

⁸ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁹ *Florida Department of Revenue v. A. Duda & Sons, Inc.*, 608 So. 2d 881 (Fla. 5th DCA 1992), quoting *Hulmes v. Division of Retirement*, 418 So. 2d 269, 270 (Fla. 1st DCA 1982), rev. den. 426 So. 2d 26 (Fla. 1983).

¹⁰ *Office of Insurance Regulation v. Service Insurance Company*, 50 So. 3d 637 (Fla. 1st DCA 2011); *Hulmes*, supra at 270.

¹¹ Sections 120.52(16), 120.54(1)(a), F.S.

¹² Section 120.55(1)(a)1., F.S.

¹³ Section 120.55(1)(a)1., F.S.

¹⁴ For example, currently, both the printed and online versions of the FAC include rules adopted by the former Advisory Council on Intergovernmental Relations (ACIR) and the former Department of Labor and Employment Security (DLES) despite the fact that both agencies, together with their rulemaking authority, have been abolished, and the laws implemented have been repealed. However, certain rules of the former Department of Commerce (DOC) continued to be published in the online version of the FAC as recently as November 8, 2011, but are now identified by DOS as “repealed” based only on the statute abolishing DOC and not on any repeal of the specific laws implemented by these rules.

¹⁵ Section 20.06(2), F.S., providing for Type Two program transfers.

address the impact of abolishing an agency or a grant of rulemaking power without altering the specific powers and duties granted to a subdivision of that agency by a prior enabling statute.

Although repeal of the law implemented has been interpreted as repealing the rules adopted to implement that law,¹⁶ this legal doctrine has not been codified. Furthermore, the DOS does not have express authority to determine whether a rule is still in full force and effect. Unless expressly repealed by act of the Legislature or as a result of repeal of the substantive law on which it depends, a rule may be repealed only by proper administrative action.¹⁷ Where a rule continues in force and effect because the law implemented remains unchanged, only an entity with the grant of rulemaking authority to implement that law is able to take action to repeal the rule. Where the rule remains in force but no rulemaking authority exists, the Legislature would have to create a new grant of rulemaking authority or repeal the rules by direct action.

Water Management District Rules

A review by the Governor's Office of Fiscal Accountability and Regulatory Reform and each of the Water Management Districts concluded that a total of 165 rules of the five Water Management Districts were not needed for continued effective operation of the Districts' programs. Most of these fall into the following general categories, with two specific exceptions:

- The rule is duplicative of statute or rule.
- The rule is not required to implement the policy of the statute.
- The rule references another rule or statute.
- The rule references a repealed statute.
- The rule is outdated or unnecessary to implement the statute.
- The statutory mandate for the rule was repealed.
- The rule duplicates information available in the District's Procedures Manual.
- The authority exercised in the rule was transferred to the Department of Environmental Protection.
- Rule 40D-4.054: Alteration of Exempt Projects - Rule to be combined with 40D-4.041, F.A.C., which sets forth what activity requires a permit.
- Rule 40D-21.441: Public Supply Water Shortage Mitigation Plans - Burdensome requirements for submittal of request for alternative water shortage plan.

Former Department of Commerce

The former Department of Commerce (DOC) was abolished in 1996¹⁸ and several of its programs were moved to the Office of Tourism, Trade, and Economic Development (OTTED).¹⁹ The rules in Chapters 8K-1 and 8K-2, FAC, pertained to one such program. After relocation to OTTED, the rulemaking authority for this program was repealed²⁰ but the various laws

¹⁶ *Office of Insurance Regulation v. Service Insurance Company* and *Hulmes v. Division of Retirement*, supra.

¹⁷ Section 120.54(3)(a)1., F.S.

¹⁸ Ch. 96-320, s. 3, Laws of Florida.

¹⁹ Ch. 96-320, s. 61, 133, Laws of Florida.

²⁰ Ch. 2002-180, s. 3, Laws of Florida.

implemented by the rules remained unaffected.²¹ Two of the laws implemented were repealed in 2007,²² and the remainder in 2011.²³

The rules in Chapter 8M-1, FAC, implemented provisions of the implementing bills for the 1991-1992 General Appropriations Act and apparently expired with the conclusion of that fiscal year. The rules in Chapter 8M-2, FAC, implemented a statute which was repealed in 1996.²⁴ The rules in Chapter 8M-3, FAC, pertained to a program which was also transferred to OTTED along with the law implemented but with the rulemaking authority repealed.²⁵ The specific law implemented was revised extensively but that revision may not have completely repealed the substance of the law implemented by the rule.²⁶

No entity currently has rulemaking authority to repeal these rules. DOS now shows these rules as repealed due to the abolition of the DOC in 1996.²⁷

Former Department of Health and Rehabilitative Services

In 1996, responsibility for all public health matters was moved from the Department of Health and Rehabilitative Services (HRS) to the Department of Health (DOH).²⁸ This was a Type Two transfer,²⁹ which included the rules previously adopted by HRS to implement the relevant statutes.

The rules adopted by HRS in Chapter 10D-116, FAC, implemented s. 383.336, F.S., establishing practice parameters pertaining to the incidence of cesarean births in provider hospitals where the procedure was paid for with state or federal funds.³⁰ This section was not formally transferred to the DOH until 1999.³¹ Most rules of the DOH are indexed in the FAC under Title 64, FAC, but the seven rules under former HRS Chapter 10D-116, FAC, have not been amended or readopted since their effective date in 1992.³² Another question arises concerning the two rules in Chapter 10D-124, FAC, pertaining to the nursing scholarship loan program. The statute implemented by these rules was repealed³³ in 2002. A new program has since been created³⁴ and the DOH adopted rules to administer that program,³⁵ but the DOH has not acted to incorporate the rules in Chapter 10D-124 into the present program.

Because the DOH has not exercised jurisdiction over the rules in either chapter, a question exists as to whether the DOH has rulemaking authority to amend or repeal these rules.

²¹ Former sections 288.707, 288.709, 288.7091, 288.71, 288.711, F.S.

²² Former sections 288.71 and 288.711 were repealed by Ch. 2007-157, s. 24, Laws of Florida.

²³ Ch. 2011-142, s. 487, Laws of Florida.

²⁴ Former s. 288.806, F.S., repealed by Ch. 96-320, s. 154, Laws of Florida.

²⁵ The transfer and repeal of the rulemaking grant were by Ch. 96-320, s. 133, Laws of Florida.

²⁶ Ch. 97-278, s. 49, Laws of Florida.

²⁷ See note 17, *supra*.

²⁸ Ch. 96-403, s. 6, Laws of Florida.

²⁹ The operative language existing in statute at the time has since been renumbered as Section 20.06(2), F.S.

³⁰ Section 383.336, F.S. (1995).

³¹ Ch. 99-8, s. 77, Laws of Florida.

³² <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=10D-116> (accessed on 11/30/2011).

³³ Ch. 2002-387, s. 1058, Laws of Florida.

³⁴ Section 1009.67, F.S., created by Ch. 2002-387, s. 450, Laws of Florida.

³⁵ Ch. 64E-24, FAC.

Former Advisory Council on Intergovernmental Relations

Title 37 of the FAC is comprised of 42 rules adopted by the Advisory Council on Intergovernmental Relations (ACIR) in 1978. Many of the rules were adopted based on the authority of earlier versions of the APA³⁶ as well as the separate grant of rulemaking power to the ACIR.³⁷ In 1996, the rulemaking authority for ACIR was partially eliminated by revisions to the APA and its separate rulemaking authority, together with the agency itself, were abolished.³⁸ While the specific laws implemented by the ACIR rules were repealed at the same time,³⁹ the substance of those statutes apparently was reenacted with the creation of the Legislative Committee on Intergovernmental Relations.⁴⁰ This substantive statute was repealed in 2011.⁴¹ The FAC still shows all rules in Title 37 as in force.⁴²

Former Department of Labor and Employment Security

The Department of Labor and Employment Security (DLES) was abolished in 2002.⁴³ Laws relating to the DLES asbestos management program were repealed in 1999,⁴⁴ 2001,⁴⁵ and 2011.⁴⁶ In 2011, the rulemaking authority associated with this program was also abolished.⁴⁷ The implementing rules, found in chapter 38I-40, FAC, are still listed as in effect.⁴⁸ This chapter also contains rules the DLES adopted related to its oversight of vocational rehabilitation. After the abolishment of the DLES, the Division of Vocational Rehabilitation was placed under the Department of Education (DOE).⁴⁹ This designation did not expressly transfer the rules the DLES adopted for the program to DOE and the Department has not acted to readopt or amend the rules as part of the agency's rulemaking.

III. Effect of Proposed Changes:

Section 1 Creates a new subsection (2) in s. 120.536(1), F.S., stating that unless the Legislature provides otherwise, the repeal of specific powers and duties granted by substantive law will automatically repeal all rules adopted to implement those specific powers and duties.⁵⁰ The DOS

³⁶ Prior to its substantial amendment in 1996, s. 120.53, F.S., could have been interpreted as providing separate rulemaking authority for all agencies to adopt procedural requirements of the APA. This language was completely removed by Ch. 96-159, s. 9, Laws of Florida.

³⁷ Former section 163.706(4), F.S.

³⁸ Ch. 96-311, s. 9, Laws of Florida.

³⁹ Ch. 96-311, s. 9, Laws of Florida.

⁴⁰ Ch. 96-311, s. 1, Laws of Florida, created s. 11.70, F.S.

⁴¹ Ch. 2011-34, s. 3 Laws of Florida.

⁴² <https://www.flrules.org/gateway/Division.asp?toType=r&DivID=408> (accessed on 11/30/2011).

⁴³ Ch. 2002-194, s. 69, Laws of Florida.

⁴⁴ Ch. 99-5, s. 10, Laws of Florida, repealing former s. 255.554, F.S.

⁴⁵ Ch. 2001-89, s. 15, Laws of Florida, repealing s. 255.565, F.S.

⁴⁶ Ch. 2011-213, s. 35, Laws of Florida, repealing s. 255.552, 255.553, 255.555, 255.556, 255.557, 255.558, 255.559, 255.56, 255.561, and 255.562, F.S.

⁴⁷ Ch. 2011-213, s. 35, Laws of Florida, repealing s. 255.563, F.S.

⁴⁸ <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=38I-40> (accessed on 11/30/2011).

⁴⁹ Ch. 2002-22, s. 1, Laws of Florida.

⁵⁰ The bill clarifies the law by codifying the legal doctrine in *Office of Insurance Regulation v. Service Insurance Company* and *Hulmes v. Division of Retirement*.

is directed to update the FAC by showing the repeal of affected rule(s) as of the effective date of the repealing law.

Section 2 Creates new section 120.555 and the procedure for DOS to review and institute summary repeal of rules that are no longer in full force and effect. Requires a response from the agency with authority over the rule, or the Governor if there is no such agency, stating whether the rule is still in full force and effect. Provides public notice of the proposed repeal. Any objection to the summary repeal is required to be brought as a challenge to proposed rulemaking under the APA.

Sections 3-7 Nullify a total of 165 rules in Title 40, FAC, of the five Water Management Districts.

Section 8 Nullifies rules in chapters 8K-1, 8K-2, 8M-1, 8M-2, and 8M-3, FAC, of the former Department of Commerce. Provides explanatory notes.

Section 9 Nullifies certain rules of the former Department of Health and Rehabilitative Services pertaining to implementation of a review program for cesarean births paid for with state or federal funds. Directs the Department of Health to initiate rulemaking to retain any of the rules. Provides an effective date for this section of July 1, 2013, to allow sufficient time for agency rulemaking. Provides explanatory notes.

Section 10 Nullifies other rules of the former Department of Health and Rehabilitative Services pertaining to implementation of a review program for cesarean births paid for with state or federal funds, which rules exceed the scope of authority in the law to be implemented by the rules. Provides explanatory notes.

Section 11 Nullifies certain rules of the former Department of Health and Rehabilitative Services pertaining to nursing scholarship loans. Directs the Department of Health to initiate rulemaking to retain any of the rules. Provides an effective date for this section of July 1, 2013, to allow sufficient time for agency rulemaking. Provides explanatory notes.

Section 12 Nullifies rules in Title 37, FAC, of the former Advisory Council on Intergovernmental Relations. Provides explanatory notes.

Sections 13-14 Nullify rules in chapter 38I-40, FAC, of the former Department of Labor and Employment Security pertaining to a repealed asbestos management program and vocational rehabilitation, which now falls under the jurisdiction of the Department of Education. It directs the DOE to initiate rulemaking to retain any of the vocational rehabilitation rules that are necessary for its program and delays the effect of the nullification of those rules to July 1, 2013. Provides explanatory notes.

Section 15 Requires rules nullified by this bill to be treated as repealed and so noted in the Florida Administrative Code and the Florida Administrative Weekly. It provides that sections nullifying rules shall not be codified in the Florida Statutes.

Section 16 Provides an effective date of 60 days after the bill becomes law.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

By Senator Norman

12-01526-12

20121470__

A bill to be entitled

An act relating to the repeal of administrative rules; amending s. 120.536, F.S.; providing for repeal of administrative rules upon the repeal of the law implemented; creating s. 120.555, F.S.; providing a process for summary repeal of administrative rules that are no longer in effect; nullifying specific administrative rules adopted by the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, Southwest Florida Water Management District, South Florida Water Management District, the former Department of Commerce, the former Department of Health and Rehabilitative Services, Health Program Office, the former Advisory Council on Intergovernmental Relations, or the former Department of Labor and Employment Security; directing the Department of Health and the Department of Education to initiate necessary rulemaking before the effective date of specified rule nullifications; providing an effective date.

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

Section 1. Present subsections (2) and (3) of section 120.536, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section to read:

120.536 Rulemaking authority; repeal; challenge.—

12-01526-12

20121470__

(2) Unless otherwise expressly provided by law:

(a) The repeal of one or more provisions of law implemented by a rule that on its face implements only the provision or provisions repealed and no other provision of law nullifies the rule. Whenever notice of the nullification of a rule under this subsection is received from the committee or otherwise, the Department of State shall remove the rule from the Florida Administrative Code as of the effective date of the law effecting the nullification and update the historical notes for the code to show the rule repealed by operation of law.

(b) The repeal of one or more provisions of law implemented by a rule that on its face implements the provision or provisions repealed and one or more other provisions of law nullifies the rule or applicable portion of the rule to the extent that it implements the repealed law. The agency having authority to repeal or amend the rule shall, within 180 days after the effective date of the repealing law, publish a notice of rule development identifying all portions of rules affected by the repealing law and if no notice is timely published the operation of each rule implementing a repealed provision of law shall be suspended until such notice is published.

(c) The repeal of one or more provisions of law that, other than as provided in paragraph (a) or paragraph (b), causes a rule or portion of a rule to be of uncertain enforceability requires the Department of State to treat the rule as provided by s. 120.555. A rule shall be considered to be of uncertain enforceability under this paragraph if the division notifies the Department of State that a rule or a portion of the rule has been invalidated in a division proceeding based upon a repeal of

12-01526-12 20121470__

law, or the committee gives written notification to the Department of State and the agency having power to amend or repeal the rule that a law has been repealed creating doubt about whether the rule is still in full force and effect.

Section 2. Section 120.555, Florida Statutes, is created to read:

120.555 Summary removal of published rules no longer in force and effect.—When, as part of the continuous revision system authorized in s. 120.55(1)(a)1. or as otherwise provided by law, the Department of State is in doubt whether a rule published in the official version of the Florida Administrative Code is still in full force and effect, the procedure in this section shall be employed.

(1) The Department of State shall submit to the head of the agency with authority to repeal or amend the rule, if any, or if no such agency can be identified, to the Governor, a written request for a statement as to whether the rule is still in full force and effect. A copy of the request shall be promptly delivered to the committee and to the Attorney General. The Department of State shall publish a notice of the request together with a copy of the request in the Florida Administrative Weekly next available after delivery of the request to the head of the agency or the Governor.

(2) No later than 90 days after the date the notice required in subsection (1) is published, the agency or the Governor, notified pursuant to subsection (1), shall file a written response with the Department of State stating whether the rule is in full force and effect and under the jurisdiction of an agency with full authority to amend or repeal the rule.

12-01526-12 20121470__

Failure to respond timely under this subsection constitutes an acknowledgement by the agency or the Governor that the rule is no longer in effect and is subject to summary repeal under this section.

(3) The Department of State shall publish a notice of the agency's or Governor's timely response or the acknowledgement determined under subsection (2) in the Florida Administrative Weekly next available after receipt of the response or the expiration of the response period, whichever occurs first.

(4) If the response states that the rule is no longer in effect, or if no response is filed timely with the Department of State, the notice required in subsection (3) shall also give notice of the following:

(a) Based on the agency's or Governor's written response or the acknowledgement determined under subsection (2), the rule will be repealed summarily pursuant to this section and removed from the Florida Administrative Code.

(b) Any objection to the summary repeal under this section must be filed as a petition challenging a proposed rule under s. 120.56 and must be filed no later than 21 days after the date the notice is published in the Florida Administrative Weekly.

(c) For purposes only of challenging a summary repeal under this section, the agency with current authority to repeal the rule under s. 120.54 shall be named as the respondent in the petition and shall be the proper party in interest. In such circumstances, the Department of State shall not be named as a party in a petition filed under paragraph (b) and this paragraph.

(d) If no agency currently has authority to repeal the rule

12-01526-12 20121470

under s. 120.54, the Department of State shall be named as the respondent in a petition filed under paragraph (b) and this paragraph. The Attorney General shall represent the Department of State in all proceedings under this paragraph.

(5) Upon the expiration of the 21-day period to file an objection to a notice of summary repeal published pursuant to subsection (4), if no timely objection is filed, or, if a timely objection is filed, on the date a decision finding the rule is no longer in effect becomes final, the Department of State shall update the Florida Administrative Code to remove the rule and shall provide historical notes identifying the manner in which the rule ceased to have effect, including the summary repeal pursuant to this section.

Section 3. The following rules of the Northwest Florida Water Management District are nullified and of no further force or effect:

(1) Rule 40A-1.1020, Florida Administrative Code, relating to General Procedures for Permit Applications.

(2) Rule 40A-1.1030, Florida Administrative Code, relating to Contract Bidding Resolution of Protest.

(3) Rule 40A-1.1040, Florida Administrative Code, relating to General Permits.

(4) Rule 40A-1.180, Florida Administrative Code, relating to Procedures for Contracting for Professional Services.

(5) Rule 40A-1.181, Florida Administrative Code, relating to Contracting Bidding-Reservation of Right.

(6) Rule 40A-1.182, Florida Administrative Code, relating to Contracting Bidding-Resolution of Protest.

(7) Rule 40A-2.311, Florida Administrative Code, relating

12-01526-12 20121470

to Competing Applications.

(8) Rule 40A-3.038, Florida Administrative Code, relating to Violations of Licensing Requirements.

(9) Rule 40A-4.061, Florida Administrative Code, relating to Mitigation Banks.

(10) Rule 40A-4.143, Florida Administrative Code, relating to Abandonment.

(11) Rule 40A-4.461, Florida Administrative Code, relating to Inspection.

(12) Rule 40A-4.471, Florida Administrative Code, relating to Abatement.

(13) Rule 40A-6.461, Florida Administrative Code, relating to Inspections.

(14) Rule 40A-6.491, Florida Administrative Code, relating to Unlawful Use.

(15) Rule 40A-44.143, Florida Administrative Code, relating to Abandonment.

Section 4. The following rules of the Suwannee River Water Management District are nullified and of no further force or effect:

(1) Rule 40B-1.100, Florida Administrative Code, relating to Uniform Rules of Procedure and Statement of District Organization and Operation.

(2) Rule 40B-1.510, Florida Administrative Code, relating to District Investigations and Probable Cause Determinations.

(3) Rule 40B-1.702, Florida Administrative Code, relating to Permits Required.

(4) Rule 40B-1.705, Florida Administrative Code, relating to Complaints.

12-01526-12 20121470

- 175 (5) Rule 40B-1.801, Florida Administrative Code, relating
 176 to General provisions pertaining to procurement.
 177 (6) Rule 40B-1.802, Florida Administrative Code, relating
 178 to Definitions.
 179 (7) Rule 40B-1.804, Florida Administrative Code, relating
 180 to Certification and Competitive Selection for Professional
 181 Services.
 182 (8) Rule 40B-1.805, Florida Administrative Code, relating
 183 to Competitive Negotiation.
 184 (9) Rule 40B-1.808, Florida Administrative Code, relating
 185 to Applicability.
 186 (10) Rule 40B-1.810, Florida Administrative Code, relating
 187 to Procurement of Commodities or Contractual Services.
 188 (11) Rule 40B-1.811, Florida Administrative Code, relating
 189 to Prequalified Providers.
 190 (12) Rule 40B-1.812, Florida Administrative Code, relating
 191 to Contract Bidding - Reservation of Rights.
 192 (13) Rule 40B-1.813, Florida Administrative Code, relating
 193 to Contract Bidding - Resolution of Protests.
 194 (14) Rule 40B-2.025, Florida Administrative Code, relating
 195 to Processing of Water Use Permit Applications.
 196 (15) Rule 40B-2.201, Florida Administrative Code, relating
 197 to Permit Fees.
 198 (16) Rule 40B-2.311, Florida Administrative Code, relating
 199 to Competing Applications.
 200 (17) Rule 40B-2.341, Florida Administrative Code, relating
 201 to Revocation of Permits.
 202 (18) Rule 40B-2.441, Florida Administrative Code, relating
 203 to Temporary Water Use Permits.

12-01526-12 20121470

- 204 (19) Rule 40B-2.781, Florida Administrative Code, relating
 205 to Enforcement.
 206 (20) Rule 40B-3.011, Florida Administrative Code, relating
 207 to Policy and Purpose.
 208 (21) Rule 40B-3.031, Florida Administrative Code, relating
 209 to Implementation.
 210 (22) Rule 40B-3.038, Florida Administrative Code, relating
 211 to Violations of Licensing Requirements.
 212 (23) Rule 40B-3.039, Florida Administrative Code, relating
 213 to Penalties.
 214 (24) Rule 40B-3.0391, Florida Administrative Code, relating
 215 to Enforcement.
 216 (25) Rule 40B-3.0511, Florida Administrative Code, relating
 217 to Variances.
 218 (26) Rule 40B-3.500, Florida Administrative Code, relating
 219 to Scope of Part II.
 220 (27) Rule 40B-3.507, Florida Administrative Code, relating
 221 to Casing and Liner Pipe Standards.
 222 (28) Rule 40B-3.525, Florida Administrative Code, relating
 223 to Explosives.
 224 (29) Rule 40B-4.1050, Florida Administrative Code, relating
 225 to Permit Fees.
 226 (30) Rule 40B-5.0021, Florida Administrative Code, relating
 227 to Definitions.
 228 (31) Rule 40B-5.0051, Florida Administrative Code, relating
 229 to Exemptions.
 230 (32) Rule 40B-5.0121, Florida Administrative Code, relating
 231 to Notice and Hearing Requirements.
 232 (33) Rule 40B-5.0201, Florida Administrative Code, relating

12-01526-12 20121470

233 to Permit Processing Fee.

234 (34) Rule 40B-5.0351, Florida Administrative Code, relating

235 to Transfer of Permits.

236 (35) Rule 40B-5.0751, Florida Administrative Code, relating

237 to Enforcement and Penalties.

238 (36) Rule 40B-5.0901, Florida Administrative Code, relating

239 to Forms and Instructions.

240 (37) Rule 40B-9.045, Florida Administrative Code, relating

241 to Acquisition Procedures-Condemnation.

242 (38) Rule 40B-9.065, Florida Administrative Code, relating

243 to Disclosure of Beneficial Interest.

244 (39) Rule 40B-9.081, Florida Administrative Code, relating

245 to Disposition of Surplus Real Property.

246 (40) Rule 40B-21.031, Florida Administrative Code, relating

247 to Elements of the Plan.

248 (41) Rule 40B-21.291, Florida Administrative Code, relating

249 to Variances.

250 (42) Rule 40B-21.421, Florida Administrative Code, relating

251 to Compliance.

252 (43) Rule 40B-21.511, Florida Administrative Code, relating

253 to General provisions pertaining to classification of water

254 users.

255 Section 5. The following rules of the St. Johns River Water

256 Management District are nullified and of no further force or

257 effect:

258 (1) Rule 40C-2.441, Florida Administrative Code, relating

259 to Temporary Permits.

260 (2) Rule 40C-3.038, Florida Administrative Code, relating

261 to Violations of Contractor Licensing Requirements.

12-01526-12 20121470

262 (3) Rule 40C-3.039, Florida Administrative Code, relating

263 to Penalties.

264 (4) Rule 40C-3.040, Florida Administrative Code, relating

265 to Scope of Part I.

266 (5) Rule 40C-3.201, Florida Administrative Code, relating

267 to Permit Processing Fee.

268 (6) Rule 40C-3.321, Florida Administrative Code, relating

269 to Duration of Permits.

270 (7) Rule 40C-3.525, Florida Administrative Code, relating

271 to Explosives.

272 (8) Rule 40C-3.529, Florida Administrative Code, relating

273 to Flowing Wells.

274 (9) Rule 40C-3.532, Florida Administrative Code, relating

275 to Violations of Well Construction Standards.

276 (10) Rule 40C-4.011, Florida Administrative Code, relating

277 to Policy and Purpose.

278 (11) Rule 40C-4.201, Florida Administrative Code, relating

279 to Permit Processing Fee.

280 (12) Rule 40C-4.351, Florida Administrative Code, relating

281 to Transfer of Permits.

282 (13) Rule 40C-4.751, Florida Administrative Code, relating

283 to Enforcement.

284 (14) Rule 40C-9.001, Florida Administrative Code, relating

285 to Purpose.

286 (15) Rule 40C-9.031, Florida Administrative Code, relating

287 to Selection of Lands - Five Year Plan Pursuant to Section

288 373.199, Florida Statutes.

289 (16) Rule 40C-9.045, Florida Administrative Code, relating

290 to Acquisition Procedures - Condemnation.

12-01526-12 20121470__

- 291 (17) Rule 40C-9.065, Florida Administrative Code, relating
 292 to Disclosure of Beneficial Interest.
 293 (18) Rule 40C-9.071, Florida Administrative Code, relating
 294 to Use of Trust Funds.
 295 (19) Rule 40C-9.081, Florida Administrative Code, relating
 296 to Disposition of Surplus Land.
 297 (20) Rule 40C-9.115, Florida Administrative Code, relating
 298 to Land Management Review Team.
 299 (21) Rule 40C-9.400, Florida Administrative Code, relating
 300 to Individuals Living on District Lands.
 301 (22) Rule 40C-21.031, Florida Administrative Code, relating
 302 to Elements of the Plan.
 303 (23) Rule 40C-24.001, Florida Administrative Code, relating
 304 to Policy and Purpose.
 305 (24) Rule 40C-24.010, Florida Administrative Code, relating
 306 to Definitions.
 307 (25) Rule 40C-24.020, Florida Administrative Code, relating
 308 to Incentive Program.
 309 (26) Rule 40C-24.030, Florida Administrative Code, relating
 310 to Incentive Program - Qualifying.
 311 (27) Rule 40C-40.011, Florida Administrative Code, relating
 312 to Policy and Purpose.
 313 (28) Rule 40C-40.021, Florida Administrative Code, relating
 314 to Definitions.
 315 (29) Rule 40C-40.031, Florida Administrative Code, relating
 316 to Implementation.
 317 (30) Rule 40C-40.321, Florida Administrative Code, relating
 318 to Duration of Permit.
 319 (31) Rule 40C-40.381, Florida Administrative Code, relating

12-01526-12 20121470__

- 320 to Limiting Conditions.
 321 (32) Rule 40C-40.900, Florida Administrative Code, relating
 322 to Forms and Instructions.
 323 (33) Rule 40C-42.071, Florida Administrative Code, relating
 324 to Permit Processing Fee.
 325 (34) Rule 40C-42.081, Florida Administrative Code, relating
 326 to General Provisions.
 327 (35) Rule 40C-44.081, Florida Administrative Code, relating
 328 to Permit Processing Fee.
 329 Section 6. The following rules of the Southwest Florida
 330 Water Management District are nullified and of no further force
 331 or effect:
 332 (1) Rule 40D-1.902, Florida Administrative Code, relating
 333 to District Investigations and Probable Cause Determinations.
 334 (2) Rule 40D-2.311, Florida Administrative Code, relating
 335 to Competing Applications.
 336 (3) Rule 40D-2.511, Florida Administrative Code, relating
 337 to Declaration of Water Shortage.
 338 (4) Rule 40D-3.011, Florida Administrative Code, relating
 339 to Policy and Purpose.
 340 (5) Rule 40D-3.031, Florida Administrative Code, relating
 341 to Implementation.
 342 (6) Rule 40D-3.038, Florida Administrative Code, relating
 343 to Violations of Contractor Licensing Requirements.
 344 (7) Rule 40D-3.201, Florida Administrative Code, relating
 345 to Permit Processing Fee.
 346 (8) Rule 40D-3.525, Florida Administrative Code, relating
 347 to Explosives.
 348 (9) Rule 40D-3.529, Florida Administrative Code, relating

12-01526-12 20121470__

349 to Flowing Wells.

350 (10) Rule 40D-4.031, Florida Administrative Code, relating

351 to Implementation, Effective Date and Applicability.

352 (11) Rule 40D-4.054, Florida Administrative Code, relating

353 to Alteration of Exempt Projects.

354 (12) Rule 40D-4.201, Florida Administrative Code, relating

355 to Permit Processing Fee.

356 (13) Rule 40D-4.461, Florida Administrative Code, relating

357 to Inspection.

358 (14) Rule 40D-40.011, Florida Administrative Code, relating

359 to Policy and Purpose.

360 (15) Rule 40D-40.031, Florida Administrative Code, relating

361 to Implementation, Effective Date and Applicability.

362 (16) Rule 40D-400.201, Florida Administrative Code,

363 relating to Policy and Purpose.

364 (17) Rule 40D-9.101, Florida Administrative Code, relating

365 to Recreational Land Use Policy.

366 (18) Rule 40D-9.110, Florida Administrative Code, relating

367 to Scope and Applicability.

368 (19) Rule 40D-9.300, Florida Administrative Code, relating

369 to Trespass After Notice.

370 (20) Rule 40D-9.310, Florida Administrative Code, relating

371 to Penalties.

372 (21) Rule 40D-21.031, Florida Administrative Code, relating

373 to Elements of the Plan.

374 (22) Rule 40D-21.441, Florida Administrative Code, relating

375 to Public Supply Water Shortage Mitigation Plans.

376 Section 7. The following rules of the South Florida Water

377 Management District are nullified and of no further force or

12-01526-12 20121470__

378 effect:

379 (1) Rule 40E-0.103, Florida Administrative Code, relating

380 to Procedures for Processing Permit Applications.

381 (2) Rule 40E-0.105, Florida Administrative Code, relating

382 to Consideration of Intended Agency Decision on Permit

383 Applications.

384 (3) Rule 40E-1.100, Florida Administrative Code, relating

385 to Uniform Rules of Procedure and Statement of District

386 Organization and Operation.

387 (4) Rule 40E-1.1065, Florida Administrative Code, relating

388 to Misuse of Public Position.

389 (5) Rule 40E-1.125, Florida Administrative Code, relating

390 to Public Information and Inspection of Records.

391 (6) Rule 40E-1.200, Florida Administrative Code, relating

392 to Procedures for Agendas and Scheduling of Meetings and

393 Workshops.

394 (7) Rule 40E-1.208, Florida Administrative Code, relating

395 to Procedure for Abstaining from Voting Conflicts of Interest.

396 (8) Rule 40E-1.300, Florida Administrative Code, relating

397 to Rulemaking Procedures.

398 (9) Rule 40E-1.400, Florida Administrative Code, relating

399 to Procedures Regarding Declaratory Statements.

400 (10) Rule 40E-1.500, Florida Administrative Code, relating

401 to Procedures for Proceedings Which Determine Substantial

402 Interests and Associated Mediation.

403 (11) Rule 40E-1.511, Florida Administrative Code, relating

404 to Point of Entry Into Proceedings.

405 (12) Rule 40E-1.520, Florida Administrative Code, relating

406 to Procedures Concerning Formal Proceedings.

12-01526-12 20121470

- 407 (13) Rule 40E-1.521, Florida Administrative Code, relating
 408 to Initiation of Formal Proceedings.
 409 (14) Rule 40E-1.564, Florida Administrative Code, relating
 410 to Exceptions to Recommended Order.
 411 (15) Rule 40E-1.570, Florida Administrative Code, relating
 412 to Procedures Concerning Informal Proceedings.
 413 (16) Rule 40E-1.601, Florida Administrative Code, relating
 414 to General provisions pertaining to administrative procedures
 415 applicable to permitting decisions.
 416 (17) Rule 40E-1.608, Florida Administrative Code, relating
 417 to Denial of Permits.
 418 (18) Rule 40E-1.611, Florida Administrative Code, relating
 419 to Emergency Action.
 420 (19) Rule 40E-1.6115, Florida Administrative Code, relating
 421 to Emergency Authorization.
 422 (20) Rule 40E-2.441, Florida Administrative Code, relating
 423 to Temporary Permits.
 424 (21) Rule 40E-3.010, Florida Administrative Code, relating
 425 to Review of Water Well Permit Applications.
 426 (22) Rule 40E-3.0511, Florida Administrative Code, relating
 427 to Exemptions and Variances for Well Construction Permits.
 428 (23) Rule 40E-4.311, Florida Administrative Code, relating
 429 to Variances from Specified Review Criteria for Environmental
 430 Resource Permits.
 431 (24) Rule 40E-7.201, Florida Administrative Code, relating
 432 to Policy and Purpose.
 433 (25) Rule 40E-7.205, Florida Administrative Code, relating
 434 to Competitive Selection for Professional Services.
 435 (26) Rule 40E-7.300, Florida Administrative Code, relating

12-01526-12 20121470

- 436 to Procedures Concerning Bid Protests of Solicitations or
 437 Contract Awards.
 438 (27) Rule 40E-7.401, Florida Administrative Code, relating
 439 to District Transfer of Funds.
 440 (28) Rule 40E-20.141, Florida Administrative Code, relating
 441 to Request for Additional Information.
 442 (29) Rule 40E-20.341, Florida Administrative Code, relating
 443 to Revocation of General Water Use Permits.
 444 (30) Rule 40E-20.391, Florida Administrative Code, relating
 445 to Publication.
 446 (31) Rule 40E-21.031, Florida Administrative Code, relating
 447 to Elements of the Plan.
 448 (32) Rule 40E-21.132, Florida Administrative Code, relating
 449 to Water Use Restrictions.
 450 (33) Rule 40E-21.611, Florida Administrative Code, relating
 451 to Classification System.
 452 (34) Rule 40E-22.082, Florida Administrative Code, relating
 453 to Minimum Flows.
 454 (35) Rule 40E-22.112, Florida Administrative Code, relating
 455 to Permit Classification.
 456 (36) Rule 40E-22.132, Florida Administrative Code, relating
 457 to Water Shortage Plan.
 458 (37) Rule 40E-22.242, Florida Administrative Code, relating
 459 to Minimum Flow.
 460 (38) Rule 40E-22.252, Florida Administrative Code, relating
 461 to Permit Classification.
 462 (39) Rule 40E-22.272, Florida Administrative Code, relating
 463 to Water Use Restrictions.
 464 (40) Rule 40E-23.011, Florida Administrative Code, relating

12-01526-12 20121470__

465 to Policy and Purpose.

466 (41) Rule 40E-23.021, Florida Administrative Code, relating

467 to Definitions.

468 (42) Rule 40E-23.023, Florida Administrative Code, relating

469 to Boundaries.

470 (43) Rule 40E-23.031, Florida Administrative Code, relating

471 to Implementation.

472 (44) Rule 40E-23.043, Florida Administrative Code, relating

473 to Application.

474 (45) Rule 40E-23.053, Florida Administrative Code, relating

475 to Criteria for Designation.

476 (46) Rule 40E-63.201, Florida Administrative Code, relating

477 to Scope.

478 (47) Rule 40E-63.211, Florida Administrative Code, relating

479 to Purpose.

480 (48) Rule 40E-63.212, Florida Administrative Code, relating

481 to Definitions.

482 (49) Rule 40E-63.223, Florida Administrative Code, relating

483 to Model to Quantify Annual Allocation of Replacement Water.

484 (50) Rule 40E-63.225, Florida Administrative Code, relating

485 to Delivery of Average Annual Allocation of Replacement Water.

486 Section 8. The following rules of the former Department of

487 Commerce are nullified and of no further force or effect:

488 (1) Rule 8K-1.001, Florida Administrative Code, relating to

489 Purpose.

490 (2) Rule 8K-1.002, Florida Administrative Code, relating to

491 Authority and Duties.

492 (3) Rule 8K-1.003, Florida Administrative Code, relating to

493 Members, Officers and Employees.

12-01526-12 20121470__

494 (4) Rule 8K-1.004, Florida Administrative Code, relating to

495 Meetings of the Board.

496 (5) Rule 8K-1.005, Florida Administrative Code, relating to

497 Notice of Meeting.

498 (6) Rule 8K-1.006, Florida Administrative Code, relating to

499 Records; Public Information.

500 (7) Rule 8K-1.007, Florida Administrative Code, relating to

501 Business Address and Hours.

502 (8) Rule 8K-1.008, Florida Administrative Code, relating to

503 Seal.

504 (9) Rule 8K-2.001, Florida Administrative Code, relating to

505 Purpose.

506 (10) Rule 8K-2.002, Florida Administrative Code, relating

507 to Definitions.

508 (11) Rule 8K-2.003, Florida Administrative Code, relating

509 to Application Procedure.

510 (12) Rule 8K-2.004, Florida Administrative Code, relating

511 to Board Investments; Type and Conditions.

512 (13) Rule 8K-2.005, Florida Administrative Code, relating

513 to Community Support.

514 (14) Rule 8K-2.006, Florida Administrative Code, relating

515 to Accountability.

516 (15) Rule 8K-2.007, Florida Administrative Code, relating

517 to Misuse of Funds; Penalty; Appeal.

518 (16) Rule 8K-2.008, Florida Administrative Code, relating

519 to Local Impact Projects.

520 (17) Rule 8K-2.009, Florida Administrative Code, relating

521 to Certified Corporations.

522 (18) Rule 8K-2.010, Florida Administrative Code, relating

12-01526-12 20121470__

523 to Investment Agreements.
 524 (19) Rule 8M-1.001, Florida Administrative Code, relating
 525 to Definitions.
 526 (20) Rule 8M-1.002, Florida Administrative Code, relating
 527 to Grant Applications.
 528 (21) Rule 8M-1.003, Florida Administrative Code, relating
 529 to Application Review.
 530 (22) Rule 8M-1.004, Florida Administrative Code, relating
 531 to Award of Grants.
 532 (23) Rule 8M-2.001, Florida Administrative Code, relating
 533 to Definitions.
 534 (24) Rule 8M-2.002, Florida Administrative Code, relating
 535 to Grant Applications.
 536 (25) Rule 8M-2.003, Florida Administrative Code, relating
 537 to Application Review.
 538 (26) Rule 8M-2.004, Florida Administrative Code, relating
 539 to Award of Grants.
 540 (27) Rule 8M-3.001, Florida Administrative Code, relating
 541 to Purpose.
 542 (28) Rule 8M-3.002, Florida Administrative Code, relating
 543 to Definitions.
 544 (29) Rule 8M-3.003, Florida Administrative Code, relating
 545 to Applications for Consideration.
 546 (30) Rule 8M-3.004, Florida Administrative Code, relating
 547 to Criteria for the Determination of Grant Award.
 548
 549 Note.—The rulemaking authority for Rules 8K-1.001
 550 through 8K-1.008 and 8K-2.001 through 8K-2.010 was
 551 abolished by section 3, chapter 2002-180, Laws of

12-01526-12 20121470__

552 Florida. No agency appears to have clear authority to
 553 repeal such rules.
 554
 555 Note.—Rules 8K-1.001 and 8K-1.002 implemented ss.
 556 288.707, 288.709, and 288.7091, Florida Statutes,
 557 which were repealed by section 487, chapter 2011-142,
 558 Laws of Florida, leaving the rules out of conformity
 559 with the law to be implemented.
 560
 561 Note.—Rules 8K-1.003, 8K-1.004, 8K-1.005, 8K-1.006,
 562 and 8K-1.007 implemented s. 288.707, F.S., which was
 563 repealed by section 487, chapter 2011-142, Laws of
 564 Florida, leaving the rules out of conformity with the
 565 law to be implemented.
 566
 567 Note.—Rule 8K-1.008 implemented s. 288.709(2), Florida
 568 Statutes, which was repealed by section 487, chapter
 569 2011-142, Laws of Florida, leaving the rule out of
 570 conformity with the law to be implemented.
 571
 572 Note.—Rules 8K-2.001, 8K-2.006, and 8K-2.007
 573 implemented s. 288.711, Florida Statutes, which was
 574 repealed by section 24, chapter 2007-157, Laws of
 575 Florida, leaving the rules out of conformity with the
 576 law to be implemented.
 577
 578 Note.—Rule 8K-2.002 implemented s. 288.707, Florida
 579 Statutes, which was repealed by section 487, chapter
 580 2011-142, Laws of Florida, and s. 288.711, Florida

12-01526-12

20121470__

581 Statutes, which was repealed by section 24, chapter
 582 2007-157, Laws of Florida, leaving the rule out of
 583 conformity with the laws to be implemented.

584

585 Note.—Rules 8K-2.003, 8K-2.004, 8K-2.009, and 8K-2.010
 586 implemented ss. 288.71 and 288.711, Florida Statutes,
 587 which were repealed by section 24, chapter 2007-157,
 588 Laws of Florida, and s. 288.7091, Florida Statutes,
 589 which was repealed by section 487, chapter 2011-142,
 590 Laws of Florida, leaving the rules out of conformity
 591 with the laws to be implemented.

592

593 Note.—Rules 8K-2.005 and 8K-2.008 implemented ss.
 594 288.71 and 288.711, Florida Statutes, which were
 595 repealed by section 24, chapter 2007-157, Laws of
 596 Florida, leaving the rules out of conformity with the
 597 laws to be implemented.

598

599 Note.—The rulemaking authority for Rules 8M-1.001
 600 through 8M-1.004 and 8M-2.001 through 8M-2.004 was
 601 abolished by section 154, chapter 96-320, Laws of
 602 Florida. No agency appears to have clear authority to
 603 repeal such rules.

604

605 Note.—Rules 8M-1.001 through 8M-1.004 implemented
 606 chapters 91-157 and 91-272, Laws of Florida, which
 607 were implementing bills for the 1991 General
 608 Appropriations Act. When those laws expired July 1,
 609 1992, the rules became out of conformity with the laws

12-01526-12

20121470__

610 to be implemented.

611

612 Note.—Rules 8M-2.001 through 8M-2.004 implemented s.
 613 288.806, Florida Statutes, which was repealed by
 614 section 154, chapter 96-320, Laws of Florida, leaving
 615 the rules out of conformity with the laws to be
 616 implemented.

617

618 Note.—The rulemaking authority for Rules 8M-3.001, 8M-
 619 3.002, 8M-3.003, and 8M-3.004 was abolished by section
 620 133, chapter 96-320, Laws of Florida. These specific
 621 rules implemented s. 311.11, Florida Statutes, which
 622 was revised extensively by section 49, chapter 97-278,
 623 Laws of Florida, leaving the rules out of conformity
 624 with the laws to be implemented. No agency appears to
 625 have clear authority to repeal such rules.

626

627 Section 9. (1) Effective July 1, 2013, the following rules
 628 of the former Department of Health and Rehabilitative Services,
 629 Health Program Office, are nullified and of no further force or
 630 effect:

631 (a) Rule 10D-116.001, Florida Administrative Code, relating
 632 to Purpose.

633 (b) Rule 10D-116.002, Florida Administrative Code, relating
 634 to Definitions.

635 (c) Rule 10D-116.003, Florida Administrative Code, relating
 636 to Department Responsibilities.

637 (d) Rule 10D-116.004, subsections (1), (2), and (3),
 638 Florida Administrative Code, relating to Provider Hospital

12-01526-12 20121470__

639 Responsibilities.

640 (e) Rule 10D-116.005, Florida Administrative Code, relating

641 to Practice Parameters.

642 (f) Rule 10D-116.006, subsections (1), (2), and (3),

643 Florida Administrative Code, relating to Functions of Peer

644 Review Boards.

645 (2) Before the effective date of this section, the

646 Department of Health shall initiate rulemaking to readopt or

647 revise those portions of the rules which are necessary to

648 implement the affected statutes.

649

650 Note.—The rules in this section were adopted by the

651 former Department of Health and Rehabilitative

652 Services before the Type Two Transfer of

653 responsibility for public health matters to the

654 Department of Health by section 6, chapter 96-403,

655 Laws of Florida. Rules 10D-116.001, 10D-116.002, 10D-

656 116.003, 10D-116.004, 10D-116.005, 10D-116.006, and

657 10D-116.007 implemented s. 383.336, Florida Statutes,

658 amended by section 77, chapter 99-8, Laws of Florida,

659 to authorize rulemaking by the Department of Health.

660 The abolition of responsibility for public health

661 matters in the former Department of Health and

662 Rehabilitative Services creates uncertainty about the

663 continued validity of these rules. Therefore, the

664 Department of Health should readopt or revise those

665 portions of the rules which remain necessary to

666 implement the agency's statutory authority.

667

12-01526-12 20121470__

668 Note.—Rules 10D-116.001, 10D-116.002(4), 10D-

669 116.002(5), 10D-116.002(6), 10D-116.003, and 10D-

670 116.004 reiterate or paraphrase provisions of s.

671 383.336, Florida Statutes, and do not conform with the

672 requirements of ss. 120.536(1) and 120.545(1)(c),

673 Florida Statutes.

674

675 Note.—Rules 10D-116.002(2) and 10D-116.004(3)

676 interpret s. 383.336, Florida Statutes, with

677 references to the former Department of Health and

678 Rehabilitative Services or repealed statutes and do

679 not conform with the specific law to be implemented.

680

681 Section 10. The following rules of the former Department of

682 Health and Rehabilitative Services, Health Program Office, are

683 nullified and of no further force or effect:

684 (1) Rule 10D-116.004, subsection (4), Florida

685 Administrative Code, relating to Provider Hospital

686 Responsibilities, directing the making of reports to the Agency

687 for Health Care Administration.

688 (2) Rule 10D-116.006, subsection (4), Florida

689 Administrative Code, relating to Functions of Peer Review

690 Boards, stating the results of a review will not serve as

691 evidence in certain proceedings.

692 (3) Rule 10D-116.007, Florida Administrative Code,

693 assigning certain responsibilities to Agency for Health Care

694 Administration.

695

696 Note.—Rules 10D-116.004(4), 10D-116.006(4), and 10D-

12-01526-12 20121470__

697 116.007 exceed the authority delegated in the specific
 698 law to be implemented.

699
 700 Section 11. (1) Effective July 1, 2013, the following rules
 701 of the former Department of Health and Rehabilitative Services,
 702 Health Program Office, are nullified and of no further force or
 703 effect:

704 (a) Rule 10D-124.003, Florida Administrative Code, relating
 705 to Payment of Scholarship Funds.

706 (b) Rule 10D-124.004, Florida Administrative Code, relating
 707 to Placement of Nursing Scholars.

708 (2) Before the effective date of this section, the
 709 Department of Health shall initiate rulemaking to readopt or
 710 revise those portions of the rules which are necessary to
 711 implement the affected statutes.

712
 713 Note.—The rules in this section were adopted by the
 714 former Department of Health and Rehabilitative
 715 Services before the Type Two Transfer of
 716 responsibility for public health matters to the
 717 Department of Health by section 6, chapter 96-403,
 718 Laws of Florida. The abolition of responsibility for
 719 public health matters in the former Department of
 720 Health and Rehabilitative Services raises a question
 721 about the continued validity of these rules. Rules
 722 10D-124.003 and 10D-124.004 implemented s. 240.4028,
 723 Florida Statutes, which was repealed by section 1058,
 724 chapter 2002-387, Laws of Florida. Therefore, the
 725 Department of Health should readopt or revise those

12-01526-12 20121470__

726 portions of the rules which remain necessary to
 727 implement the agency's statutory authority.

728
 729 Section 12. The following rules of the former Advisory
 730 Council on Intergovernmental Relations are nullified and of no
 731 further force or effect:

732 (1) Rule 37-1.001, Florida Administrative Code, relating to
 733 General Authority.

734 (2) Rule 37-1.002, Florida Administrative Code, relating to
 735 Composition of the Council.

736 (3) Rule 37-1.003, Florida Administrative Code, relating to
 737 Council Officers.

738 (4) Rule 37-1.004, Florida Administrative Code, relating to
 739 General Description of Council Organization and Operations.

740 (5) Rule 37-1.005, Florida Administrative Code, relating to
 741 Council Functions and Duties.

742 (6) Rule 37-1.006, Florida Administrative Code, relating to
 743 Council Recommendations.

744 (7) Rule 37-1.007, Florida Administrative Code, relating to
 745 General Information Concerning Council, Its Record and
 746 Proceedings.

747 (8) Rule 37-2.001, Florida Administrative Code, relating to
 748 Notice of Meeting.

749 (9) Rule 37-2.002, Florida Administrative Code, relating to
 750 Scheduling of Meetings.

751 (10) Rule 37-2.003, Florida Administrative Code, relating
 752 to Meetings, Hearings; Intergovernmental Cooperation.

753 (11) Rule 37-2.004, Florida Administrative Code, relating
 754 to Agenda of Meetings and Workshops.

12-01526-12 20121470

- 755 (12) Rule 37-2.005, Florida Administrative Code, relating
 756 to Emergency Meetings.
- 757 (13) Rule 37-2.006, Florida Administrative Code, relating
 758 to Model Rules Application.
- 759 (14) Rule 37-3.001, Florida Administrative Code, relating
 760 to Commencement of Proceeding.
- 761 (15) Rule 37-3.002, Florida Administrative Code, relating
 762 to Notice of Proceeding, and the Proposed Rules.
- 763 (16) Rule 37-3.003, Florida Administrative Code, relating
 764 to Petitions to Initiate Rule Making Proceedings.
- 765 (17) Rule 37-3.004 Florida Administrative Code, relating to
 766 Agency Action on Petitions to Initiate Rule Making Proceedings.
- 767 (18) Rule 37-3.005, Florida Administrative Code, relating
 768 to Rule Making Proceeding - Hearing.
- 769 (19) Rule 37-3.006, Florida Administrative Code, relating
 770 to Description of Publication by Reference.
- 771 (20) Rule 37-3.007, Florida Administrative Code, relating
 772 to Emergency Rule Hearing.
- 773 (21) Rule 37-3.008, Florida Administrative Code, relating
 774 to Model Rules Application.
- 775 (22) Rule 37-4.001, Florida Administrative Code, relating
 776 to General provisions pertaining to petition for declaratory
 777 statement.
- 778 (23) Rule 37-4.002, Florida Administrative Code, relating
 779 to Purpose and Use of Declaratory Statement.
- 780 (24) Rule 37-4.003, Florida Administrative Code, relating
 781 to Council Disposition.
- 782 (25) Rule 37-5.001, Florida Administrative Code, relating
 783 to Members Present Shall Vote.

12-01526-12 20121470

- 784 (26) Rule 37-5.002, Florida Administrative Code, relating
 785 to Quorum; Majority Action.
- 786 (27) Rule 37-5.003, Florida Administrative Code, relating
 787 to Voting.
- 788 (28) Rule 37-5.004, Florida Administrative Code, relating
 789 to Change of Vote.
- 790 (29) Rule 37-5.005, Florida Administrative Code, relating
 791 to Casting Vote for Another.
- 792 (30) Rule 37-5.006, Florida Administrative Code, relating
 793 to Explanation of Vote.
- 794 (31) Rule 37-5.007, Florida Administrative Code, relating
 795 to Motions; How Made, Withdrawn.
- 796 (32) Rule 37-5.008, Florida Administrative Code, relating
 797 to Motions; Precedence.
- 798 (33) Rule 37-5.009, Florida Administrative Code, relating
 799 to Order of Questions.
- 800 (34) Rule 37-5.010, Florida Administrative Code, relating
 801 to Motions; Disposition.
- 802 (35) Rule 37-5.011, Florida Administrative Code, relating
 803 to Reconsideration: Generally.
- 804 (36) Rule 37-5.012, Florida Administrative Code, relating
 805 to Motion to Lay on Table.
- 806 (37) Rule 37-5.013, Florida Administrative Code, relating
 807 to Amendments; Manner of Consideration.
- 808 (38) Rule 37-5.014, Florida Administrative Code, relating
 809 to Amendments; Adoption.
- 810 (39) Rule 37-5.015, Florida Administrative Code, relating
 811 to Sequence of Amendments to Amendments.
- 812 (40) Rule 37-6.001, Florida Administrative Code, relating

12-01526-12 20121470

813 to Interpretation of Rules.

814 (41) Rule 37-6.002, Florida Administrative Code, relating
815 to Waiver and Suspension of Rules.

816 (42) Rule 37-6.003, Florida Administrative Code, relating
817 to General provisions pertaining to construction of rules.

818
819 Note.-The rules in this section, comprising Title 37
820 of the Florida Administrative Code, were adopted by
821 the former Advisory Council on Intergovernmental
822 Relations, which was abolished by section 9, chapter
823 96-311, Laws of Florida. The rulemaking authority for
824 the above rules was abolished by section 9, chapter
825 96-311, Laws of Florida. The above rules variously
826 implemented ss. 120.53 and 120.54, Florida Statutes,
827 which were extensively revised by sections 9 and 10,
828 chapter 96-159, Laws of Florida, eliminating certain
829 provisions implemented by such rules, and ss. 163.703,
830 163.704, 163.705, 163.7055, 163.706, 163.707, and
831 163.708, Florida Statutes, which were repealed by
832 section 9, chapter 96-311, Laws of Florida. The
833 substance of these statutes was reenacted as s. 11.70,
834 Florida Statutes, by section 1, chapter 96-311, Laws
835 of Florida, which was repealed by section 3, chapter
836 2011-34, Laws of Florida, leaving the rules out of
837 conformity with the law to be implemented. No agency
838 appears to have clear authority to repeal such rules.

839
840 Section 13. The following rules of the former Department of
841 Labor and Employment Security are nullified and of no further

12-01526-12 20121470

842 force or effect:

843 (1) Rule 38I-40.002, Florida Administrative Code, relating
844 to Definitions.

845 (2) Rule 38I-40.003, Florida Administrative Code, relating
846 to Identification of State-Owned Buildings and the Building
847 Asbestos Contact Person for Each Building.

848 (3) Rule 38I-40.004, Florida Administrative Code, relating
849 to Review and Approval of Building Asbestos Surveys Completed
850 Prior to January 1, 1989.

851 (4) Rule 38I-40.005, Florida Administrative Code, relating
852 to Review and Approval of Current Operation and Maintenance
853 Plans Implemented Prior to January 1, 1989.

854 (5) Rule 38I-40.006, Florida Administrative Code, relating
855 to Collection of Information Concerning Completed Asbestos
856 Abatement Work.

857 (6) Rule 38I-40.007, Florida Administrative Code, relating
858 to Standardization of Asbestos Management Activities.

859 (7) Rule 38I-40.008, Florida Administrative Code, relating
860 to Completion of Asbestos Surveys.

861 (8) Rule 38I-40.009, Florida Administrative Code, relating
862 to Preparation and Implementation of Asbestos Operation and
863 Maintenance Plans.

864 (9) Rule 38I-40.010, Florida Administrative Code, relating
865 to Agency Responsibilities for Management of Asbestos.

866 (10) Rule 38I-40.011, Florida Administrative Code, relating
867 to Building Asbestos Contact Person.

868 (11) Rule 38I-40.012, Florida Administrative Code, relating
869 to Asbestos Oversight Program Team.

870 (12) Rule 38I-40.013, Florida Administrative Code, relating

12-01526-12 20121470__

871 to Regional Asbestos Program Managers.

872 (13) Rule 38I-40.014, Florida Administrative Code, relating

873 to Training Requirements.

874 (14) Rule 38I-40.015, Florida Administrative Code, relating

875 to Safety and Health Requirements.

876 (15) Rule 38I-40.016, Florida Administrative Code, relating

877 to Standard Technical Specifications and Guides.

878

879 Note.-The rulemaking authority for the above rules was

880 abolished by section 35, chapter 2011-213, Laws of

881 Florida. No agency appears to have clear authority to

882 repeal such rules.

883

884 Note.-Rules 38I-40.002 and 38I-40.003 implemented s.

885 255.554, Florida Statutes, which was repealed by

886 section 10, chapter 99-5, Laws of Florida, and ss.

887 255.552 and 255.553, Florida Statutes, which were

888 repealed by section 35, chapter 2011-213, Laws of

889 Florida, leaving the rules out of conformity with the

890 laws to be implemented.

891

892 Note.-Rule 38I-40.004 implemented s. 255.554, Florida

893 Statutes, which was repealed by section 10, chapter

894 99-5, Laws of Florida, and ss. 255.552, 255.553, and

895 255.556, Florida Statutes, which were repealed by

896 section 35, chapter 2011-213, Laws of Florida, leaving

897 the rule out of conformity with the laws to be

898 implemented.

899

12-01526-12 20121470__

900 Note.-Rules 38I-40.005, 38I-40.008, and 38I-40.009

901 implemented ss. 255.552 and 255.557, Florida Statutes,

902 which were repealed by section 35, chapter 2011-213,

903 Laws of Florida, leaving the rules out of conformity

904 with the laws to be implemented.

905

906 Note.-Rule 38I-40.006 implemented s. 255.552, Florida

907 Statutes, which was repealed by section 35, chapter

908 2011-213, Laws of Florida, leaving the rule out of

909 conformity with the law to be implemented.

910

911 Note.-Rules 38I-40.007 and 38I-40.010 implemented ss.

912 255.552, 255.553, 255.555, 255.556, and 255.557,

913 Florida Statutes, which were repealed by section 35,

914 chapter 2011-213, Laws of Florida, leaving the rules

915 out of conformity with the laws to be implemented.

916

917 Note.-Rule 38I-40.011 implemented s. 255.554, Florida

918 Statutes, which was repealed by section 10, chapter

919 99-5, Laws of Florida, and ss. 255.552, 255.553,

920 255.555, and 255.557, Florida Statutes, which were

921 repealed by section 35, chapter 2011-213, Laws of

922 Florida, leaving the rule out of conformity with the

923 laws to be implemented.

924

925 Note.-Rule 38I-40.012 implemented s. 255.565, Florida

926 Statutes, which was repealed by section 15, chapter

927 2001-89, Laws of Florida, leaving the rule out of

928 conformity with the law to be implemented.

12-01526-12

20121470__

929
 930 Note.—Rule 38I-40.013 implemented s. 255.554, Florida
 931 Statutes, which was repealed by section 10, chapter
 932 99-5, Laws of Florida, and ss. 255.552, 255.553,
 933 255.557, 255.561, and 255.562, Florida Statutes, which
 934 were repealed by section 35, chapter 2011-213, Laws of
 935 Florida, leaving the rule out of conformity with the
 936 laws to be implemented.

937
 938 Note.—Rule 38I-40.014 implemented s. 255.565, Florida
 939 Statutes, which was repealed by section 15, chapter
 940 2001-89, Laws of Florida, and s. 255.552, Florida
 941 Statutes, which was repealed by section 35, chapter
 942 2011-213, Laws of Florida, leaving the rule out of
 943 conformity with the laws to be implemented.

944
 945 Note.—Rule 38I-40.015 implemented s. 255.561, Florida
 946 Statutes, which was repealed by section 35, chapter
 947 2011-213, Laws of Florida, leaving the rule out of
 948 conformity with the law to be implemented.

949
 950 Note.—Rule 38I-40.016 implemented ss. 255.552,
 951 255.553, 255.557, 255.558, 255.559, 255.56, 255.561,
 952 and 255.562, Florida Statutes, which were repealed by
 953 section 35, chapter 2011-213, Laws of Florida, leaving
 954 the rule out of conformity with the laws to be
 955 implemented.

956
 957 Section 14. (1) Effective July 1, 2013, the following rules

12-01526-12

20121470__

958 of the former Department of Labor and Employment Security are
 959 nullified and of no further force or effect:

960 (a) Rule 38J-1.001, Florida Administrative Code, relating
 961 to Recovery From Third Parties.

962 (b) Rule 38J-1.002, Florida Administrative Code, relating
 963 to Definitions.

964 (c) Rule 38J-1.003, Florida Administrative Code, relating
 965 to Right to Make Informed Choice.

966 (d) Rule 38J-1.004, Florida Administrative Code, relating
 967 to Division Services - General.

968 (e) Rule 38J-1.005, Florida Administrative Code, relating
 969 to Additional Requirements for Providing Certain Services.

970 (f) Rule 38J-1.006, Florida Administrative Code, relating
 971 to Division Decisions and Appeal Procedures.

972 (g) Rule 38J-1.007, Florida Administrative Code, relating
 973 to Case Closure due to individual's actions.

974 (h) Rule 38J-1.008, Florida Administrative Code, relating
 975 to Destruction of Records.

976 (i) Rule 38J-1.009, Florida Administrative Code, relating
 977 to Forms and Documents.

978 (2) Before the effective date of this section, the
 979 Department of Education shall initiate rulemaking to readopt or
 980 revise those portions of the rules which are necessary to
 981 implement the affected statutes.

982
 983 Note.—The rules in this section were adopted by the
 984 former Department of Labor and Employment Security,
 985 which was abolished by section 69, chapter 2002-194,
 986 Laws of Florida. The Division of Vocational

12-01526-12

20121470__

987 Rehabilitation was placed under the Department of
988 Education by section 1, chapter 2002-22, Laws of
989 Florida, without a clear accompanying transfer of
990 these rules, leaving the rules out of conformity with
991 the law to be implemented. While no agency appears to
992 have clear authority to repeal such rules, the laws
993 implemented remain under the jurisdiction of the
994 Department of Education. Therefore, the Department of
995 Education should readopt or revise those portions of
996 the rules which remain necessary to implement the
997 agency's statutory authority.

998
999 Section 15. Upon this act becoming a law, its enactment and
1000 effective dates shall be noted in the Florida Administrative
1001 Code or the Florida Administrative Weekly or both, as
1002 appropriate with an appropriate notice that the rules listed in
1003 sections 3-14 of this act have been repealed by law. The
1004 administrative rules nullified by this act shall be treated as
1005 repealed for purposes of all future editions of the Florida
1006 Administrative Code. The provisions of sections 3-14 of this act
1007 serve no other purpose and shall not be codified in the Florida
1008 Statutes. This act does not alter rulemaking authority delegated
1009 or withdrawn by previous law.

1010 Section 16. This act shall take effect 60 days after
1011 becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/26/12
Meeting Date

Topic _____ Bill Number 1470
(if applicable)
Name Leticia Adams Amendment Barcode _____
(if applicable)
Job Title Director of Governance Policy
Address 136 S. Brough St. Phone 850 501 1279
Street
Tall FL 32301 E-mail ladams@flchamber.com
City State Zip
Speaking: ☒ For ☐ Against ☐ Information
Representing Florida Chamber of Commerce
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

January 26, 2012
Meeting Date

Topic _____ Bill Number SB 1470
(if applicable)
Name Patricia Nelson Amendment Barcode _____
(if applicable)
Job Title Deputy Director/Rules Ombudsman
Address 1702 The Capitol Phone (850) 487-1880
Street
Tallahassee, FL 32399-0001 E-mail patricia.nelson@laspbs.state.fl.us
City State Zip
Speaking: ☐ For ☐ Against ☒ Information
Representing Executive Office of the Governor, Off. of Fiscal Accountability and Regulatory Reform
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1498

INTRODUCER: Senator Ring

SUBJECT: State Technology

DATE: January 24, 2012

REVISED: _____

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

I. Summary:

The bill abolishes the Agency for Enterprise Information Technology and transfers its duties to the Agency for State Technology (AST), which is created by the bill. Current duties undertaken by the Department of Management Services (DMS) related to technology and telecommunications are also transferred to the AST.

This bill substantially amends the following sections of the Florida Statutes: 282.0041, 282.0055, 282.0056, 282.201, 282.203, 282.34, 282.702, 20.22, 110.205, 215.22, 215.322, 216.292, 282.318, 282.604, 282.703, 282.704, 282.705, 282.706, 282.707, 282.709, 282.7101, 282.711, 287.012, 282.057, 318.18, 320.0802, 328.72, 364.0135, 328.72, 364.0135, 365.171, 365.172, 365.173, 365.174, 401.013, 401.015, 401.018, 401.021, 401.024, 401.027, 401.465, 445.011, 445.045, and 668.50.

The bill repeals sections 14.204, 282.204, 282.205, and 282.33 of the Florida Statutes, and creates section 14.206.

II. Present Situation:

The operations and organizational configuration of information technology itself reflects the state's traditional avoidance of concentration of authority in any one constitutional or statutory office. This dispersion complemented the separation of powers among the three governmental branches in its early history, but as the reach of state government became greater over the years, it also permitted the development of separately funded enclaves of technology operations within departments and their subordinate units.

Following the adjournment of the 2006 Regular Session of the Florida Legislature, the then Senate Ways and Means Committee was commissioned to undertake a comprehensive review of information technology in state government. That commission resulted in the publication of a wide-ranging study that catalogued all of the state's historical and structural efforts at identifying, operating, and funding information technology.¹ The report discussed the statutory attempts at making programmatic sense of such an evolving technology and the contractual difficulties associated with failed attempts. The complex decision-making environments characteristic of the Florida state government federated executive system of management also played a role in attempting to achieve focus and accountability in this area.

Common themes soon presented themselves in both successful and unsuccessful ventures. Many projects were found to be off-task and off-budget, there was a poor understanding of operational expectations, or personnel and operational practices were insufficient for the proper and timely execution of responsibilities. In its 2007 report, the Senate Governmental Oversight and Productivity Committee identified several common attributes of state agency contractual procurements in which actual performance demonstrated a significant departure from expectations. All of those procurement underperformances reviewed had significant technology components and were found to be beset of one or more of the following conditions:

- A management-directed imperative to execute faster than the agency had capacity;
- Loss of knowledge capital through a strategic disinvestment in agency capacity or over reliance upon contract vendors;
- Decision-making based upon price rather than product or service effectiveness;
- Decision-making motivated by minimizing state investment and maximizing shared federal revenues;
- Claimed tangible savings that were speculative;
- Unwritten understandings accompanied by longer term financial liabilities;
- A rush to the procurement market with a poor understanding of expectations; and,
- Vendor systems that could not deliver the service or product on time, on-task, or on budget.

Limitations on the ability to execute system-wide changes are not confined to information technology. The Department of Management Services' human resources outsourcing initiative fell more than one year behind schedule as its contract vendor, Convergys Customer Management Group, had to contend with a difficult technology migration from the predecessor state personnel system to its successor one.² As a consequence, there were missed or delayed employee payrolls, benefit coverage interruptions, incorrect benefit premium calculations, and ineffective implementation of electronic time and attendance reports. All of these resulted in increased management attention. Shortly after the department renegotiated the contract in late 2009, Convergys announced it was selling this line of business entirely to the English firm NorthgateArinso.

In a March 11, 2005, presentation to the National Association of State Comptrollers, the Department of Financial Services reported to the Nation's other state chief financial officers on Florida's experience to date with Convergys. The report³ described the history of the

¹ *Enterprise Information Technology: Senate Review and Study*, Report No. 2007-140. Tallahassee, FL: January 2007.

² The proprietary state legacy system was **COPES** (**CO**operative **P**ersonnel and **E**mployment **S**ystem).

³ Florida Department of Financial Services, *Outsourcing Human Resource Management*, undated.

procurement and the many performance expectations that the service provider had not executed well into the early implementation of its nine-year contract with the Department of Management Services.

The 2006 Legislature terminated funding for the State Technology Office in partial response to these cumulative difficulties. It funded an interim Enterprise Information Technology Services unit in the DMS pending a more significant restructuring of state agency relationships.

The Agency for Enterprise Information Technology

The 2007 Legislature enacted CS/CS/SB 1974 to bring particular focus on information technology as an enterprise responsibility that links all of the state's separate business and jurisdictional entities. The head of the Agency for Enterprise Information Technology (agency or AEIT) is the Governor and Cabinet, and the agency is a separate budget entity and is not subject to control, supervision, or direction by the Executive Office of the Governor. The agency has an executive director who is the state's Chief Information Officer, who must have a degree from an accredited postsecondary institution, and at least 7 years of executive-level experience in managing information technology organizations. The Chief Information Officer is appointed by the Governor and confirmed by the Cabinet, subject to confirmation by the Senate, and serves at the pleasure of the Governor and Cabinet.⁴

The agency has the following duties and responsibilities:⁵

- Develop strategies for the design, delivery, and management of the enterprise information technology services established in law.
- Monitor the delivery and management of the enterprise information technology services as established in law.
- Make recommendations to the agency head and the Legislature concerning other information technology services that should be designed, delivered, and managed as enterprise information technology services.
- Plan and establish policies for managing proposed statutorily authorized enterprise information technology services, which includes:
 - Developing business cases that, when applicable, include the components required in business cases to outsource;⁶
 - Establishing and coordinating project-management teams;
 - Establishing formal risk-assessment and mitigation processes; and
 - Providing for independent monitoring of projects for recommended corrective actions.
- Develop, publish, and biennially update a long-term strategic enterprise information technology plan that identifies and recommends strategies and opportunities to improve the delivery of cost-effective and efficient enterprise information technology services to be proposed for establishment.
- Perform duties related to the state data center system as provided in s. 282.201, F.S.
- Coordinate acquisition planning and procurement negotiations for hardware and software products and services.

⁴ Section 14.204(1), (2), and (3), F.S.

⁵ Section 14.204(4), F.S.

⁶ The requirements for business cases to outsource are specified in s. 287.0571, F.S.

- In consultation with the Division of Purchasing in the Department of Management Services (DMS), coordinate procurement negotiations for information technology products as which will be used by multiple agencies.
- In coordination with DMS, establish best practices for the procurement of information technology products.
- Develop information technology standards for enterprise information technology services.
- Provide yearly recommendations to the Legislature relating to techniques for consolidating the purchase of information technology commodities and services, and for establishing a process to achieve savings through consolidated purchases.

The Office of Information Security is created within the agency, which designates a state Chief Information Security Officer to oversee the office and report directly to the executive director. The agency must operate in a manner that ensures the participation and representation of state agencies and the Agency Chief Information Officers Council, and the agency may adopt rules to carry out its statutory duties.⁷

Pursuant to legislative direction, AEIT organizes the required consolidation of agency data centers, and is working on a solicitation, business case analysis, and implementation plan for the provision of an enterprise-wide email system.

According to the 2010-11 AEIT Annual Report:

In Fiscal Year 2010-2011, the AEIT staff facilitated major enterprise IT service initiatives, including a new enterprise e-mail service. Expected savings from enterprise e-mail is approximately \$735,422 for Fiscal Year 2011-12. Over the life of the 7-year contract, outsourcing enterprise e-mail is expected to save the state more than \$15.3 million. Wave I of Data Center consolidation was completed in Fiscal Year 2010-2011 producing more than \$1.1 million in recurring savings through operational efficiencies and consolidation of shared services. Additional savings are expected with consolidation, standardization, and virtualization of existing hardware and software infrastructure.

Method of Reorganization for the Executive Branch

Pursuant to s. 20.06, F.S., the executive branch of state government must be reorganized by transferring the specified agencies, programs, and functions to other specified departments, commissions, or offices. Such a transfer does not affect the validity of any judicial or administrative proceeding pending on the day of the transfer, and any agency or department to which are transferred the powers, duties, and functions relating to the pending proceeding must be substituted as a party in interest for the proceeding.

A type one transfer is the transferring intact of an existing agency or department so that the agency or department becomes a unit of another agency or a department. Any agency or department transferred to another agency or department by a type one transfer will exercise its powers, duties, and functions as prescribed by law, subject to review and

⁷ Section 14.204(5),(6), and (7), F.S.

approval by, and under the direct supervision of, the head of the agency or department to which the transfer is made, unless otherwise provided by law. Any agency or department transferred by a type one transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, transferred to the agency or department to which it is transferred. Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished. Any agency or department or a program, activity, or function transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided. Unless otherwise provided, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions. Unless otherwise provided, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

III. Effect of Proposed Changes:

Section 1 abolishes the Agency for Enterprise Information Technology (AEIT), and transfers all its duties, functions, funds, rules, and contracts by type two transfer to the Agency for State Technology (AST).

Section 2 transfers the DMS technology program established in s. 20.22(2), F.S., by type one transfer to the AST, in addition to specified DMS responsibilities under parts II and III of chapter 282, F.S., responsibilities under s. 364.0135, F.S., specified responsibilities in chapter 365, F.S., and certain responsibilities under part 1 of chapter 401, F.S. The bill also transfers related funds, orders, rules, and regulatory authority.

The bill transfers the Northwood Shared Resource Center and Southwood Shared Resource center from DMS to AST by type one transfer.

The bill transfers the Communications Working Capital Trust Fund, Emergency Communications Number E911 System Fund, and State Agency Law Enforcement Radio System Trust Fund from DMS to AST by type one transfer.

Section 3 repeals s. 14.204, F.S., which creates the AEIT.

Section 4 creates the AST in s. 14.206, F.S., specifies the Governor and Cabinet as the agency head, specifies the organization of the agency, and requires the appointment of an executive director by the Governor, subject to confirmation by the Cabinet and the Senate, serving at the pleasure of the Governor and Cabinet. The executive director must appoint a Chief Technology officer and Chief Information Security Officer, and may appoint employees necessary to carry out the duties of the agency.

The AST must publish a long term State Information Technology Resources Strategic Plan, manage IT services, provide status reports on IT service consolidations, operate the shared resource centers, develop a means of chargeback for primary data center services, and may adopt rules.

Section 5 amends s. 282.0041, F.S., by modifying and adding some definitions, and replacing the AEIT with AST.

Section 6 substantially amends s. 282.0055, F.S., by specifying that AST has the duties of planning, designing, and procuring enterprise information technology services; supervision and maintenance of state-agency specific or unique software applications will remain with the state agency. AST must create a road map for enterprise IT consolidation, and a yearly transition plan for consolidations. State agencies must submit transitions plans to AST, and may not create or expand computing services that are designated enterprise IT services. AST may grant exceptions to data center consolidation if the primary data center lacks sufficient capacity.

Section 7 amends s. 282.0056, F.S., to specify the requirements for the biennial Information Technology Strategic Plan, and requires state agencies to develop their own information technology plans.

Section 8 amends s. 282.201, F.S., to change duties related to the state data center system. The bill specifies legislative intent, requires AST to provide recommendations for the schedule for consolidating state data centers, requires agencies to execute memorandums of understanding when consolidating into a primary data center, and suspends data center consolidations for the 2012-13 fiscal year.

Section 9 amends s. 282.203, F.S., relating to primary data centers. The bill requires primary data centers to serve and cooperate with state agencies, comply with rules adopted by AST, and provide transparent financial statements to participating state agencies. Each primary data center must enter onto a memorandum of understanding (MOU) with each participating agency.

Sections 10 and 11 repeal sections 282.204 and 282.205, F.S., which establish the Northwood Shared Resource Center and Southwood Shared Resource Center. These entities will become part of AST by operation of this bill.

Section 12 creates s. 282.206, F.S., which establishes the Fletcher Shared Resource Center within the Department of Financial Services. The center *must* collaborate with AST on developing policies and procedures, and *may* comply with AST policies and rules. The center must provide collocation services to the Department of Legal Affairs (DLA) and the Department

of Agriculture and Consumer Services (DACs), and the center must be governed by a master MOU and complemented by a steering committee.

The DLA must move its data center equipment to the center by June 30, 2014; DACs must move its Mayo Building data center equipment to the center by that date.

Section 13 repeals s. 282.33, F.S., which requires AEIT to establish standards for data center energy efficiency.

Section 14 amends s. 282.34, F.S., to provide that the statewide email service may be used by other public sector entities, and excludes DACs, DLA, and DFS from the requirement that all state agencies receive their email through AST. Those three agencies may use the Fletcher center or AST for email. The bill also deletes provisions relating to the implementation of a statewide email service.

Section 15 amends s. 282.702, F.S., to give the duties of AEIT to AST, and require the AST to develop a plan for statewide voice-over-internet protocol service.

Section 16 amends s. 20.22, to delete the technology program from DMS' list of established programs.

Section 17 amends s. 110.205, F.S., to provide that the Governor and Cabinet set the salary and benefits for the executive director of the AST.

Section 18 amends s. 215.22, F.S., to move the Communications Working Capital Trust Fund from DMS to AST.

Sections 19 through 50 amend statutory provisions to reflect the transfer of technology duties from DMS and AEIT to the AST.

Section 51 provides that the bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

DFS estimates that \$334,791,454 in budget and 319 FTE (based on the 2011-12 General Appropriations Act) will be transferred from AEIT, DMS, and the shared resource centers to the AST. DFS estimates that AST will need \$600,900 in additional budget and 4 FTE for new resources, and \$992,250 and 15 FTE for administrative services.

VI. Technical Deficiencies:

Line 307 refers to a “State Information Technology Resources Strategic Plan;” line 744 refers to a “state Information Technology Strategic Plan.” If these are references to the same plan, the name should be the same.

VII. Related Issues:

Lines 847-857 specify that “it is the intent of the Legislature that state agency data centers and computing facilities be consolidated into the Agency for State Technology to the maximum extent possible by June 30, 2018.” If this is a requirement and not merely a statement of intent, it might be better placed in s. 282.201(4), F.S. Relatedly, without defining “maximum extent possible,” it will be difficult to determine compliance.

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

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

None.

B. Amendments:

None.



243162

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete line 518
and insert:
the legislative and judicial branches, the State Board of
Administration, the State University

Delete line 562
and insert:
include the State Board of Administration, university boards of
trustees, or state universities.



243162

13
14
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16
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18

Delete lines 970 - 971
and insert:
Consumer Services, the Department of Legal Affairs, the
Department of Financial Services, and the State Board of
Administration, all state agencies shall

By Senator Ring

32-00639B-12

20121498__

1 A bill to be entitled
 2 An act relating to state technology; abolishing the
 3 Agency for Enterprise Information Technology;
 4 transferring the personnel, functions, and funds of
 5 the Agency for Enterprise Information Technology to
 6 the Agency for State Technology; transferring
 7 specified personnel, functions, and funds relating to
 8 technology programs from the Department of Management
 9 Services to the Agency for State Technology;
 10 transferring the Northwood Shared Resource Center and
 11 the Southwood Shared Resource Center to the agency;
 12 repealing s. 14.204, F.S., relating to the Agency for
 13 Enterprise Information Technology; creating s. 14.206,
 14 F.S.; creating the Agency for State Technology;
 15 providing for organization of the agency; providing
 16 for an executive director who shall be the state's
 17 Chief Information Officer; providing duties and
 18 responsibilities of the agency and of the executive
 19 director; requiring certain status reports to the
 20 Governor, the Cabinet, and the Legislature;
 21 authorizing the agency to adopt rules; amending s.
 22 282.0041, F.S.; revising and providing definitions of
 23 terms as used in the Enterprise Information Technology
 24 Services Management Act; amending s. 282.0055, F.S.;
 25 revising provisions for assignment of information
 26 technology services; directing the agency to create a
 27 road map for enterprise information technology service
 28 consolidation and a comprehensive transition plan;
 29 requiring the transition plan to be submitted to the

Page 1 of 81

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

32-00639B-12

20121498__

30 Governor and Cabinet and the Legislature by a certain
 31 date; providing duties for state agencies relating to
 32 the transition plan; prohibiting state agencies from
 33 certain technology-related activities; providing for
 34 exceptions; amending s. 282.0056, F.S.; providing for
 35 development by the agency executive director of a
 36 biennial State Information Technology Strategic Plan
 37 for approval by the Governor and the Cabinet;
 38 directing state agencies to submit their own
 39 information technology plans and any requested
 40 information to the agency; revising provisions for
 41 development of work plans and implementation plans;
 42 revising provisions for reporting on achievements;
 43 amending s. 282.201, F.S.; revising provisions for a
 44 state data center system; providing legislative
 45 intent; directing the agency to provide
 46 recommendations to the Governor and Legislature
 47 relating to changes to the schedule for the
 48 consolidations of state agency data centers; providing
 49 duties of a state agency consolidating a data center
 50 into a primary data center; suspending the
 51 consolidations scheduled for state agency data centers
 52 for a specified period; amending s. 282.203, F.S.;
 53 revising duties of primary data centers; removing
 54 provisions for boards of trustees to head primary data
 55 centers; requiring a memorandum of understanding
 56 between the primary data center and the participating
 57 state agency; limiting the term of the memorandum;
 58 providing for failure to enter into a memorandum;

Page 2 of 81

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32-00639B-12

20121498

59 repealing s. 282.204, F.S., relating to Northwood
 60 Shared Resource Center; repealing s. 282.205, F.S.,
 61 relating to Southwood Shared Resource Center; creating
 62 s. 282.206, F.S.; establishing the Fletcher Shared
 63 Resource Center within the Department of Financial
 64 Services to provide enterprise information technology
 65 services; directing the center to collaborate with the
 66 agency; directing the center to provide colocation
 67 services to the Office of the Attorney General and the
 68 Department of Legal Affairs, the Department of
 69 Agriculture and Consumer Services, and the Department
 70 of Financial Services; directing the Department of
 71 Financial Services to continue to use the center and
 72 provide service to the Office of Financial Regulation
 73 and the Office of Insurance Regulation and host the
 74 Legislative Appropriations System/Planning and
 75 Budgeting Subsystem; providing for governance of the
 76 center; providing for a steering committee to ensure
 77 adequacy and appropriateness of services; directing
 78 the Department of Legal Affairs and the Department of
 79 Agriculture and Consumer Services to move data center
 80 equipment to the center by certain dates; repealing s.
 81 282.33, F.S., relating to objective standards for data
 82 center energy efficiency; amending s. 282.34, F.S.;
 83 revising provisions for a statewide e-mail service to
 84 meet the needs of executive branch agencies; requiring
 85 state agencies to receive e-mail services through the
 86 agency; authorizing the Department of Agriculture and
 87 Consumer Services, the Department of Financial

Page 3 of 81

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

32-00639B-12

20121498

88 Services, the Office of Financial Regulation, and the
 89 Office of Insurance Regulation to receive e-mail
 90 services from the Fletcher Shared Resource Center or
 91 the agency; amending s. 282.702, F.S.; directing the
 92 agency to develop a plan for statewide voice-over-
 93 Internet protocol services; requiring certain content
 94 in the plan; requiring the plan to be submitted to the
 95 Governor, the Cabinet, and the Legislature by a
 96 certain date; amending ss. 20.22, 110.205, 215.22,
 97 215.322, 216.292, 282.318, 282.604, 282.703, 282.704,
 98 282.705, 282.706, 282.707, 282.709, 282.7101, 282.711,
 99 287.012, 287.057, 318.18, 320.0802, 328.72, 364.0135,
 100 365.171, 365.172, 365.173, 365.174, 401.013, 401.015,
 101 401.018, 401.021, 401.024, 401.027, 401.465, 445.011,
 102 445.045, and 668.50, F.S., relating to a financial and
 103 cash management system task force, career service
 104 exemptions, trust funds, payment cards and electronic
 105 funds transfers, the Communications Working Capital
 106 Trust Fund, the Enterprise Information Technology
 107 Services Management Act, adoption of rules, the
 108 Communication Information Technology Services Act,
 109 procurement of commodities and contractual services,
 110 the Florida Uniform Disposition of Traffic Infractions
 111 Act, surcharge on vehicle license tax, vessel
 112 registration, broadband Internet service, the
 113 emergency communications number E911, regional
 114 emergency medical telecommunications, the Workforce
 115 Innovation Act of 2000, and the Uniform Electronic
 116 Transaction Act; conforming provisions and cross-

Page 4 of 81

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32-00639B-12 20121498

117 references to changes made by the act; revising and
118 deleting obsolete provisions; providing an effective
119 date.

120
121 Be It Enacted by the Legislature of the State of Florida:

122
123 Section 1. (1) The Agency for Enterprise Information
124 Technology is abolished.

125 (2) All of the powers, duties, functions, records,
126 personnel, and property; funds, trust funds, and unexpended
127 balances of appropriations, allocations, and other funds;
128 administrative authority; administrative rules; pending issues;
129 and existing contracts of the Agency for Enterprise Information
130 Technology are transferred by a type two transfer, pursuant to
131 s. 20.06(2), Florida Statutes, to the Agency for State
132 Technology.

133 Section 2. Transfers from the Department of Management
134 Services.—

135 (1) The Technology Program established under section
136 20.22(2), Florida Statutes, is transferred intact by a type one
137 transfer, as defined in s. 20.06(1), Florida Statutes, from the
138 Department of Management Services to the Agency for State
139 Technology.

140 (2) All of the powers, duties, functions, records,
141 personnel, and property; funds, trust funds, and unexpended
142 balances of appropriations, allocations, and other funds;
143 administrative authority; administrative rules; pending issues;
144 and existing contracts relating to the following
145 responsibilities of the Department of Management Services are

32-00639B-12 20121498

146 transferred by a type one transfer, as defined in s. 20.06(2),
147 Florida Statutes, to the Agency for State Technology:

148 (a) Administrative and regulatory responsibilities under
149 part II of chapter 282, Florida Statutes, consisting of ss.
150 282.601-282.606, Florida Statutes, relating to accessibility of
151 electronic information and information technology for state
152 employees and members of the public with disabilities, including
153 the responsibility for rules for the development, procurement,
154 maintenance, and use of accessible electronic information
155 technology by governmental units pursuant to section 282.604,
156 Florida Statutes.

157 (b) Administrative and regulatory responsibilities under
158 part III of chapter 282, Florida Statutes, consisting of ss.
159 282.701-282.711, relating to the state telecommunications
160 network, state communications, telecommunications services with
161 state agencies and political subdivisions of the state, the
162 SUNCOM network, the law enforcement radio system and
163 interoperability network, regional law enforcement
164 communications, and remote electronic access.

165 (c) Administrative and regulatory responsibilities under s.
166 364.0135, Florida Statutes, relating to broadband Internet
167 service.

168 (d) Administrative and regulatory responsibilities under
169 ss. 365.171, 365.172, 365.173, 365.174, and 365.175, Florida
170 Statutes, relating to emergency communications number E911.

171 (e) Administrative and regulatory responsibilities under
172 part I of chapter 401, Florida Statutes, consisting of ss.
173 401.013-401.027, relating to a statewide system of regional
174 emergency medical telecommunications.

32-00639B-12

20121498

(3) (a) The following trust funds are transferred by a type one transfer, as defined in s. 20.06(1), Florida Statutes, from the Department of Management Services to the Agency for State Technology:

1. The Communications Working Capital Trust Fund.
2. The Emergency Communications Number E911 System Fund.
3. The State Agency Law Enforcement Radio System Trust Fund.

(b) All unexpended balances of appropriations, allocations, and other funds of the Department of Management Services relating to ss. 282.701-282.711, s. 364.0135, ss. 365.171-365.175, and part I of chapter 401, Florida Statutes, which are not specifically transferred by this subsection are transferred by a type one transfer, as defined in s. 20.06(1), Florida Statutes, to the Agency for State Technology.

(4) All lawful orders issued by the Department of Management Services implementing or enforcing or otherwise in regard to ss. 282.701-282.711, s. 364.0135, ss. 365.171-365.175, or part I of chapter 401, Florida Statutes, issued before July 1, 2012, shall remain in effect and be enforceable after that date unless thereafter modified in accordance with law.

(5) Any binding contract or interagency agreement entered into pursuant to ss. 282.701-282.711, s. 364.0135, ss. 365.171-365.175, or part I of chapter 401, Florida Statutes, and existing before July 1, 2012, between the Department of Management Services or an entity or agent of the department and any other agency, entity, or person shall continue as a binding contract or agreement for the remainder of the term of such contract or agreement on the Agency for State Technology.

32-00639B-12

20121498

(6) The rules of the Department of Management Services relating to ss. 282.701-282.711, s. 364.0135, ss. 365.171-365.175, or part I of chapter 401, Florida Statutes, which were in effect at 11:59 p.m. on June 30, 2012, shall become the rules of the Agency for State Technology and shall remain in effect until amended or repealed in the manner provided by law.

(7) The transfer of regulatory authority under ss. 282.701-282.711, s. 364.0135, ss. 365.171-365.175, or part I of chapter 401, Florida Statutes, provided by this section shall not affect the validity of any judicial or administrative action pending as of 11:59 p.m. on June 30, 2012, to which the Department of Management Services is at that time a party, and the Agency for State Technology shall be substituted as a party in interest in any such action.

(8) The Northwood Shared Resource Center is transferred by a type one transfer, as defined in s. 20.06(1), Florida Statutes, from the Department of Management Services to the Agency for State Technology.

(a) Any binding contract or interagency agreement entered into between the Northwood Shared Resource Center or an entity or agent of the center and any other agency, entity, or person shall continue as a binding contract or agreement for the remainder of the term of such contract or agreement on the Agency for State Technology.

(b) The rules of the Northwood Shared Resource Center that were in effect at 11:59 p.m. on June 30, 2012, shall become the rules of the Agency for State Technology and shall remain in effect until amended or repealed in the manner provided by law.

(9) The Southwood Shared Resource Center is transferred by

32-00639B-12 20121498

233 a type one transfer, as defined in s. 20.06(1), Florida
234 Statutes, from the Department of Management Services to the
235 Agency for State Technology.

236 (a) Any binding contract or interagency agreement entered
237 into between the Southwood Shared Resource Center or an entity
238 or agent of the center and any other agency, entity, or person
239 shall continue as a binding contract or agreement for the
240 remainder of the term of such contract or agreement on the
241 Agency for State Technology.

242 (b) The rules of the Southwood Shared Resource Center that
243 were in effect at 11:59 p.m. on June 30, 2012, shall become the
244 rules of the Agency for State Technology and shall remain in
245 effect until amended or repealed in the manner provided by law.

246 Section 3. Section 14.204, Florida Statutes, is repealed.

247 Section 4. Section 14.206, Florida Statutes, is created to
248 read:

249 14.206 Agency for State Technology; creation; powers and
250 duties.—

251 (1) There is created the Agency for State Technology. The
252 head of the agency shall be the Governor and Cabinet.

253 (2) The following officers, divisions, and units of the
254 agency are established:

255 (a) Under the Chief Technology Officer:

256 1. The Division of Telecommunications.

257 a. SUNCOM.

258 b. State Agency Law Enforcement Radio System.

259 c. State E911 Program.

260 2. The Division of Data Center Operations.

261 a. Northwood Shared Resource Center.

32-00639B-12 20121498

262 b. Southwood Shared Resource Center.

263 3. The Division of Enterprise Service Delivery.

264 a. Enterprise e-mail.

265 (b) Under the Chief Enterprise Applications Officer:

266 1. Enterprise Software Design and Projects.

267 2. Enterprise Software Operations.

268 3. Enterprise Data Standards.

269 4. Enterprise Data Management.

270 (c) Under the Deputy Director of Enterprise Information
271 Technology Standards, Procurement, and Service Design:

272 1. Strategic Planning.

273 2. Enterprise Information Technology Standards.

274 a. Enterprise Information Technology Procurement.

275 b. Information Technology Security and Compliance.

276 3. Enterprise Services Planning and Consolidation.

277 (d) Under the Director of Administration:

278 1. Accounting and Budgeting.

279 2. Personnel.

280 3. Procurement and Contracts.

281 (e) Under the Office of the Executive Director:

282 1. Inspector General.

283 2. Legal.

284 3. Project Management Office.

285 4. Governmental Affairs.

286 (3) The agency shall have an executive director who is the
287 state's Chief Information Officer and who must be qualified by
288 education and experience for the office. The executive director
289 shall be appointed by the Governor, subject to confirmation by
290 the Cabinet and the Senate, and serve at the pleasure of the

32-00639B-12

20121498

Governor and Cabinet. The executive director:

(a) Shall be responsible for developing and administering a comprehensive long-range plan for the state's information technology resources, ensuring the proper management of such resources, and delivering services.

(b) Shall appoint a Chief Technology Officer to lead the divisions of the agency dedicated to the operation and delivery of enterprise information technology services.

(c) Shall designate a state Chief Information Security Officer.

(d) May appoint all employees necessary to thoroughly carry out the duties and responsibilities of the agency.

(4) The agency shall operate in a manner that ensures the participation and representation of state agencies.

(5) The agency shall have the following duties and responsibilities. The agency shall:

(a) Develop and publish a long-term State Information Technology Resources Strategic Plan.

(b) Project manage, plan, design, implement, and manage enterprise information technology services.

(c) Beginning October 1, 2012, and every 3 months thereafter, provide a status report on its initiatives. The report shall be presented at a meeting of the Governor and Cabinet.

(d) Beginning September 1, 2013, and every 3 months thereafter until enterprise information technology service consolidations are complete, provide a status report on the implementation of the consolidations that must be completed during the fiscal year. The report shall be submitted to the

32-00639B-12

20121498

Executive Office of the Governor, the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. The report must, at a minimum, describe:

1. Whether the consolidation is on schedule, including progress on achieving the milestones necessary for successful and timely consolidation of scheduled agency data centers and computing facilities; and

2. The risks that may affect the progress or outcome of the consolidation and how such risks are being mitigated or managed.

(e) Set technical standards for information technology, review major information technology projects and procurements, establish information technology security standards, provide for the procurement of information technology resources, excluding human resources, and deliver enterprise information technology services as defined in s. 282.0041.

(f) Establish and operate shared resource centers.

(g) Establish and deliver enterprise information technology services to serve state agencies on a cost-sharing basis, charging each state agency its proportionate share of the cost of maintaining and delivering a service based on a state agency's use of the service.

(h) Use the following principles to develop a means of chargeback for primary data center services:

1. The customers of the primary data center shall provide payments to the primary data center that are sufficient to maintain the solvency of the primary data center operation for all costs not directly funded through the General Appropriations Act.

2. Per unit cost of usage shall be the primary basis for

32-00639B-12 20121498

pricing, and usage shall be accurately measurable and attributable to the appropriate customer.

3. The primary data center shall combine the aggregate purchasing power of large and small customers to achieve collective savings opportunities to all customers.

4. Chargeback methodologies shall be devised to consider restrictions on grants to customers.

5. Chargeback methodologies should establish incentives that lead to customer usage practices that result in lower costs to the state.

6. Chargeback methodologies shall consider technological change when:

a. New services require short-term investments before achieving long-term, full-cost recovery for the service.

b. Customers of antiquated services may not be able to bear all of the costs for the antiquated services during periods when customers are migrating to replacement services.

7. Prices may be established which allow for accrual of cash balances for the purpose of maintaining contingent operating funds and funding planned capital investments. Accrual of the cash balances shall be considered to be costs for the purposes of this section.

8. The primary data center may not knowingly enter into an agreement with a customer for more than 2 years if associated charges will not be sufficient to cover the associated proportional costs.

9. Flat rate charges may be used only if there are provisions for reconciling charges to comport with actual costs and use.

32-00639B-12 20121498

(i) Exercise technical and fiscal tact in determining the best way to deliver enterprise information technology services.

(j) Collect and maintain an inventory of the information technology resources in the state agencies.

(k) Assume ownership or custody and control of information processing equipment, supplies, and positions required in order to thoroughly carry out the duties and responsibilities of the agency.

(l) Adopt rules and policies for the efficient, secure, and economical management and operation of the shared resource centers and state telecommunications services.

(m) Provide other public sector organizations as defined in s. 282.0041 with access to the services provided by the agency. Access shall be provided on the same cost basis that applies to state agencies.

(n) Ensure that data that is confidential under state or federal law may not be entered into or processed through any shared resource center or network established under the agency until safeguards for the data's security satisfactory to the department head and the executive director have been designed, installed, and tested and are fully operational. This paragraph may not be construed to prescribe what actions to satisfy a department's objectives are to be undertaken or to remove from the control and administration of the departments the responsibility for working with the agency to implement safeguards, regardless of whether such control and administration are specifically required by general law or administered under the general program authority and responsibility of the department.

32-00639B-12

20121498

(o) Conduct periodic assessments of state agencies for compliance with statewide information technology policies and recommend to the Governor and Cabinet statewide policies for information technology.

(6) The agency may adopt rules to carry out its duties and responsibilities.

Section 5. Section 282.0041, Florida Statutes, is amended to read:

282.0041 Definitions.—As used in this chapter, the term:

~~(1) "Agency" has the same meaning as in s. 216.011(1)(qq), except that for purposes of this chapter, "agency" does not include university boards of trustees or state universities.~~

(1)(2) "Agency for State Enterprise Information Technology" or "agency" means the agency created in s. 14.206 ~~14.204.~~

(2)(3) "Agency information technology service" means a service that directly helps a state an agency fulfill its statutory or constitutional responsibilities and policy objectives and is usually associated with the state agency's primary or core business functions.

~~(4) "Annual budget meeting" means a meeting of the board of trustees of a primary data center to review data center usage to determine the apportionment of board members for the following fiscal year, review rates for each service provided, and determine any other required changes.~~

(3)(5) "Breach" has the same meaning as in s. 817.5681(4).

(4)(6) "Business continuity plan" means a plan for disaster recovery which provides for the continued functioning of a primary data center during and after a disaster.

(5)(7) "Computing facility" means a state agency site space

32-00639B-12

20121498

containing fewer than a total of 10 physical or logical servers, any of which supports a strategic or nonstrategic information technology service, as described in budget instructions developed pursuant to s. 216.023, but excluding telecommunications and voice gateways and a clustered pair of servers operating as a single logical server to provide file, print, security, and endpoint management services ~~single, logical-server installations that exclusively perform a utility function such as file and print servers.~~

(6) "Computing service" means an information technology service that is used in all state agencies or a subset of agencies and is, therefore, a candidate for being established as an enterprise information technology service. Examples include, but are not limited to, e-mail, service hosting, telecommunications, and disaster recovery.

~~(8) "Customer entity" means an entity that obtains services from a primary data center.~~

(7)(9) "Data center" means state agency space containing 10 or more physical or logical servers any of which supports a strategic or nonstrategic information technology service, as described in budget instructions developed pursuant to s. 216.023.

~~(10) "Department" means the Department of Management Services.~~

(8)(12) "E-mail, messaging, and calendaring service" means the enterprise information technology service that enables users to send, receive, file, store, manage, and retrieve electronic messages, attachments, appointments, and addresses. The e-mail, messaging, and calendaring service must include e-mail account

32-00639B-12

20121498

~~management, help desk, technical support and user provisioning services, disaster recovery and backup and restore capabilities, antispam and antivirus capabilities, archiving and e-discovery, and remote access and mobile messaging capabilities.~~

~~(9)(11)~~ "Enterprise information technology service" means an information technology service that is used in all state agencies or a subset of state agencies and is established in law to be designed, delivered, and managed at the enterprise level. Current enterprise information technology services include data center services, e-mail, and security.

~~(10)(13)~~ "Information-system utility" means an information processing a full-service information-processing facility offering hardware, software, operations, integration, networking, floor space, and consulting services.

~~(11)(15)~~ "Information technology policy" means statements that describe clear choices for how information technology will deliver effective and efficient government services to residents and improve state agency operations. A policy may relate to investments, business applications, architecture, or infrastructure. A policy describes its rationale, implications of compliance or noncompliance, the timeline for implementation, metrics for determining compliance, and the accountable structure responsible for its implementation.

~~(12)(14)~~ "Information technology resources" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate,

32-00639B-12

20121498

control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form, and includes the human resources to perform such duties, but excludes application developers and logical database administrators.

(13) "Local area network" means any telecommunications network through which messages and data are exchanged strictly within a single building or contiguous campus.

(14) "Logical database administration" means the resources required to build and maintain database structure, implement and maintain role-based data access controls, and perform performance optimization of data queries and includes the manipulation, transformation, modification, and maintenance of data within a logical database. Typical tasks include schema design and modifications, user provisioning, query tuning, index and statistics maintenance, and data import, export, and manipulation.

(15) "Memorandum of understanding" means a written agreement between a shared resource center or the Division of Telecommunications and a state agency which specifies the scope of services provided, service level, duration of the agreement, responsible parties, and service costs. A memorandum of understanding is not a rule pursuant to chapter 120.

(16) "Other public sector organizations" means entities of the legislative and judicial branches, the State University System, the Florida Community College System, counties, and municipalities. Such organizations may elect to participate in the information technology programs, services, or contracts offered by the Agency for State Technology, including

32-00639B-12 20121498

information technology procurement, in accordance with general law, policies, and administrative rules.

~~(17)-(16)~~ "Performance metrics" means the measures of an organization's activities and performance.

(18) "Physical database administration" means the resources responsible for installing, maintaining, and operating an environment within which a database is hosted. Typical tasks include database engine installation, configuration, and security patching, as well as performing backup and restoration of hosted databases, setup and maintenance of instance-based data replication, and monitoring the health and performance of the database environment.

(19)-(17) "Primary data center" means a data center that is a recipient entity for consolidation of state agency information technology resources ~~nonprimary data centers and computing facilities and that is established by law.~~

(20)-(18) "Project" means an endeavor that has a defined start and end point; is undertaken to create or modify a unique product, service, or result; and has specific objectives that, when attained, signify completion.

(21)-(19) "Risk analysis" means the process of identifying security risks, determining their magnitude, and identifying areas needing safeguards.

(22)-(20) "Service level" means the key performance indicators (KPI) of an organization or service which must be regularly performed, monitored, and achieved.

~~(21) "Service-level agreement" means a written contract between a data center and a customer entity which specifies the scope of services provided, service level, the duration of the~~

32-00639B-12 20121498

~~agreement, the responsible parties, and service costs. A service-level agreement is not a rule pursuant to chapter 120.~~

(23) "Shared resource center" means a primary data center that has been designated and assigned specific duties under this chapter or by the Agency for State Technology under s. 14.206.

(24)-(22) "Standards" means required practices, controls, components, or configurations established by an authority.

(25) "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. The term does not include university boards of trustees or state universities.

(26) "State agency site" means a single, contiguous local area network segment that does not traverse a metropolitan area network or wide area network.

(27)-(23) "SUNCOM Network" means the state enterprise telecommunications system that provides all methods of electronic or optical telecommunications beyond a single building or contiguous building complex and used by entities authorized as network users under this part.

(28)-(24) "Telecommunications" means the science and technology of communication at a distance, including electronic systems used in the transmission or reception of information.

(29)-(25) "Threat" means any circumstance or event that may cause harm to the integrity, availability, or confidentiality of information technology resources.

(30)-(26) "Total cost" means all costs associated with information technology projects or initiatives, including, but not limited to, value of hardware, software, service, maintenance, incremental personnel, and facilities. Total cost

32-00639B-12 20121498

of a loan or gift of information technology resources to a state
an agency includes the fair market value of the resources.

~~(31)-(27)~~ "Usage" means the billing amount charged by the
primary data center, less any pass-through charges, to the state
agency customer entity.

~~(32)-(28)~~ "Usage rate" means a state agency's customer
entity's usage or billing amount as a percentage of total usage.

(33) "Wide area network" means any telecommunications
network or components thereof through which messages and data
are exchanged outside of a local area network.

Section 6. Section 282.0055, Florida Statutes, is amended
to read:

(Substantial rewording of section. See s. 282.0055,
Florida Statutes, for current text.)

282.0055 Assignment of enterprise information technology.—

(1) In order to establish a systematic process for the
planning, design, implementation, procurement, delivery, and
maintenance of enterprise information technology services, such
duties shall be the responsibility of the Agency for State
Technology for executive branch agencies created or authorized
in statute to perform legislatively delegated functions. The
duties shall be performed in collaboration with the state
agencies. The supervision, design, development, delivery, and
maintenance of state-agency specific or unique software
applications shall remain within the responsibility and control
of the individual state agency or other public sector
organization.

(2) During the 2012-2013 fiscal year, the Agency for State
Technology shall, in collaboration with the state agencies and

32-00639B-12 20121498

other stakeholders, create a road map for enterprise information
technology service consolidation. At a minimum, the road map
must include:

(a) An enterprise architecture that provides innovative,
yet pragmatic and cost-effective offerings.

(b) A schedule for the consolidation of state agency data
centers.

(c) Cost-saving targets and timeframes when the savings
will be realized.

(d) Recommendations, including cost estimates, for
enhancements to the Northwood Shared Resource Center and the
Southwood Shared Resource Center that will improve their ability
to deliver enterprise information technology services.

(3) By October 15th of each year beginning in 2013, the
Agency for State Technology shall develop a comprehensive
transition plan for scheduled consolidations occurring the next
fiscal year. This plan shall be submitted to the Governor, the
Cabinet, the President of the Senate, and the Speaker of the
House of Representatives. The transition plan shall be developed
in consultation with agencies submitting agency transition
plans. The comprehensive transition plan must include:

(a) Recommendations for accomplishing the proposed
transitions as efficiently and effectively as possible with
minimal disruption to state agency business processes.

(b) Strategies to minimize risks associated with any of the
proposed consolidations.

(c) A compilation of the state agency transition plans
submitted by state agencies scheduled for consolidation for the
following fiscal year.

32-00639B-12

20121498

639 (d) An estimate of the cost to provide enterprise
 640 information technology services for each state agency scheduled
 641 for consolidation.

642 (e) An analysis of the cost effects resulting from the
 643 planned consolidations on existing state agencies.

644 (f) The fiscal year adjustments to budget categories in
 645 order to absorb the transfer of agency information technology
 646 resources pursuant to the legislative budget request
 647 instructions provided in s. 216.023.

648 (g) A description of any issues that must be resolved in
 649 order to accomplish as efficiently and effectively as possible
 650 all consolidations required during the fiscal year.

651 (4) State agencies have the following duties:

652 (a) For the purpose of completing its work activities, each
 653 state agency shall provide to the Agency for State Technology
 654 all requested information and any other information relevant to
 655 the state agency's ability to effectively transition its
 656 information technology resources into the agency.

657 (b) For the purpose of completing its work activities, each
 658 state agency shall temporarily assign staff to assist the agency
 659 as negotiated between the agency and the state agency.

660 (c) Each state agency identified for consolidation into an
 661 enterprise information technology service offering shall submit
 662 a transition plan to the Agency for State Technology by
 663 September 1 of the fiscal year before the fiscal year in which
 664 the scheduled consolidation will occur. Transition plans shall
 665 be developed in consultation with the Agency for State
 666 Technology and must include:

667 1. An inventory of the state agency data center's resources

32-00639B-12

20121498

668 being consolidated, including all hardware, software, staff, and
 669 contracted services, and the facility resources performing data
 670 center management and operations, security, backup and recovery,
 671 disaster recovery, system administration, database
 672 administration, system programming, job control, production
 673 control, print, storage, technical support, help desk, and
 674 managed services, but excluding application development.

675 2. A description of the level of services needed to meet
 676 the technical and operational requirements of the platforms
 677 being consolidated and an estimate of the primary data center's
 678 cost for the provision of such services.

679 3. A description of expected changes to its information
 680 technology needs and the timeframe when such changes will occur.

681 4. A description of the information technology resources
 682 proposed to remain in the state agency.

683 5. A baseline project schedule for the completion of the
 684 consolidation.

685 6. The specific recurring and nonrecurring budget
 686 adjustments of budget resources by appropriation category into
 687 the appropriate data processing category pursuant to the
 688 legislative budget instructions in s. 216.023 necessary to
 689 support state agency costs for the transfer.

690 (5) (a) Unless authorized by the Legislature or as provided
 691 in paragraphs (b) and (c), a state agency may not:

692 1. Create a new computing service or expand an existing
 693 computing service if that service has been designated as an
 694 enterprise information technology service.

695 2. Spend funds before the state agency's scheduled
 696 consolidation to an enterprise information technology service to

32-00639B-12 20121498

697 purchase or modify hardware or operations software that does not
 698 comply with hardware and software standards established by the
 699 Agency for State Technology.

700 3. Unless for the purpose of offsite disaster recovery
 701 services, transfer existing computing services to any service
 702 provider other than the Agency for State Technology.

703 4. Terminate services with the Agency for State Technology
 704 without giving written notice of intent to terminate or transfer
 705 services 180 days before such termination or transfer.

706 5. Initiate a new computing service with any service
 707 provider other than the Agency for State Technology if that
 708 service has been designated as an enterprise information
 709 technology service.

710 (b) Exceptions to the limitations in subparagraphs (a)1.,
 711 2., 3., and 5. may be granted by the Agency for State Technology
 712 if there is insufficient capacity in the primary data centers to
 713 absorb the workload associated with agency computing services,
 714 expenditures are compatible with the scheduled consolidation and
 715 established standards, or the equipment or resources are needed
 716 to meet a critical state agency business need that cannot be
 717 satisfied from surplus equipment or resources of the primary
 718 data center until the state agency data center is consolidated.

719 1. A request for an exception must be submitted in writing
 720 to the Agency for State Technology. The agency must accept,
 721 accept with conditions, or deny the request within 60 days after
 722 receipt of the written request. The agency's decision is not
 723 subject to chapter 120.

724 2. The Agency for State Technology may not approve a
 725 request unless it includes, at a minimum:

32-00639B-12 20121498

726 a. A detailed description of the capacity requirements of
 727 the state agency requesting the exception.

728 b. Documentation from the state agency head demonstrating
 729 why it is critical to the state agency's mission that the
 730 expansion or transfer must be completed within the fiscal year
 731 rather than when capacity is established at a primary data
 732 center.

733 3. Exceptions to subparagraph (a)4. may be granted by the
 734 Agency for State Technology if the termination or transfer of
 735 services can be absorbed within the current cost-allocation
 736 plan.

737 Section 7. Section 282.0056, Florida Statutes, is amended
 738 to read:

739 282.0056 Development of strategic plan; development and
 740 administration of work plan; development of implementation
 741 plans; and policy recommendations.-

742 (1) In order to provide a systematic process for meeting
 743 the state's technology needs, the executive director shall
 744 develop a biennial state Information Technology Strategic Plan.
 745 The Governor and Cabinet shall approve the plan before
 746 transmitting it to the Legislature, biennially, starting October
 747 1, 2013. The plan shall include the following elements:

748 (a) The vision, goals, initiatives, and targets for state
 749 information technology for the short term of 2 years, midterm of
 750 3 to 5 years, and long term of more than 5 years.

751 (b) An inventory of the information technology resources in
 752 state agencies and major projects currently in progress. As used
 753 in this section, the term "major project" means projects that
 754 cost more than \$500,000 to implement.

32-00639B-12

20121498

(c) An analysis of opportunities for statewide initiatives that would yield efficiencies, cost savings, or avoidance or improve effectiveness in state programs. The analysis shall include:

1. Information technology services that should be designed, delivered, and managed as enterprise information technology services.

2. Techniques for consolidating the purchase of information technology commodities and services that may result in savings for the state and for establishing a process to achieve savings through consolidated purchases.

(d) Recommended initiatives based on the analysis in paragraph (c).

(e) Implementation plans for enterprise information technology services that the agency recommends be established in law in the upcoming fiscal year. The implementation plans shall describe the scope of the service, requirements analyses, costs and savings projects, and a project schedule for statewide implementation.

(2) Each state agency shall, biennially, develop its own information technology plan that includes the information required under paragraph (1)(b). The agency shall consult with and assist state agencies in the preparation of these plans. Each state agency shall submit its plan to the agency biennially, starting January 1, 2013.

(3) For the purpose of completing its work activities, each state agency shall provide to the agency all requested information, including, but not limited to, the state agency's costs, service requirements, staffing, and equipment

32-00639B-12

20121498

inventories.

~~(4)(1)~~ For the purpose of ensuring accountability for the duties and responsibilities of the executive director and the agency under ss. 14.206 and 282.0055, the executive director ~~For the purposes of carrying out its responsibilities under s. 282.0055, the Agency for Enterprise Information Technology shall~~ develop an annual work plan within 60 days after the beginning of the fiscal year describing the activities that the agency intends to undertake for that year and must identify the critical success factors, risks, and issues associated with the work planned. The work plan must also include planned including ~~proposed~~ outcomes and ~~completion~~ timeframes for the planning and implementation of ~~all~~ enterprise information technology services. The work plan must align with the state Information Technology Strategic Plan, be presented at a public hearing, and be approved by the Governor and Cabinet; ~~and,~~ thereafter, be submitted to the President of the Senate and the Speaker of the House of Representatives. The work plan may be amended as needed, subject to approval by the Governor and Cabinet.

~~(2) The agency may develop and submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor by October 1 of each year implementation plans for proposed enterprise information technology services to be established in law.~~

~~(3) In developing policy recommendations and implementation plans for established and proposed enterprise information technology services, the agency shall describe the scope of operation, conduct costs and requirements analyses, conduct an inventory of all existing information technology resources that~~

32-00639B-12

20121498

are associated with each service, and develop strategies and timeframes for statewide migration.

(4) For the purpose of completing its work activities, each state agency shall provide to the agency all requested information, including, but not limited to, the state agency's costs, service requirements, and equipment inventories.

(5) For the purpose of ensuring accountability for the duties and responsibilities of the executive director and the agency under ss. 14.206 and 282.0055, within 60 days after the end of each fiscal year, the executive director agency shall report to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives on what was achieved or not achieved in the prior year's work plan.

Section 8. Section 282.201, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 282.201, Florida Statutes, for current text.)

282.201 State data center system; agency duties and limitations.—A state data center system that includes all primary data centers, other nonprimary data centers, and computing facilities, and that provides an enterprise information technology service, is established.

(1) INTENT.—The Legislature finds that the most efficient and effective means of providing quality utility data processing services to state agencies requires that computing resources be concentrated in quality facilities that provide the proper security, infrastructure, and staff resources to ensure that the state's data is maintained reliably and safely and is recoverable in the event of a disaster. Efficiencies resulting

32-00639B-12

20121498

from such consolidation include the increased ability to leverage technological expertise and hardware and software capabilities; increased savings through consolidated purchasing decisions; and the enhanced ability to deploy technology improvements and implement new policies consistently throughout the consolidated organization. Therefore, it is the intent of the Legislature that state agency data centers and computing facilities be consolidated into the Agency for State Technology to the maximum extent possible by June 30, 2018.

(2) AGENCY FOR STATE TECHNOLOGY DUTIES.—The Agency for State Technology shall by October 1 of each year, beginning in 2013, provide recommendations to the Governor and Legislature relating to changes to the schedule for the consolidations of state agency data centers. The recommendations must be based on the goals of maximizing efficiency of service delivery and current and future cost savings.

(3) STATE AGENCY DUTIES.—

(a) Any state agency that is consolidating agency data centers into a primary data center must execute a new or update an existing memorandum of understanding within 60 days after the specified consolidation date, as required by s. 282.203, in order to specify the services and levels of service it is to receive from the primary data center as a result of the consolidation. If a state agency is unable to execute a memorandum of understanding by that date, the state agency shall submit a report to the Executive Office of the Governor, the Cabinet, the President of the Senate, and the Speaker of the House of Representatives within 5 working days after that date which explains the specific issues preventing execution and

32-00639B-12 20121498

871 describes its plan and schedule for resolving those issues.
 872 (b) On the date of each consolidation specified in general
 873 law or the General Appropriations Act, each state agency shall
 874 retain the least-privileged administrative access rights
 875 necessary to perform the duties not assigned to the primary data
 876 centers.
 877 (4) SCHEDULE FOR CONSOLIDATIONS OF STATE AGENCY DATA
 878 CENTERS.—Consolidations of agency data centers shall be
 879 suspended for the 2012-2013 fiscal year. Consolidations shall
 880 resume during the 2013-2014 fiscal year based upon a revised
 881 schedule developed by the agency.
 882 Section 9. Section 282.203, Florida Statutes, is amended to
 883 read:
 884 (Substantial rewording of section. See s. 282.203,
 885 Florida Statutes, for current text.)
 886 282.203 Primary data centers; duties.—
 887 (1) Each primary data center shall:
 888 (a) Serve participating state agencies as an information-
 889 system utility.
 890 (b) Cooperate with participating state agencies to offer,
 891 develop, and support the services and applications.
 892 (c) Comply with rules adopted by the Agency for State
 893 Technology, pursuant to this section, and coordinate with the
 894 agency in the consolidation of data centers.
 895 (d) Provide transparent financial statements to
 896 participating state agencies.
 897 (e) Assume the least-privileged administrative access
 898 rights necessary to perform the services provided by the data
 899 center for the software and equipment that is consolidated into

32-00639B-12 20121498

900 a primary data center.
 901 (2) (a) Each primary data center shall enter into a
 902 memorandum of understanding with each participating state agency
 903 to provide services. A memorandum of understanding may not have
 904 a term exceeding 3 years but may include an option to renew for
 905 up to 3 years.
 906 (b) The failure to execute a memorandum of understanding
 907 within 60 days after service commencement shall, in the case of
 908 a participating state agency, result in a continuation of the
 909 terms of the memorandum of understanding from the previous
 910 fiscal year, including any amendments that were formally
 911 proposed to the state agency by the primary data center within
 912 the 3 months before service commencement, and a revised cost-of-
 913 service estimate. If a participating state agency fails to
 914 execute a memorandum of understanding within 60 days after
 915 service commencement, the data center may cease services.
 916 Section 10. Section 282.204, Florida Statutes, is repealed.
 917 Section 11. Section 282.205, Florida Statutes, is repealed.
 918 Section 12. Section 282.206, Florida Statutes, is created
 919 to read:
 920 282.206 Fletcher Shared Resource Center.—The Fletcher
 921 Shared Resource Center is established as a state agency within
 922 the Department of Financial Services.
 923 (1) The center shall collaborate with the Agency for State
 924 Technology to develop policies, procedures, standards, and rules
 925 for the delivery of enterprise information technology services.
 926 (2) The center may comply with the policies and rules of
 927 the Agency for State Technology related to the design and
 928 delivery of enterprise information technology services.

32-00639B-12

20121498

929 (3) The center shall provide colocation services to the
 930 Department of Legal Affairs and the Department of Agriculture
 931 and Consumer Services.

932 (4) The Department of Financial Services shall continue to
 933 use the Fletcher Shared Resource Center, provide full service to
 934 the Office of Financial Regulation and the Office of Insurance
 935 Regulation, and host the Legislative Appropriations
 936 System/Planning and Budgeting Subsystem (LAS/PBS).

937 (5) The center shall be governed through a master
 938 memorandum of understanding and complemented by a steering
 939 committee comprised of the chief information officers of the
 940 Department of Legal Affairs, the Department of Agriculture and
 941 Consumer Services, and the Department of Financial Services. The
 942 steering committee shall meet quarterly to ensure that customers
 943 are receiving expected services in accordance with the
 944 memorandum of understanding and to discuss services and
 945 structure. The committee may create ad hoc workgroups to account
 946 for, mitigate, and manage any unforeseen issues.

947 (6) The Department of Legal Affairs shall move its data
 948 center equipment to the center by June 30, 2014.

949 (7) The Department of Agriculture and Consumer Services
 950 shall move its Mayo Building data center equipment to the center
 951 by June 30, 2014.

952 Section 13. Section 282.33, Florida Statutes, is repealed.

953 Section 14. Section 282.34, Florida Statutes, is amended to
 954 read:

955 282.34 Statewide e-mail service.—A statewide e-mail service
 956 that includes the delivery and support of e-mail, messaging, and
 957 calendaring capabilities is established as an enterprise

32-00639B-12

20121498

958 information technology service as defined in s. 282.0041. The
 959 service shall be provisioned ~~designed~~ to meet the needs of all
 960 executive branch agencies and may also be used by other public
 961 sector ~~nonstate agency~~ entities. The primary goals of the
 962 service are to leverage the state's existing investment in e-
 963 mail; provide a reliable collaborative communication service to
 964 state agencies; minimize the state investment required to
 965 establish, operate, and support the statewide service; reduce
 966 the cost of current e-mail operations and the number of
 967 duplicative e-mail systems; and eliminate the need for each
 968 state agency to maintain its own e-mail staff.

969 (1) With the exception of the Department of Agriculture and
 970 Consumer Services, the Department of Legal Affairs, and the
 971 Department of Financial Services, all state agencies shall
 972 receive their primary e-mail services exclusively through the
 973 Agency for State Technology. The Southwood Shared Resource
 974 Center, a primary data center, shall be the provider of the
 975 statewide e-mail service for all state agencies. The center
 976 shall centrally host, manage, operate, and support the service,
 977 or outsource the hosting, management, operational, or support
 978 components of the service in order to achieve the primary goals
 979 identified in this section.

980 (2) The Department of Agriculture and Consumer Services,
 981 the Department of Financial Services, the Office of Financial
 982 Regulation, and the Office of Insurance Regulation may receive
 983 e-mail services from the Fletcher Shared Resource Center or the
 984 Agency for State Technology. The Agency for Enterprise
 985 Information Technology, in cooperation and consultation with all
 986 state agencies, shall prepare and submit for approval by the

32-00639B-12 20121498

Legislative Budget Commission at a meeting scheduled before June 30, 2011, a proposed plan for the migration of all state agencies to the statewide e-mail service. The plan for migration must include:

(a) A cost-benefit analysis that compares the total recurring and nonrecurring operating costs of the current agency e-mail systems, including monthly mailbox costs, staffing, licensing and maintenance costs, hardware, and other related e-mail product and service costs to the costs associated with the proposed statewide e-mail service. The analysis must also include:

1. A comparison of the estimated total 7-year life-cycle cost of the current agency e-mail systems versus the feasibility of funding the migration and operation of the statewide e-mail service.

2. An estimate of recurring costs associated with the energy consumption of current agency e-mail equipment, and the basis for the estimate.

3. An identification of the overall cost savings resulting from state agencies migrating to the statewide e-mail service and decommissioning their agency e-mail systems.

(b) A proposed migration date for all state agencies to be migrated to the statewide e-mail service. The Agency for Enterprise Information Technology shall work with the Executive Office of the Governor to develop the schedule for migrating all state agencies to the statewide e-mail service except for the Department of Legal Affairs. The Department of Legal Affairs shall provide to the Agency for Enterprise Information Technology by June 1, 2011, a proposed migration date based upon

32-00639B-12 20121498

its decision to participate in the statewide e-mail service and the identification of any issues that require resolution in order to migrate to the statewide e-mail service.

(c) A budget amendment, submitted pursuant to chapter 216, for adjustments to each agency's approved operating budget necessary to transfer sufficient budget resources into the appropriate data processing category to support its statewide e-mail service costs.

(d) A budget amendment, submitted pursuant to chapter 216, for adjustments to the Southwood Shared Resource Center approved operating budget to include adjustments in the number of authorized positions, salary budget and associated rate, necessary to implement the statewide e-mail service.

(3) Contingent upon approval by the Legislative Budget Commission, the Southwood Shared Resource Center may contract for the provision of a statewide e-mail service. Executive branch agencies must be completely migrated to the statewide e-mail service based upon the migration date included in the proposed plan approved by the Legislative Budget Commission.

(4) Notwithstanding chapter 216, general revenue funds may be increased or decreased for each agency provided the net change to general revenue in total for all agencies is zero or less.

(5) Subsequent to the approval of the consolidated budget amendment to reflect budget adjustments necessary to migrate to the statewide e-mail service, an agency may make adjustments subject to s. 216.177, notwithstanding provisions in chapter 216 which may require such adjustments to be approved by the Legislative Budget Commission.

32-00639B-12

20121498

~~(6) No agency may initiate a new e-mail service or execute a new e-mail contract or amend a current e-mail contract, other than with the Southwood Shared Resource Center, for nonessential products or services unless the Legislative Budget Commission denies approval for the Southwood Shared Resource Center to enter into a contract for the statewide e-mail service.~~

~~(7) The Agency for Enterprise Information Technology shall work with the Southwood Shared Resource Center to develop an implementation plan that identifies and describes the detailed processes and timelines for an agency's migration to the statewide e-mail service based on the migration date approved by the Legislative Budget Commission. The agency may establish and coordinate workgroups consisting of agency e-mail management, information technology, budget, and administrative staff to assist the agency in the development of the plan.~~

~~(8) Each executive branch agency shall provide all information necessary to develop the implementation plan, including, but not limited to, required mailbox features and the number of mailboxes that will require migration services. Each agency must also identify any known business, operational, or technical plans, limitations, or constraints that should be considered when developing the plan.~~

Section 15. Section 282.702, Florida Statutes, is amended to read:

282.702 Powers and duties.—The Agency for State Technology Department of Management Services shall have the following powers, duties, and functions:

(1) To publish electronically the portfolio of services available from the agency department, including pricing

32-00639B-12

20121498

information; the policies and procedures governing usage of available services; and a forecast of the agency's department's priorities for each telecommunications service.

(2) To adopt technical standards by rule for the state telecommunications network which ensure the interconnection and operational security of computer networks, telecommunications, and information systems of agencies.

(3) To enter into agreements related to information technology and telecommunications services with state agencies and political subdivisions of the state.

(4) To purchase from or contract with information technology providers for information technology, including private line services.

(5) To apply for, receive, and hold authorizations, patents, copyrights, trademarks, service marks, licenses, and allocations or channels and frequencies to carry out the purposes of this part.

(6) To purchase, lease, or otherwise acquire and to hold, sell, transfer, license, or otherwise dispose of real, personal, and intellectual property, including, but not limited to, patents, trademarks, copyrights, and service marks.

(7) To cooperate with any federal, state, or local emergency management agency in providing for emergency telecommunications services.

(8) To control and approve the purchase, lease, or acquisition and the use of telecommunications services, software, circuits, and equipment provided as part of any other total telecommunications system to be used by the state or its agencies.

32-00639B-12

20121498

- 1103 (9) To adopt rules pursuant to ss. 120.536(1) and 120.54
 1104 relating to telecommunications and to administer the provisions
 1105 of this part.
- 1106 (10) To apply for and accept federal funds for the purposes
 1107 of this part as well as gifts and donations from individuals,
 1108 foundations, and private organizations.
- 1109 (11) To monitor issues relating to telecommunications
 1110 facilities and services before the Florida Public Service
 1111 Commission and the Federal Communications Commission and, if
 1112 necessary, prepare position papers, prepare testimony, appear as
 1113 a witness, and retain witnesses on behalf of state agencies in
 1114 proceedings before the commissions.
- 1115 (12) Unless delegated to the state agencies by the agency
 1116 ~~department~~, to manage and control, but not intercept or
 1117 interpret, telecommunications within the SUNCOM Network by:
- 1118 (a) Establishing technical standards to physically
 1119 interface with the SUNCOM Network.
- 1120 (b) Specifying how telecommunications are transmitted
 1121 within the SUNCOM Network.
- 1122 (c) Controlling the routing of telecommunications within
 1123 the SUNCOM Network.
- 1124 (d) Establishing standards, policies, and procedures for
 1125 access to and the security of the SUNCOM Network.
- 1126 (e) Ensuring orderly and reliable telecommunications
 1127 services in accordance with the service level agreements
 1128 executed with state agencies.
- 1129 (13) To plan, design, and conduct experiments for
 1130 telecommunications services, equipment, and technologies, and to
 1131 implement enhancements in the state telecommunications network

32-00639B-12

20121498

- 1132 if in the public interest and cost-effective. Funding for such
 1133 experiments must be derived from SUNCOM Network service revenues
 1134 and may not exceed 2 percent of the annual budget for the SUNCOM
 1135 Network for any fiscal year or as provided in the General
 1136 Appropriations Act. New services offered as a result of this
 1137 subsection may not affect existing rates for facilities or
 1138 services.
- 1139 (14) To enter into contracts or agreements, with or without
 1140 competitive bidding or procurement, to make available, on a
 1141 fair, reasonable, and nondiscriminatory basis, property and
 1142 other structures under agency ~~departmental~~ control for the
 1143 placement of new facilities by any wireless provider of mobile
 1144 service as defined in 47 U.S.C. s. 153(27) or s. 332(d) and any
 1145 telecommunications company as defined in s. 364.02 if it is
 1146 practical and feasible to make such property or other structures
 1147 available. The agency ~~department~~ may, without adopting a rule,
 1148 charge a just, reasonable, and nondiscriminatory fee for the
 1149 placement of the facilities, payable annually, based on the fair
 1150 market value of space used by comparable telecommunications
 1151 facilities in the state. The agency ~~department~~ and a wireless
 1152 provider or telecommunications company may negotiate the
 1153 reduction or elimination of a fee in consideration of services
 1154 provided to the agency ~~department~~ by the wireless provider or
 1155 telecommunications company. All such fees collected by the
 1156 agency ~~department~~ shall be deposited directly into the Law
 1157 Enforcement Radio Operating Trust Fund, and may be used by the
 1158 agency ~~department~~ to construct, maintain, or support the system.
- 1159 (15) Establish policies that ensure that the agency's
 1160 ~~department's~~ cost-recovery methodologies, billings, receivables,

32-00639B-12

20121498

expenditures, budgeting, and accounting data are captured and reported timely, consistently, accurately, and transparently and are in compliance with all applicable federal and state laws and rules. The ~~agency department~~ shall annually submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that describes each service and its cost, the billing methodology for recovering the cost of the service, and, if applicable, the identity of those services that are subsidized.

(16) Develop a plan for statewide voice-over-Internet protocol services. The plan shall include cost estimates and the estimated return on investment. The plan shall be submitted to the Governor, the Cabinet, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2013.

Section 16. Subsection (2) of section 20.22, Florida Statutes, is amended to read:

20.22 Department of Management Services.—There is created a Department of Management Services.

(2) The following divisions and programs within the Department of Management Services are established:

(a) Facilities Program.

~~(b) Technology Program.~~

~~(b)(c)~~ Workforce Program.

~~(c)(d)~~ 1. Support Program.

2. Federal Property Assistance Program.

~~(d)(e)~~ Administration Program.

~~(e)(f)~~ Division of Administrative Hearings.

~~(f)(g)~~ Division of Retirement.

~~(g)(h)~~ Division of State Group Insurance.

32-00639B-12

20121498

Section 17. Paragraph (e) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(e) The ~~executive director of Chief Information Officer in the Agency for State Enterprise Information Technology~~. Unless otherwise fixed by law, the Governor and Cabinet Agency for Enterprise Information Technology shall set the salary and benefits of this position in accordance with the rules of the Senior Management Service.

Section 18. Paragraph (o) of subsection (1) of section 215.22, Florida Statutes, is amended to read:

215.22 Certain income and certain trust funds exempt.—

(1) The following income of a revenue nature or the following trust funds shall be exempt from the appropriation required by s. 215.20(1):

(o) The Communications Working Capital Trust Fund of the Agency for State Technology Department of Management Services.

Section 19. Subsections (2) and (9) of section 215.322, Florida Statutes, are amended to read:

215.322 Acceptance of credit cards, charge cards, debit cards, or electronic funds transfers by state agencies, units of local government, and the judicial branch.—

(2) A state agency as defined in s. 216.011, or the judicial branch, may accept credit cards, charge cards, debit cards, or electronic funds transfers in payment for goods and services with the prior approval of the Chief Financial Officer. If the Internet or other related electronic methods are to be

32-00639B-12 20121498

1219 used as the collection medium, the Agency for ~~State Enterprise~~
 1220 ~~Information~~ Technology shall review and recommend to the Chief
 1221 Financial Officer whether to approve the request with regard to
 1222 the process or procedure to be used.

1223 (9) For payment programs in which credit cards, charge
 1224 cards, or debit cards are accepted by state agencies, the
 1225 judicial branch, or units of local government, the Chief
 1226 Financial Officer, in consultation with the Agency for State
 1227 ~~Enterprise Information~~ Technology, may adopt rules to establish
 1228 uniform security safeguards for cardholder data and to ensure
 1229 compliance with the Payment Card Industry Data Security
 1230 Standards.

1231 Section 20. Paragraph (c) of subsection (6) of section
 1232 216.292, Florida Statutes, is amended to read:

1233 216.292 Appropriations nontransferable; exceptions.—

1234 (6) The Chief Financial Officer shall transfer from any
 1235 available funds of an agency or the judicial branch the
 1236 following amounts and shall report all such transfers and the
 1237 reasons therefor to the legislative appropriations committees
 1238 and the Executive Office of the Governor:

1239 (c) The amount due to the Communications Working Capital
 1240 Trust Fund from moneys appropriated in the General
 1241 Appropriations Act for the purpose of paying for services
 1242 provided by the state communications system in the Agency for
 1243 State Technology ~~Department of Management Services~~ which is
 1244 unpaid 45 days after the billing date. The amount transferred
 1245 shall be that billed by the department.

1246 Section 21. Subsections (3), (4), (5), and (6) of section
 1247 282.318, Florida Statutes, are amended to read:

32-00639B-12 20121498

1248 282.318 Enterprise security of data and information
 1249 technology.—

1250 (3) The Agency for ~~State Enterprise Information~~ Technology
 1251 is responsible for establishing rules and publishing guidelines
 1252 for ensuring an appropriate level of security for all data and
 1253 information technology resources for executive branch agencies.
 1254 The agency shall also perform the following duties and
 1255 responsibilities:

1256 (a) Develop, and annually update by February 1, an
 1257 enterprise information security strategic plan that includes
 1258 security goals and objectives for the strategic issues of
 1259 information security policy, risk management, training, incident
 1260 management, and survivability planning.

1261 (b) Develop enterprise security rules and published
 1262 guidelines for:

1263 1. Comprehensive risk analyses and information security
 1264 audits conducted by state agencies.

1265 2. Responding to suspected or confirmed information
 1266 security incidents, including suspected or confirmed breaches of
 1267 personal information or exempt data.

1268 3. Agency security plans, including strategic security
 1269 plans and security program plans.

1270 4. The recovery of information technology and data
 1271 following a disaster.

1272 5. The managerial, operational, and technical safeguards
 1273 for protecting state government data and information technology
 1274 resources.

1275 (c) Assist agencies in complying with the provisions of
 1276 this section.

32-00639B-12

20121498__

1277 (d) Pursue appropriate funding for the purpose of enhancing
1278 domestic security.

1279 (e) Provide training for agency information security
1280 managers.

1281 (f) Annually review the strategic and operational
1282 information security plans of executive branch agencies.

1283 (4) To assist the Agency for State Enterprise Information
1284 Technology in carrying out its responsibilities, each state
1285 agency head shall, at a minimum:

1286 (a) Designate an information security manager to administer
1287 the security program of the state agency for its data and
1288 information technology resources. This designation must be
1289 provided annually in writing to the Agency for State Enterprise
1290 Information Technology by January 1.

1291 (b) Submit to the Agency for State Enterprise Information
1292 Technology annually by July 31, the state agency's comprehensive
1293 strategic and operational information security plans developed
1294 pursuant to the rules and guidelines established by the Agency
1295 for State Enterprise Information Technology.

1296 1. The state agency comprehensive strategic information
1297 security plan must cover a 3-year period and define security
1298 goals, intermediate objectives, and projected agency costs for
1299 the strategic issues of agency information security policy, risk
1300 management, security training, security incident response, and
1301 survivability. The plan must be based on the enterprise
1302 strategic information security plan created by the Agency for
1303 State Enterprise Information Technology. Additional issues may
1304 be included.

1305 2. The state agency operational information security plan

32-00639B-12

20121498__

1306 must include a progress report for the prior operational
1307 information security plan and a project plan that includes
1308 activities, timelines, and deliverables for security objectives
1309 that, subject to current resources, the state agency will
1310 implement during the current fiscal year. The cost of
1311 implementing the portions of the plan which cannot be funded
1312 from current resources must be identified in the plan.

1313 (c) Conduct, and update every 3 years, a comprehensive risk
1314 analysis to determine the security threats to the data,
1315 information, and information technology resources of the state
1316 agency. The risk analysis information is confidential and exempt
1317 from the provisions of s. 119.07(1), except that such
1318 information shall be available to the Auditor General and the
1319 Agency for State Enterprise Information Technology for
1320 performing postauditing duties.

1321 (d) Develop, and periodically update, written internal
1322 policies and procedures ~~that, which~~ include procedures for
1323 notifying the Agency for State Enterprise Information Technology
1324 when a suspected or confirmed breach, or an information security
1325 incident, occurs. Such policies and procedures must be
1326 consistent with the rules and guidelines established by the
1327 Agency for State Enterprise Information Technology to ensure the
1328 security of the data, information, and information technology
1329 resources of the state agency. The internal policies and
1330 procedures that, if disclosed, could facilitate the unauthorized
1331 modification, disclosure, or destruction of data or information
1332 technology resources are confidential information and exempt
1333 from s. 119.07(1), except that such information shall be
1334 available to the Auditor General and the Agency for State

32-00639B-12 20121498

1335 ~~Enterprise Information~~ Technology for performing postauditing
1336 duties.

1337 (e) Implement appropriate cost-effective safeguards to
1338 address identified risks to the data, information, and
1339 information technology resources of the state agency.

1340 (f) Ensure that periodic internal audits and evaluations of
1341 the state agency's security program for the data, information,
1342 and information technology resources of the state agency are
1343 conducted. The results of such audits and evaluations are
1344 confidential information and exempt from s. 119.07(1), except
1345 that such information shall be available to the Auditor General
1346 and the Agency for State Enterprise Information Technology for
1347 performing postauditing duties.

1348 (g) Include appropriate security requirements in the
1349 written specifications for the solicitation of information
1350 technology and information technology resources and services,
1351 which are consistent with the rules and guidelines established
1352 by the Agency for State Enterprise Information Technology.

1353 (h) Provide security awareness training to employees and
1354 users of the state agency's communication and information
1355 resources concerning information security risks and the
1356 responsibility of employees and users to comply with policies,
1357 standards, guidelines, and operating procedures adopted by the
1358 state agency to reduce those risks.

1359 (i) Develop a process for detecting, reporting, and
1360 responding to suspected or confirmed security incidents,
1361 including suspected or confirmed breaches consistent with the
1362 security rules and guidelines established by the Agency for
1363 State Enterprise Information Technology.

32-00639B-12 20121498

1364 1. Suspected or confirmed information security incidents
1365 and breaches must be immediately reported to the Agency for
1366 State Enterprise Information Technology.

1367 2. For incidents involving breaches, agencies shall provide
1368 notice in accordance with s. 817.5681 and to the Agency for
1369 State Enterprise Information Technology in accordance with this
1370 subsection.

1371 (5) Each state agency shall include appropriate security
1372 requirements in the specifications for the solicitation of
1373 contracts for procuring information technology or information
1374 technology resources or services which are consistent with the
1375 rules and guidelines established by the Agency for State
1376 Enterprise Information Technology.

1377 (6) The Agency for State Enterprise Information Technology
1378 may adopt rules relating to information security and to
1379 administer the provisions of this section.

1380 Section 22. Section 282.604, Florida Statutes, is amended
1381 to read:

1382 282.604 Adoption of rules.—The Agency for State Technology
1383 ~~Department of Management Services~~ shall, with input from
1384 stakeholders, adopt rules pursuant to ss. 120.536(1) and 120.54
1385 for the development, procurement, maintenance, and use of
1386 accessible electronic information technology by governmental
1387 units.

1388 Section 23. Section 282.703, Florida Statutes, is amended
1389 to read:

1390 282.703 SUNCOM Network; exemptions from the required use.—

1391 (1) The SUNCOM Network is established within the Agency for
1392 State Technology ~~department~~ as the state enterprise

32-00639B-12 20121498
 1393 telecommunications system for providing local and long-distance
 1394 communications services to state agencies, political
 1395 subdivisions of the state, municipalities, and nonprofit
 1396 corporations pursuant to this part. The SUNCOM Network shall be
 1397 developed to transmit all types of telecommunications signals,
 1398 including, but not limited to, voice, data, video, image, and
 1399 radio. State agencies shall cooperate and assist in the
 1400 development and joint use of telecommunications systems and
 1401 services.

1402 (2) The Agency for State Technology department shall
 1403 design, engineer, implement, manage, and operate through state
 1404 ownership, commercial leasing, contracted services, or some
 1405 combination thereof, the facilities, equipment, and contracts
 1406 providing SUNCOM Network services, and shall develop a system of
 1407 equitable billings and charges for telecommunications services.

1408 (3) The Agency for State Technology department shall own,
 1409 manage, and establish standards for the telecommunications
 1410 addressing and numbering plans for the SUNCOM Network. This
 1411 includes distributing or revoking numbers and addresses to
 1412 authorized users of the network and delegating or revoking the
 1413 delegation of management of subsidiary groups of numbers and
 1414 addresses to authorized users of the network.

1415 (4) The Agency for State Technology department shall
 1416 maintain a directory of information and services which provides
 1417 the names, phone numbers, and e-mail addresses for employees,
 1418 state agencies, and network devices that are served, in whole or
 1419 in part, by the SUNCOM Network. State agencies and political
 1420 subdivisions of the state shall cooperate with the Agency for
 1421 State Technology department by providing timely and accurate

32-00639B-12 20121498
 1422 directory information in the manner established by the Agency
 1423 for State Technology department.

1424 (5) All state agencies shall use the SUNCOM Network for
 1425 state agency telecommunications services as the services become
 1426 available; however, a state ~~an~~ agency is not relieved of
 1427 responsibility for maintaining telecommunications services
 1428 necessary for effective management of its programs and
 1429 functions. The Agency for State Technology department may
 1430 provide such communications services to a state university if
 1431 requested by the university.

1432 (a) If a SUNCOM Network service does not meet the
 1433 telecommunications requirements of a state ~~an~~ agency, the state
 1434 agency must notify the Agency for State Technology department in
 1435 writing and detail the requirements for that service. If the
 1436 agency department is unable to meet a state ~~an~~ agency's
 1437 requirements by enhancing SUNCOM Network service, the Agency for
 1438 State Technology department may grant the state agency an
 1439 exemption from the required use of specified SUNCOM Network
 1440 services.

1441 (b) Unless an exemption has been granted by the agency
 1442 department, effective October 1, 2010, all customers of a state
 1443 primary data center, excluding state universities, must use the
 1444 shared SUNCOM Network telecommunications services connecting the
 1445 state primary data center to SUNCOM services for all
 1446 telecommunications needs in accordance with rules of the Agency
 1447 for State Technology department ~~rules~~.

1448 1. Upon discovery of customer noncompliance with this
 1449 paragraph, the agency department shall provide the affected
 1450 customer with a schedule for transferring to the shared

32-00639B-12 20121498__

telecommunications services provided by the SUNCOM Network and an estimate of all associated costs. The state primary data centers and their customers shall cooperate with the agency ~~department~~ to accomplish the transfer.

2. Customers may request an exemption from this paragraph in the same manner as authorized in paragraph (a).

(6) This section may not be construed to require a state university to use SUNCOM Network communication services.

Section 24. Section 282.704, Florida Statutes, is amended to read:

282.704 Use of state SUNCOM Network by municipalities.—Any municipality may request the Agency for State Technology ~~department~~ to provide any or all of the SUNCOM Network's portfolio of communications services upon such terms and conditions as the agency ~~department~~ may establish. The requesting municipality shall pay its share of installation and recurring costs according to the published rates for SUNCOM Network services and as invoiced by the agency ~~department~~. Such municipality shall also pay for any requested modifications to existing SUNCOM Network services, if any charges apply.

Section 25. Section 282.705, Florida Statutes, is amended to read:

282.705 Use of state SUNCOM Network by nonprofit corporations.—

(1) The Agency for State Technology ~~department~~ shall provide a means whereby private nonprofit corporations under contract with state agencies or political subdivisions of the state may use the state SUNCOM Network, subject to the limitations in this section. In order to qualify to use the

32-00639B-12 20121498__

state SUNCOM Network, a nonprofit corporation shall:

(a) Expend the majority of its total direct revenues for the provision of contractual services to the state, a municipality, or a political subdivision; and

(b) Receive only a small portion of its total revenues from any source other than a state agency, a municipality, or a political subdivision during the time SUNCOM Network services are requested.

(2) Each nonprofit corporation seeking authorization to use the state SUNCOM Network shall provide to the agency ~~department~~, upon request, proof of compliance with subsection (1).

(3) Nonprofit corporations established pursuant to general law and an association of municipal governments which is wholly owned by the municipalities are eligible to use the state SUNCOM Network, subject to the terms and conditions of the agency ~~department~~.

(4) Institutions qualified to participate in the William L. Boyd, IV, Florida Resident Access Grant Program pursuant to s. 1009.89 are eligible to use the state SUNCOM Network, subject to the terms and conditions of the agency ~~department~~. Such entities are not required to satisfy the other criteria of this section.

(5) Private, nonprofit elementary and secondary schools are eligible for rates and services on the same basis as public schools if such schools do not have an endowment in excess of \$50 million.

Section 26. Section 282.706, Florida Statutes, is amended to read:

282.706 Use of SUNCOM Network by libraries.—The Agency for State Technology ~~department~~ may provide SUNCOM Network services

32-00639B-12 20121498
 1509 to any library in the state, including libraries in public
 1510 schools, community colleges, state universities, and nonprofit
 1511 private postsecondary educational institutions, and libraries
 1512 owned and operated by municipalities and political subdivisions.
 1513 This section may not be construed to require a state university
 1514 library to use SUNCOM Network services.

1515 Section 27. Section 282.707, Florida Statutes, is amended
 1516 to read:

1517 282.707 SUNCOM Network; criteria for usage.—

1518 (1) The Agency for State Technology department and
 1519 customers served by the agency department shall periodically
 1520 review the qualifications of subscribers using the state SUNCOM
 1521 Network and terminate services provided to a facility not
 1522 qualified under this part or rules adopted hereunder. In the
 1523 event of nonpayment of invoices by subscribers whose SUNCOM
 1524 Network invoices are paid from sources other than legislative
 1525 appropriations, such nonpayment represents good and sufficient
 1526 reason to terminate service.

1527 (2) The Agency for State Technology department shall adopt
 1528 rules for implementing and operating the state SUNCOM Network,
 1529 which include procedures for withdrawing and restoring
 1530 authorization to use the state SUNCOM Network. Such rules shall
 1531 provide a minimum of 30 days' notice to affected parties before
 1532 terminating voice communications service.

1533 (3) This section does not limit or restrict the ability of
 1534 the Florida Public Service Commission to set jurisdictional
 1535 tariffs of telecommunications companies.

1536 Section 28. Section 282.709, Florida Statutes, is amended
 1537 to read:

32-00639B-12 20121498
 1538 282.709 State agency law enforcement radio system and
 1539 interoperability network.—

1540 (1) The Agency for State Technology department may acquire
 1541 and administer a statewide radio communications system to serve
 1542 law enforcement units of state agencies, and to serve local law
 1543 enforcement agencies through mutual aid channels.

1544 (a) The agency department shall, in conjunction with the
 1545 Department of Law Enforcement and the Division of Emergency
 1546 Management, establish policies, procedures, and standards to be
 1547 incorporated into a comprehensive management plan for the use
 1548 and operation of the statewide radio communications system.

1549 (b) The agency department shall bear the overall
 1550 responsibility for the design, engineering, acquisition, and
 1551 implementation of the statewide radio communications system and
 1552 for ensuring the proper operation and maintenance of all common
 1553 system equipment.

1554 (c)1. The agency department may rent or lease space on any
 1555 tower under its control and refuse to lease space on any tower
 1556 at any site.

1557 2. The agency department may rent, lease, or sublease
 1558 ground space as necessary to locate equipment to support
 1559 antennae on the towers. The costs for the use of such space
 1560 shall be established by the agency department for each site if
 1561 it is determined to be practicable and feasible to make space
 1562 available.

1563 3. The agency department may rent, lease, or sublease
 1564 ground space on lands acquired by the agency department for the
 1565 construction of privately owned or publicly owned towers. The
 1566 agency department may, as a part of such rental, lease, or

32-00639B-12 20121498

sublease agreement, require space on such towers for antennae as necessary for the construction and operation of the state agency law enforcement radio system or any other state need.

4. All moneys collected by the ~~agency department~~ for rents, leases, and subleases under this subsection shall be deposited directly into the State Agency Law Enforcement Radio System Trust Fund established in subsection (3) and may be used by the ~~agency department~~ to construct, maintain, or support the system.

5. The positions necessary for the ~~agency department~~ to accomplish its duties under this subsection shall be established in the General Appropriations Act and funded by the Law Enforcement Radio Operating Trust Fund or other revenue sources.

(d) The ~~agency department~~ shall exercise its powers and duties under this part to plan, manage, and administer the mutual aid channels in the statewide radio communication system.

1. In implementing such powers and duties, the ~~agency department~~ shall consult and act in conjunction with the Department of Law Enforcement and the Division of Emergency Management, and shall manage and administer the mutual aid channels in a manner that reasonably addresses the needs and concerns of the involved law enforcement agencies and emergency response agencies and entities.

2. The ~~agency department~~ may make the mutual aid channels available to federal agencies, state agencies, and agencies of the political subdivisions of the state for the purpose of public safety and domestic security.

(e) The ~~agency department~~ may allow other state agencies to use the statewide radio communications system under terms and conditions established by the ~~agency department~~.

32-00639B-12 20121498

(2) The Joint Task Force on State Agency Law Enforcement Communications is created adjunct to the Agency for State Technology ~~department~~ to advise the ~~agency department~~ of member-agency needs relating to the planning, designing, and establishment of the statewide communication system.

(a) The Joint Task Force on State Agency Law Enforcement Communications shall consist of eight members, as follows:

1. A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation who shall be appointed by the secretary of the department.

2. A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who shall be appointed by the executive director of the department.

3. A representative of the Department of Law Enforcement who shall be appointed by the executive director of the department.

4. A representative of the Fish and Wildlife Conservation Commission who shall be appointed by the executive director of the commission.

5. A representative of the Division of Law Enforcement of the Department of Environmental Protection who shall be appointed by the secretary of the department.

6. A representative of the Department of Corrections who shall be appointed by the secretary of the department.

7. A representative of the Division of State Fire Marshal of the Department of Financial Services who shall be appointed by the State Fire Marshal.

32-00639B-12

20121498

8. A representative of the Department of Transportation who shall be appointed by the secretary of the department.

(b) Each appointed member of the joint task force shall serve at the pleasure of the appointing official. Any vacancy on the joint task force shall be filled in the same manner as the original appointment. A joint task force member may, upon notification to the chair before the beginning of any scheduled meeting, appoint an alternative to represent the member on the task force and vote on task force business in his or her absence.

(c) The joint task force shall elect a chair from among its members to serve a 1-year term. A vacancy in the chair of the joint task force must be filled for the remainder of the unexpired term by an election of the joint task force members.

(d) The joint task force shall meet as necessary, but at least quarterly, at the call of the chair and at the time and place designated by him or her.

(e) The per diem and travel expenses incurred by a member of the joint task force in attending its meetings and in attending to its affairs shall be paid pursuant to s. 112.061, from funds budgeted to the state agency that the member represents.

(f) The agency ~~department~~ shall provide technical support to the joint task force.

(3) (a) The State Agency Law Enforcement Radio System Trust Fund is established in the Agency for State Technology ~~department~~ and funded from surcharges collected under ss. 318.18, 320.0802, and 328.72. Upon appropriation, moneys in the trust fund may be used by the agency ~~department~~ to acquire by

32-00639B-12

20121498

competitive procurement the equipment, software, and engineering, administrative, and maintenance services it needs to construct, operate, and maintain the statewide radio system. Moneys in the trust fund from surcharges shall be used to help fund the costs of the system. Upon completion of the system, moneys in the trust fund may also be used by the agency ~~department~~ for payment of the recurring maintenance costs of the system.

(b) Funds from the State Agency Law Enforcement Radio System Trust Fund may be used by the agency ~~department~~ to fund mutual aid buildout maintenance and sustainment as appropriated by law. This paragraph expires July 1, 2012.

(4) The Agency for State Technology ~~department~~ may create and administer an interoperability network to enable interoperability between various radio communications technologies and to serve federal agencies, state agencies, and agencies of political subdivisions of the state for the purpose of public safety and domestic security.

(a) The agency ~~department~~ shall, in conjunction with the Department of Law Enforcement and the Division of Emergency Management, exercise its powers and duties pursuant to this chapter to plan, manage, and administer the interoperability network. The agency ~~office~~ may:

1. Enter into mutual aid agreements among federal agencies, state agencies, and political subdivisions of the state for the use of the interoperability network.

2. Establish the cost of maintenance and operation of the interoperability network and charge subscribing federal and local law enforcement agencies for access and use of the

32-00639B-12 20121498

network. The agency ~~department~~ may not charge state law enforcement agencies identified in paragraph (2)(a) to use the network.

3. In consultation with the Department of Law Enforcement and the Division of Emergency Management, amend and enhance the statewide radio communications system as necessary to implement the interoperability network.

(b) The agency ~~department~~, in consultation with the Joint Task Force on State Agency Law Enforcement Communications, and in conjunction with the Department of Law Enforcement and the Division of Emergency Management, shall establish policies, procedures, and standards to incorporate into a comprehensive management plan for the use and operation of the interoperability network.

Section 29. Section 282.7101, Florida Statutes, is amended to read:

282.7101 Statewide system of regional law enforcement communications.—

(1) It is the intent and purpose of the Legislature that a statewide system of regional law enforcement communications be developed whereby maximum efficiency in the use of existing radio channels is achieved in order to deal more effectively with the apprehension of criminals and the prevention of crime. To this end, all law enforcement agencies within the state are directed to provide the Agency for State Technology ~~department~~ with any information the agency ~~department~~ requests for the purpose of implementing the provisions of subsection (2).

(2) The Agency for State Technology ~~department~~ is ~~hereby~~ ~~authorized and~~ directed to develop and maintain a statewide

32-00639B-12 20121498

system of regional law enforcement communications. In formulating such a system, the agency ~~department~~ shall divide the state into appropriate regions and shall develop a program that includes, but is not limited to:

(a) The communications requirements for each county and municipality comprising the region.

(b) An interagency communications provision that depicts the communication interfaces between municipal, county, and state law enforcement entities operating within the region.

(c) A frequency allocation and use provision that includes, on an entity basis, each assigned and planned radio channel and the type of operation, simplex, duplex, or half-duplex, on each channel.

(3) The Agency for State Technology ~~department~~ shall adopt any necessary rules and regulations for administering and coordinating the statewide system of regional law enforcement communications.

(4) The executive director ~~secretary~~ of the Agency for State Technology ~~department~~ or his or her designee is designated as the director of the statewide system of regional law enforcement communications and, for the purpose of carrying out the provisions of this section, may coordinate the activities of the system with other interested state agencies and local law enforcement agencies.

(5) A law enforcement communications system may not be established or expanded without the prior approval of the Agency for State Technology ~~department~~.

(6) Within the limits of its capability, the Department of Law Enforcement is encouraged to lend assistance to the Agency

32-00639B-12 20121498

for State Technology ~~department~~ in the development of the statewide system of regional law enforcement communications proposed by this section.

Section 30. Section 282.711, Florida Statutes, is amended to read:

282.711 Remote electronic access services.—The Agency for State Technology ~~department~~ may collect fees for providing remote electronic access pursuant to s. 119.07(2). The fees may be imposed on individual transactions or as a fixed subscription for a designated period of time. All fees collected under this section shall be deposited in the appropriate trust fund of the program or activity that made the remote electronic access available.

Section 31. Subsection (14) of section 287.012, Florida Statutes, is amended to read:

287.012 Definitions.—As used in this part, the term:

(14) "Information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form ~~has the meaning ascribed in s. 282.0041.~~

Section 32. Subsection (22) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.—

32-00639B-12 20121498

(22) The department, in consultation with the Agency for ~~State Enterprise Information~~ Technology and the Chief Financial Officer ~~Comptroller~~, shall develop a program for online procurement of commodities and contractual services. To enable the state to promote open competition and to leverage its buying power, agencies shall participate in the online procurement program, and eligible users may participate in the program. Only vendors prequalified as meeting mandatory requirements and qualifications criteria may participate in online procurement.

(a) The department, in consultation with the agency, may contract for equipment and services necessary to develop and implement online procurement.

(b) The department, in consultation with the agency, shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to administer the program for online procurement. The rules shall include, but not be limited to:

1. Determining the requirements and qualification criteria for prequalifying vendors.

2. Establishing the procedures for conducting online procurement.

3. Establishing the criteria for eligible commodities and contractual services.

4. Establishing the procedures for providing access to online procurement.

5. Determining the criteria warranting any exceptions to participation in the online procurement program.

(c) The department may impose and shall collect all fees for the use of the online procurement systems.

1. The fees may be imposed on an individual transaction

32-00639B-12 20121498
 1799 basis or as a fixed percentage of the cost savings generated. At
 1800 a minimum, the fees must be set in an amount sufficient to cover
 1801 the projected costs of the services, including administrative
 1802 and project service costs in accordance with the policies of the
 1803 department.

1804 2. If the department contracts with a provider for online
 1805 procurement, the department, pursuant to appropriation, shall
 1806 compensate the provider from the fees after the department has
 1807 satisfied all ongoing costs. The provider shall report
 1808 transaction data to the department each month so that the
 1809 department may determine the amount due and payable to the
 1810 department from each vendor.

1811 3. All fees that are due and payable to the state on a
 1812 transactional basis or as a fixed percentage of the cost savings
 1813 generated are subject to s. 215.31 and must be remitted within
 1814 40 days after receipt of payment for which the fees are due. For
 1815 fees that are not remitted within 40 days, the vendor shall pay
 1816 interest at the rate established under s. 55.03(1) on the unpaid
 1817 balance from the expiration of the 40-day period until the fees
 1818 are remitted.

1819 4. All fees and surcharges collected under this paragraph
 1820 shall be deposited in the Operating Trust Fund as provided by
 1821 law.

1822 Section 33. Subsection (17) of section 318.18, Florida
 1823 Statutes, is amended to read:

1824 318.18 Amount of penalties.—The penalties required for a
 1825 noncriminal disposition pursuant to s. 318.14 or a criminal
 1826 offense listed in s. 318.17 are as follows:

1827 (17) In addition to any penalties imposed, a surcharge of

32-00639B-12 20121498
 1828 \$3 must be paid for all criminal offenses listed in s. 318.17
 1829 and for all noncriminal moving traffic violations under chapter
 1830 316. Revenue from the surcharge shall be remitted to the
 1831 Department of Revenue and deposited quarterly into the State
 1832 Agency Law Enforcement Radio System Trust Fund of the Agency for
 1833 State Technology ~~Department of Management Services~~ for the state
 1834 agency law enforcement radio system, as described in s. 282.709,
 1835 and to provide technical assistance to state agencies and local
 1836 law enforcement agencies with their statewide systems of
 1837 regional law enforcement communications, as described in s.
 1838 282.7101. This subsection expires July 1, 2012. The Agency for
 1839 State Technology ~~Department of Management Services~~ may retain
 1840 funds sufficient to recover the costs and expenses incurred for
 1841 managing, administering, and overseeing the Statewide Law
 1842 Enforcement Radio System, and providing technical assistance to
 1843 state agencies and local law enforcement agencies with their
 1844 statewide systems of regional law enforcement communications.
 1845 The Agency for State Technology ~~Department of Management~~
 1846 ~~Services~~ working in conjunction with the Joint Task Force on
 1847 State Agency Law Enforcement Communications shall determine and
 1848 direct the purposes for which these funds are used to enhance
 1849 and improve the radio system.

1850 Section 34. Section 320.0802, Florida Statutes, is amended
 1851 to read:

1852 320.0802 Surcharge on license tax.—There is hereby levied
 1853 and imposed on each license tax imposed under s. 320.08, except
 1854 those set forth in s. 320.08(11), a surcharge in the amount of
 1855 \$1, which shall be collected in the same manner as the license
 1856 tax and deposited into the State Agency Law Enforcement Radio

32-00639B-12 20121498

1857 System Trust Fund of the Agency for State Technology Department
 1858 ~~of Management Services.~~

1859 Section 35. Subsection (9) of section 328.72, Florida
 1860 Statutes, is amended to read:

1861 328.72 Classification; registration; fees and charges;
 1862 surcharge; disposition of fees; fines; marine turtle stickers.—

1863 (9) SURCHARGE.—In addition, there is hereby levied and
 1864 imposed on each vessel registration fee imposed under subsection
 1865 (1) a surcharge in the amount of \$1 for each 12-month period of
 1866 registration, which shall be collected in the same manner as the
 1867 fee and deposited into the State Agency Law Enforcement Radio
 1868 System Trust Fund of the Agency for State Technology Department
 1869 ~~of Management Services.~~

1870 Section 36. Section 364.0135, Florida Statutes, is amended
 1871 to read:

1872 364.0135 Promotion of broadband adoption.—

1873 (1) The Legislature finds that the sustainable adoption of
 1874 broadband Internet service is critical to the economic and
 1875 business development of the state and is beneficial for
 1876 libraries, schools, colleges and universities, health care
 1877 providers, and community organizations. The term “sustainable
 1878 adoption” means the ability for communications service providers
 1879 to offer broadband services in all areas of the state by
 1880 encouraging adoption and utilization levels that allow for these
 1881 services to be offered in the free market absent the need for
 1882 governmental subsidy.

1883 (2) The Agency for State Technology may Department of
 1884 ~~Management Services is authorized to~~ work collaboratively with,
 1885 and to receive staffing support and other resources from,

32-00639B-12 20121498

1886 Enterprise Florida, Inc., state agencies, local governments,
 1887 private businesses, and community organizations to:

1888 (a) Monitor the adoption of broadband Internet service in
 1889 collaboration with communications service providers, including,
 1890 but not limited to, wireless and wireline Internet service
 1891 providers, to develop geographical information system maps at
 1892 the census tract level that will:

1893 1. Identify geographic gaps in broadband services,
 1894 including areas unserved by any broadband provider and areas
 1895 served by a single broadband provider;

1896 2. Identify the download and upload transmission speeds
 1897 made available to businesses and individuals in the state, at
 1898 the census tract level of detail, using data rate benchmarks for
 1899 broadband service used by the Federal Communications Commission
 1900 to reflect different speed tiers; and

1901 3. Provide a baseline assessment of statewide broadband
 1902 deployment in terms of percentage of households with broadband
 1903 availability.

1904 (b) Create a strategic plan that has goals and strategies
 1905 for increasing the use of broadband Internet service in the
 1906 state.

1907 (c) Build and facilitate local technology planning teams or
 1908 partnerships with members representing cross-sections of the
 1909 community, which may include, but are not limited to,
 1910 representatives from the following organizations and industries:
 1911 libraries, K-12 education, colleges and universities, local
 1912 health care providers, private businesses, community
 1913 organizations, economic development organizations, local
 1914 governments, tourism, parks and recreation, and agriculture.

32-00639B-12

20121498

(d) Encourage the use of broadband Internet service, especially in the rural, unserved, and underserved communities of the state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily unserved areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in unserved areas of the state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in the state.

(3) The Agency for State Technology ~~department~~ may apply for and accept federal funds for purposes of this section, as well as gifts and donations from individuals, foundations, and private organizations.

(4) The Agency for State Technology ~~department~~ may:

(a) Enter into contracts necessary or useful to carry out the purposes of this section.

(b) ~~(5) The department may~~ Establish any committee or workgroup to administer and carry out the purposes of this section.

32-00639B-12

20121498

(c) ~~(6) The department may~~ Adopt rules necessary to carry out the purposes of this section. Any rule, contract, grant, or other activity undertaken by the agency ~~department~~ shall ensure that all entities are in compliance with any applicable federal or state laws, rules, and regulations, including, but not limited to, those applicable to private entities providing communications services for hire and the requirements of s. 350.81.

Section 37. Subsections (3), (4), (5), (7), (9), (10), and (11) of section 365.171, Florida Statutes, are amended to read: 365.171 Emergency communications number E911 state plan.—

(3) DEFINITIONS.—As used in this section, the term:

(a) "Agency" means the Agency for State Technology ~~"Office"~~ means the Technology Program within the Department of Management Services, as designated by the ~~secretary of the department~~.

(b) "Local government" means any city, county, or political subdivision of the state and its agencies.

(c) "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(d) "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(4) STATE PLAN.—The agency ~~office~~ shall develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan. The plan shall

32-00639B-12

20121498

1973 provide for:

1974 (a) The public agency emergency communications requirements
1975 for each entity of local government in the state.

1976 (b) A system to meet specific local government
1977 requirements. Such system shall include law enforcement,
1978 firefighting, and emergency medical services and may include
1979 other emergency services such as poison control, suicide
1980 prevention, and emergency management services.

1981 (c) Identification of the mutual aid agreements necessary
1982 to obtain an effective E911 system.

1983 (d) A funding provision that identifies the cost necessary
1984 to implement the E911 system.

1985

1986 The agency office shall be responsible for the implementation
1987 and coordination of such plan. The agency office shall adopt any
1988 necessary rules and schedules related to public agencies for
1989 implementing and coordinating the plan, pursuant to chapter 120.

1990 (5) SYSTEM DIRECTOR.—The executive director of the agency
1991 ~~secretary of the department~~ or his or her designee is designated
1992 as the director of the statewide emergency communications number
1993 E911 system and, for the purpose of carrying out the provisions
1994 of this section, ~~may is authorized to~~ coordinate the activities
1995 of the system with state, county, local, and private agencies.
1996 The director, in implementing the system, shall consult,
1997 cooperate, and coordinate with local law enforcement agencies.

1998 (7) TELECOMMUNICATIONS INDUSTRY COORDINATION.—The agency
1999 ~~office~~ shall coordinate with the Florida Public Service
2000 Commission which shall encourage the Florida telecommunications
2001 industry to activate facility modification plans for timely E911

32-00639B-12

20121498

2002 implementation.

2003 (9) SYSTEM APPROVAL.—~~An~~ ~~No~~ emergency communications number
2004 E911 system may not shall be established and a ~~and no~~ present
2005 system may not shall be expanded without prior approval of the
2006 agency office.

2007 (10) COMPLIANCE.—All public agencies shall assist the
2008 agency office in their efforts to carry out the intent of this
2009 section, and such agencies shall comply with the developed plan.

2010 (11) FEDERAL ASSISTANCE.—The executive director of the
2011 agency ~~secretary of the department~~ or his or her designee may
2012 apply for and accept federal funding assistance in the
2013 development and implementation of a statewide emergency
2014 communications number E911 system.

2015 Section 38. Paragraphs (a) through (s) of subsection (3) of
2016 section 365.172, Florida Statutes, are redesignated as
2017 paragraphs (b) through (t), respectively, a new paragraph (a) is
2018 added to that subsection, and paragraph (d) of subsection (2),
2019 present paragraph (t) of subsection (3), subsection (4),
2020 paragraph (a) of subsection (5), paragraph (c) of subsection
2021 (6), and paragraph (f) of subsection (12) of that section are
2022 amended to read:

2023 365.172 Emergency communications number "E911."—

2024 (2) LEGISLATIVE INTENT.—It is the intent of the Legislature
2025 to:

2026 (d) Provide for an E911 board to administer the fee, with
2027 oversight by the Agency for State Technology office, in a manner
2028 that is competitively and technologically neutral as to all
2029 voice communications services providers.

2030

32-00639B-12

20121498

It is further the intent of the Legislature that the fee authorized or imposed by this section not necessarily provide the total funding required for establishing or providing E911 service.

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, and 365.174, the term:

(a) "Agency" means the Agency for State Technology.

~~(t) "Office" means the Technology Program within the Department of Management Services, as designated by the secretary of the department.~~

(4) POWERS AND DUTIES OF THE AGENCY FOR STATE TECHNOLOGY OFFICE.—The agency office shall oversee the administration of the fee authorized and imposed on subscribers of voice communications services under subsection (8).

(5) THE E911 BOARD.—

(a) The E911 Board is established to administer, with oversight by the agency office, the fee imposed under subsection (8), including receiving revenues derived from the fee; distributing portions of the revenues to wireless providers, counties, and the agency office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports to the Governor and the Legislature for submission by the agency office on amounts collected and expended, the purposes for which expenditures have been made, and the status of E911 service in this state. In order to advise and assist the agency office in carrying out the purposes of this section, the board, which shall have the power of a body corporate, has the powers enumerated in subsection (6).

32-00639B-12

20121498

(6) AUTHORITY OF THE BOARD; ANNUAL REPORT.—

(c) By February 28 of each year, the board shall prepare a report for submission by the agency office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses for the immediately preceding calendar year:

1. The annual receipts, including the total amount of fee revenues collected by each provider, the total disbursements of money in the fund, including the amount of fund-reimbursed expenses incurred by each wireless provider to comply with the order, and the amount of moneys on deposit in the fund.

2. Whether the amount of the fee and the allocation percentages set forth in s. 365.173 have been or should be adjusted to comply with the requirements of the order or other provisions of this chapter, and the reasons for making or not making a recommended adjustment to the fee.

3. Any other issues related to providing E911 services.

4. The status of E911 services in this state.

(12) FACILITATING E911 SERVICE IMPLEMENTATION.—To balance the public need for reliable E911 services through reliable wireless systems and the public interest served by governmental zoning and land development regulations and notwithstanding any other law or local ordinance to the contrary, the following standards shall apply to a local government's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility. This subsection shall not, however, be construed to waive or alter the provisions of s. 286.011 or s. 286.0115. For the purposes of this subsection only, "local government" shall

32-00639B-12

20121498

mean any municipality or county and any agency of a municipality or county only. The term "local government" does not, however, include any airport, as defined by s. 330.27(2), even if it is owned or controlled by or through a municipality, county, or agency of a municipality or county. Further, notwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government's actions as a property or structure owner in the use of any property or structure owned by such entity for the placement, construction, or modification of wireless communications facilities. In the use of property or structures owned by the local government, however, a local government may not use its regulatory authority so as to avoid compliance with, or in a manner that does not advance, the provisions of this subsection.

(f) Any other law to the contrary notwithstanding, the agency ~~Department of Management Services~~ shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property not acquired for transportation purposes, and the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251. On other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The agency ~~Department of Management Services~~ and the Department of

32-00639B-12

20121498

Transportation are authorized to adopt rules for the terms and conditions and granting of any such leases.

Section 39. Subsection (1) and paragraph (g) of subsection (2) of section 365.173, Florida Statutes, are amended to read:

365.173 Emergency Communications Number E911 System Fund.—

(1) All revenues derived from the fee levied on subscribers under s. 365.172 must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Number E911 System Fund, a fund created in the Agency for State Technology Program, ~~or other office as designated by the Secretary of Management Services~~, and, for accounting purposes, must be segregated into two separate categories:

(a) The wireless category; and

(b) The nonwireless category.

All moneys must be invested by the Chief Financial Officer pursuant to s. 17.61. All moneys in such fund are to be expended by the agency ~~office~~ for the purposes provided in this section and s. 365.172. These funds are not subject to s. 215.20.

(2) As determined by the board pursuant to s.

365.172(8)(h), and subject to any modifications approved by the board pursuant to s. 365.172(6)(a)3. or (8)(i), the moneys in the fund shall be distributed and used only as follows:

(g) Two percent of the moneys in the fund shall be used to make monthly distributions to rural counties for the purpose of providing facilities and network and service enhancements and assistance for the 911 or E911 systems operated by rural

32-00639B-12 20121498
 2147 counties and for the provision of grants by the agency ~~office~~ to
 2148 rural counties for upgrading and replacing E911 systems.
 2149

2150 The Legislature recognizes that the fee authorized under s.
 2151 365.172 may not necessarily provide the total funding required
 2152 for establishing or providing the E911 service. It is the intent
 2153 of the Legislature that all revenue from the fee be used as
 2154 specified in this subsection.

2155 Section 40. Subsection (1) of section 365.174, Florida
 2156 Statutes, is amended to read:

2157 365.174 Proprietary confidential business information.—

2158 (1) All proprietary confidential business information
 2159 submitted by a provider to the board or the Agency for State
 2160 Technology ~~office~~, including the name and billing or service
 2161 addresses of service subscribers, and trade secrets as defined
 2162 by s. 812.081, is confidential and exempt from s. 119.07(1) and
 2163 s. 24(a), Art. I of the State Constitution. Statistical
 2164 abstracts of information collected by the board or the agency
 2165 ~~office~~ may be released or published, but only in a manner that
 2166 does not identify or allow identification of subscribers or
 2167 their service numbers or of revenues attributable to any
 2168 provider.

2169 Section 41. Section 401.013, Florida Statutes, is amended
 2170 to read:

2171 401.013 Legislative intent.—It is the intention and purpose
 2172 of the Legislature that a statewide system of regional emergency
 2173 medical telecommunications be developed whereby maximum use of
 2174 existing radio channels is achieved in order to more effectively
 2175 and rapidly provide emergency medical service to the general

32-00639B-12 20121498
 2176 population. To this end, all emergency medical service entities
 2177 within the state are directed to provide the Agency for State
 2178 Technology ~~Department of Management Services~~ with any
 2179 information the agency ~~department~~ requests for the purpose of
 2180 implementing the provisions of s. 401.015, and such entities
 2181 shall comply with the resultant provisions established pursuant
 2182 to this part.

2183 Section 42. Section 401.015, Florida Statutes, is amended
 2184 to read:

2185 401.015 Statewide regional emergency medical
 2186 telecommunication system.—The Agency for State Technology shall
 2187 ~~Department of Management Services is authorized and directed to~~
 2188 develop a statewide system of regional emergency medical
 2189 telecommunications. For the purpose of this part, the term
 2190 "telecommunications" means ~~these~~ voice, data, and signaling
 2191 transmissions and receptions between emergency medical service
 2192 components, including, but not limited to: ambulances; rescue
 2193 vehicles; hospitals or other related emergency receiving
 2194 facilities; emergency communications centers; physicians and
 2195 emergency medical personnel; paging facilities; law enforcement
 2196 and fire protection agencies; and poison control, suicide, and
 2197 emergency management agencies. In formulating such a system, the
 2198 agency ~~department~~ shall divide the state into appropriate
 2199 regions and ~~shall~~ develop a program that ~~which~~ includes, but is
 2200 not limited to, the following provisions:

2201 (1) A requirements provision that states, ~~which shall state~~
 2202 the telecommunications requirements for each emergency medical
 2203 entity comprising the region.

2204 (2) An interfacility communications provision that depicts,

32-00639B-12

20121498

which shall depict the telecommunications interfaces between the various medical service entities that ~~which~~ operate within the region and state.

(3) An organizational layout provision that includes, ~~which shall include~~ each emergency medical entity and the number of radio operating units (base, mobile, handheld, etc.) per entity.

(4) A frequency allocation and use provision that includes, ~~which shall include~~ on an entity basis each assigned and planned radio channel and the type of operation (simplex, duplex, half duplex, etc.) on each channel.

(5) An operational provision that includes, ~~which shall include~~ dispatching, logging, and operating procedures pertaining to telecommunications on an entity basis and regional basis.

(6) An emergency medical service telephone provision that includes, ~~which shall include~~ the telephone and the numbering plan throughout the region for both the public and interface requirements.

Section 43. Section 401.018, Florida Statutes, is amended to read:

401.018 System coordination.—

(1) The statewide system of regional emergency medical telecommunications shall be developed by the Agency for State Technology Department of Management Services, ~~which department~~ shall be responsible for the implementation and coordination of such system into the state telecommunications plan. The agency ~~department~~ shall adopt any necessary rules and regulations for implementing and coordinating such a system.

(2) The Agency for State Technology Department of

32-00639B-12

20121498

~~Management Services~~ shall be designated as the state frequency coordinator for the special emergency radio service.

Section 44. Section 401.021, Florida Statutes, is amended to read:

401.021 System director.—The executive director of the Agency for State Technology ~~Secretary of Management Services~~ or his or her designee is designated as the director of the statewide telecommunications system of the regional emergency medical service and, for the purpose of carrying out the provisions of this part, may ~~is authorized to~~ coordinate the activities of the telecommunications system with other interested state, county, local, and private agencies.

Section 45. Section 401.024, Florida Statutes, is amended to read:

401.024 System approval.—~~An~~ From July 1, 1973, no emergency medical telecommunications system may not ~~shall~~ be established and ~~or~~ present systems may not be expanded without prior approval of the Agency for State Technology ~~Department of Management Services~~.

Section 46. Section 401.027, Florida Statutes, is amended to read:

401.027 Federal assistance.—The executive director of the Agency for State Technology ~~Secretary of Management Services~~ or his or her designee may ~~is authorized to~~ apply for and accept federal funding assistance in the development and implementation of a statewide emergency medical telecommunications system.

Section 47. Paragraph (a) of subsection (2) of section 401.465, Florida Statutes, is amended to read:

401.465 911 public safety telecommunicator certification.—

32-00639B-12

20121498

2263 (2) PERSONNEL; STANDARDS AND CERTIFICATION.—

2264 (a) Effective October 1, 2012, any person employed as a 911
2265 public safety telecommunicator at a public safety answering
2266 point, as defined in s. 365.172(3)(b) ~~s. 365.172(3)(a)~~, must be
2267 certified by the department.

2268 Section 48. Subsection (4) of section 445.011, Florida
2269 Statutes, is amended to read:

2270 445.011 Workforce information systems.—

2271 (4) Workforce Florida, Inc., shall coordinate development
2272 and implementation of workforce information systems with the
2273 executive director of the Agency for State Enterprise
2274 ~~Information~~ Technology to ensure compatibility with the state's
2275 information system strategy and enterprise architecture.

2276 Section 49. Subsection (2) and paragraphs (a) and (b) of
2277 subsection (4) of section 445.045, Florida Statutes, are amended
2278 to read:

2279 445.045 Development of an Internet-based system for
2280 information technology industry promotion and workforce
2281 recruitment.—

2282 (2) Workforce Florida, Inc., shall coordinate with the
2283 Agency for State Enterprise ~~Information~~ Technology and the
2284 Department of Economic Opportunity to ensure links, where
2285 feasible and appropriate, to existing job information websites
2286 maintained by the state and state agencies and to ensure that
2287 information technology positions offered by the state and state
2288 agencies are posted on the information technology website.

2289 (4) (a) Workforce Florida, Inc., shall coordinate
2290 development and maintenance of the website under this section
2291 with the executive director of the Agency for State Enterprise

32-00639B-12

20121498

2292 ~~Information~~ Technology to ensure compatibility with the state's
2293 information system strategy and enterprise architecture.

2294 (b) Workforce Florida, Inc., may enter into an agreement
2295 with the Agency for State Enterprise ~~Information~~ Technology, the
2296 Department of Economic Opportunity, or any other public agency
2297 with the requisite information technology expertise for the
2298 provision of design, operating, or other technological services
2299 necessary to develop and maintain the website.

2300 Section 50. Paragraph (b) of subsection (18) of section
2301 668.50, Florida Statutes, is amended to read:

2302 668.50 Uniform Electronic Transaction Act.—

2303 (18) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY
2304 GOVERNMENTAL AGENCIES.—

2305 (b) To the extent that a governmental agency uses
2306 electronic records and electronic signatures under paragraph
2307 (a), the Agency for State Enterprise ~~Information~~ Technology, in
2308 consultation with the governmental agency, giving due
2309 consideration to security, may specify:

2310 1. The manner and format in which the electronic records
2311 must be created, generated, sent, communicated, received, and
2312 stored and the systems established for those purposes.

2313 2. If electronic records must be signed by electronic
2314 means, the type of electronic signature required, the manner and
2315 format in which the electronic signature must be affixed to the
2316 electronic record, and the identity of, or criteria that must be
2317 met by, any third party used by a person filing a document to
2318 facilitate the process.

2319 3. Control processes and procedures as appropriate to
2320 ensure adequate preservation, disposition, integrity, security,

32-00639B-12

20121498__

2321 confidentiality, and auditability of electronic records.

2322 4. Any other required attributes for electronic records
2323 which are specified for corresponding nonelectronic records or
2324 reasonably necessary under the circumstances.

2325 Section 51. This act shall take effect July 1, 2012.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 2024

INTRODUCER: Governmental Oversight and Accountability Committee and Governmental Oversight and Accountability Committee

SUBJECT: Florida Retirement System

DATE: January 26, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☒	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☐	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

This bill clarifies some issues in the Florida Retirement System (FRS), and makes other substantive changes. The bill corrects a cross reference, clarifies that loans and hardship withdrawals are prohibited in the FRS and optional retirement programs, and makes Deferred Retirement Option Program (DROP) deferral ages consistent with normal retirement ages.

The bill also:

- Adds a definition of “normal retirement age” for investment plan members.
- Changes normal retirement age for Special Risk Class members to age 55, or age 48 with 25 years of service, or age 52 with 25 years of service, including 4 years of military service.
- Changes vesting in the pension plan from 8 to 10 years.
- Places all new employees eligible for the investment plan into the investment plan, with one year only to elect participation in the pension plan. After the first year, there is no further option to switch.
- Allows a retired member of the investment plan or specified optional annuity programs who returns to state employment to become a renewed member in the Regular Class of the investment plan.

- Requires a retired member returning to a job eligible for the State University Optional Retirement Program or the State Community College Optional Retirement Program to become a renewed member of those programs.

This bill amends the following sections of the Florida Statutes: 121.012, 121.021, 121.0515, 121.053, 121.055, 121.071, 121.091, 121.122, 121.35, 121.4501, 121.591, and 1012.875.

II. Present Situation:

Florida Retirement System

The Florida Retirement System (FRS) is a multi-employer, non-contributory pension plan providing retirement income benefits to the 572,000 active and 319,000 retired members and beneficiaries of its more than 900 state and local government public employers. Originally established in 1970 as the successor to the Teachers' Retirement System and the State and County Officers' and Employees' Retirement System, the FRS is today a combination of five previously separate pension plans. Benefit payments are administered by the Department of Management Services through its Division of Retirement while investment management is undertaken by the Board of Administration. Established as a Section 401(a) government plan under the Internal Revenue Code, its benefits are exempt from federal taxation until received by the employee.

As a defined benefit plan, the FRS "Pension Plan" provides retirement income expressed as a percent of final pay. Members accrue retirement credits based upon their eligibility in one of several membership classes. Years of creditable service multiplied by average final salary multiplied by the accrual rate for the membership class, plus specified annual leave, yield a monthly annuity benefit at normal retirement. The accrual rates range from 1.60 percent for the Regular Class to 3.33 percent for Justices and Judges. Members seeking early retirement dates receive a five percent reduction in the benefit for each year below their normal age threshold.

All membership classes in the Pension Plan permit enrollment in a Deferred Retirement Option Program (DROP) under which a participant may extend employment for an additional five years - eight years for instructional personnel in district school boards - and receive a lump sum benefit at a fixed rate of interest for that additional service. Enrollment in DROP requires the participant to serve the employer with a deferred resignation from employment at the end of the period.

Reenrollment in the FRS is prohibited for retirees who are initially reemployed on or after July 1, 2010.

Management employees and instructional employees in higher educational units are also permitted to enroll in one of three other separate optional retirement programs that exist outside of FRS authority.

Optional Retirement Programs

Eligible employees may elect to participate in one of three optional retirement programs in lieu of participation in the FRS.

Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program.¹ Employees in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program.² Eligible employees of a community college may elect to enroll in the Community College Optional Retirement Program.³

Changes to the FRS in 2011

The 2011 Legislature enacted⁴ sweeping changes to the FRS, by providing for the following:

- Effective July 1, 2011, required 3 percent employee contribution for all FRS members. DROP participants are not required to pay employee contributions.
- For employees initially enrolled on or after July 1, 2011, the definition of "average final compensation" means the average of the 8 highest fiscal years of compensation for creditable service prior to retirement, for purposes of calculation of retirement benefits. For employees initially enrolled prior to July 1, 2011, the definition of "average final compensation" continues to be the average of the 5 highest fiscal years of compensation.
- For employees initially enrolled in the pension plan on or after July 1, 2011, such members will vest in 100 percent of employer contributions upon completion of 8 years of creditable service. For existing employees, vesting will remain at 6 years of creditable service.
- For employees, initially enrolled on or after July 1, 2011, increased the normal retirement age and years of service requirements, as follows:
 - For Special Risk Class: Increased the age from 55 to 60 years of age; and increased the years of creditable service from 25 to 30.
 - For all other classes: Increased the age from 62 to 65 years of age; and increased the years of creditable service from 30 to 33 years.
- Maintained DROP; however, employees entering DROP on or after July 1, 2011 will earn interest at a reduced accrual rate of 1.3 percent. For employees currently in DROP or entering before July 1, 2011, the interest rate remains 6.5 percent.
- Eliminated the cost-of-living adjustment (COLA) for service earned on or after July 1, 2011. Subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the reinstatement of the COLA, the new COLA formula will expire effective June 30, 2016, and the current 3 percent cost-of-living adjustment will be reinstated.
- To implement the bill for the 2011-12 fiscal year, funded the Division of Retirement with four positions and \$207,070 in recurring funds and \$31,184 in non-recurring funds.

III. Effect of Proposed Changes:

Section 1 creates s. 121.012, F.S., to clarify that the General Provisions (Part I) of Chapter 121, F.S., apply also to the parts of the chapter relating to the Public Employee Optional Retirement Program (Part II) and the FRS contribution rates (Part III).

¹ Section 121.055(6), F.S.

² Section 121.35, F.S.

³ Section 1012.875, F.S.

⁴ Chapter 2011-68, L.O.F.; Senate Bill 2100.

Section 2 amends s. 121.021, F.S., to provide that for investment plan members, normal retirement age is the date a member attains the normal date or is vested in the investment plan pursuant to s. 121.4501(6), F.S., whichever is later.

The bill changes the normal retirement date for Special Risk Class members initially enrolled after July 1, 2012 to:

- Age 55;
- Age 48 and 25 years of service; or
- Age 52 and 25 years of service, including up to 4 years of military service credit.

The bill also increases the amount of time needed to vest in the pension plan from 8 to 10 years, for those initially enrolled in the FRS on or after July 1, 2012.

Section 3 corrects a reference in s. 121.0515(3)(k), F.S., to the appropriate section describing employees eligible for membership in the Special Risk Class. Without this change, the cross-reference in s. 121.0515(3)(k), F.S., incorrectly refers to inclusion of certain forensic employees in s. 121.0515(2)(f), F.S., instead of the correct cross-reference for continued Special Risk Class membership by members who suffer a specified in-line-of-duty injury and can no longer perform Special Risk Class duties, but who remain employed by the same employer at the time of injury in s. 121.0515(2)(i), F.S.

Section 4 amends s. 121.053, F.S., to provide that a retiree from the FRS who is elected for the first time to an office of an FRS employer may not reenroll in the FRS except as provided in s. 121.122, F.S.

Section 5 amends s. 121.055, F.S., to clarify that loans and hardship withdrawals are prohibited in the Senior Management Service Optional Annuity program.

The bill also provides that effective July 1, 2012, a retiree member of the Senior Management Service Optional Annuity Program who returns to covered employment becomes a member of the investment plan.

Section 6 amends s. 121.071, F.S., to clarify that that loans and hardship withdrawals are prohibited in the FRS.

Section 7 amends s. 121.091, F.S., to adjust the DROP deferral ages for members enrolled after July 1, 2011, for those entering DROP based on years of service instead of normal retirement age. This change makes the DROP deferral age 5 years before normal retirement age - age 55 for Special Risk Class members and age 60 for all other members, which will line up the DROP deferral age with the normal retirement ages.

Section 8 amends s. 121.122, F.S., to clarify that a retiree of the pension plan who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member.

A retiree who is a member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program who is employed after July 1, 2012, is a renewed member of the Regular Class of the investment plan. However, if reemployed in a position eligible for participation in the State University System Optional Retirement Program, or the State Community College Optional Retirement Program, the member becomes a renewed member in one of those programs.

Section 9 amends s. 121.35, F.S., to clarify that that loans and hardship withdrawals are prohibited in the State University System Optional Retirement Program. The bill also provides a definition of the term “benefit,” to clarify when distributions received by a member prohibit enrollment as a renewed member in a state-administered retirement system.

Section 10 amends s. 121.4501, F.S., to add that a retired member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program who is employed after July 1, 2012, is an “eligible employee” for purposes of the investment plan.

A retiree of the investment plan employed on or after July 1, 2012, shall be a renewed member in the regular class of the investment plan.

Section 11 amends s. 121.591, F.S., clarify that that loans and hardship withdrawals are prohibited in the FRS Investment Plan.

Section 12 amends s. 1012.875, F.S., to clarify that that loans and hardship withdrawals are prohibited in the State Community College System Optional Retirement Program.

The bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates provision may apply because this bill potentially requires cities and/or counties to spend money or take action that requires the expenditure of money; however, an exception would apply if the Legislature determines that this bill satisfies an important state interest, and if similarly-situated persons are all required to comply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

D. Other Constitutional Issues:

The Florida Constitution provides that any retirement or pension system supported in whole or part by public funds shall not increase benefits to the members or beneficiaries of the system after January 1, 1977, unless the provision of the funding increase is made on a sound actuarial basis.⁵ The “Florida Protection of Public Employee Retirement Benefits Act” prohibits “the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”⁶

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Special Risk Class years of service language in section 7 of the bill will need to be adjusted to reflect the changed Special Risk Class language in section 2 of the bill.

The bill may require the expenditure of funds by local governments; if so, the Legislature should consider adding language determining that the bill satisfies an important state interest.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Governmental Oversight and Accountability on January 26, 2012:**

The committee substitute:

⁵ Section 14, Art. X, Florida Constitution.

⁶ Section 112.61, F.S.

- Adds a definition of “normal retirement age” for investment plan members.
- Changes normal retirement age for Special Risk Class members to age 55, or age 48 with 25 years of service, or age 52 with 25 years of service, including 4 years of military service.
- Adjusts the calculation for early retirement and DROP election dates for Special Risk members, consistent with the changed normal retirement dates.
- Changes vesting in the pension plan from 8 to 10 years.
- Places all new employees eligible for the investment plan into the investment plan, with one year only to elect participation in the pension plan. After the first year, there is no further option to switch.
- Allows a retired member of the investment plan or specified optional annuity programs who returns to state employment to become a renewed member in the Regular Class of the investment plan.
- Requires a retired member returning to a job eligible for the State University Optional Retirement Program or the State Community College Optional Retirement Program to become a renewed member of those programs.

B. Amendments:

None.



209596

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 45 and 46
insert:

Section 1. Section 121.012, Florida Statutes, is created to
read:

121.012 Applicability.—The provisions of this part are
applicable to parts II and III of this chapter to the extent
that such provisions are not inconsistent with, or duplicative
of, the provisions of parts II and III.

Section 2. Subsection (29) of section 121.021, Florida
Statutes, is amended to read:



209596

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

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

(a)~~1.~~ If a Regular Class member, a Senior Management Service Class member, or an Elected Officers' Class member initially enrolled:

1. Before July 1, 2011:

a. The first day of the month the member attains age 62; or

b. The first day of the month following the date the member completes 30 years of creditable service, regardless of age.

~~2. If a Regular Class member, a Senior Management Service Class member, or an Elected Officers' Class member initially enrolled~~ On or after July 1, 2011:

a. The first day of the month the member attains age 65; or

b. The first day of the month following the date the member completes 33 years of creditable service, regardless of age.

(b)~~1.~~ If a Special Risk Class member initially enrolled:

1. Before July 1, 2011:

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

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

c. The first day of the month following the date the member



209596

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

~~2. If a Special Risk Class member initially enrolled~~ On or after July 1, 2011:

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

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

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

For pension plan members, "normal retirement age" is attained on the "normal retirement date." For investment plan members, normal retirement age is the date a member attains his or her normal retirement date or is vested pursuant to s. 121.4501(6), whichever is later.

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

And the title is amended as follows:

Delete line 2
and insert:



209596

71 An act relating to state retirement; creating s.
72 121.012, F.S.; providing applicability; amending s.
73 121.021, F.S.; redefining the term "normal retirement
74 date"; amending s.



930296

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 46 - 461
and insert:

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

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

(29) "Normal retirement date" means the date a member



930296

attains normal retirement age and is vested, which is determined as follows:

(b)~~1~~. If a Special Risk Class member initially enrolled:

1. Before July 1, 2011:

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

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

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

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

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

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

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



930296

system and the remaining years are in the Special Risk Class.

3. On or after July 1, 2012:

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

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

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

"Normal retirement age" is attained on the "normal retirement date."

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

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

(c) Any member initially enrolled in the Florida Retirement



930296

System on or after July 1, 2012, shall be vested upon completion of 10 years of creditable service.

Section 2. Paragraph (k) of subsection (3) of section 121.0515, Florida Statutes, is amended to read:

121.0515 Special Risk Class.—

(3) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(k) The member must have already qualified for and be actively participating in special risk membership under paragraph (a), paragraph (b), or paragraph (c), must have suffered a qualifying injury ~~as defined in this paragraph~~, must not be receiving disability retirement benefits under ~~as provided in~~ s. 121.091(4), and must satisfy the requirements of this paragraph.

1. ~~The ability~~ To qualify for the class of membership defined in paragraph (2)(i), ~~(2)(f) occurs when~~ two licensed medical physicians, one of whom is the member's a primary treating physician ~~of the member~~, must certify the existence of ~~the physical injury and medical condition that constitute a~~ qualifying injury ~~as defined in this paragraph~~ and that the member has reached maximum medical improvement after August 1, 2008. The certifications ~~from the licensed medical physicians~~ must include, at a minimum, that the injury ~~to the special risk member~~ has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg; and that:

a. The ~~That this~~ physical loss or loss of use is total and permanent, unless ~~except in the event that~~ the loss of use is due to a physical injury to the member's brain, in which event



930296

the loss of use is permanent with at least 75 percent loss of motor function with respect to each arm or leg affected.

b. ~~The~~ ~~That this~~ physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.

c. ~~That,~~ Notwithstanding the ~~this~~ physical loss or loss of use, the individual is able to perform the essential job functions required by the member's new position, as provided in subparagraph 3.

d. ~~The~~ ~~That~~ use of artificial limbs is ~~either~~ not possible or does not alter the member's ability to perform the essential job functions of the member's position.

e. ~~That~~ The physical loss or loss of use is a direct result of a physical injury and not a result of any mental, psychological, or emotional injury.

2. For the purposes of this paragraph, "qualifying injury" means a physical ~~an~~ injury and medical condition sustained in the line of duty, as certified by the member's employing agency, by a special risk member which ~~that~~ does not result in total and permanent disability as defined in s. 121.091(4)(b). An injury is a qualifying injury if the injury is a physical injury to the member's physical body resulting in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg. Notwithstanding any other provision of this section, an injury that would otherwise qualify as a qualifying injury is not ~~considered~~ a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.



930296

129 3. The new position, as described in sub-subparagraph 1.c.,
130 ~~that is required for qualification as a special risk member~~
131 ~~under this paragraph~~ is not required to be a position with
132 essential job functions that entitle an individual to special
133 risk membership. Whether the ~~a~~ new position ~~as described in sub-~~
134 ~~subparagraph 1.c.~~ exists and is available to the special risk
135 member is a decision to be made solely by the employer in
136 accordance with its hiring practices and applicable law.

137 4. This paragraph does not grant or create additional
138 rights for an ~~any~~ individual to continued employment or to be
139 hired or rehired by his or her employer which ~~that~~ are not
140 already provided under state law ~~within the Florida Statutes,~~
141 ~~the State Constitution,~~ the Americans with Disabilities Act, if
142 applicable, or any other applicable ~~state or~~ federal law.

143 Section 3. Paragraph (a) of subsection (3) of section
144 121.053, Florida Statutes, is amended to read:

145 121.053 Participation in the Elected Officers' Class for
146 retired members.—

147 (3) On or after July 1, 2010:

148 (a) A retiree of a state-administered retirement system who
149 is elected or appointed for the first time to an elective office
150 in a regularly established position with a covered employer may
151 not be enrolled as a renewed member of a state-administered
152 ~~reenroll in the Florida~~ retirement system.

153 Section 4. Paragraph (f) of subsection (1) and paragraph
154 (e) of subsection (6) of section 121.055, Florida Statutes, are
155 amended to read:

156 121.055 Senior Management Service Class.—There is hereby
157 established a separate class of membership within the Florida



930296

Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(f) Effective July 1, 1997:

1. Except as provided in subparagraph 3., an elected state officer eligible for membership in the Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, ~~or within 6 months after this act becomes a law~~ for serving elected state officers, within 6 months after May 30, 1997, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

2. Except as provided in subparagraph 3., an elected officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, ~~or within 6 months after this act becomes a law~~ for serving elected officers of a local agency employer, within 6 months after May 30, 1997, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, as an elected official eligible for the Elected Officers' Class may not be enrolled in renewed ~~renew~~ membership in the Senior Management Service Class or in the



930296

Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class.

(6)

(e) *Benefits.*—

1. Benefits under the Senior Management Service Optional Annuity Program are payable only to members of the program, or their beneficiaries as designated by the member in the contract with the provider company, and must be paid by the designated company in accordance with the terms of the annuity contract applicable to the member. A member must be terminated from all employment relationships with Florida Retirement System employers for 3 calendar months to begin receiving the employer-funded and employee-funded benefit. The member must meet the definition of termination in s. 121.021(39) beginning the month after receiving a benefit, including a distribution. Benefits funded by employer and employee contributions are payable under the terms of the contract to the member, his or her beneficiary, or his or her estate, in addition to:

a. A lump-sum payment to the beneficiary upon the death of the member;

b. A cash-out of a de minimis account upon the request of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation. Such cash-out must be a complete liquidation of the account balance with that company and is subject to the Internal Revenue Code;



930296

c. A mandatory distribution of a de minimis account of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation as authorized by the department; or

d. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member's account directly to the custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member.

2. Under the Senior Management Service Optional Annuity Program, benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except for a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a minimum distribution required pursuant to the Internal Revenue Code ~~before termination from all employment relationships with participating employers for 3 calendar months.~~

3. The benefits payable to a ~~any~~ person under the Senior Management Service Optional Annuity Program, and any contribution accumulated under such program, are not subject to assignment, execution, or attachment or to any legal process ~~whatsoever.~~

4. Except as provided in subparagraph 5., a member who terminates employment and receives a distribution, including a



930296

245 rollover or trustee-to-trustee transfer, funded by employer and
246 required employee contributions is a retiree of ~~deemed to be~~
247 ~~retired from~~ a state-administered retirement system. Such
248 retiree, who is initially reemployed in a regularly established
249 position on or after July 1, 2010, may not be enrolled as a
250 renewed member ~~if the member is subsequently employed with an~~
251 ~~employer that participates in the Florida Retirement System.~~

252 5. A member who receives optional annuity program benefits
253 funded by employer and employee contributions as a mandatory
254 distribution of a de minimis account authorized by the
255 department is not considered a retiree.

256
257 As used in this paragraph, a "de minimis account" means an
258 account with a provider company containing employer and employee
259 contributions and accumulated earnings of up to ~~not more than~~
260 \$5,000 made under this chapter.

261 Section 5. Subsection (7) of section 121.071, Florida
262 Statutes, is amended to read:

263 121.071 Contributions.—Contributions to the system shall be
264 made as follows:

265 (7) ~~Before termination of employment,~~ Benefits, including
266 employee contributions, are not payable under the pension plan
267 for employee hardships, unforeseeable emergencies, loans,
268 medical expenses, educational expenses, purchase of a principal
269 residence, payments necessary to prevent eviction or foreclosure
270 on an employee's principal residence, or any other reason except
271 for payment of retirement benefits, a refund of employee
272 contributions, or a minimum distribution required pursuant to
273 the Internal Revenue Code ~~before termination from all employment~~



930296

~~relationships with participating employers.~~

Section 6. Paragraph (a) of subsection (3) and paragraph (a) of subsection (13) of section 121.091, Florida Statutes, are amended to read:

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

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

(a) For a member initially enrolled:

1. Before July 1, 2011, the amount of each monthly payment shall be computed in the same manner as for a normal retirement benefit, in accordance with subsection (1), but shall be based on the member's average monthly compensation and creditable service as of the member's early retirement date. The benefit so



930296

computed shall be reduced by five-twelfths of 1 percent for each complete month by which the early retirement date precedes the normal retirement date of age 62 for a member of the Regular Class, Senior Management Service Class, or the Elected Officers' Class, and age 55 for a member of the Special Risk Class, or age 52 if a Special Risk member has completed 25 years of creditable service in accordance with s. 121.021(29)(b)1.c.

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

3. On or after July 1, 2012, the amount of each monthly payment shall be computed in the same manner as a normal retirement benefit in accordance with subsection (1), but shall be based on the member's average monthly compensation and creditable service as of the member's early retirement date. The benefit so computed shall be reduced by five-twelfths of 1 percent for each complete month by which the early retirement date precedes the normal retirement date of age 62 for a member of the Regular Class, Senior Management Service Class, or the



930296

Elected Officers' Class, and age 55 for a member of the Special Risk Class, or age 48 if a Special Risk member has completed 25 years of creditable service in accordance with s. 121.021(29)(b)3.c.

(13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and subject to this section, the Deferred Retirement Option Program, hereinafter referred to as DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the Florida Retirement System on behalf of the member, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the member shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP. Participation in DROP by an eligible member beyond the initial 60-month period as authorized in this subsection shall be on an annual contractual basis for all participants.

(a) *Eligibility of member to participate in DROP.*—All active Florida Retirement System members in a regularly established position, and all active members of the Teachers' Retirement System established in chapter 238 or the State and County Officers' and Employees' Retirement System established in chapter 122, which are consolidated within the Florida Retirement System under s. 121.011, may participate ~~are eligible to elect participation~~ in DROP if:



930296

1. The member is not a renewed member under s. 121.122 or a member of the State Community College System Optional Retirement Program under s. 121.051, the Senior Management Service Optional Annuity Program under s. 121.055, or the optional retirement program for the State University System under s. 121.35.

2. Except as provided in subparagraph 6., for members initially enrolled before July 1, 2011, election to participate must be ~~is~~ made within 12 months immediately following the date ~~on which~~ the member first reaches normal retirement date; ~~or,~~ or, for a member who reaches normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 57, or age 52 for Special Risk Class members. Except as provided in subparagraph 6., for members initially enrolled on or after July 1, 2011, election to participate must be made within the 12 months immediately following the date on which the member first reaches normal retirement date; or, for a member who reaches normal retirement date based on service before he or she reaches age 65, or age 60 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 60, or age 55 for Special Risk Class members. A member who delays DROP participation during the 12-month period immediately following his or her maximum DROP deferral date, ~~except as provided in subparagraph 6.,~~ loses a month of DROP participation for each month delayed. A member who fails to make an election within the 12-month limitation period forfeits all rights to participate in DROP. The member shall advise his or her employer and the



930296

division in writing of the date DROP begins. The beginning date may be subsequent to the 12-month election period but must be within the original 60-month participation period provided in subparagraph (b)1. When establishing eligibility to participate in DROP, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates may ~~is eligible to elect to~~ participate in DROP after attaining normal retirement date in either class.

3. The employer of a member electing to participate in DROP, or employers if dually employed, shall acknowledge in writing to the division the date the member's participation in DROP begins and the date the member's employment and DROP participation terminates.

4. Simultaneous employment of a member by additional Florida Retirement System employers subsequent to the commencement of a member's participation in DROP is permissible if such employers acknowledge in writing a DROP termination date no later than the member's existing termination date or the maximum participation period provided in subparagraph (b)1.

5. A member may change employers while participating in DROP, subject to the following:

a. The A change of employment takes place without a break in service so that the member receives salary for each month of continuous DROP participation. If a member receives no salary during a month, DROP participation ceases unless the employer verifies a continuation of the employment relationship for such member pursuant to s. 121.021(39)(b).



930296

b. The member and new employer notify the division of the identity of the new employer on forms required by the division.

c. The new employer acknowledges, in writing, the member's DROP termination date, which may be extended but not beyond the maximum participation period provided in subparagraph (b)1., acknowledges liability for any additional retirement contributions and interest required if the member fails to timely terminate employment, and is subject to the adjustment required in sub-subparagraph (c)5.d.

6. Effective July 1, 2001, for instructional personnel as defined in s. 1012.01(2), election to participate in DROP may be made at any time following the date on which the member first reaches normal retirement date. The member shall advise his or her employer and the division in writing of the date on which DROP begins. When establishing eligibility of the member to participate in DROP for the 60-month participation period provided in subparagraph (b)1., the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is eligible to elect to participate in either class.

Section 7. Subsection (2) of section 121.122, Florida Statutes, is amended to read:

121.122 Renewed membership in system.—

(2) A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member ~~is not eligible for renewed membership.~~

Section 8. Paragraphs (a), (b), (g), and (h) of subsection



930296

(5) of section 121.35, Florida Statutes, are amended to read:

121.35 Optional retirement program for the State University System.—

(5) BENEFITS.—

(a) Benefits are payable under the optional retirement program only to vested members participating in the program, or their beneficiaries as designated by the member in the contract with a provider company, and such benefits shall be paid only by the designated company in accordance with s. 403(b) of the Internal Revenue Code and the terms of the annuity or investment contract ~~or contracts~~ applicable to the member. Benefits accrue in individual accounts that are member-directed, portable, and funded by employer and employee contributions and the earnings thereon. The member must be terminated for 3 calendar months from all employment relationships with all Florida Retirement System employers to begin receiving the benefit. Benefits funded by employer and employee contributions are payable in accordance with the following terms and conditions:

1. Benefits shall be paid only to a participating member, to his or her beneficiaries, or to his or her estate, as designated by the member.

2. Benefits shall be paid by the provider company or companies in accordance with the law, the provisions of the contract, and any applicable department rule or policy.

3. In the event of a member's death, moneys accumulated by, or on behalf of, the member, less withholding taxes remitted to the Internal Revenue Service, if any, shall be distributed to the member's designated beneficiary or beneficiaries, or to the member's estate, as if the member retired on the date of death,



930296

as provided in paragraph (d). No other death benefits are available to survivors of members under the optional retirement program except for such benefits, or coverage for such benefits, as are separately afforded by the employer, at the employer's discretion.

(b) Benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except for a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a minimum distribution required pursuant to the Internal Revenue Code ~~before termination from all employment relationships with participating employers for 3 calendar months.~~

(g) Benefits funded by the participating member's voluntary personal contributions may be paid out after termination of employment from all participating employers for 3 calendar months ~~at any time~~ and in any form within the limits provided in the contract between the member and the provider company. The member shall notify the provider company regarding the date and provisions under which he or she wants to receive the employee-funded portion of the plan.

(h) For purposes of this section, the term:

1. "Benefit" means a distribution requested by the member or surviving beneficiary funded in part or in whole by the employer or required employee contributions, plus earnings, and includes rolling a distribution over to another qualified plan.



930296

2. "Retiree" means a former participating member of the optional retirement program who has terminated employment and has taken a distribution as provided in this subsection, except for a mandatory distribution of a de minimis account authorized by the department.

Section 9. Paragraph (e) of subsection (2) and subsection (4) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(2) DEFINITIONS.—As used in this part, the term:

(e) "Eligible employee" means an officer or employee, as defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010; or

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program ~~as~~ established under s. 121.055(6), the State Community College System Optional Retirement Program ~~as~~ established under s. 121.051(2)(c), or the State University System Optional Retirement Program established under s. 121.35.

The term does not include a ~~any~~ member participating in the Deferred Retirement Option Program established under s. 121.091(13), a retiree of a state-administered retirement system initially reemployed in a regularly established position on or after July 1, 2010, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.



930296

(4) PARTICIPATION; ENROLLMENT.—

(a)1. With respect to an eligible employee who is employed in a regularly established position on June 1, 2002, by a state employer:

a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by August 31, 2002, or, in the case of an active employee who is on a leave of absence on April 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.

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

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



930296

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

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

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

3. With respect to employees who become eligible to participate in the investment plan pursuant to s. 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to participate in the investment plan in lieu of retaining his or her membership in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program. The election must be made in writing or by electronic means and must be filed with the third-party



930296

administrator. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member in the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's participation in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program terminates. The employee's enrollment in the investment plan is effective on the first day of the month for which a full month's employer and employee contribution is made to the investment plan.

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

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

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



930296

in the pension plan.

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

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

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

a. The ~~Any such~~ employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by November 30, or, in the case of an active employee who is on a leave of absence on July 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of



930296

the month for which a full month's employer contribution is made to the investment program.

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

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

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

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

c. An ~~Any such~~ employee who fails to elect to participate in the investment plan within the prescribed time period is



930296

deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.

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

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

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

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

4.3- For purposes of this paragraph, "district school board employer" means any district school board that participates in



930296

the Florida Retirement System for the benefit of certain employees, or a charter school or charter technical career center that participates in the Florida Retirement System as provided in s. 121.051(2) (d).

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

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

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

2. With respect to employees who become eligible to



930296

participate in the investment plan by reason of employment in a regularly established position with a local employer commencing after October 1, 2002, but before July 1, 2012:

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

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

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

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

a. The employee shall, by default, be enrolled in the



930296

investment plan at the commencement of employment, and may, by the last business day of the 12th month following the employee's month of hire, elect to participate in the pension plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator.

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

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

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

(d) Contributions available for self-direction by a member who has not selected one or more specific investment products shall be allocated as prescribed by the state board. The third-party administrator shall notify the member at least quarterly that the member should take an affirmative action to make an asset allocation among the investment products.

(e) On or after July 1, 2011, a member of the pension plan who obtains a refund of employee contributions retains his or



930296

her prior plan choice upon return to employment in a regularly established position with a participating employer.

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

(g) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. However, employees initially enrolled in the investment plan on or after July 1, 2012, may not move from the investment plan to the pension plan after the close of the initial prescribed time period to do so. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service.

1. If the employee chooses to move to the investment plan,



930296

the provisions of subsection (3) govern the transfer.

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the investment plan. Benefit commencement occurs on the first date the employee is eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. For any employee who, at the time of the second election, already maintains an accrued benefit amount in the pension plan, the then-present value of the accrued benefit is deemed part of the required transfer amount. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee



930296

moneys as necessary, a sum representing the employee's actuarial accrued liability. A refund of any employee contributions or additional participant payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

4. An employee's ability to transfer from the pension plan to the investment plan pursuant to paragraphs (a)-(d), and the ability of a current employee to have an option to later transfer back into the pension plan under subparagraph 2., shall be deemed a significant system amendment. Pursuant to s. 121.031(4), any resulting unfunded liability arising from actual original transfers from the pension plan to the investment plan must be amortized within 30 plan years as a separate unfunded actuarial base independent of the reserve stabilization mechanism defined in s. 121.031(3)(f). For the first 25 years, a direct amortization payment may not be calculated for this base. During this 25-year period, the separate base shall be used to offset the impact of employees exercising their second program election under this paragraph. The actuarial funded status of the pension plan will not be affected by such second program elections in any significant manner, after due recognition of the separate unfunded actuarial base. Following the initial 25-year period, any remaining balance of the original separate base shall be amortized over the remaining 5 years of the required 30-year amortization period.

5. If the employee chooses to transfer from the investment plan to the pension plan and retains an excess account balance in the investment plan after satisfying the buy-in requirements



930296

under this paragraph, the excess may not be distributed until the member retires from the pension plan. The excess account balance may be rolled over to the pension plan and used to purchase service credit or upgrade creditable service in the pension plan.

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

And the title is amended as follows:

Delete lines 2 - 34

and insert:

An act relating to state retirement; amending s. 121.021, F.S.; revising definitions of the terms "normal retirement date" and "vested" or "vesting"; amending s. 121.0515, F.S.; correcting a cross-reference; amending s. 121.053, F.S.; specifying that a retiree who is elected or appointed for the first time to an elective office may not be enrolled as a renewed member; amending s. 121.055, F.S.; specifying that a retiree who is reemployed in a regularly established position as an elected official may not renew membership in the Senior Management Service Class or an annuity program; providing exceptions from the prohibition against paying benefits for certain purposes under the Senior Management Service Optional Annuity Program; specifying that a retiree who is reemployed in a regularly established position on or after a certain date may not be enrolled as a renewed member; amending s. 121.071, F.S.; providing exceptions from the prohibition against paying



930296

benefits for certain purposes under the pension plan;
amending s. 121.091, F.S.; revising provisions
relating to the early retirement benefit calculation
to conform to changes made by the act; specifying the
age of eligibility to participate in DROP for members
enrolled after a certain date; amending s. 121.122,
F.S.; specifying that a retiree who is reemployed in a
regularly established position after a certain date
may not be enrolled as a renewed member; amending s.
121.35, F.S.; providing exceptions from the
prohibition against paying benefits for certain
purposes under the optional retirement program for the
State University System; clarifying when voluntary
contributions may be paid out; defining the term
"benefit" for the purposes of the optional program;
amending s. 121.4501, F.S.; specifying that the
definition of "eligible employee" does not include
certain members reemployed in a regularly established
position; requiring new employees to, by default, be
enrolled in the investment plan; extending the period
during which employees may elect to participate in the
pension plan; prohibiting certain employees from
choosing to move to the pension plan after a certain
period; amending s. 121.591, F.S.; providing



342150

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 116 - 461
and insert:

Section 2. Paragraph (a) of subsection (3) and subsection
(5) of section 121.053, Florida Statutes, are amended to read:

121.053 Participation in the Elected Officers' Class for
retired members.—

(3) On or after July 1, 2010:

(a) A retiree of a state-administered retirement system who
is elected or appointed for the first time to an elective office
in a regularly established position with a covered employer may



342150

not reenroll in the Florida Retirement System, except as provided in s. 121.122.

(5) A Any renewed member, as described in subsection (1) or in s. 121.122(3), (4), or (5) ~~subsection (2)~~, who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of the such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

Section 3. Paragraph (f) of subsection (1) and paragraphs (c) and (e) of subsection (6) of section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(f) Effective July 1, 1997:

1. Except as provided in subparagraph 3., an elected state officer eligible for membership in the Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office or within 6 months after this act becomes a law for serving elected state officers, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.



342150

2. Except as provided in subparagraph 3., an elected officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers of a local agency employer, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is a member of the pension plan and is initially reemployed on or after July 1, 2010, as an elected official eligible for the Elected Officers' Class may not renew membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class. Effective July 1, 2012, a retiree who is a member of the Senior Management Service Optional Annuity Program and returns to covered employment shall be a mandatory member of the investment plan as provided in s. 121.122.

(6)

(c) *Participation.*—

1. An eligible employee who is employed on or before February 1, 1987, may elect to participate in the optional annuity program in lieu of participating in the Senior Management Service Class. Such election must be made in writing and filed with the department and the personnel officer of the



342150

71 employer on or before May 1, 1987. An eligible employee who is
72 employed on or before February 1, 1987, and who fails to make an
73 election to participate in the optional annuity program by May
74 1, 1987, shall be deemed to have elected membership in the
75 Senior Management Service Class.

76 2. Except as provided in subparagraph 6., an employee who
77 becomes eligible to participate in the optional annuity program
78 by reason of initial employment commencing after February 1,
79 1987, may, within 90 days after the date of commencing
80 employment, elect to participate in the optional annuity
81 program. Such election must be made in writing and filed with
82 the personnel officer of the employer. An eligible employee who
83 does not within 90 days after commencing employment elect to
84 participate in the optional annuity program shall be deemed to
85 have elected membership in the Senior Management Service Class.

86 3. A person who is appointed to a position in the Senior
87 Management Service Class and who is a member of an existing
88 retirement system or the Special Risk or Special Risk
89 Administrative Support Classes of the Florida Retirement System
90 may elect to remain in such system or class in lieu of
91 participating in the Senior Management Service Class or optional
92 annuity program. Such election must be made in writing and filed
93 with the department and the personnel officer of the employer
94 within 90 days after such appointment. An eligible employee who
95 fails to make an election to participate in the existing system,
96 the Special Risk Class of the Florida Retirement System, the
97 Special Risk Administrative Support Class of the Florida
98 Retirement System, or the optional annuity program shall be
99 deemed to have elected membership in the Senior Management



342150

Service Class.

4. Except as provided in subparagraph 5., an employee's election to participate in the optional annuity program is irrevocable if the employee continues to be employed in an eligible position and continues to meet the eligibility requirements set forth in this paragraph.

5. Effective from July 1, 2002, through September 30, 2002, an active employee in a regularly established position who has elected to participate in the Senior Management Service Optional Annuity Program has one opportunity to choose to move from the Senior Management Service Optional Annuity Program to the Florida Retirement System Pension Plan.

a. The election must be made in writing and must be filed with the department and the personnel officer of the employer before October 1, 2002, or, in the case of an active employee who is on a leave of absence on July 1, 2002, within 90 days after the conclusion of the leave of absence. This election is irrevocable.

b. The employee shall receive service credit under the pension plan equal to his or her years of service under the Senior Management Service Optional Annuity Program. The cost for such credit is the amount representing the present value of that employee's accumulated benefit obligation for the affected period of service.

c. The employee must transfer the total accumulated employer contributions and earnings on deposit in his or her Senior Management Service Optional Annuity Program account. If the transferred amount is not sufficient to pay the amount due, the employee must pay a sum representing the remainder of the



342150

amount due. The employee may not retain any employer contributions or earnings from the Senior Management Service Optional Annuity Program account.

6. A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, may not renew membership in the Senior Management Service Optional Annuity Program. Effective July 1, 2012, a retiree who is a member of the Senior Management Service Optional Annuity Program and returns to covered employment shall be a mandatory member of the investment plan as provided in s. 121.122.

(e) *Benefits.*—

1. Benefits under the Senior Management Service Optional Annuity Program are payable only to members of the program, or their beneficiaries as designated by the member in the contract with the provider company, and must be paid by the designated company in accordance with the terms of the annuity contract applicable to the member. A member must be terminated from all employment relationships with Florida Retirement System employers for 3 calendar months to begin receiving the employer-funded and employee-funded benefit. The member must meet the definition of termination in s. 121.021(39) beginning the month after receiving a benefit, including a distribution. Benefits funded by employer and employee contributions are payable under the terms of the contract to the member, his or her beneficiary, or his or her estate, in addition to:

a. A lump-sum payment to the beneficiary upon the death of the member;

b. A cash-out of a de minimis account upon the request of a former member who has been terminated for a minimum of 6



342150

calendar months from the employment that entitled him or her to optional annuity program participation. Such cash-out must be a complete liquidation of the account balance with that company and is subject to the Internal Revenue Code;

c. A mandatory distribution of a de minimis account of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation as authorized by the department; or

d. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member's account directly to the custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member.

2. Under the Senior Management Service Optional Annuity Program, benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except for a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a minimum distribution required pursuant to the Internal Revenue Code ~~before termination from all employment relationships with participating employers for 3 calendar months.~~

3. The benefits payable to a ~~any~~ person under the Senior Management Service Optional Annuity Program, and any contribution accumulated under such program, are not subject to



342150

assignment, execution, or attachment or to any legal process
~~whatsoever.~~

4. Except as provided in subparagraph 5., a member who terminates employment and receives a distribution, including a rollover or trustee-to-trustee transfer, funded by employer and required employee contributions is a retiree of ~~deemed to be retired from~~ a state-administered retirement system. Such retiree, who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member ~~if the member is subsequently employed with an employer that participates in the Florida Retirement System.~~

5. A member who receives optional annuity program benefits funded by employer and employee contributions as a mandatory distribution of a de minimis account authorized by the department is not considered a retiree.

As used in this paragraph, a "de minimis account" means an account with a provider company containing employer and employee contributions and accumulated earnings of up to ~~not more than~~ \$5,000 made under this chapter.

Section 4. Subsection (7) of section 121.071, Florida Statutes, is amended to read:

121.071 Contributions.—Contributions to the system shall be made as follows:

(7) ~~Before termination of employment,~~ Benefits, including employee contributions, are not payable under the pension plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure



342150

on an employee's principal residence, or any other reason except
for payment of retirement benefits, a refund of employee
contributions, or a minimum distribution required pursuant to
the Internal Revenue Code ~~before termination from all employment~~
~~relationships with participating employers.~~

Section 5. Paragraph (a) of subsection (13) of section
121.091, Florida Statutes, is amended to read:

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

(13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and
subject to this section, the Deferred Retirement Option Program,
hereinafter referred to as DROP, is a program under which an
eligible member of the Florida Retirement System may elect to
participate, deferring receipt of retirement benefits while
continuing employment with his or her Florida Retirement System
employer. The deferred monthly benefits shall accrue in the
Florida Retirement System on behalf of the member, plus interest
compounded monthly, for the specified period of the DROP



342150

participation, as provided in paragraph (c). Upon termination of employment, the member shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP. Participation in DROP by an eligible member beyond the initial 60-month period as authorized in this subsection shall be on an annual contractual basis for all participants.

(a) *Eligibility of member to participate in DROP.*—All active Florida Retirement System members in a regularly established position, and all active members of the Teachers' Retirement System established in chapter 238 or the State and County Officers' and Employees' Retirement System established in chapter 122, which are consolidated within the Florida Retirement System under s. 121.011, may participate ~~are eligible to elect participation~~ in DROP if:

1. The member is not a renewed member under s. 121.122 or a member of the State Community College System Optional Retirement Program under s. 121.051, the Senior Management Service Optional Annuity Program under s. 121.055, or the optional retirement program for the State University System under s. 121.35.

2. Except as provided in subparagraph 6., for members initially enrolled before July 1, 2011, election to participate must be ~~is~~ made within 12 months immediately following the date ~~on which~~ the member first reaches normal retirement date; ~~or,~~ for a member who reaches normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 57,



342150

or age 52 for Special Risk Class members. Except as provided in subparagraph 6., for members initially enrolled on or after July 1, 2011, election to participate must be made within the 12 months immediately following the date on which the member first reaches normal retirement date; or, for a member who reaches normal retirement date based on service before he or she reaches age 65, or age 60 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 60, or age 55 for Special Risk Class members. A member who delays DROP participation during the 12-month period immediately following his or her maximum DROP deferral date, ~~except as provided in subparagraph 6.,~~ loses a month of DROP participation for each month delayed. A member who fails to make an election within the 12-month limitation period forfeits all rights to participate in DROP. The member shall advise his or her employer and the division in writing of the date DROP begins. The beginning date may be subsequent to the 12-month election period but must be within the original 60-month participation period provided in subparagraph (b)1. When establishing eligibility to participate in DROP, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates may ~~is eligible to elect to~~ participate in DROP after attaining normal retirement date in either class.

3. The employer of a member electing to participate in DROP, or employers if dually employed, shall acknowledge in writing to the division the date the member's participation in



342150

DROP begins and the date the member's employment and DROP participation terminates.

4. Simultaneous employment of a member by additional Florida Retirement System employers subsequent to the commencement of a member's participation in DROP is permissible if such employers acknowledge in writing a DROP termination date no later than the member's existing termination date or the maximum participation period provided in subparagraph (b)1.

5. A member may change employers while participating in DROP, subject to the following:

a. The A change of employment takes place without a break in service so that the member receives salary for each month of continuous DROP participation. If a member receives no salary during a month, DROP participation ceases unless the employer verifies a continuation of the employment relationship for such member pursuant to s. 121.021(39)(b).

b. The member and new employer notify the division of the identity of the new employer on forms required by the division.

c. The new employer acknowledges, in writing, the member's DROP termination date, which may be extended but not beyond the maximum participation period provided in subparagraph (b)1., acknowledges liability for any additional retirement contributions and interest required if the member fails to timely terminate employment, and is subject to the adjustment required in sub-subparagraph (c)5.d.

6. Effective July 1, 2001, for instructional personnel as defined in s. 1012.01(2), election to participate in DROP may be made at any time following the date on which the member first reaches normal retirement date. The member shall advise his or



342150

her employer and the division in writing of the date on which DROP begins. When establishing eligibility of the member to participate in DROP for the 60-month participation period provided in subparagraph (b)1., the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is eligible to elect to participate in either class.

Section 6. Subsection (2) of section 121.122, Florida Statutes, is amended, and subsections (3), (4), and (5) are added to that section, to read:

121.122 Renewed membership in system.—

(2) A retiree of a state-administered retirement system who is a member of the pension plan and is initially reemployed on or after July 1, 2010, is not eligible for renewed membership in the pension plan.

(3) A retiree who is a member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program and is employed on or after July 1, 2010, until June 30, 2012, is not eligible for renewed membership. A retiree who is a member of such retirement plan and is employed on or after July 1, 2012, is a renewed member of the investment plan in the Regular Class, regardless of the position held, unless employed in a position eligible for participation in the State University Optional Retirement Program or the State Community College Optional Retirement Program as provided in subsections (4) and (5). The retiree must satisfy the vesting requirements and other provisions in this



342150

chapter.

(a) Creditable service, including credit toward the retiree health insurance subsidy provided in s. 112.363, does not accrue for a retiree's employment in a regularly established position with a covered employer during the period from July 1, 2010, until June 30, 2012.

(b) The renewed member, or the employer on behalf of the member, may not pay employer and employee contributions, interest, earnings, or any other funds into a renewed member's investment plan account for any employment in a regularly established position with a covered employer during the period from July 1, 2010, until June 30, 2012.

(c) Upon the renewed membership of a retiree, the employer of such member and the member shall pay the applicable employer and employee contributions as required by ss. 112.363, 121.71, 121.74, and 121.76. The contributions are payable only for employment in a regularly established position with a covered employer on or after July 1, 2012.

(d) The member may not purchase any past service in the investment plan, including employment in a regularly established position with a covered employer during the period from July 1, 2010, until June 30, 2012.

(e) The member must meet the vesting requirements of the investment plan as provided in s. 121.4501(6) to be eligible to receive a retirement benefit.

(f) The member is not entitled to disability benefits as provided in s. 121.091(4) or s. 121.591(2).

(g) The member is subject to the employment after retirement limitations as provided in s. 121.091(9), as



342150

applicable.

(h) The member must meet the termination from employment provisions as provided in s. 121.021(39).

(i) A member who is a retired member of the investment plan and is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the subsidy. The credit may be earned only for employment in a regularly established position with a covered employer on or after July 1, 2012. Any additional subsidy due to the member because of additional credit may be received only at the time of paying the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed under s. 112.363.

(4) A retiree who is a member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or Senior Management Service Optional Annuity Program and is employed on or after July 1, 2012, in a regularly established position eligible for participation in the State University Optional Retirement Program shall become a renewed member of the optional retirement program. The renewed member must satisfy the vesting requirements and the other provisions provided in this chapter. The renewed member remains enrolled in the optional retirement program while employed in a position eligible for the optional retirement program. If employment in a different covered position results in the retiree becoming enrolled in the investment plan, the retiree is no longer eligible to participate in the optional retirement program unless employed



342150

in a mandatory position under s. 121.35.

(a) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.

(b) The member must meet the termination from employment provisions as provided in s. 121.021(39).

(c) Upon renewed membership of a retiree, the employer of the member and the member must pay the applicable employer and employee contributions as required by s. 121.35.

(d) The member, or the employer on behalf of the member, may not purchase any past service in the optional retirement program or employment from July 1, 2010, until June 30, 2012, when renewed membership was not available.

(5) A retiree who is a member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or Senior Management Service Optional Annuity Program and is employed in a regularly established position eligible for participation in the State Community College Optional Retirement Program as provided in s. 121.051(2)(c)4. and who enrolled on or after July 1, 2012, shall become a renewed member of the optional retirement program. The renewed member must satisfy the eligibility requirements and other provisions provided in this chapter and s. 1012.875 for the optional retirement program. The renewed member remains enrolled in the optional retirement program while filling a position eligible for the optional retirement program. If employment in a different covered position results in the retiree becoming enrolled in the investment plan, the retiree is no longer eligible to participate in the optional retirement program.



342150

448 (a) The member is subject to the reemployment after
449 retirement limitations provided in s. 121.091(9), as applicable.

450 (b) The member must meet the termination from employment
451 provisions as provided in s. 121.021(39).

452 (c) Upon renewed membership of a retiree, the employer of
453 such member and the member must pay the applicable employer and
454 employee contributions as required by s. 121.35.

455 (d) The member, or the employer on behalf of the member,
456 may not purchase any past service in the optional retirement
457 program or employment from July 1, 2010, until June 30, 2012,
458 when renewed membership was not available.

459 Section 7. Paragraphs (a), (b), (g), and (h) of subsection
460 (5) of section 121.35, Florida Statutes, are amended to read:

461 121.35 Optional retirement program for the State University
462 System.—

463 (5) BENEFITS.—

464 (a) Benefits are payable under the optional retirement
465 program only to vested members participating in the program, or
466 their beneficiaries as designated by the member in the contract
467 with a provider company, and such benefits shall be paid only by
468 the designated company in accordance with s. 403(b) of the
469 Internal Revenue Code and the terms of the annuity or investment
470 contract ~~or contracts~~ applicable to the member. Benefits accrue
471 in individual accounts that are member-directed, portable, and
472 funded by employer and employee contributions and the earnings
473 thereon. The member must be terminated for 3 calendar months
474 from all employment relationships with all Florida Retirement
475 System employers to begin receiving the benefit. Benefits funded
476 by employer and employee contributions are payable in accordance



342150

with the following terms and conditions:

1. Benefits shall be paid only to a participating member, to his or her beneficiaries, or to his or her estate, as designated by the member.

2. Benefits shall be paid by the provider company or companies in accordance with the law, the provisions of the contract, and any applicable department rule or policy.

3. In the event of a member's death, moneys accumulated by, or on behalf of, the member, less withholding taxes remitted to the Internal Revenue Service, if any, shall be distributed to the member's designated beneficiary or beneficiaries, or to the member's estate, as if the member retired on the date of death, as provided in paragraph (d). No other death benefits are available to survivors of members under the optional retirement program except for such benefits, or coverage for such benefits, as are separately afforded by the employer, at the employer's discretion.

(b) Benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except for a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a minimum distribution required pursuant to the Internal Revenue Code ~~before termination from all employment relationships with participating employers for 3 calendar months.~~

(g) Benefits funded by the participating member's voluntary



342150

personal contributions may be paid out after termination of employment from all participating employers for 3 calendar months ~~at any time and~~ in any form within the limits provided in the contract between the member and the provider company. The member shall notify the provider company regarding the date and provisions under which he or she wants to receive the employee-funded portion of the plan.

(h) For purposes of this section, the term:

1. "Benefit" means a distribution requested by the member or surviving beneficiary funded in part or in whole by the employer or required employee contributions, plus earnings, and includes the rollover of a distribution to another qualified plan.

2. "Retiree" means a former participating member of the optional retirement program who has terminated employment and has taken a distribution as provided in this subsection, except for a mandatory distribution of a de minimis account authorized by the department.

Section 8. Paragraph (e) of subsection (2) and paragraph (f) of subsection (4) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(2) DEFINITIONS.—As used in this part, the term:

(e) "Eligible employee" means an officer or employee, as defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010; ~~or~~



342150

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6), the State Community College System Optional Retirement Program as established under s. 121.051(2)(c), or the State University System Optional Retirement Program established under s. 121.35; or-

3. Is a retired member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or Senior Management Service Optional Annuity Program and is employed and enrolled on and after July 1, 2012, as provided in s. 121.122.

The term does not include any member participating in the Deferred Retirement Option Program established under s. 121.091(13), a retiree of a state-administered retirement system initially reemployed on or after July 1, 2010, except as provided in s. 121.122, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

(4) PARTICIPATION; ENROLLMENT.—

(f) A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A retiree who is initially reemployed on or after July 1, 2010, until June 30, 2012, is not eligible for renewed membership except as provided in s. 121.122. A retiree who is a member of the investment plan and is employed on or after July 1, 2012, in a regularly established position shall be a renewed member in the regular class of the investment plan as provided in s. 121.122.



342150

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

And the title is amended as follows:

Delete lines 4 - 34

and insert:

s. 121.053, F.S.; providing an exception from the prohibition for reenrollment in the Florida Retirement System for a retiree who is elected or appointed for the first time; conforming provisions; amending s. 121.055, F.S.; providing that certain retirees who return to covered employment are mandatory members of investment plans; specifying that a retiree who is reemployed in a regularly established position on or after a certain date may not be enrolled as a renewed member; amending s. 121.071, F.S.; providing exceptions from the prohibition against paying benefits for certain purposes under the pension plan; amending s. 121.091, F.S.; specifying the age of eligibility to participate in DROP for members enrolled after a certain date; amending s. 121.122, F.S.; specifying that a retiree who is reemployed in a regularly established position after a certain date may not be enrolled as a renewed member in the pension plan; providing that a retiree who is a member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program and is reemployed between certain dates is not eligible for renewed



342150

membership in a retirement plan; providing that a retiree who is a member of the investment plan, the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program and is reemployed after a certain date is eligible for renewed membership in a retirement plan, unless employed in a position eligible for participation in the State University Optional Retirement Program or the State Community College Retirement Program; providing conditions for eligibility and contributions; providing that a retiree who is a member of certain investment plans and is employed after a certain date in a regularly established position eligible for participation in the State University Optional Retirement Program shall become a renewed member of the optional retirement program; providing conditions for eligibility and contributions; providing that a retiree who is a member of certain investment plans and is employed after a certain date in a regularly established position eligible for participation in the State Community College Optional Retirement Program shall become a renewed member of the optional retirement program; providing conditions for eligibility and contributions; amending s. 121.35, F.S.; providing exceptions from the prohibition against paying benefits for certain purposes under the optional retirement program for the State University System;



342150

clarifying when voluntary contributions may be paid
out; defining the term "benefit" for the purposes of
the optional retirement program; amending s. 121.4501,
F.S.; redefining the term "eligible employee" to
include a retired member of an investment plan, the
State University System Optional Retirement Program,
the State Community College Optional Retirement
Program, or Senior Management Service Optional Annuity
Program who is reemployed and initially enrolled after
a certain date; providing an exception to the
prohibition for renewed membership to a retiree who is
reemployed; amending s. 121.591, F.S.; providing

By the Committee on Governmental Oversight and Accountability

585-01774-12

20122024__

1 A bill to be entitled
 2 An act relating to state retirement; amending s.
 3 121.0515, F.S.; correcting a cross-reference; amending
 4 s. 121.053, F.S.; specifying that a retiree who is
 5 elected or appointed for the first time to an elective
 6 office may not be enrolled as a renewed member;
 7 amending s. 121.055, F.S.; specifying that a retiree
 8 who is reemployed in a regularly established position
 9 as an elected official may not renew membership in the
 10 Senior Management Service Class or an annuity program;
 11 providing exceptions from the prohibition against
 12 paying benefits for certain purposes under the Senior
 13 Management Service Optional Annuity Program;
 14 specifying that a retiree who is reemployed in a
 15 regularly established position on or after a certain
 16 date may not be enrolled as a renewed member; amending
 17 s. 121.071, F.S.; providing exceptions from the
 18 prohibition against paying benefits for certain
 19 purposes under the pension plan; amending s. 121.091,
 20 F.S.; specifying the age of eligibility to participate
 21 in DROP for members enrolled after a certain date;
 22 amending s. 121.122, F.S.; specifying that a retiree
 23 who is reemployed in a regularly established position
 24 after a certain date may not be enrolled as a renewed
 25 member; amending s. 121.35, F.S.; providing exceptions
 26 from the prohibition against paying benefits for
 27 certain purposes under the optional retirement program
 28 for the State University System; clarifying when
 29 voluntary contributions may be paid out; defining the

585-01774-12

20122024__

30 term "benefit" for the purposes of the optional
 31 program; amending s. 121.4501, F.S.; specifying that
 32 the definition of "eligible employee" does not include
 33 certain members reemployed in a regularly established
 34 position; amending s. 121.591, F.S.; providing
 35 exceptions from the prohibition against paying
 36 benefits for certain purposes under the Florida
 37 Retirement System Investment Plan; amending s.
 38 1012.875, F.S.; providing exceptions to the
 39 prohibition against paying benefits for certain
 40 purposes under the State Community College System
 41 Optional Retirement Program; providing an effective
 42 date.

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

46 Section 1. Paragraph (k) of subsection (3) of section
 47 121.0515, Florida Statutes, is amended to read:

48 121.0515 Special Risk Class.—

49 (3) CRITERIA.—A member, to be designated as a special risk
 50 member, must meet the following criteria:

51 (k) The member must have already qualified for and be
 52 actively participating in special risk membership under
 53 paragraph (a), paragraph (b), or paragraph (c), must have
 54 suffered a qualifying injury ~~as defined in this paragraph~~, must
 55 not be receiving disability retirement benefits under ~~as~~
 56 ~~provided in~~ s. 121.091(4), and must satisfy the requirements of
 57 this paragraph.

58 1. ~~The ability~~ To qualify for the class of membership

585-01774-12

20122024

defined in paragraph (2)(i), ~~(2)(f) occurs when~~ two licensed medical physicians, one of whom is the member's a primary treating physician ~~of the member, must~~ certify the existence of ~~the physical injury and medical condition that constitute~~ a qualifying injury ~~as defined in this paragraph~~ and that the member has reached maximum medical improvement after August 1, 2008. The certifications ~~from the licensed medical physicians~~ must include, at a minimum, that the injury ~~to the special risk member~~ has resulted in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg; and that:

a. The ~~That this~~ physical loss or loss of use is total and permanent, unless ~~except in the event that~~ the loss of use is due to a physical injury to the member's brain, in which event the loss of use is permanent with at least 75 percent loss of motor function with respect to each arm or leg affected.

b. The ~~That this~~ physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.

c. ~~That,~~ Notwithstanding the ~~this~~ physical loss or loss of use, the individual is able to perform the essential job functions required by the member's new position, as provided in subparagraph 3.

d. The ~~That~~ use of artificial limbs is ~~either~~ not possible or does not alter the member's ability to perform the essential job functions of the member's position.

e. ~~That~~ The physical loss or loss of use is a direct result of a physical injury and not a result of any mental, psychological, or emotional injury.

585-01774-12

20122024

2. For the purposes of this paragraph, "qualifying injury" means a physical ~~an injury and medical condition~~ sustained in the line of duty, as certified by the member's employing agency, by a special risk member which ~~that~~ does not result in total and permanent disability as defined in s. 121.091(4)(b). An injury is a qualifying injury if the injury is a physical injury to the member's physical body resulting in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg. Notwithstanding any other provision of this section, an injury that would otherwise qualify as a qualifying injury is not ~~considered~~ a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

3. The new position, as described in sub-subparagraph 1.c., ~~that is required for qualification as a special risk member under this paragraph~~ is not required to be a position with essential job functions that entitle an individual to special risk membership. Whether the ~~a~~ new position ~~as described in sub-subparagraph 1.c.~~ exists and is available to the special risk member is a decision to be made solely by the employer in accordance with its hiring practices and applicable law.

4. This paragraph does not grant or create additional rights for an ~~any~~ individual to continued employment or to be hired or rehired by his or her employer which ~~that~~ are not already provided under state law within the Florida Statutes, ~~the State Constitution,~~ the Americans with Disabilities Act, if applicable, or any other applicable ~~state or~~ federal law.

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

585-01774-12

20122024

121.053, Florida Statutes, is amended to read:

121.053 Participation in the Elected Officers' Class for retired members.—

(3) On or after July 1, 2010:

(a) A retiree of a state-administered retirement system who is elected or appointed for the first time to an elective office in a regularly established position with a covered employer may not be enrolled as a renewed member of a state-administered ~~reenroll in the Florida~~ retirement system.

Section 3. Paragraph (f) of subsection (1) and paragraph (e) of subsection (6) of section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(f) Effective July 1, 1997:

1. Except as provided in subparagraph 3., an elected state officer eligible for membership in the Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, ~~or within 6 months after this act becomes a law~~ within 6 months after May 30, 1997, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

2. Except as provided in subparagraph 3., an elected

585-01774-12

20122024

officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, ~~or within 6 months after this act becomes a law~~ within 6 months after May 30, 1997, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, as an elected official eligible for the Elected Officers' Class may not be enrolled in renewed ~~renew~~ membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class.

(6)

(e) *Benefits.*—

1. Benefits under the Senior Management Service Optional Annuity Program are payable only to members of the program, or their beneficiaries as designated by the member in the contract with the provider company, and must be paid by the designated company in accordance with the terms of the annuity contract applicable to the member. A member must be terminated from all employment relationships with Florida Retirement System employers for 3 calendar months to begin receiving the employer-

585-01774-12 20122024

funded and employee-funded benefit. The member must meet the definition of termination in s. 121.021(39) beginning the month after receiving a benefit, including a distribution. Benefits funded by employer and employee contributions are payable under the terms of the contract to the member, his or her beneficiary, or his or her estate, in addition to:

a. A lump-sum payment to the beneficiary upon the death of the member;

b. A cash-out of a de minimis account upon the request of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation. Such cash-out must be a complete liquidation of the account balance with that company and is subject to the Internal Revenue Code;

c. A mandatory distribution of a de minimis account of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation as authorized by the department; or

d. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member's account directly to the custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member.

2. Under the Senior Management Service Optional Annuity Program, benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or

585-01774-12 20122024

foreclosure on an employee's principal residence, or any other reason except for a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a minimum distribution required pursuant to the Internal Revenue Code ~~before termination from all employment relationships with participating employers for 3 calendar months.~~

3. The benefits payable to a ~~any~~ person under the Senior Management Service Optional Annuity Program, and any contribution accumulated under such program, are not subject to assignment, execution, or attachment or to any legal process ~~whatsoever.~~

4. Except as provided in subparagraph 5., a member who terminates employment and receives a distribution, including a rollover or trustee-to-trustee transfer, funded by employer and required employee contributions is a retiree of ~~deemed to be retired from~~ a state-administered retirement system. Such retiree, who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member if the member is subsequently employed with an employer that participates in the Florida Retirement System.

5. A member who receives optional annuity program benefits funded by employer and employee contributions as a mandatory distribution of a de minimis account authorized by the department is not considered a retiree.

As used in this paragraph, a "de minimis account" means an account with a provider company containing employer and employee contributions and accumulated earnings of up to ~~not more than~~

585-01774-12 20122024__

233 \$5,000 made under this chapter.

234 Section 4. Subsection (7) of section 121.071, Florida
235 Statutes, is amended to read:

236 121.071 Contributions.—Contributions to the system shall be
237 made as follows:

238 (7) ~~Before termination of employment,~~ Benefits, including
239 employee contributions, are not payable under the pension plan
240 for employee hardships, unforeseeable emergencies, loans,
241 medical expenses, educational expenses, purchase of a principal
242 residence, payments necessary to prevent eviction or foreclosure
243 on an employee's principal residence, or any other reason except
244 for payment of retirement benefits, a refund of employee
245 contributions, or a minimum distribution required pursuant to
246 the Internal Revenue Code before termination from all employment
247 relationships with participating employers.

248 Section 5. Paragraph (a) of subsection (13) of section
249 121.091, Florida Statutes, is amended to read:

250 121.091 Benefits payable under the system.—Benefits may not
251 be paid under this section unless the member has terminated
252 employment as provided in s. 121.021(39) (a) or begun
253 participation in the Deferred Retirement Option Program as
254 provided in subsection (13), and a proper application has been
255 filed in the manner prescribed by the department. The department
256 may cancel an application for retirement benefits when the
257 member or beneficiary fails to timely provide the information
258 and documents required by this chapter and the department's
259 rules. The department shall adopt rules establishing procedures
260 for application for retirement benefits and for the cancellation
261 of such application when the required information or documents

585-01774-12 20122024__

262 are not received.

263 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and
264 subject to this section, the Deferred Retirement Option Program,
265 hereinafter referred to as DROP, is a program under which an
266 eligible member of the Florida Retirement System may elect to
267 participate, deferring receipt of retirement benefits while
268 continuing employment with his or her Florida Retirement System
269 employer. The deferred monthly benefits shall accrue in the
270 Florida Retirement System on behalf of the member, plus interest
271 compounded monthly, for the specified period of the DROP
272 participation, as provided in paragraph (c). Upon termination of
273 employment, the member shall receive the total DROP benefits and
274 begin to receive the previously determined normal retirement
275 benefits. Participation in the DROP does not guarantee
276 employment for the specified period of DROP. Participation in
277 DROP by an eligible member beyond the initial 60-month period as
278 authorized in this subsection shall be on an annual contractual
279 basis for all participants.

280 (a) *Eligibility of member to participate in DROP.*—All
281 active Florida Retirement System members in a regularly
282 established position, and all active members of the Teachers'
283 Retirement System established in chapter 238 or the State and
284 County Officers' and Employees' Retirement System established in
285 chapter 122, which are consolidated within the Florida
286 Retirement System under s. 121.011, may participate ~~are eligible~~
287 ~~to elect participation~~ in DROP if:

288 1. The member is not a renewed member under s. 121.122 or a
289 member of the State Community College System Optional Retirement
290 Program under s. 121.051, the Senior Management Service Optional

585-01774-12

20122024

291 Annuity Program under s. 121.055, or the optional retirement
 292 program for the State University System under s. 121.35.

293 2. Except as provided in subparagraph 6., for members
 294 initially enrolled before July 1, 2011, election to participate
 295 must be ~~is~~ made within 12 months immediately following the date
 296 ~~on which~~ the member first reaches normal retirement date; ~~or,~~
 297 for a member who reaches normal retirement date based on service
 298 before he or she reaches age 62, or age 55 for Special Risk
 299 Class members, election to participate may be deferred to the 12
 300 months immediately following the date the member attains age 57,
 301 or age 52 for Special Risk Class members. Except as provided in
 302 subparagraph 6., for members initially enrolled on or after July
 303 1, 2011, election to participate must be made within the 12
 304 months immediately following the date on which the member first
 305 reaches normal retirement date; or, for a member who reaches
 306 normal retirement date based on service before he or she reaches
 307 age 65, or age 60 for Special Risk Class members, election to
 308 participate may be deferred to the 12 months immediately
 309 following the date the member attains age 60, or age 55 for
 310 Special Risk Class members. A member who delays DROP
 311 participation during the 12-month period immediately following
 312 his or her maximum DROP deferral date, ~~except as provided in~~
 313 ~~subparagraph 6.,~~ loses a month of DROP participation for each
 314 month delayed. A member who fails to make an election within the
 315 12-month limitation period forfeits all rights to participate in
 316 DROP. The member shall advise his or her employer and the
 317 division in writing of the date DROP begins. The beginning date
 318 may be subsequent to the 12-month election period but must be
 319 within the original 60-month participation period provided in

585-01774-12

20122024

320 subparagraph (b)1. When establishing eligibility to participate
 321 in DROP, the member may elect to include or exclude any optional
 322 service credit purchased by the member from the total service
 323 used to establish the normal retirement date. A member who has
 324 dual normal retirement dates may ~~is eligible to elect to~~
 325 participate in DROP after attaining normal retirement date in
 326 either class.

327 3. The employer of a member electing to participate in
 328 DROP, or employers if dually employed, shall acknowledge in
 329 writing to the division the date the member's participation in
 330 DROP begins and the date the member's employment and DROP
 331 participation terminates.

332 4. Simultaneous employment of a member by additional
 333 Florida Retirement System employers subsequent to the
 334 commencement of a member's participation in DROP is permissible
 335 if such employers acknowledge in writing a DROP termination date
 336 no later than the member's existing termination date or the
 337 maximum participation period provided in subparagraph (b)1.

338 5. A member may change employers while participating in
 339 DROP, subject to the following:

340 a. ~~The~~ A change of employment takes place without a break
 341 in service so that the member receives salary for each month of
 342 continuous DROP participation. If a member receives no salary
 343 during a month, DROP participation ceases unless the employer
 344 verifies a continuation of the employment relationship for such
 345 member pursuant to s. 121.021(39)(b).

346 b. The member and new employer notify the division of the
 347 identity of the new employer on forms required by the division.

348 c. The new employer acknowledges, in writing, the member's

585-01774-12

20122024

DROP termination date, which may be extended but not beyond the maximum participation period provided in subparagraph (b)1., acknowledges liability for any additional retirement contributions and interest required if the member fails to timely terminate employment, and is subject to the adjustment required in sub-subparagraph (c)5.d.

6. Effective July 1, 2001, for instructional personnel as defined in s. 1012.01(2), election to participate in DROP may be made at any time following the date on which the member first reaches normal retirement date. The member shall advise his or her employer and the division in writing of the date on which DROP begins. When establishing eligibility of the member to participate in DROP for the 60-month participation period provided in subparagraph (b)1., the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is eligible to elect to participate in either class.

Section 6. Subsection (2) of section 121.122, Florida Statutes, is amended to read:

121.122 Renewed membership in system.—

(2) A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member ~~is not eligible for renewed membership.~~

Section 7. Paragraphs (a), (b), (g), and (h) of subsection (5) of section 121.35, Florida Statutes, are amended to read:

121.35 Optional retirement program for the State University System.—

585-01774-12

20122024

(5) BENEFITS.—

(a) Benefits are payable under the optional retirement program only to vested members participating in the program, or their beneficiaries as designated by the member in the contract with a provider company, and such benefits shall be paid only by the designated company in accordance with s. 403(b) of the Internal Revenue Code and the terms of the annuity or investment contract ~~or contracts~~ applicable to the member. Benefits accrue in individual accounts that are member-directed, portable, and funded by employer and employee contributions and the earnings thereon. The member must be terminated for 3 calendar months from all employment relationships with all Florida Retirement System employers to begin receiving the benefit. Benefits funded by employer and employee contributions are payable in accordance with the following terms and conditions:

1. Benefits shall be paid only to a participating member, to his or her beneficiaries, or to his or her estate, as designated by the member.

2. Benefits shall be paid by the provider company or companies in accordance with the law, the provisions of the contract, and any applicable department rule or policy.

3. In the event of a member's death, moneys accumulated by, or on behalf of, the member, less withholding taxes remitted to the Internal Revenue Service, if any, shall be distributed to the member's designated beneficiary or beneficiaries, or to the member's estate, as if the member retired on the date of death, as provided in paragraph (d). No other death benefits are available to survivors of members under the optional retirement program except for such benefits, or coverage for such benefits,

585-01774-12 20122024

as are separately afforded by the employer, at the employer's discretion.

(b) Benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except for a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a minimum distribution required pursuant to the Internal Revenue Code before termination from all employment relationships with participating employers for 3 calendar months.

(g) Benefits funded by the participating member's voluntary personal contributions may be paid out after termination of employment from all participating employers for 3 calendar months at any time and in any form within the limits provided in the contract between the member and the provider company. The member shall notify the provider company regarding the date and provisions under which he or she wants to receive the employee-funded portion of the plan.

(h) For purposes of this section, the term:

1. "Benefit" means a distribution requested by the member or surviving beneficiary funded in part or in whole by the employer or required employee contributions, plus earnings, and includes rolling a distribution over to another qualified plan.

2. "Retiree" means a former participating member of the optional retirement program who has terminated employment and has taken a distribution as provided in this subsection, except

585-01774-12 20122024

for a mandatory distribution of a de minimis account authorized by the department.

Section 8. Paragraph (e) of subsection (2) of section 121.4501, Florida Statutes, is amended to read:

121.4501 Florida Retirement System Investment Plan.—

(2) DEFINITIONS.—As used in this part, the term:

(e) "Eligible employee" means an officer or employee, as defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010; or

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program ~~as~~ established under s. 121.055(6), the State Community College System Optional Retirement Program ~~as~~ established under s. 121.051(2)(c), or the State University System Optional Retirement Program established under s. 121.35.

The term does not include a ~~any~~ member participating in the Deferred Retirement Option Program established under s. 121.091(13), a retiree of a state-administered retirement system initially reemployed in a regularly established position on or after July 1, 2010, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

Section 9. Section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under

585-01774-12

20122024

465 the Florida Retirement System Investment Plan unless the member
 466 has terminated employment as provided in s. 121.021(39) (a) or is
 467 deceased and a proper application has been filed as prescribed
 468 by the state board or the department. ~~Before termination of~~
 469 ~~employment,~~ Benefits, including employee contributions, are not
 470 payable under the investment plan for employee hardships,
 471 unforeseeable emergencies, loans, medical expenses, educational
 472 expenses, purchase of a principal residence, payments necessary
 473 to prevent eviction or foreclosure on an employee's principal
 474 residence, or any other reason except for a requested
 475 distribution for retirement, a mandatory de minimis distribution
 476 authorized by the board, or a minimum distribution required
 477 pursuant to the Internal Revenue Code prior to termination from
 478 all employment relationships with participating employers. The
 479 state board or department, as appropriate, may cancel an
 480 application for retirement benefits if the member or beneficiary
 481 fails to timely provide the information and documents required
 482 by this chapter and the rules of the state board and department.
 483 In accordance with their respective responsibilities, the state
 484 board and the department shall adopt rules establishing
 485 procedures for applying application for retirement benefits and
 486 for cancelling the cancellation of such application if the
 487 required information or documents are not received. The state
 488 board and the department, as appropriate, may are authorized to
 489 cash out a de minimis account of a member who has been
 490 terminated from Florida Retirement System covered employment for
 491 a minimum of 6 calendar months. A de minimis account is an
 492 account containing employer and employee contributions and
 493 accumulated earnings of up to not more than \$5,000 made under

585-01774-12

20122024

494 ~~the provisions of~~ this chapter. Such cash-out must be a complete
 495 lump-sum liquidation of the account balance, subject to ~~the~~
 496 ~~provisions of~~ the Internal Revenue Code, or a lump-sum direct
 497 rollover distribution paid directly to the custodian of an
 498 eligible retirement plan, as defined by the Internal Revenue
 499 Code, on behalf of the member. Any nonvested accumulations and
 500 associated service credit, including amounts transferred to the
 501 suspense account of the Florida Retirement System Investment
 502 Plan Trust Fund authorized under s. 121.4501(6), are shall be
 503 forfeited upon payment of any vested benefit to a member or
 504 beneficiary, except for de minimis distributions or minimum
 505 required distributions as provided under this section. If any
 506 financial instrument issued for the payment of retirement
 507 benefits under this section is not presented for payment within
 508 180 days after the last day of the month in which it was
 509 originally issued, the third-party administrator or other ~~duly~~
 510 authorized agent of the state board shall cancel the instrument
 511 and credit the amount of the instrument to the suspense account
 512 of the Florida Retirement System Investment Plan Trust Fund
 513 ~~authorized under s. 121.4501(6).~~ Any amounts transferred to the
 514 suspense account are payable upon a proper application, not
 515 including to include earnings thereon, as provided in this
 516 section, within 10 years after the last day of the month in
 517 which the instrument was originally issued, after which time
 518 such amounts and any earnings attributable to employer
 519 contributions are shall be forfeited. Any forfeited amounts are
 520 assets of the trust fund and are not subject to chapter 717.
 521 (1) NORMAL BENEFITS.—Under the investment plan:
 522 (a) Benefits in the form of vested accumulations as

585-01774-12 20122024

described in s. 121.4501(6) are payable ~~under this subsection~~ in accordance with the following terms and conditions:

1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a beneficiary.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with ~~the~~ law, the contracts, and any applicable board rule or policy.

3. The member must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

4. Benefit payments may not be made until the member has been terminated for 3 calendar months, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021.

5. If a member or former member of the Florida Retirement System receives an invalid distribution, such person must ~~either~~ repay the full amount within 90 days after receipt of final notification by the state board or the third-party administrator that the distribution was invalid, or, in lieu of repayment, ~~the member~~ must terminate employment from all participating employers. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the investment plan by the state board and is subject to s. 121.122. If such person is deemed retired, any joint and several liability set out in s. 121.091(9)(d)2. is void, and the state board, the department, or the employing agency is not liable for gains on payroll

585-01774-12 20122024

contributions that have not been deposited to the person's account in the investment plan, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the state board to have taken an invalid distribution may appeal the agency decision through the complaint process ~~as~~ provided under s. 121.4501(9)(g)3. As used in this subparagraph, the term "invalid distribution" means any distribution from an account in the investment plan which is taken in violation of this section, s. 121.091(9), or s. 121.4501.

(b) If a member elects to receive his or her benefits upon termination of employment as defined in s. 121.021, the member must submit a written application or an application by electronic means to the third-party administrator indicating his or her preferred distribution date and selecting an authorized method of distribution as provided in paragraph (c). The member may defer application for and receipt of benefits ~~until he or she chooses to make such application~~, subject to federal requirements.

(c) Upon receipt by the third-party administrator of a properly executed application for distribution of benefits, the total accumulated benefit is payable to the member pro rata across all Florida Retirement System benefit sources as:

1. A lump-sum or partial distribution to the member;

2. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member's account directly to the custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member; or

585-01774-12

20122024

581 3. Periodic distributions, as authorized by the state
582 board.

583 (d) The distribution payment method selected by the member
584 or beneficiary, and the retirement of the member or beneficiary,
585 is final and irrevocable at the time a benefit distribution
586 payment is cashed, deposited, or transferred to another
587 financial institution. Any additional service that remains
588 unclaimed at retirement may not be claimed or purchased, and the
589 type of retirement may not be changed, except that if a member
590 recovers from a disability, the member may subsequently request
591 benefits under subsection (2).

592 (e) A member may not receive a distribution of employee
593 contributions if a pending qualified domestic relations order is
594 filed against the member's investment plan account.

595 (2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under
596 this subsection are payable in lieu of ~~the~~ benefits that would
597 otherwise be payable under ~~the provisions of~~ subsection (1).
598 Such benefits must be funded from employer contributions made
599 under s. 121.571, transferred employee contributions and funds
600 accumulated pursuant to paragraph (a), and interest and earnings
601 thereon.

602 (a) *Transfer of funds.*—To qualify to receive monthly
603 disability benefits under this subsection:

604 1. All moneys accumulated in the member's accounts ~~account~~,
605 including vested and nonvested accumulations as described in s.
606 121.4501(6), must be transferred from the ~~such individual~~
607 accounts to the division for deposit in the disability account
608 of the Florida Retirement System Trust Fund. Such moneys must be
609 accounted for separately. Earnings must be credited on an annual

585-01774-12

20122024

610 basis for amounts held in the disability accounts of the Florida
611 Retirement System Trust Fund based on actual earnings of the
612 trust fund.

613 2. If the member has retained retirement credit earned
614 under the pension plan as provided in s. 121.4501(3), a sum
615 representing the actuarial present value of such credit within
616 the Florida Retirement System Trust Fund shall be reassigned by
617 the division from the pension plan to the disability program as
618 implemented under this subsection and ~~shall be deposited into~~ into ~~the~~
619 the disability account of the trust fund. Such moneys must be
620 accounted for separately.

621 (b) *Disability retirement; entitlement.*—

622 1. A member of the investment plan who becomes totally and
623 permanently disabled, as defined in paragraph (d), after
624 completing 8 years of creditable service, or a member who
625 becomes totally and permanently disabled in the line of duty
626 regardless of length of service, is entitled to a monthly
627 disability benefit.

628 2. In order for service to apply toward the 8 years of
629 creditable service required for regular disability benefits, or
630 toward the creditable service used in calculating a service-
631 based benefit ~~as provided~~ under paragraph (g), the service must
632 be creditable service as described below:

633 a. The member's period of service under the investment plan
634 shall be considered creditable service, except as provided in
635 subparagraph d.

636 b. If the member has elected to retain credit for service
637 under the pension plan as provided under s. 121.4501(3), all
638 such service is ~~shall be~~ considered creditable service.

585-01774-12

20122024

c. If the member elects to transfer to his or her member accounts a sum representing the present value of his or her retirement credit under the pension plan as provided under s. 121.4501(3), the period of service under the pension plan represented in the present value amounts transferred is ~~shall be~~ considered creditable service, except as provided in subparagraph d.

d. If a member has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable service represented by such distributed funds is forfeited for purposes of this subsection.

(c) *Disability retirement effective date.*—The effective retirement date for a member who applies and is approved for disability retirement shall be established as provided under s. 121.091(4)(a)2. and 3.

(d) *Total and permanent disability.*—A member is ~~shall be~~ considered totally and permanently disabled if, in the opinion of the division, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.

(e) *Proof of disability.*— Before approving payment of a ~~any~~ disability retirement benefit, the division shall require proof that the member is totally and permanently disabled as provided under s. 121.091(4)(c).

(f) *Disability retirement benefit.*—Upon the disability retirement of a member under this subsection, the member shall receive a monthly benefit that begins accruing on the first day of the month of disability retirement, as approved by the

585-01774-12

20122024

division, and is payable on the last day of that month and each month thereafter during his or her lifetime and continued disability. All disability benefits must be paid out of the disability account of the Florida Retirement System Trust Fund established under this subsection.

(g) *Computation of disability retirement benefit.*—The amount of each monthly payment must be calculated as provided under s. 121.091(4)(f). Creditable service under both the pension plan and the investment plan is ~~shall be~~ applicable as provided under paragraph (b).

(h) *Reapplication.*—A member whose initial application for disability retirement is denied may reapply for disability benefits as provided in s. 121.091(4)(g).

(i) *Membership.*—Upon approval of a member's application for disability benefits, the member shall be transferred to the pension plan, effective upon his or her disability retirement effective date.

(j) *Option to cancel.*—A member whose application for disability benefits is approved may cancel the application if the cancellation request is received by the division before a disability retirement warrant has been deposited, cashed, or received by direct deposit. Upon cancellation:

1. The member's transfer to the pension plan under paragraph (i) is ~~shall be~~ nullified;

2. The member shall be retroactively reinstated in the investment plan without hiatus;

3. All funds transferred to the Florida Retirement System Trust Fund under paragraph (a) must be returned to the member accounts from which the funds were drawn; and

585-01774-12

20122024

4. The member may elect to receive the benefit payable under subsection (1) in lieu of disability benefits.

(k) *Recovery from disability.*—

1. The division may require periodic reexaminations at the expense of the disability program account of the Florida Retirement System Trust Fund. Except as provided in subparagraph 2., all other matters relating to recovery from disability are ~~shall be~~ as provided under s. 121.091(4)(h).

2. Upon recovery from disability, the recipient of disability retirement benefits under this subsection becomes ~~shall be~~ a compulsory member of the investment plan. The net difference between the recipient's original account balance transferred to the Florida Retirement System Trust Fund, including earnings and total disability benefits paid to the ~~such~~ recipient, if any, shall be determined as provided in subparagraph a.

a. An amount equal to the total benefits paid shall be subtracted from that portion of the transferred account balance consisting of vested accumulations as described under s. 121.4501(6), if any, and an amount equal to the remainder of benefit amounts paid, if any, shall be subtracted from any remaining nonvested accumulations.

b. Amounts subtracted under sub-subparagraph a. must be retained within the disability account of the Florida Retirement System Trust Fund. Any remaining account balance shall be transferred to the third-party administrator for disposition as provided under sub-subparagraph c. or sub-subparagraph d., as appropriate.

c. If the recipient returns to covered employment,

585-01774-12

20122024

transferred amounts must be deposited in individual accounts under the investment plan, as directed by the member. Vested and nonvested amounts shall be accounted for separately as provided in s. 121.4501(6).

d. If the recipient fails to return to covered employment upon recovery from disability:

(I) Any remaining vested amount must be deposited in individual accounts under the investment plan, as directed by the member, and is payable as provided in subsection (1).

(II) Any remaining nonvested amount must be held in a suspense account and is forfeitable after 5 years as provided in s. 121.4501(6).

3. If present value was reassigned from the pension plan to the disability program as provided under subparagraph (a)2., the full present value amount must be returned to the defined benefit account within the Florida Retirement System Trust Fund and the member's associated retirement credit under the pension plan must be reinstated in full. Any benefit based upon such credit must be calculated as provided in s. 121.091(4)(h)1.

(l) *Nonadmissible causes of disability.*—A member is not entitled to a disability retirement benefit if the disability results from an ~~any~~ injury or disease ~~as~~ described in s. 121.091(4)(i).

(m) *Disability retirement of justice or judge by order of Supreme Court.*—

1. If a member is a justice of the Supreme Court, judge of a district court of appeal, circuit judge, or judge of a county court who has served for the years equal to, or greater than, the vesting requirement in s. 121.021(45) as an elected

585-01774-12 20122024

755 constitutional judicial officer, including service as a judicial
 756 officer in any court abolished pursuant to Art. V of the State
 757 Constitution, and who is retired for disability pursuant to s.
 758 12, Art. V of the State Constitution, the member's Option 1
 759 monthly disability benefit amount as provided in s.
 760 121.091(6)(a)1. shall be two-thirds of his or her monthly
 761 compensation as of the member's disability retirement date. The
 762 member may alternatively elect to receive an actuarially
 763 adjusted disability retirement benefit under any other option as
 764 provided in s. 121.091(6)(a) or ~~to receive~~ the normal benefit
 765 payable under subsection (1).

766 2. If any justice or judge who is a member of the
 767 investment plan is retired for disability pursuant to s. 12,
 768 Art. V of the State Constitution and elects to receive a monthly
 769 disability benefit under the provisions of this paragraph:

770 a. Any present value amount that was transferred to his or
 771 her investment plan account and all employer and employee
 772 contributions made to such account on his or her behalf, plus
 773 interest and earnings thereon, must be transferred to and
 774 deposited in the disability account of the Florida Retirement
 775 System Trust Fund; and

776 b. The monthly disability benefits payable under this
 777 paragraph shall be paid from the disability account of the
 778 Florida Retirement System Trust Fund.

779 (n) *Death of retiree or beneficiary.*—Upon the death of a
 780 disabled retiree or beneficiary of the retiree who is receiving
 781 monthly disability benefits under this subsection, the monthly
 782 benefits shall be paid through the last day of the month of
 783 death and ~~shall~~ terminate, or be adjusted, if applicable, as of

585-01774-12 20122024

784 that date in accordance with the optional form of benefit
 785 selected at the time of retirement. The department may adopt
 786 rules necessary to administer this paragraph.

787 (3) DEATH BENEFITS.—Under the Florida Retirement System
 788 Investment Plan:

789 (a) Survivor benefits are payable in accordance with the
 790 following terms and conditions:

791 1. To the extent vested, benefits are payable only to a
 792 member's beneficiary or beneficiaries as designated by the
 793 member under ~~as provided in~~ s. 121.4501(20).

794 2. Benefits shall be paid by the third-party administrator
 795 or designated approved providers in accordance with ~~the~~ law, the
 796 contracts, and any applicable state board rule or policy.

797 3. ~~To receive benefits,~~ The member must be deceased.

798 (b) In the event of a member's death, all vested
 799 accumulations as described in s. 121.4501(6), less withholding
 800 taxes remitted to the Internal Revenue Service, shall be
 801 distributed, as provided in paragraph (c) or as described in s.
 802 121.4501(20), as if the member retired on the date of death. No
 803 other death benefits are available for survivors of members,
 804 except for benefits, or coverage for benefits, as are otherwise
 805 provided by law or separately provided by the employer, at the
 806 employer's discretion.

807 (c) Upon receipt by the third-party administrator of a
 808 properly executed application for distribution of benefits, the
 809 total accumulated benefit is payable by the third-party
 810 administrator to the member's surviving beneficiary or
 811 beneficiaries, as:

812 1. A lump-sum distribution payable to the beneficiary or

585-01774-12 20122024__

beneficiaries, or to the deceased member's estate;

2. An eligible rollover distribution, if permitted, on behalf of the surviving spouse of a deceased member, whereby all accrued benefits, plus interest and investment earnings, are paid from the deceased member's account directly to the custodian of an eligible retirement plan, as described in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the surviving spouse; or

3. A partial lump-sum payment whereby a portion of the accrued benefit is paid to the deceased member's surviving spouse or other designated beneficiaries, less withholding taxes remitted to the Internal Revenue Service, and the remaining amount is transferred directly to the custodian of an eligible retirement plan, if permitted, as described in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the surviving spouse. The proportions must be specified by the member or the surviving beneficiary.

This paragraph does not abrogate other applicable provisions of state or federal law providing for payment of death benefits.

(4) LIMITATION ON LEGAL PROCESS.—The benefits payable to any person under the Florida Retirement System Investment Plan, and any contributions accumulated under the plan, are not subject to assignment, execution, attachment, or any legal process, except for qualified domestic relations orders by a court of competent jurisdiction, income deduction orders as provided in s. 61.1301, and federal income tax levies.

Section 10. Subsection (7) of section 1012.875, Florida Statutes, is amended to read:

585-01774-12 20122024__

1012.875 State Community College System Optional Retirement Program.—Each Florida College System institution may implement an optional retirement program, if such program is established therefor pursuant to s. 1001.64(20), under which annuity or other contracts providing retirement and death benefits may be purchased by, and on behalf of, eligible employees who participate in the program, in accordance with s. 403(b) of the Internal Revenue Code. Except as otherwise provided herein, this retirement program, which shall be known as the State Community College System Optional Retirement Program, may be implemented and administered only by an individual Florida College System institution or by a consortium of Florida College System institutions.

(7) Benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except for a requested distribution for retirement, a mandatory de minimis distribution authorized by the college, or a minimum distribution required pursuant to the Internal Revenue Code before termination from all employment relationships with participating employers for 3 calendar months.

Section 11. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/26/12
Meeting Date

Topic _____

Bill Number 2024
(if applicable)

Name Leticia M Adams

Amendment Barcode 930296
(if applicable)

Job Title Director of Governance Policy

Address 136 S. Bronough St.
Street

Phone 850 521 1279

Tall FL 32301
City State Zip

E-mail ladams@flchamber.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/26/12
Meeting Date

Topic Retirement

Bill Number 2024
(if applicable)

Name Sarahbeth Snuggs

Amendment Barcode _____
(if applicable)

Job Title Retirement Director

Address 1317 Winewood Blvd - Bldg 8
Street

Phone 487-4133

Tallahassee FL 32317
City State Zip

E-mail sarahbeth.snuggs@dmr.myflorida.com

Speaking: ☐ For ☐ Against ☒ Information

Representing _____

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7190

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Florida Workers' Compensation Joint Underwriting Association

DATE: January 24, 2012

REVISED: _____

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

I. Summary:

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

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

This bill substantially amends section 627.3121 of the Florida Statutes.

II. Present Situation:

Florida's Public Records and Public Meetings Laws

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

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

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

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

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

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

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

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

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

³ Chapter 119, F.S.

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

⁵ Section 119.011(12), F.S.

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

Article I, s. 24 of the State Constitution also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

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

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

Open Government Sunset Review Act

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

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

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

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

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

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

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

¹² Attorney General Opinion 85-62.

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

¹⁴ Section 119.15, F.S.

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

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

The Act also requires the Legislature to consider the following:

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

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

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

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

Florida Workers' Compensation Joint Underwriting Association, Inc.

The Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA), created by the Legislature in 1993, is a nonprofit, self-funding entity that is the insurer of last resort for

¹⁵ Section 119.15(6)(b), F.S.

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

employers who are unable to secure workers' compensation insurance coverage in the voluntary market.¹⁷ The JUA board consists of: three members appointed by the Financial Services Commission; two members representing the top 20 domestic insurers writing workers' compensation; two members representing the top 20 foreign insurers writing workers' compensation; one person appointed by the largest property and casualty insurance agents' association; and the Consumer Advocate for the Department of Financial Services.¹⁸

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

Public Records and Meetings Exemption Under Review

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

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

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

¹⁸ Section 627.311(5)(b), F.S.

¹⁹ See Attorney General Opinion 94-32.

²⁰ *Id.*

mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association.

- That portion of a meeting of the association's board of governors or any subcommittee thereof at which exempt records are discussed; all exempt portions must be recorded and transcribed and preserved for a minimum of 5 years; and
- The transcript and minutes of exempt portions of meetings at which confidential and exempt records are discussed until termination of all litigation and settlement of all claims with regard to that claim.

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

III. Effect of Proposed Changes:

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01616-12

20127190

A bill to be entitled

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

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

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

627.3121 Public records and public meetings exemptions.—

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

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

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

585-01616-12

20127190

or exempt if otherwise provided by law.

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

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

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

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

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

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

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

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

585-01616-12 20127190__

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

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

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

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

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

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

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

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

585-01616-12 20127190__

88 State Constitution.

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

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

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

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7192

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Personal Identifying Information/Lifeline Assistance Plan

DATE: January 24, 2012

REVISED: _____

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

I. Summary:

This proposed committee bill is the result of the Governmental Oversight and Accountability Committee's Open Government Sunset Review of the public records exemption for personal identifying information of Lifeline Assistance Plan participants. This public records exemption will expire October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. This bill reenacts this public records exemption. In addition, the bill creates a penalty for the unauthorized intentional disclosure of the protected information by an officer or employee of the Public Service Commission.

Section 364.107, F.S. currently provides that personal identifying information of a participant in a telecommunication carrier's Lifeline Assistance Plan held by the Public Service Commission is confidential and exempt from disclosure under the public records requirements of s. 119.07(1), F.S., and Article 1, Section 24(a) of the Florida Constitution.

This bill substantially amends section 364.107 of the Florida Statutes.

II. Present Situation:

Florida's Public Records Law

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

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

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

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

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

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

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

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

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

² FLA. CONST. art. I, s. 24.

³ Chapter 119, F.S.

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

⁵ Section 119.011(12), F.S.

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

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

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

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

Open Government Sunset Review Act

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

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

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

The Act also requires the Legislature to consider the following:

⁸ Florida Attorney General Opinion 85-62.

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

¹⁰ *Supra* note 1.

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

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

¹³ *Supra* note 1.

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

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

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

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

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

Lifeline Assistance Plan

The Lifeline Assistance Plan is part of a federal program designed to enable low-income households to afford basic local telephone service. Plan participants are eligible for a monthly credit. In Florida, the plan is administered by the Public Service Commission (PSC).¹⁸ In order to enroll in the plan, a telecommunications customer must submit an application with the Public Service Commission that requires certain personal identifying information. Prospective participants must submit his or her name, address, telephone number, service provider, and the last four digits of his or her social security number.¹⁹ In addition, any state agency that determines a person is eligible for Lifeline Assistance Plan service is required to immediately forward that person's information to the PSC to ensure that the person is automatically enrolled in the Lifeline program.²⁰

Public Records Exemption for Lifeline Assistance Plan participants

Section 364.107, F.S., provides that personal identifying information of a participant in a telecommunication carrier's Lifeline Assistance Plan held by the Public Service Commission is

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

¹⁸ Section 364.10, F.S.

¹⁹ Florida Public Service Commission, *Application for Link-Up Florida and Lifeline Assistance*, available at <http://www.psc.state.fl.us/utilities/telecomm/lifeline/LifelinePDFs/ApplicationEnglish.pdf>.

²⁰ Section 364.10(2)(g)(2), F.S.

confidential and exempt from disclosure under the public records requirements of s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution.

This public records exemption specifies that the protected information may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.²¹ The exemption also authorizes an officer or employee of a telecommunications carrier to intentionally disclose the information only as:

- Authorized by the customer;
- Necessary for billing purposes;
- Required by subpoena, court order, or other process of court;
- Necessary to disclose to an agency as defined in s. 119.011 or a governmental entity for purposes directly connected with implementing service for, or verifying eligibility of, a participant in a Lifeline Assistance Plan or auditing a Lifeline Assistance Plan; or
- Otherwise authorized by law.

The exemption provides that any officer or employee of a telecommunications carrier who otherwise intentionally discloses the protected information commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Open Government Sunset Review of Section 364.107, F.S.

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Governmental Oversight and Accountability Committee recommended that the Legislature retain the public records exemption found in s. 364.107, F.S., which makes personal identifying information of Lifeline Assistance Plan participants held by the Public Service Commission confidential and exempt from disclosure.

The Open Government Sunset Review of this exemption concluded that there is a public necessity to continue to protect information of a sensitive personal nature concerning the participant and that without the exemption, the effective and efficient administration of this program would be impaired. The Sunset Review also recommended amending the current statute to provide that an officer or employee of the Public Service Commission who intentionally discloses the protected information in violation of the exemption's provisions is subject to the provided penalty, in addition to the officers and employees of a telecommunications carrier who are already subject to the penalty.

III. Effect of Proposed Changes:

Section 1 amends s. 364.107, F.S., reenacts and saves from repeal the public records exemption for personal identifying information for Lifeline Assistance Plan participants; and provides that an officer or employee of the Public Service Commission who intentionally discloses the exempt information commits a misdemeanor of the second degree.

²¹ Federal Communications Commission (FCC) rules currently require at least twice-yearly verification that a participant still qualifies for the plan.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this proposed committee bill does not expand the existing public records exemption, passage is not subject to the two-thirds vote requirement by both houses of the Legislature. The bill complies with the requirement of Article I, section 24 of the State Constitution that public records and meetings exemptions may only be addressed in legislation separate from substantive changes in law.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01615A-12

20127192__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 364.107, F.S., relating to an exemption from public records requirements for personal identifying information of Lifeline Assistance Plan participants; providing a penalty for intentional disclosure of confidential and exempt information by an officer or employee of the Public Service Commission; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 364.107, Florida Statutes, is amended to read:

364.107 Public records exemption; Lifeline Assistance Plan participants.—

(1) Personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan under s. 364.10 held by the Public Service Commission is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Information made confidential and exempt under subsection (1) may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

585-01615A-12

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(3) (a) An officer or employee of a telecommunications carrier shall not intentionally disclose information made confidential and exempt under subsection (1), except as:

1. Authorized by the customer;

2. Necessary for billing purposes;

3. Required by subpoena, court order, or other process of court;

4. Necessary to disclose to an agency as defined in s. 119.011 or a governmental entity for purposes directly connected with implementing service for, or verifying eligibility of, a participant in a Lifeline Assistance Plan or auditing a Lifeline Assistance Plan; or

5. Otherwise authorized by law.

(b) Nothing in this section precludes a telecommunications carrier from disclosing information made confidential and exempt under subsection (1) to the extent such information is otherwise publicly available or from disclosing to a customer his or her own account record through telephonic means.

(4)(e) Any officer or employee of a telecommunications carrier or of the Public Service Commission who intentionally discloses information in violation of this section ~~paragraph (a)~~ commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7194

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: OGSR/U.S. Census Bureau Address Information

DATE: January 24, 2012

REVISED: _____

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

I. Summary:

This proposed committee bill is the result of the Governmental Oversight and Accountability Committee's Open Government Sunset Review of the public records exemption for United States Census Bureau address information held by an agency pursuant to the Local Update of Census Address (LUCA) Program. This public records exemption will expire October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. The Sunset Review recommended that this public records exemption be repealed as the U.S. Census Bureau has ended the LUCA Program.

This bill repeals Section 119.071 of the Florida Statutes.

II. Present Situation:

Florida's Public Records Law

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

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body,

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

² FLA. CONST. art. I, s. 24.

officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

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

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

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

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

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

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

³ Chapter 119, F.S.

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

⁵ Section 119.011(12), F.S.

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

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

⁸ Florida Attorney General Opinion 85-62.

disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

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

Open Government Sunset Review Act

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

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

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

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

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

¹⁰ *Supra* fn. 1.

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

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

¹³ *Supra* fn. 1.

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

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

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

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

Local Update of Census Address Program

The Local Update of Census Addresses Program (LUCA Program) was a decennial census geographic partnership program designed to allow the United States Census Bureau to benefit from local knowledge in developing its Master Address File¹⁸ for the 2010 census.¹⁹ The LUCA Program was made possible by the Census Address List Improvement Act of 1994, which authorizes designated representatives of local and tribal governments to review the Master Address File.²⁰

The LUCA Program required that participating governments designate a LUCA liaison to review the portion of the census address list covering the area under the participating government's jurisdiction.²¹ The LUCA liaison was subject to the same confidentiality requirements as census workers and was prohibited from disclosing census information.²² LUCA Program participants

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

¹⁸ The Master Address File is an inventory of all addresses and physical/location descriptions assembled by the Census Bureau, including their geographic locations, and serves as the source of addresses for mailing and delivering decennial census forms and for physically locating the addresses when necessary. See Prepared Statement of Robert M. Groves, Director of the U.S. Census Bureau, *2010 Census: Master Address File, Issues and Concerns*, http://www.census.gov/newsroom/releases/pdf/Groves_House_Testimony_10-21_Final.pdf (last viewed Jan. 18, 2012).

¹⁹ U.S. Census Bureau, *2010 Decennial Census Local Update of Census Addresses (LUCA)*, <http://www.census.gov/geo/www/luca2010/luca.html> (last viewed Jan. 18, 2012).

²⁰ Public Law 103-430.

²¹ U.S. Census Bureau, *Overview of the 2010 Decennial Census LUCA Program*, http://www.census.gov/geo/www/luca2010/luca_ov.html (last viewed Jan. 18, 2012).

²² Federal law requires the U.S. Census Bureau to maintain the confidentiality of certain information that it collects. This confidentiality helps to ensure that the bureau maintains the most accurate data possible. To uphold the law, the bureau requires that all individuals who work with the confidential information must abide by a confidentiality and security

were required to review a set of security guidelines and to sign a confidentiality agreement promising to protect the confidential address list, which included corresponding maps and address tallies.²³

The LUCA Program provided clear guidelines for local government participation and confidentiality; however, the federal law was less clear regarding confidentiality at the state level. Therefore, the Legislature created the public records exemption under review.²⁴

The LUCA Program officially ended as of March 31, 2010.²⁵ Therefore, there is no need to continue the associated public-records exemption for United States Census Bureau address information held by an agency pursuant to the LUCA Program. The United States Census Bureau is currently working on a Geographic Support System Initiative in support of the 2020 Census to improve address coverage, continually update spatial features, and enhance quality assessment and measurement.²⁶

III. Effect of Proposed Changes:

Section 1 repeals s. 119.071, F.S., relating to the public records exemption for U.S. Census Bureau address information held by an agency pursuant to the Local Update of Census Address Program.

Section 2 provides that this act takes effect immediately 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.

agreement. Title 13 of the United States Code provides for the confidential treatment of census-related information. Census information includes: everything on a completed or partially completed questionnaire or obtained in a personal or telephone interview; individual addresses maintained by the LUCA Program liaisons review; and maps that identify the location of individual housing units and/or group quarters.

²³ U.S. Census Bureau, *Overview of the 2010 Decennial Census LUCA Program*, http://www.census.gov/geo/www/luca2010/luca_ov.html (last viewed Jan. 18, 2012).

²⁴ Chapter 2007-250, Laws of Florida.

²⁵ U.S. Census Bureau, *LUCA Closeout Phase*, http://www.census.gov/geo/www/luca2010/luca_co.html (last viewed Jan. 18, 2012).

²⁶ U.S. Census Bureau, *Geographic Support System (GSS) Initiative*, <http://www.census.gov/geo/www/gss/index.html> (last viewed Jan. 18, 2012).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01599-12

20127194__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; repealing s. 119.071(1)(g), F.S., which provides a public records exemption for United States Census Bureau address information; providing an effective date.

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

Section 1. Paragraph (g) of subsection (1) of section 119.071, Florida Statutes, is repealed.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7196

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: State Employment

DATE: January 24, 2012

REVISED: _____

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

I. Summary:

This bill is comprised of the Department of Management Services' legislative package for the Department's Division of Human Resource Management. The bill makes numerous changes to the state employment statutes contained in Chapters 110 and 112 of the Florida Statutes. The bill includes a reorganization of the statutes governing state employment, making predominantly technical and clarifying changes. Some of the more notable changes include:

- Permitting the Department of Management Services to charge any state government entity outside the State Personnel System who receives or utilizes services of more than a *de minimis* value from the People First System;
- Modifying language relating to the implementation of furloughs;
- Providing a \$1000 cap on bonus payments to an employee per fiscal year;
- Removing the 1,040 hour annual cap for OPS employees;
- Transferring the administration of the alternative retirement benefit program for OPS employees from the Department of Management Services to the Department of Financial Services;
- Clarifying the pay additive implementation process;
- Providing agencies with greater flexibility to implement telework plans;
- Replacing references to the "Career Service" with "Civil Service" to comport with the language in Article III, Section 14 of the State Constitution;
- Removing Administration Commission rule approval requirement for six provisions currently in statute;
- Removing language allowing career service employees serving in a probationary period in a position to which he or she has been promoted to be removed from the promotional position

anytime during the probationary period but must be returned to his or her former position, or a comparable position, if such a position remains vacant;

- Defining the “State Personnel System”; and
- Removing a statutory provision allowing Career Service employees to retain regular or special compensatory leave credits upon appointment to a Selected Exempt Service position.

This bill amends the following sections of the Florida Statutes: 110.105, 110.1056, 110.1099, 110.112, 110.116, 110.1245, 110.125, 110.126, 110.127, 110.205, 110.211, 110.213, 110.2135, 110.215, 110.217, 110.219, 110.221, 110.224, 110.227, 110.401, 110.402, 110.403, 11.13, 20.055, 20.21, 20.23, 20.255, 24.105, 24.122, 30.071, 43.16, 104.31, 106.24, 112.044, 112.0805, 112.313, 112.3145, 112.363, 121.021, 121.051, 121.055, 121.35, 145.19, 216.011, 216.181, 260.0125, 287.175, 295.07, 295.09, 296.04, 296.34, 381.00315, 381.85, 394.47865, 402.3057, 402.55, 402.7305, 402.731, 409.1757, 409.9205, 414.37, 427.012, 440.102, 447.203, 447.203, 447.207, 447.209, 447.401, 456.048, 551.116, 570.07, 601.10, 624.307, 624.437, 627.6488, 627.649, 627.6498, 627.6617, 627.6686, 849.086, 943.0585, 943.059, 945.043, 946.525, 985.045, 1001.705, 1001.706, 1001.74, 1002.36, 1012.62, 1012.79, 1012.88, and 1012.96.

This bill transfers, renumbers, and amends the following sections of the Florida Statutes: 110.107, 110.405, 110.233, 110.235, 110.2037, 110.601, 110.602, 110.605, 110.131, 110.1315, 110.1221, 110.122, 110.121, 110.119, 110.120, 110.1091, 110.151, 110.1225, 110.1155, 110.191, 110.1082, 110.1165, 110.113, 110.1127, 110.117, 110.1227, 110.1228, 110.123, 110.12301, 110.12312, 110.1232, 110.161, 110.501, 110.502, 110.503, and 110.504.

This bill transfers and renumbers the following sections of the Florida Statutes: 110.1128, 110.181, 110.114, 110.1156, 110.12302, 110.12315, 110.1234, 110.1238, and 110.1239.

This bill creates the following sections of the Florida Statutes: 110.1065, 110.1135, 110.183, 110.184, 110.202, 110.208, 110.2085, 110.3023, 110.4035, 112.906, 112.910, 112.911, 112.927, 112.930, 112.931, 112.933, 112.952, and 112.965,

This bill repeals the following sections of the Florida Statutes: 110.115, 110.118, 110.124, 110.129, 110.1521, 110.1522, 110.1523, 110.171, 110.201, 110.2035, 110.21, 110.406, 110.603, 110.604, and 110.606.

II. Present Situation:

Department of Management Services

The Department of Management Services (DMS) is the state’s chief agency responsible for the administration of the state employment system. The 1992 legislature created DMS by consolidating the Department of Administration and the Department of General Services.¹ The Department’s Division of Human Resource Management provides human resource policies, practices and strategies to State Personnel System agencies.² Individual agencies retain authority to customize the guidance to suit their department’s needs.

¹ Chapter 92-279, Laws of Florida.

² Division of Human Resource Management, Department of Management Services, http://www.dms.myflorida.com/human_resource_support/human_resource_management (last visited Jan. 17, 2012).

State employees belong to various personnel systems, with each system having its own rules and regulations, collective bargaining agreements and wage and benefit packages. The six primary state government employers include the State Personnel System (SPS), the State Universities, the Justice Administration System, the State Courts System, the Legislature, and the Florida Lottery. The SPS consists of employees in the Career Service, the Selected Exempt Service, and the Senior Management Service. The SPS is the largest state government employer, consisting of roughly 65 percent of all state employees.³ The majority of the positions within the SPS fall within the Career Service.⁴

“Service First” Legislation

The most recent set of significant changes to the statutes governing the state employment system occurred during the 2001 legislative session. That year, the Legislature enacted numerous changes to Chapters 110 and 112 through the *Service First* initiative.⁵ Those changes removed designated positions from the civil service; increased benefit compensation for named, exempt positions; banned political considerations in civil service actions; altered appellate rights in personnel disciplinary cases; and made retention decisions during reduction in force actions a function of overall fitness considerations rather than longevity of prior employment. In the years following enactment of the *Service First* legislation, several inefficient practices and procedures have developed that require revisions to the current statutory authority.

Furloughs

A furlough is a temporary reduction in the regular hours of employment in a pay period, or temporary leave without pay for one or more pay periods, with a commensurate reduction in pay.⁶ State agencies are permitted to impose furloughs on employees in response to a projected deficit in funds that support salary and benefit costs.⁷ Agencies may only furlough employees when the Revenue Estimating Conference projects a deficit.⁸ As the Florida Constitution requires the State to have a balanced budget each fiscal year, a formal deficit never exists. Despite budget shortfalls in recent fiscal years, agencies have not been able to implement furloughs due to the current statutory language.

Transfer of Accumulated Compensatory Leave

Compensatory leave is earned for time worked in excess of the standard 40 hour week. The compensatory leave earned may be transferred across state agencies as employees change locations and employers. As a result of the 2001 *Service First* legislation, several thousand Career Service employees had their positions involuntarily moved from the Career Service to the Selected Exempt Service. As employees were moved into different personnel systems, the value

³ Department of Management Services, Division of Human Resource Management, Fiscal Year 2010-2011 Annual Workforce Report (at pg. 14), available at http://www.dms.myflorida.com/human_resource_support/human_resource_management.

⁴ *Id.* at 17.

⁵ Chapter 2001-43, Laws of Florida.

⁶ Section 110.107(3), F.S.

⁷ *Id.*

⁸ *Id.*

of their previously accumulated leave was also moved. This statutory provision was intended to be a temporary measure during the *Service First* implementation to prevent loss of compensatory leave credits for the large number of Career Service employees whose positions were involuntarily transferred to the Selected Exempt Service. As a result, the special compensatory leave could be paid at the later, potentially higher rate rather than based on the employee's rate of pay when the compensatory leave was actually earned.

Bonus Payments and Other Rewards

Section 110.1245, F.S., allows for department heads to authorize expenditures for awards such as framed certificates, pins, or other tokens to state employees who have demonstrated satisfactory service to the agency or to the state. These awards currently may not exceed \$100 per employee.⁹ Currently, there is no cap on the number of \$100 awards that can be given to an employee in a fiscal year. The cost of discretionary awards are absorbed through the agency's existing budget and do not require additional appropriations.

Administrative Costs and Human Resource Information System

People First is the State of Florida's web-based personnel information system and online suite of human resources services. The system accommodates state agency functions including payroll preparation, attendance and leave, recruitment, benefits administration, human resources management, and organizational management.

The Department of Management Services has direct oversight over the state's People First contract. Currently, the administrative costs of the People First system are primarily funded by State Personnel System agencies. Although the People First system is funded through only State Personnel System agencies, many other governmental entities are currently using the system without paying any charge.

Other Personal Services (OPS) Employment

Agencies may hire individuals in other personal services (OPS) temporary employment when certain vacancies exist. Section 110.131(1), F.S. establishes a 1,040 hour annual cap for each OPS employee. Any extension beyond the 1,040 hour limitation for each individual requires a recommendation by the agency head and approval by the Executive Office of the Governor.¹⁰ The Department of Management Services is required to perform an annual review to assess agencies for the regulation of other personal services employment.¹¹

Agencies have the option of offering alternative retirement benefits to OPS employees. Individual agencies may implement an alternative retirement income security program for OPS employees upon review and recommendation of the Department of Management Services and the Governor.

⁹ Section 110.1245(3)-(5), F.S.

¹⁰ Section 110.131(2), F.S.

¹¹ Section 110.131(7), F.S.

Pay Additives

State Personnel System agencies are permitted to use pay additives. Pay additives include: shift differentials; on-call fees; hazardous-duty pay; salary increase and decrease corrections; lead-worker pay; temporary special duties pay; trainer-additive pay; competitive area differentials; and critical market pay.¹² The pay additives must be consistent with Department of Management Services' guidelines and the directions of the Legislature contained in the General Appropriations Act.¹³

The employing agency must notify the Department of Management Services, the Executive Office of the Governor, and the Legislature by writing of the plan to implement any pay additives before any scheduled start date.¹⁴ Agencies are restricted from implementing any pay additives unless the Legislature has specifically authorized the specific pay additives and their implementation do not conflict with any collective bargaining agreements.¹⁵

Probationary Employees

Any employee who has satisfactorily completed at least a 1-year probationary period in his or her current position may be suspended or dismissed only for cause.¹⁶ Career service employees are subject to suspension, reduction in pay, transfer, layoff, demotion, and dismissal.¹⁷ Current law prescribes that cause includes, but is not limited to, poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.¹⁸ The Department of Management Services has established rules and procedures governing the probation of Career Service employees.¹⁹

The 2008 Legislature passed legislation enabling career service employees serving in a probationary period in a position to which he or she has been promoted to be removed from the promotional position anytime during the probationary period but must be returned to his or her former position, or a comparable position, if such a position remains vacant.²⁰

Rulemaking

The Administration Commission is comprised of the Governor and the three members of the Cabinet.²¹ The Administration Commission is currently responsible for approving several rules grounded in Chapter 110 of the Florida Statutes – those rules relate to suspensions, dismissals, reductions in pay, demotions, layoffs, transfers and grievances. The Administration Commission

¹² Section 110.2035(6)(c), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 110.227(1), F.S.

¹⁷ Section 110.227(2)(a), F.S.

¹⁸ Section 110.227(1), F.S.

¹⁹ Section 110.227(2)(a), F.S.

²⁰ Section 1, ch. 2008-126, L.O.F.; Section 110.227(8), F.S.

²¹ Section 14.202, F.S.

rule approval requirement is a vestige from the period in which the courts and universities were included in the State Personnel System.

III. Effect of Proposed Changes:

Section 1 provides a directive to the Division of Statutory Revision to rename Chapter 110, F.S. as “State Personnel System.”

Section 2 provides a directive to the Division of Statutory Revision to rename part I of Chapter 110, F.S., as “General Provisions.”

Section 3 amends s. 110.105, F.S., establishing that the purpose of Chapter 110, F.S. is to establish the State Personnel System; removing provisions relating to discrimination, Florida residency requirements, and protection of rights guaranteed under Chapter 447, F.S. that are moved to s. 110.1065, F.S.

Section 4 transfers, renumbers, reorders, and amends s. 110.107, F.S. to s. 110.1054, F.S., revising numerous definitions used in Chapter 110, F.S. for clarifications and to reflect the renaming of the “Career Service System” to the “Civil Service System.”

Section 5 amends s. 110.1055, F.S., requiring the Department of Management Services to develop uniform personnel rules, guidelines, and reports; granting rulemaking authority to the Department of Management Services that provides alternative requirements to the uniform rules; providing that each state agency must apply the uniform personnel rules; providing exceptions to uniform personnel rule compliance; allowing the Department of Management Services to develop uniform forms and instructions relating to personnel transactions as deemed necessary

Section 6 creates s. 110.1056, F.S., providing that the Department of Management Services may periodically audit agency records to determine compliance with Chapter 110, F.S. and department rules.

Section 7 transfers, renumbers, and amends s. 110.405, F.S. to s. 110.106, F.S., clarifying language governing advisory committees organized by the Secretary of Management Services to provide consultation on matters affecting the State Personnel System.

Section 8 creates s. 110.1065, F.S., establishing the general employment policies and requirements of the State Personnel System; granting rulemaking authority to the Department of Management Services to administer this section.

Section 9 transfers, renumbers, and amends s. 110.233, F.S. to s. 110.1075, F.S., replacing references to the “Career Service” with “Civil Service”; granting rulemaking authority to the Department of Management Services to administer this section.

Section 10 amends s. 110.1099, F.S., clarifying language relating to elective education and professional development opportunities for state employees.

Section 11 transfers, renumbers, and amends s. 110.235, F.S. to s. 110.1115, F.S., providing that state agencies shall implement professional development programs for employees; providing that state agencies shall provide requested information to the Department of Management Services; specifying subjects for training programs administered by each agency; providing that each individual agency is responsible for ensuring that personnel are trained in the administration of state personnel system policies and procedures; permitting the Department of Management Services to coordinate with state universities and community colleges to sponsor conferences relating to human resources management; permitting the Department of Management Services to open such conferences to state and local public employers with common interests; granting rulemaking authority to the Department of Management Services to administer this section.

Section 12 amends s. 110.112, F.S., removing the Administration Commission approval requirement for agencies' affirmative action plans; requiring the Department of Management Services to include the demographic composition of the State Personnel System in its annual workforce report; requiring agencies to provide the Department of Management Services data regarding the demographic composition of their employees; requiring each state agency to ensure freedom from discrimination in employment through application of relevant state and federal laws; requiring the phrase "An Equal Opportunity Provider" be included in all recruitment literature listing State Personnel System vacancies; granting rulemaking authority to the Department of Management Services to administer this section.

Section 13 creates s. 110.1135, F.S., requiring each state agency to keep accurate records of all hours of work performed and any authorized leave taken by each employee; specifying that the ultimate responsibility for the accuracy and maintenance of attendance and leave records lies with the agency head.

Section 14 amends s. 110.116, F.S., replacing references to the "Career Service" with "Civil Service"; replacing references to the "personnel information system" with "human resources information system"; granting rulemaking authority to the Department of Management Services to administer this section.

Section 15 amends s. 110.1245, F.S., removing references to government employers outside the State Personnel System; providing that state agencies may pay employees bonuses in accordance with criteria and instructions included in the annual General Appropriations Act; providing that an employee may not receive bonus awards totaling more than \$1,000 per fiscal year; requiring agencies to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the dollar value and number of such cash awards given in the previous fiscal year by September 1st of each year; allowing agency heads to issue noncash tokens of recognition to employees not exceeding \$150; specifying which classes of employees are eligible to receive noncash tokens of recognition.

Section 16 amends s. 110.125, F.S., providing that administrative expenses and costs paid by individual state agencies to be based on the number of authorized full-time equivalent positions appropriated to the agency, the average number of OPS employees paid by the agency, and the total administrative expenses and costs of operating the State Personnel System; specifying that governmental entities outside the State Personnel System that use or receive services from the personnel system must pay the Department of Management Services any resulting administrative

expenses and costs; granting rulemaking authority to the Department of Management Services to administer this section.

Section 17 amends s. 110.126, F.S., providing that the Department of Management Services may compel records in written or electronic form relevant to any investigation of personnel practices or hearing authorized by Chapter 110, F.S.; granting rulemaking authority to the Department of Management Services to administer this section.

Section 18 amends s. 110.127, F.S., simplifying language relating to already-existing penalties for any person who willfully violates a provision of Ch. 110, F.S.; granting rulemaking authority to the Department of Management Services to administer this section.

Section 19 transfers, renumbers, and amends s. 110.2037 to s. 110.182, F.S., clarifying provisions relating to tax-sheltered annual leave and sick leave payments and special compensation payments; correcting cross-references; granting rulemaking authority to the Department of Management Services to administer this section.

Section 20 creates s. 110.183, F.S., relating to coordination on collective bargaining between the Department of Management Services and the Governor's office and other state agencies. This provision is currently found in s. 110.201(4), F.S.

Section 21 creates s. 110.184, F.S., requiring the Department of Management Services to prepare an annual workforce report on human resources in the State Personnel System; specifying that the Department of Management Services shall annually submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 22 provides a directive to the Division of Statutory Revision to rename part II of Chapter 110, F.S., as "Civil Service."

Section 23 creates s. 110.202, F.S., creating the Civil Service System within the State Personnel System to comport with s. 14, Art. III of the State Constitution.

Section 24 amends s. 110.205, F.S., changing references to the "Career Service System" to the "Civil Service System"; specifying positions and classes of employees that are exempt from the Civil Service; granting rulemaking authority to the Department of Management Services to administer this section; deleting provision allowing Career Service employees to retain all unused annual, sick, and compensatory leave upon appointment to a Selected Exempt Service position.

Section 25 creates s. 110.208, F.S., requiring the Department of Management Services to establish and operate a uniform classification system of all Civil Service positions; specifying specific criteria and requirements governing the creation and administration of the uniform classification system; granting rulemaking authority to the Department of Management Services to administer the classification system; providing that state agencies are responsible for the daily application of the classification system.

Section 26 creates s. 110.2085, F.S., requiring the Department of Management Services to establish and maintain a pay plan for the Civil Service System; permitting the Department of Management Services to conduct compensation surveys in consultation with the Executive Office of the Governor and the legislative appropriations committees; granting rulemaking authority to the Department of Management Services for the administration of pay additives; establishing authorized pay additives; requiring each state agency to include an implementation plan for pay additives in its annual legislative budget request; providing that any revisions to an approved pay additive implementation plan must be approved by the Executive Office of the Governor; requiring that new competitive area differentials or a new critical market pay additive may not be implemented by agencies unless express authority is granted by the Legislative and is reviewed and recommended by the Department of Management Services; requiring the Department of Management Services to provide an annual report on pay additives to the Governor and the Legislature; granting rulemaking authority to DMS to administer this section.

Section 27 amends s. 110.211, F.S., clarifying language relating to recruitment of prospective employees; granting rulemaking authority to DMS to administer this section.

Section 28 amends s. 110.213, F.S., clarifying language relating to selection of candidates; granting rulemaking authority to DMS to administer this section.

Section 29 amends s. 110.2135, F.S., clarifying language relating to veterans' preference practices; granting rulemaking authority to DMS to administer this section.

Section 30 amends s. 110.215, F.S., changing references to the "Career Service System" to the "Civil Service System"; granting rulemaking authority to DMS to administer this section.

Section 31 amends s. 110.217, F.S., removing requirement for uniform rule approval by the Administration Commission; clarifying language relating to appointments.

Section 32 amends s. 110.219, F.S., clarifying language relating to attendance and leave of employees; changing references to the "Career Service" to the "Civil Service."

Section 33 amends s. 110.221, F.S., clarifying language relating to parental or family medical leave; changing references to the "Career Service" to the "Civil Service"; granting rulemaking authority to DMS to administer this section.

Section 34 amends s. 110.224, F.S., clarifying language relating to the Employee Performance Evaluation System.

Section 35 amends s. 110.227, F.S., removing requirement for rule approval by the Administration Commission; clarifying language relating to suspensions and dismissals; changing references to the "Career Service" to the "Civil Service"; clarifying that appeal rights under this section are not available to employees who attained merit status in a previous position; removing language that a Career Service employee serving a probationary period in a promotional position must be returned to their former or comparable position if removed; granting rulemaking authority to DMS to administer this section.

Section 36 provides a directive to the Division of Statutory Revision to renumber part V of Chapter 110, F.S., as part III and to rename that part as “Selected Exempt Service.”

Section 37 transfers, renumbers, and amends s. 110.601, F.S. to s. 110.302, F.S., clarifying language relating to the declaration of policy of the State Personnel System.

Section 38 transfers, renumbers, and amends s. 110.602, F.S. to s. 110.3021, F.S., clarifying language relating to the Selected Exempt Service; providing that employees in the Selected Exempt Service serve at the pleasure of their agency head.

Section 39 transfers, renumbers, and amends s. 110.605, F.S. to s. 110.3022, F.S., establishing that DMS is responsible for the policy administration of the Selected Exempt Service, providing that rules adopted by DMS are to comply with federal regulations to allow agencies to receive federal funds; providing that agencies must comply with the uniform personnel rules adopted by DMS; requiring that each agency maintain up-to-date records and reports in accordance with applicable rules.

Section 40 creates s. 110.3023, F.S., providing that each agency is responsible for creating a process for employing, advancing, and deploying selected exempt service staff; providing criteria for agencies if a multistate search is necessary to fill a position.

Section 41 provides a directive to the Division of Statutory Revision to renumber part III of Chapter 110, F.S., as part IV and to rename that part as “Senior Management Service.”

Section 42 amends s. 110.401, F.S., clarifying language relating to the declaration of policy of the Senior Management Service.

Section 43 amends s. 110.402, F.S., clarifying language relating to the creation of the Senior Management Service; transferring language providing that employees in the Senior Management Service serve at the pleasure of the agency head previously in s. 110.403(1)(a), F.S.

Section 44 amends s. 110.403, F.S., establishing that DMS is responsible for the policy administration of the Senior Management Service, providing that DMS may not approve any Senior Management Service position that exceeds the limitation; establishing that DMS is to provide market-based pay bands for Senior Management Service positions; providing that DMS may conduct compensation surveys; providing that DMS shall establish a performance evaluation system for Senior Management Service employees; providing that rules adopted by DMS are to comply with federal regulations to allow agencies to receive federal funds; providing that agencies must comply with the uniform personnel rules adopted by DMS; requiring that each agency maintain up-to-date records and reports in accordance with applicable rules.

Section 45 creates s. 110.4035, F.S., providing that each agency is responsible for creating a process for employing, advancing, and deploying executive level managers; providing criteria for agencies if a multistate search is necessary to fill a position.

Section 46 provides a directive to the Division of Statutory Revision to create part IX of Chapter 112, F.S. and to name that part as “State Employment.”

Section 47 creates s. 112.906, F.S., establishes definitions to be used within part IX of Chapter 112, F.S.

Section 48 transfers, renumbers, and amends s. 110.131, F.S., to s. 112.907, F.S., clarifying language relating to Other Personal Services (OPS) employment; removing 1,040 hour limitation for OPS employees; granting rulemaking authority to authorized agencies to administer this section.

Section 49 transfers, renumbers, and amends s. 110.1315, F.S., to s. 112.908, F.S., clarifying language relating to Alternative Retirement Benefits for OPS employees; establishing that the Department of Financial Services (DFS) shall provide the alternative retirement program for OPS employees; granting rulemaking authority to DFS to administer this section.

Section 50 transfers and renumbers s. 110.1128, F.S. to s. 112.909, F.S.

Section 51 creates s. 112.910, F.S., relating to equal employment opportunity policy of the state. This language is transferred from its current location in s. 110.112, F.S.

Section 52 creates s. 112.911, F.S., establishing the policy of nondiscrimination in employment.

Section 53 transfers, renumbers, and amends s. 110.1221, F.S. to s. 112.912, F.S., providing that each agency that has authority to adopt rules governing the terms and conditions of employment shall adopt uniform sexual harassment rules.

Section 54 transfers, renumbers, and amends s. 110.122, F.S. to s. 112.913, F.S., clarifying language relating to the terminal payment for accumulated sick leave; providing that each employing entity is responsible for the maintenance of sick leave records for its employees; requiring that rules and policies must provide terminal pay for sick leave equal to one-fourth of all unused sick leave credit.

Section 55 transfers, renumbers, and amends s. 110.121, F.S. to s. 112.914, F.S., clarifying language relating to sick leave pools.

Section 56 transfers, renumbers, and amends s. 110.119, F.S. to s. 112.915, F.S., providing that paid leave for a military-service connected disability may not exceed 48 hours per calendar year; removing rulemaking authority to DMS to administer this section.

Section 57 transfers, renumbers, and amends s. 110.120, F.S. to s. 112.916, F.S., clarifying language relating to administrative leave for disaster service volunteers.

Section 58 transfers, renumbers, and amends s. 110.1091, F.S. to s. 112.917, F.S., clarifying language relating to a public records exemption for employee assistance programs.

Section 59 transfers, renumbers, and amends s. 110.151, F.S. to s. 112.918, F.S., clarifying language relating to child care services for agency employees' children or dependents.

Section 60 transfers and renumbers s. 110.181, F.S. to s. 112.919, F.S.

Section 61 transfers, renumbers, and amends s. 110.1225, F.S. to s. 112.920, F.S., clarifying language relating to furloughs; removing reference to the Revenue Estimating Conference; providing that an agency may submit a furlough plan to the Legislative Budget Commission in the event of a deficit; requiring that an agency may only submit a furlough plan after approval by the Governor or the Chief Justice of the Supreme Court; providing that agencies may also impose furloughs as directed by the Legislature in the General Appropriations Act.

Section 62 transfers and renumbers s. 110.1155, F.S. to 112.922, F.S.

Section 63 transfers, renumbers, and amends s. 110.191, F.S. to s. 112.922, F.S., clarifying language relating to state employee leasing.

Section 64 transfers, renumbers, and amends s. 110.1082, F.S. to s. 112.923, F.S., clarifying language relating to telephone system use by state employees.

Section 65 transfers, renumbers, and amends s. 110.1165, F.S. to s. 112.924, F.S., clarifying language relating to executive branch personnel errors.

Section 66 transfers, renumbers, and amends s. 110.113, F.S. to s. 112.925, F.S., clarifying language relating to pay periods for state officers and employees and salary payments by direct deposit.

Section 67 transfers and renumbers s. 110.114, F.S. to s. 112.926, F.S.

Section 68 creates s. 112.927, F.S., allowing DMS to contract with other agencies or government entities to establish and maintain positions and use the Human Resource Information System; establishing that the use and operation of the Human Resource Information System is based upon design rules set by DMS; providing that other agencies may be required to conform their human resource rules and practices to conform to those governing the Human Resource Information System.

Section 69 transfers, renumbers, and amends s. 110.1127, F.S. to s. 112.928, F.S., clarifying language relating to employee background screening and investigation; providing that agencies designate which positions require security background screening.

Section 70 transfers, renumbers, and amends s. 110.117, F.S. to s. 112.929, F.S., providing that each full-time employee is entitled to one personal day each year, providing that the personal day must be taken on a whole day and may not be used incrementally; clarifying that OPS employees are not eligible for paid holidays or a personal day.

Section 71 creates s. 112.930, F.S., providing a definition of “telework”, requiring agencies to designate positions that are deemed appropriate for telework; requiring agencies to develop a telework plan that includes telework policies and procedures, providing minimum requirements for an agency telework plan; granting rulemaking authority to administer this section to each agency authorized to adopt rules governing the terms and conditions of employment.

Section 72 creates s. 112.931, F.S., relating to the savings sharing program; requiring DMS and the judicial branch to provide an annual report on the program to the President of the Senate and the Speaker of the House of Representatives.

Section 73 transfers and renumbers s. 110.1156, F.S. to s. 112.932, F.S.

Section 74 creates s. 112.933, F.S., relating to penalties. This is an already-existing penalty that is moved from Chapter 110 to Chapter 112 to correspond with the reorganization to the state employment statutes that this bill accomplishes.

Section 75 provides a directive to the Division of Statutory Revision to create Part X of Chapter 112, F.S. and to name that part “State Administered Benefits.”

Section 76 transfers, renumbers, and amends s. 110.1227, F.S. to s. 112.940, F.S., clarifying language relating to the Florida Employee Long-Term-Care Plan Act.

Section 77 transfers, renumbers, and amends s. 110.1228, F.S. to s. 112.941, F.S., correcting cross-references.

Section 78 transfers, renumbers, and amends s. 110.123, F.S. to s. 112.942, F.S., clarifying language relating to the State Group Insurance Program; changing references to the “Career Service” to the “Civil Service.”

Section 79 transfers, renumbers, and amends s. 110.12301, F.S. to s. 112.943, F.S., correcting a cross-reference.

Section 80 transfers and renumbers s. 110.12302, F.S. to s. 112.944, F.S.

Section 81 transfers, renumbers, and amends s. 110.12312, F.S. to s. 112.945, F.S., correcting a cross-reference.

Section 82 transfers and renumbers s. 110.12315, F.S. to s. 112.946, F.S.

Section 83 transfers, renumbers, and amends s. 110.1232, F.S. to s. 112.947, F.S., correcting a cross-reference.

Section 84 transfers and renumbers s. 110.1234, F.S. to s. 112.948, F.S.

Section 85 transfers and renumbers s. 110.1238, F.S. to s. 112.949, F.S.

Section 86 transfers and renumbers s. 110.1239, F.S. to s. 112.950, F.S.

Section 87 transfers, renumbers, and amends s. 110.161, F.S. to s. 112.951, F.S., correcting a cross-reference.

Section 88 creates s. 112.952, F.S., relating to penalties. This is an already-existing penalty that is moved from Chapter 110 to Chapter 112 to correspond with the reorganization to the state employment statutes that this bill accomplishes.

Section 89 provides a directive to the Division of Statutory Revision to renumber part IV of Chapter 110, F.S. as part XI, and to rename that part as “State Volunteer Services.”

Section 90 transfers, renumbers, and amends s. 110.501, F.S. to s. 112.961, F.S., clarifying definitions related to State Volunteer Services.

Section 91 transfers, renumbers, and amends s. 110.502, F.S. to s. 112.962, F.S., clarifying language relating to the Domestic Volunteer Service Act; providing that volunteers may be required by the agency to submit to security background screenings; correcting cross-references.

Section 92 transfers, renumbers, and amends s. 110.503, F.S. to s. 112.963, F.S., clarifying the responsibilities of state agencies using volunteer services; providing that agencies must provide volunteers with the agency’s policies and procedures applicable to their volunteer activities; providing that a state employee’s volunteer activities are not considered volunteer work if work requires payment for overtime in accordance with the Fair Labor Standards Act.

Section 93 transfers, renumbers, and amends s. 110.504, F.S. to s. 112.964, F.S., clarifying language relating to volunteer benefits.

Section 94 creates s. 112.965, F.S., relating to penalties. This is an already-existing penalty that is moved from Chapter 110 to Chapter 112 to correspond with the reorganization to the state employment statutes that this bill accomplishes.

Section 95 repeals ss. 110.115, 110.118, 110.124, 110.129, 110.1521, 110.1522, 110.1523, 110.171, 110.201, 110.2035, 110.21, 110.406, 110.603, 110.604, and 110.606, F.S.

Sections 96-165 make non-substantive editorial changes, correct cross-references, and change references to the “Career Service” to the “Civil Service.”

Section 166 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. While expanding the People First fee to all agencies utilizing the system may require additional appropriations, it may help lower the system-wide costs borne by the current paying agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00618D-12

20127196

1 A bill to be entitled
 2 An act relating to state employment; providing
 3 directives to the Division of Statutory Revision;
 4 amending s. 110.105, F.S.; revising provisions
 5 relating to the establishment of the State Personnel
 6 System; transferring, renumbering, reordering, and
 7 amending s. 110.107, F.S.; revising definitions
 8 relating to ch. 110, F.S.; amending s. 110.1055, F.S.;
 9 revising the rulemaking authority of the Department of
 10 Management Services; creating s. 110.1056, F.S.;
 11 providing for agency audits to determine compliance
 12 with laws and rules; transferring, renumbering, and
 13 amending s. 110.405, F.S.; revising provisions
 14 relating to the appointment of ad hoc advisory
 15 committees; creating s. 110.1065, F.S.; providing the
 16 employment policies of the State Personnel System;
 17 authorizing the department to adopt rules;
 18 transferring, renumbering, and amending s. 110.233,
 19 F.S.; conforming provisions to changes made by the
 20 act; authorizing the department to adopt rules;
 21 amending s. 110.1099, F.S.; revising provisions
 22 relating to educational opportunities for employees;
 23 transferring, renumbering, and amending s. 110.235,
 24 F.S.; revising provisions relating to training
 25 employees; authorizing the department to adopt rules;
 26 amending s. 110.112, F.S.; revising provisions
 27 relating to equal employment opportunities;
 28 authorizing the department to adopt rules; creating s.
 29 110.1135, F.S.; requiring state agencies to keep

Page 1 of 192

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

585-00618D-12

20127196

30 accurate records of work performed and leave; amending
 31 s. 110.116, F.S.; revising provisions relating to
 32 maintaining human resource information; authorizing
 33 the department to adopt rules; amending s. 110.1245,
 34 F.S.; revising provisions relating to bonuses and
 35 other awards; authorizing the department to adopt
 36 rules; amending s. 110.125, F.S.; revising provisions
 37 relating to payment for the administrative costs of
 38 operating the personnel program; authorizing the
 39 department to adopt rules; amending s. 110.126, F.S.;
 40 revising provisions relating to the department's
 41 authority to administer oaths; authorizing the
 42 department to adopt rules; amending s. 110.127, F.S.;
 43 revising provisions relating to penalties; authorizing
 44 the department to adopt rules; transferring,
 45 renumbering, and amending s. 110.2037, F.S.; revising
 46 provisions relating to tax-sheltered and special
 47 compensation benefits; authorizing the department to
 48 adopt rules; creating s. 110.183, F.S., consisting of
 49 provisions relating to collective bargaining
 50 discussions and providing a public records and public
 51 meetings exemption for those discussions which is
 52 currently contained in and transferred from s.
 53 110.201(4), F.S.; creating s. 110.184, F.S.; revising
 54 provisions relating to the department's annual
 55 workforce report; providing a directive to the
 56 Division of Statutory Revision; creating s. 110.202,
 57 F.S.; providing a declaration of policy with respect
 58 to the establishment of the Civil Service; amending s.

Page 2 of 192

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

585-00618D-12

20127196__

59 110.205, F.S.; revising provisions relating to the
60 list of positions that are exempted from the Civil
61 Service; authorizing the department to adopt rules;
62 creating s. 110.208, F.S.; providing for a uniform
63 classification system for civil service positions;
64 creating s. 110.2085, F.S.; providing a pay plan for
65 civil service positions; authorizing the department to
66 adopt rules; amending s. 110.211, F.S.; revising
67 provisions relating to recruitment; authorizing the
68 department to adopt rules; amending s. 110.213, F.S.;
69 revising provisions relating to selecting a candidate
70 for employment; authorizing the department to adopt
71 rules; amending s. 110.2135, F.S.; revising provisions
72 relating to veterans' preference; authorizing the
73 department to adopt rules; amending s. 110.215, F.S.;
74 revising provisions relating to employing persons with
75 disabilities; authorizing the department to adopt
76 rules; amending s. 110.217, F.S.; revising provisions
77 relating to a change in an employee's position status;
78 amending s. 110.219, F.S.; revising provisions
79 relating to attendance and leave policies; amending s.
80 110.221, F.S.; conforming provisions to changes made
81 by the act; authorizing the department to adopt rules;
82 amending s. 110.224, F.S.; revising provisions
83 relating to employee evaluation; amending s. 110.227,
84 F.S.; revising provisions relating to employee
85 grievances; authorizing the department to adopt rules;
86 providing a directive to the Division of Statutory
87 Revision; transferring, renumbering, and amending s.

585-00618D-12

20127196__

88 110.601, F.S.; revising provisions relating to
89 selected exempt service policy; transferring,
90 renumbering, and amending s. 110.602, F.S.; revising
91 provisions relating to the creation of the Selected
92 Exempt Service; transferring, renumbering, and
93 amending s. 110.605, F.S.; revising provisions
94 relating to the powers and duties of the department;
95 creating s. 110.3023, F.S.; providing for the
96 recruitment of selected exempt service staff;
97 providing a directive to the Division of Statutory
98 Revision; amending s. 110.401, F.S.; revising
99 provisions relating to policies for senior management
100 employees; amending s. 110.402, F.S.; revising
101 provisions relating to the establishment of the Senior
102 Management Service; amending s. 110.403, F.S.;
103 revising provisions relating to the duties of the
104 department with respect to the Senior Management
105 Service; creating s. 110.4035, F.S.; providing
106 recruitment requirements for senior management service
107 employees; providing a directive to the Division of
108 Statutory Revision; creating s. 112.906, F.S.;
109 providing definitions for part IX of ch. 112, F.S.,
110 relating to state employment; transferring,
111 renumbering, and amending s. 110.131, F.S.; revising
112 the duties of state agencies with respect to the
113 employment of personal services employees; authorizing
114 state agencies having rulemaking authority with
115 respect to the conditions of employment to adopt
116 rules; transferring, renumbering and amending s.

585-00618D-12

20127196__

117 110.1315, F.S.; revising a provision relating to other
 118 personal service employment; authorizing the
 119 Department of Financial Services to adopt rules;
 120 transferring and renumbering s. 110.1128, F.S.,
 121 relating to selective service registration; creating
 122 s. 112.910, F.S.; providing for equal employment
 123 opportunity; creating s. 112.911, F.S.; providing for
 124 nondiscrimination in employment; transferring,
 125 renumbering, and amending s. 110.1221, F.S.; revising
 126 provisions relating to the state sexual harassment
 127 policy; transferring, renumbering, and amending s.
 128 110.122, F.S.; revising provisions relating to payment
 129 for sick leave; transferring, renumbering, and
 130 amending s. 110.121, F.S.; revising provisions
 131 relating to the sick leave pool; transferring,
 132 renumbering, and amending s. 110.119, F.S.; revising
 133 provisions relating to administrative leave for a
 134 service-connected disability; transferring,
 135 renumbering, and amending ss. 110.120 and 110.1091,
 136 F.S.; conforming provisions to changes made by the
 137 act; transferring, renumbering, and amending s.
 138 110.151, F.S.; revising provisions relating to child
 139 care services provided by a state agency; transferring
 140 and renumbering s. 110.181, F.S., relating to the
 141 Florida State Employees' Charitable Campaign;
 142 transferring, renumbering, and amending s. 110.1225,
 143 F.S.; revising provisions relating to agency
 144 furloughs; transferring and renumbering s. 110.1155,
 145 F.S., relating to travel to certain countries lacking

585-00618D-12

20127196__

146 diplomatic relations with the United States;
 147 transferring, renumbering, and amending s. 110.191,
 148 F.S.; revising provisions relating to state employee
 149 leasing; transferring, renumbering, and amending s.
 150 110.1082, F.S.; revising provisions related to
 151 telephone use; transferring, renumbering, and amending
 152 s. 110.1165, F.S.; revising provisions relating to
 153 executive branch personnel errors; transferring,
 154 renumbering, and amending s. 110.113, F.S.; revising
 155 provisions relating to pay periods; requiring state
 156 employees to participate in the direct deposit
 157 program; transferring and renumbering s. 110.114,
 158 F.S., relating to employee wage deductions; creating
 159 s. 112.927, F.S.; authorizing the department to use
 160 its human resource information system for resource
 161 functionality; transferring, renumbering, and amending
 162 s. 110.1127, F.S.; revising provisions relating to
 163 background screening; transferring, renumbering, and
 164 amending s. 110.117, F.S.; revising provisions
 165 relating to an employee's personal holiday; creating
 166 s. 112.930, F.S.; providing a telework program;
 167 creating s. 112.931, F.S.; providing requirements for
 168 the savings sharing program; transferring and,
 169 renumbering s. 110.1156, F.S., relating to the export
 170 of goods to countries that support terrorism; creating
 171 s. 112.933, F.S.; providing penalties for violations
 172 relating to state employment; providing a directive to
 173 the Division of Statutory Revision; transferring,
 174 renumbering, and amending s. 110.1227, F.S.;

585-00618D-12

20127196

175 conforming a cross-reference; transferring,
 176 renumbering, and amending s. 110.1228, F.S.;
 177 conforming a cross-reference; transferring,
 178 renumbering, and amending s. 110.123, F.S., relating
 179 to the state group insurance program; conforming
 180 terminology and making editorial changes;
 181 transferring, renumbering, and amending s. 110.12301,
 182 F.S.; conforming a cross-reference; transferring and
 183 renumbering s. 110.12302, F.S., relating to costing
 184 options for state group insurance plans; transferring,
 185 renumbering, and amending s. 110.12312, F.S.;
 186 conforming cross-references; transferring and
 187 renumbering s. 110.12315, F.S., relating to the state
 188 employees' prescription drug program; transferring,
 189 renumbering, and amending s. 110.1232, F.S.;
 190 conforming cross-references; transferring and
 191 renumbering s. 110.1234, F.S., relating to health
 192 insurance for retirees under the Florida Retirement
 193 System; transferring and renumbering s. 110.1238,
 194 F.S., relating to state group health insurance plans;
 195 transferring and renumbering s. 110.1239, F.S.,
 196 relating to funding for the state group health
 197 insurance program; transferring, renumbering, and
 198 amending s. 110.161, F.S.; conforming a cross-
 199 reference; creating s. 112.952, F.S.; providing for
 200 penalties; providing a directive to the Division of
 201 Statutory Revision; transferring, renumbering, and
 202 amending s. 110.501, F.S.; revising definitions
 203 relating to state volunteer services; transferring,

585-00618D-12

20127196

204 renumbering, and amending s. 110.502, F.S.; revising
 205 provisions relating to volunteer status; transferring,
 206 renumbering, and amending s. 110.503, F.S.; revising
 207 provisions relating to state agency responsibilities;
 208 transferring, renumbering, and amending s. 110.504,
 209 F.S.; revising provisions relating to volunteer
 210 benefits; creating s. 112.965, F.S.; providing for
 211 penalties; repealing s. 110.115, F.S., relating to
 212 employees of historical commissions; repealing s.
 213 110.118, F.S., relating to administrative leave for
 214 athletic competitions; repealing s. 110.124, F.S.,
 215 relating to the termination or transfer of employees
 216 65 years of age or older; repealing s. 110.129, F.S.,
 217 relating to technical personnel assistance to
 218 political subdivisions; repealing s. 110.1521, F.S.,
 219 relating to a short title; repealing s. 110.1522,
 220 F.S., relating to a model rule establishing family
 221 support personnel policies; repealing s. 110.1523,
 222 F.S., relating to the adoption of the model rule;
 223 repealing s. 110.171, F.S., relating to telecommuting;
 224 repealing s. 110.201, F.S., relating to personnel
 225 rules, records, and reports; repealing s. 110.2035,
 226 F.S., relating to the classification and compensation
 227 program for employment positions; repealing s. 110.21,
 228 F.S., relating to shared employment; repealing s.
 229 110.406, F.S., relating to senior management service
 230 data collection; repealing s. 110.603, F.S., relating
 231 to a classification plan and pay bands for selected
 232 exempt service positions; repealing s. 110.604, F.S.,

585-00618D-12

20127196

233 relating to certain personnel actions for selected
 234 exempt service employees; repealing s. 110.606, F.S.,
 235 relating to selected exempt service data collection;
 236 amending ss. 11.13, 20.055, 20.21, 20.23, 20.255,
 237 24.105, 24.122, 30.071, 43.16, 104.31, 106.24,
 238 112.044, 112.0805, 112.313, 112.3145, 112.363,
 239 121.021, 121.051, 121.055, 121.35, 145.19, 216.011,
 240 216.181, 260.0125, 287.175, 295.07, 295.09, 296.04,
 241 296.34, 381.00315, 381.85, 394.47865, 402.3057,
 242 402.55, 402.7305, 402.731, 409.1757, 409.9205, 414.37,
 243 427.012, 440.102, 447.203, 447.207, 447.209, 447.401,
 244 456.048, 551.116, 570.07, 601.10, 624.307, 624.437,
 245 627.6488, 627.649, 627.6498, 627.6617, 627.6686,
 246 849.086, 943.0585, 943.059, 945.043, 946.525, 985.045,
 247 1001.705, 1001.706, 1001.74, 1002.36, 1012.62,
 248 1012.79, 1012.88, and 1012.96 F.S.; conforming
 249 provisions to changes made by the act; providing an
 250 effective date.

251
 252 Be It Enacted by the Legislature of the State of Florida:

253
 254 Section 1. The Division of Statutory Revision is requested
 255 to rename chapter 110, Florida Statutes, as "State Personnel
 256 System."

257 Section 2. The Division of Statutory Revision is requested
 258 to rename part I of chapter 110, Florida Statutes, as "General
 259 Provisions."

260 Section 3. Section 110.105, Florida Statutes, is amended to
 261 read:

585-00618D-12

20127196

262 110.105 Establishment of the State Personnel System
 263 Employment policy of the state.

264 (1) ~~It is~~ The purpose of this chapter is to establish the
 265 State Personnel a System of ~~personnel management~~. ~~The This~~
 266 system shall provide a means for maintaining ~~to recruit, select,~~
 267 ~~train, develop, and maintain~~ an effective and responsible
 268 workforce and include ~~shall include~~ policies, and procedures,
 269 and guidelines for employee hiring and advancement, training and
 270 career development, position classification, salary
 271 administration, benefits, attendance and leave, discipline,
 272 dismissal ~~discharge~~, employee performance evaluations,
 273 affirmative action, and other related activities.

274 ~~(2) All appointments, terminations, assignments and~~
 275 ~~maintenance of status, compensation, privileges, and other terms~~
 276 ~~and conditions of employment in state government shall be made~~
 277 ~~without regard to age, sex, race, religion, national origin,~~
 278 ~~political affiliation, marital status, or handicap, except when~~
 279 ~~a specific sex, age, or physical requirement constitutes a bona~~
 280 ~~fide occupational qualification necessary to proper and~~
 281 ~~efficient administration.~~

282 ~~(3) Except as expressly provided by law, there shall be no~~
 283 ~~Florida residence requirement for any person as a condition~~
 284 ~~precedent to employment by the state; however, preference may be~~
 285 ~~given to Florida residents in hiring.~~

286 ~~(2)(4)~~ This chapter contains the requirements ~~and guides~~
 287 for establishing and maintaining a system of personnel
 288 administration on a merit basis. The system ~~of personnel~~
 289 ~~administration~~ shall be implemented so as to ensure that the
 290 permit state agencies participating in the State Personnel

585-00618D-12

20127196

291 System are to be eligible for to receive federal funds.

292 ~~(5) Nothing in this chapter shall be construed either to~~
 293 ~~infringe upon or to supersede the rights guaranteed public~~
 294 ~~employees under chapter 447.~~

295 Section 4. Section 110.107, Florida Statutes, is
 296 transferred, renumbered as section 110.1054, Florida Statutes,
 297 reordered, and amended to read:

298 110.1054 ~~110.107~~ Definitions.—As used in this chapter, the
 299 term:

300 ~~(5)(1)~~ “Department” means the Department of Management
 301 Services.

302 ~~(30)(2)~~ “Secretary” means the Secretary of Management
 303 Services.

304 ~~(3) “Furlough” means a temporary reduction in the regular~~
 305 ~~hours of employment in a pay period, or temporary leave without~~
 306 ~~pay for one or more pay periods, with a commensurate reduction~~
 307 ~~in pay, necessitated by a projected deficit in any fund that~~
 308 ~~supports salary and benefit appropriations. The deficit must be~~
 309 ~~projected by the Revenue Estimating Conference pursuant to s.~~
 310 ~~216.136(3).~~

311 ~~(31)(4)~~ “State agency” or “agency” means any entity within
 312 the State Personnel System official, officer, commission, board,
 313 authority, council, committee, or department of the executive
 314 branch or the judicial branch of state government as defined in
 315 chapter 216.

316 (32) “State employee” or “employee” means an employee of a
 317 state agency.

318 (33) “State Personnel System” means the system of personnel
 319 administration for authorized civil service, selected exempt

585-00618D-12

20127196

320 service, and senior management service positions and other
 321 personal services employment within the following state agencies
 322 and organizational units of such agencies as specified by law:

323 (a) Agency for Enterprise Information Technology.

324 (b) Agency for Health Care Administration.

325 (c) Agency for Persons with Disabilities.

326 (d) Department of Agriculture and Consumer Services.

327 (e) Department of Business and Professional Regulation.

328 (f) Department of Children and Family Services.

329 (g) Department of Citrus.

330 (h) Department of Corrections.

331 (i) Department of Economic Opportunity.

332 (j) Department of Education.

333 (k) Department of Elderly Affairs.

334 (l) Department of Environmental Protection.

335 (m) Department of Financial Services.

336 (n) Department of Health.

337 (o) Department of Highway Safety and Motor Vehicles.

338 (p) Department of Juvenile Justice.

339 (q) Department of Law Enforcement.

340 (r) Department of Legal Affairs.

341 (s) Department of Management Services.

342 (t) Department of Military Affairs.

343 (u) Department of Revenue.

344 (v) Department of State.

345 (w) Department of Transportation.

346 (x) Department of Veterans' Affairs.

347 (y) Executive Office of the Governor.

348 (z) Fish and Wildlife Conservation Commission.

585-00618D-12

20127196

349 (aa) Florida Public Service Commission.
 350 (bb) Florida School for the Deaf and the Blind.
 351 (cc) Parole Commission.
 352 ~~(22)(45)~~ "Position" means the work, consisting of duties and
 353 responsibilities, ~~assigned to be~~ performed by an officer or
 354 employee.
 355 (23) "Position description" means the document that
 356 accurately describes the assigned duties, responsibilities, and
 357 other pertinent information, including licensure, certification,
 358 or registration requirements, of a position and that serves as
 359 the official record of the work and other requirements of the
 360 position.
 361 ~~(10)(6)~~ "Full-time position" means a position authorized
 362 for the entire normally established work period, whether daily,
 363 weekly, monthly, or annually.
 364 ~~(19)(7)~~ "Part-time position" means a position authorized
 365 for less than the entire normally established work period,
 366 whether daily, weekly, monthly, or annually.
 367 ~~(16)(8)~~ "Occupation" means all positions that ~~which~~ are
 368 sufficiently similar in knowledge, skills, and abilities, and
 369 sufficiently similar as to kind or subject matter of work.
 370 ~~(17)(9)~~ "Occupational group" means a group of occupations
 371 which are sufficiently similar in the kind of work performed to
 372 warrant the use of the same performance factors in determining
 373 the level of complexity for all occupations in that occupational
 374 group.
 375 (18) "Other personal services" means temporary employment
 376 as provided in s. 112.907.
 377 ~~(3)(10)~~ "Classification system plan" means a formal

585-00618D-12

20127196

378 description of the concepts, rules, job family definitions,
 379 occupational group characteristics, ~~and~~ occupational profiles,
 380 and broadband levels used to classify in the classification of
 381 positions.
 382 ~~(21)(11)~~ "Pay plan" means a formal description of the
 383 philosophy, methods, procedures, and salary schedules for
 384 competitively compensating employees at market-based rates for
 385 work performed.
 386 ~~(29)(12)~~ "Salary schedule" means an official document that
 387 ~~which~~ contains a complete list of occupation titles, broadband
 388 level codes, ~~and~~ pay bands, and other related information.
 389 ~~(1)(13)~~ "Authorized position" means a position included in
 390 an approved budget. In counting the number of authorized
 391 positions, part-time positions may be converted to full-time
 392 equivalents.
 393 ~~(8)(14)~~ "Established position" means an authorized position
 394 that ~~which~~ has been classified in accordance with a
 395 classification system and pay plan as provided by law.
 396 ~~(24)(15)~~ "Position number" means the identification number
 397 assigned to an established position or other personal services
 398 employment position.
 399 ~~(28)(16)~~ "Reclassification" means changing an established
 400 position ~~in one broadband level in an occupational group~~ to a
 401 higher or lower broadband level within in the same occupation or
 402 changing an established position to a different occupation,
 403 either of which is the result of a change in the duties and
 404 responsibilities of the position ~~occupational group or to a~~
 405 ~~broadband level in a different occupational group.~~
 406 ~~(26)(17)~~ "Promotion" means moving a civil service employee

585-00618D-12

20127196

to a higher broadband level within an occupation, or moving an employee to an occupation that has a broadband level having ~~changing the classification of an employee to a broadband level having a higher maximum salary; or the changing of the classification of an employee to a broadband level having the same or a lower maximum salary but a higher level of responsibility.~~

~~(4)(18)~~ "Demotion" means moving a civil service ~~changing the classification of an employee to a lower broadband level within an occupation, or moving an employee to an occupation that has a broadband level having a lower maximum salary; or the changing of the classification of an employee to a broadband level having the same or a higher maximum salary but a lower level of responsibility.~~

~~(35)(19)~~ "Transfer" means moving a civil service ~~an~~ employee from one geographic location of the state to a different geographic location ~~that is more than in excess of 50 highway miles from the employee's current work location. The mileage shall be calculated using an official Department of Transportation map.~~

~~(27)(20)~~ "Reassignment" means moving a civil service ~~an~~ employee from a position in an occupation to a position in the same occupation and ~~one~~ broadband level but which has different duties; or to a different position in a different occupation that has a the same broadband level with the same maximum salary; or to a position in the same occupation and different broadband level regardless of the duties, but in a different agency having the same maximum salary.

~~(6)(21)~~ "Dismissal" means a disciplinary action taken by an

585-00618D-12

20127196

agency pursuant to s. 110.227 against a civil service ~~an~~ employee which results ~~resulting~~ in the termination of his or her employment.

~~(34)(22)~~ "Suspension" means a disciplinary action taken by an agency against a civil service employee pursuant to s. 110.227 which against an employee to temporarily relieves ~~relieve~~ the employee of his or her duties and places ~~place~~ him or her on leave without pay.

~~(14)(23)~~ "Layoff" means termination of employment due to a shortage of funds or work, or a material change in the duties or organization of an agency, including the outsourcing or privatization of an activity or function previously performed by civil ~~career~~ service employees.

~~(15)~~ "Merit status" means the status attained by a civil service employee in his or her current position upon successfully completing the required probationary period by demonstrating competency in performing the duties and responsibilities of that position.

~~(7)(24)~~ "Employing agency" means any agency authorized to employ personnel to carry out the responsibilities of the agency pursuant to under the provisions of chapter 20 or other law statutory authority.

~~(25)~~ "Shared employment" means part-time career employment whereby the duties and responsibilities of a full-time position in the career service are divided among part-time employees who are eligible for the position and who receive career service benefits and wages pro rata. In no case shall "shared employment" include the employment of persons paid from other personal services funds.

585-00618D-12

20127196

465 ~~(9)(26)~~ "Firefighter" means a firefighter certified under
466 chapter 633.

467 ~~(13)(27)~~ "Law enforcement or correctional officer" means a
468 law enforcement officer, special agent, correctional officer,
469 correctional probation officer, or institutional security
470 specialist ~~required to be~~ certified under chapter 943.

471 ~~(25)(28)~~ "Professional health care provider" means
472 registered nurses, physician's assistants, dentists,
473 psychologists, nutritionists or dietitians, pharmacists,
474 psychological specialists, physical therapists, and speech and
475 hearing therapists.

476 ~~(11)(29)~~ "Job family" means a defined grouping of one or
477 more similar occupational groups.

478 ~~(12)~~ "Lateral" means moving a civil service employee within
479 an agency to a different position that is in the same
480 occupation, that is at the same broadband level with the same
481 maximum salary, and that has substantially the same duties and
482 responsibilities.

483 ~~(20)(30)~~ "Pay band" means the minimum salary, the maximum
484 salary, and intermediate rates that ~~which~~ are payable for work
485 in a specific broadband level.

486 ~~(2)(31)~~ "Broadband level" means all positions that ~~which~~
487 are sufficiently similar in knowledge, skills, and abilities;
488 ~~the, and sufficiently similar as to~~ kind or subject matter of
489 work; ~~the, level of difficulty or~~ responsibility;
490 ~~responsibilities, and qualification requirements of the work so~~
491 as to warrant the same treatment with respect as to title, pay
492 band, and other personnel transactions.

493 Section 5. Section 110.1055, Florida Statutes, is amended

585-00618D-12

20127196

494 to read:

495 110.1055 Rules; records and rulemaking authority.-

496 ~~(1)~~ The department of Management Services shall adopt rules
497 as necessary to carry out its statutory duties effectuate the
498 provisions of this chapter, as amended by this act, and in
499 accordance with the authority granted to the department in this
500 chapter. All existing rules relating to this chapter are
501 statutorily repealed January 1, 2002, unless otherwise
502 readopted.

503 ~~(2)~~ In consultation with the state agencies, the department
504 shall develop uniform personnel rules, guidelines, records, and
505 reports relating to employees in the State Personnel System. The
506 department may adopt rules that provide alternative
507 requirements.

508 ~~(3)~~ Upon adoption, the uniform personnel rules constitute
509 the personnel rules for each state agency.

510 ~~(a)~~ Each agency must comply with the uniform rules unless:

511 1. The Administration Commission has granted an exception
512 to a specific rule. An agency may request an exception to the
513 uniform personnel rules by filing a petition with the
514 commission. The commission shall approve an exception if the
515 exception is necessary to conform to any requirement imposed as
516 a condition precedent to receipt of federal funds or to permit
517 persons in this state to receive tax benefits under federal law,
518 or if required for the most efficient operation of the agency as
519 determined by the commission. The reasons for the exception must
520 be published in the Florida Administrative Weekly. Agency rules
521 that provide exceptions to the uniform rules may not be adopted
522 unless approved by the commission.

585-00618D-12

20127196

523 2. The agency must comply with a statutory provision that
 524 conflicts with the uniform rules. In such case, the agency shall
 525 notify the department, the Administration Commission, the
 526 Administrative Procedures Committee, and the appropriate
 527 standing committees of the Legislature and advise the standing
 528 committees if the agency recommends revision of the statute to
 529 conform it to the uniform rules. Agencies are encouraged to
 530 propose methods for conforming statutory provisions to the
 531 uniform rules.

532 (b) An agency that adopts rules that provide an exception
 533 to the uniform rules or that comply with statutory requirements
 534 that conflict with the uniform rules must have a separate
 535 chapter published in the Florida Administrative Code. The
 536 chapter must clearly delineate the provisions of the agency's
 537 rules which provide an exception or which are based on a
 538 conflicting statutory requirement. Each alternative chosen from
 539 those authorized by the uniform rules must be specified. Each
 540 chapter must be organized in the same manner as the uniform
 541 rules.

542 (c) Any rule adopted by an agency which is an exception to
 543 the uniform rules or which is based upon a conflicting statutory
 544 provision may not prescribe personnel policies inconsistent with
 545 the provisions of this chapter. Such rules may not include any
 546 benefits for State Personnel System employees which are in
 547 addition to, or exceed, those authorized by this chapter, and
 548 must comply with all federal regulations necessary to allow the
 549 agency to receive federal funds.

550 (4) The department may develop uniform forms and
 551 instructions relating to personnel transactions as the

585-00618D-12

20127196

552 department determines necessary.

553 (5) The agency is responsible for maintaining up-to-date
 554 personnel records and reports in accordance with applicable
 555 rules and laws.

556 Section 6. Section 110.1056, Florida Statutes, is created
 557 to read:

558 110.1056 Agency audits.—The department may periodically
 559 audit agency records to determine compliance with this chapter
 560 and department rules.

561 Section 7. Section 110.405, Florida Statutes, is
 562 transferred, renumbered as section 110.106, Florida Statutes,
 563 and amended to read:

564 110.106 ~~110.405~~ Advisory committees.—The secretary of
 565 ~~Management Services~~ may at any time appoint an ad hoc or
 566 continuing advisory committee consisting of members of the
 567 Senior Management Service or other persons knowledgeable in the
 568 field of personnel management. Advisory committees ~~Any such~~
 569 ~~committee shall consist of not more than nine members, who shall~~
 570 serve at the pleasure of and meet at the call of the secretary
 571 and, at the request of the secretary, provide consultation and
 572 advice, ~~to advise and consult with the secretary on such matters~~
 573 affecting the State Personnel System ~~Senior Management Service~~
 574 ~~as the secretary requests.~~ Members shall serve without
 575 compensation, but are shall be entitled to receive reimbursement
 576 for travel expenses as provided in s. 112.061. The secretary may
 577 periodically hire a consultant who has with expertise in
 578 personnel ~~administration management~~ to advise him or her with
 579 respect to the administration of the State Personnel System
 580 Senior Management Service.

585-00618D-12

20127196

581 Section 8. Section 110.1065, Florida Statutes, is created
582 to read:

583 110.1065 General employment policies and requirements.-

584 (1) It is the policy of the State Personnel System:

585 (a) That all appointments, terminations, assignments, and
586 maintenance of status, compensation, privileges, and other terms
587 and conditions of employment in the State Personnel System be
588 made without regard to age, sex, race, color, religion, national
589 origin, political affiliation, marital status, disability, or
590 genetic information, unless a specific requirement constitutes a
591 bona fide occupational qualification.

592 (b) That sexual harassment is a form of discrimination and,
593 therefore, is prohibited and shall be defined in a manner
594 consistent with federal law.

595 (c) To support employees in balancing their personal needs
596 and work responsibilities. This policy is designed to enhance
597 the employee's ability to blend the competing demands of work
598 and personal life and produce a more skilled, accountable, and
599 committed workforce for the State Personnel System. Provisions
600 may include, but need not be limited to, flexible work
601 schedules, telework, part-time employment, and leaves of absence
602 with or without pay.

603 (d) To adopt and comply with the federal Family and Medical
604 Leave Act, except for those provisions that do not specifically
605 apply to state government employers. With regard to those
606 provisions, the sovereign immunity of the state is not waived
607 and the rules of the department relating to leave control.

608 (2) Except as expressly provided by law, Florida residency
609 may not be required for any person as a condition precedent to

585-00618D-12

20127196

610 employment; however, preference in hiring may be given to state
611 residents.

612 (3) State agencies that use other personal services
613 employment must comply with s. 112.907.

614 (4) Employees of the State Personnel System may be
615 furloughed pursuant to s. 112.920.

616 (5) This chapter may not be construed to infringe upon or
617 supersede the rights guaranteed public employees under chapter
618 447.

619 (6) The department may adopt rules necessary to administer
620 this section.

621 (7) The provisions of parts IX and XI of chapter 112 are
622 applicable to the State Personnel System. The department may
623 adopt rules necessary to administer those sections.

624 Section 9. Section 110.233, Florida Statutes, is
625 transferred, renumbered as section 110.1075, Florida Statutes,
626 and amended to read:

627 110.1075 ~~110.233~~ Political activities and unlawful acts
628 prohibited.-

629 (1) No person shall be appointed to, demoted, or dismissed
630 from any position in the Civil career Service, or in any way
631 favored or discriminated against with respect to employment in
632 the Civil career Service, because of ~~race, color, national~~
633 ~~origin, sex, handicap, religious creed, or~~ political opinion or
634 affiliation.

635 (2) No person ~~may~~ shall use or promise to use, directly or
636 indirectly, any official authority or influence, whether
637 possessed or anticipated, to secure or attempt to secure for any
638 person an appointment or advantage in appointment to a position

585-00618D-12

20127196

in the Civil career Service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration. ~~However, letters of inquiry, recommendations, and references by public employees or public officials are shall not be considered political pressure unless they contain any such letter contains~~ a threat, intimidation, or irrelevant, derogatory, or false information. For the purposes of this section, the term "political pressure," in addition to any appropriate meaning that which may be ascribed ~~thereto~~ by lawful authority, includes the use of official authority or influence in any manner prohibited by this chapter.

(3) No person may shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the Civil career Service. ~~The provisions of This subsection does de~~ not apply to a private employment agency if licensed pursuant to the provisions of chapter 449 when the services of the such private employment agency are requested by a state agency, ~~board, department, or commission~~ and neither the state nor any political subdivision pays the private employment agency for such services.

(4) As an individual, each employee retains all rights and obligations of citizenship provided in the Constitution and laws of the state and the Constitution and laws of the United States. However, an ne employee in the Civil career Service may not shall:

585-00618D-12

20127196

(a) Hold, or be a candidate for, public office while in the employment of the state or take an any active part in a political campaign while on duty or within any period of time during which the employee is expected to perform services for which he or she receives compensation from the state. However, if when authorized by his or her agency head and approved by the department as not involving an ne interest that which conflicts or activity that which interferes with his or her state employment, an employee in the Civil career Service may be a candidate for or hold local public office. The department shall prepare and make available to all affected personnel who make such request a definite set of rules and procedures consistent with this paragraph the provisions herein.

(b) Use the authority of his or her position to secure support for, or oppose, any candidate, party, or issue in a partisan election or affect the results thereof.

(5) No State Personnel System employee or official may shall use any promise of reward or threat of loss to encourage or coerce any employee to support or contribute to any political issue, candidate, or party.

(6) The department shall adopt by rule procedures for State Personnel Career Service System employees which that require disclosure to the agency head of any application for or offer of employment, gift, contractual relationship, or financial interest with any individual, partnership, association, corporation, utility, or other organization, ~~whether~~ public or private, doing business with or subject to regulation by the agency.

(7) The department may adopt rules to administer this

585-00618D-12

20127196

697 section.

698 Section 10. Section 110.1099, Florida Statutes, is amended
699 to read:

700 110.1099 Elective education and professional development
701 ~~and training~~ opportunities for state employees.-

702 (1) The education and professional development of employees
703 ~~training~~ are an integral components ~~component~~ in improving the
704 delivery of services to the public. Recognizing that the
705 application of productivity-enhancing technology and practice
706 demands continuous educational and professional development
707 training opportunities, an a state employee may be authorized to
708 receive a voucher, ~~or~~ grant, or tuition reimbursement for
709 matriculation fees, to attend work-related courses at public
710 community colleges, public career centers, ~~or~~ public
711 universities, or other accredited postsecondary educational
712 institutions. ~~The department may implement the provisions of~~
713 ~~this section from funds appropriated to the department for this~~
714 ~~purpose. In the event insufficient funds are appropriated to the~~
715 ~~department, Each state agency may supplement these funds to~~
716 support the educational and professional development training
717 ~~and education~~ needs of its employees from funds appropriated to
718 the agency.

719 ~~(2) The department, in conjunction with the agencies, shall~~
720 ~~request that public universities provide evening and weekend~~
721 ~~programs for state employees. When evening and weekend training~~
722 ~~and educational programs are not available, an employee may be~~
723 ~~authorized to take paid time off during his or her regular~~
724 ~~working hours for training and career development, as provided~~
725 ~~in s. 110.105(1), if such training benefits the employer as~~

585-00618D-12

20127196

726 ~~determined by that employee's agency head.~~

727 ~~(2)(3)~~ An employee who exhibits superior aptitude and
728 performance may be authorized by his or her ~~that employee's~~
729 agency head to take a paid educational leave of absence for up
730 to 1 academic year at a time, for specific approved work-related
731 education and professional development training. ~~The That~~
732 employee must enter into a contract to return to the agency
733 granting the leave ~~state employment~~ for a period of time equal
734 to the length of the leave of absence or refund the salary and
735 benefits paid during the ~~his or her educational~~ leave of
736 absence.

737 ~~(3)(4)~~ As a precondition to approving an employee's
738 training request for an educational, professional development,
739 or training program, an agency ~~or the judicial branch~~ may
740 require the an employee to enter into an agreement which
741 provides that, if the employee voluntarily terminates employment
742 or is dismissed from the agency within a specified period of
743 time, not to exceed 2 years after the conclusion of the program,
744 requires the employee must to reimburse the agency or judicial
745 branch for up to the total cost of fees and associated expenses
746 for the program if the registration fee or similar expense for
747 any training or training series when the total cost of the fee
748 or similar expense exceeds \$1,000 if the employee voluntarily
749 terminates employment or is discharged for cause from the agency
750 or judicial branch within a specified period of time not to
751 exceed 4 years after the conclusion of the training. This
752 subsection does not apply to any training program or course that
753 an agency ~~or the judicial branch~~ requires an employee to attend.
754 An agency ~~or the judicial branch~~ may pay the outstanding balance

585-00618D-12

20127196

then due and owing on behalf of an a-state employee under this subsection in connection with the recruitment and hiring of such state employee.

~~(4)(5) The department may of Management Services, in consultation with the agencies and, to the extent applicable, with Florida's public community colleges, public career centers, and public universities, shall adopt rules to administer this section.~~

Section 11. Section 110.235, Florida Statutes, is transferred, renumbered as section 110.1115, Florida Statutes, and amended to read:

110.1115 110.235 Training and professional development of employees.-

(1) State agencies shall implement training and professional development programs that encompass modern management principles, and that provide the framework to develop human resources, ~~through empowerment, training, and rewards for productivity enhancement,~~ to continuously improve the quality of services, ~~+~~ and to satisfy the expectations of the public.

(2) Each state ~~employing~~ agency shall provide the department with training information as requested for the purpose of analyzing statewide training needs annually evaluate and report to the department the training it has implemented and the progress it has made in the area of training.

(3) ~~As approved by the Legislature by law,~~ Each state ~~employing~~ agency may use a portion specified percentage of its salary budget to implement training programs.

(4) In order to promote the development of managerial, executive, or administrative skills among employees, each agency

585-00618D-12

20127196

may establish and administer a training program that may include, but need not be limited to:

(a) Improving the performance of individuals and groups of employees.

(b) Relating the efforts of employees to the goals of the organization.

(c) Strategic planning.

(d) Team leadership.

(5) The department is responsible for ensuring that appropriate state agency personnel are adequately trained in the proper administration of state personnel system policies and procedures, compliance with all applicable federal and state workforce regulations, and the promotion of efficient and equitable employment practices. The department may host workshops, conferences, and other professional development activities that focus on the training needs of agency staff who are responsible for human resource management, training and development, and benefits administration.

(a) The department may coordinate with the appropriate business units of the state universities or community colleges for the purpose of sponsoring conferences and expositions that provide continuing professional development to the agencies in the areas of human resource management, payroll and benefits administration, and other topics critical to the proper administration of the state workforce.

(b) For the purposes of leveraging resources and promoting best practices, the department may open such conferences to all state and local public employers who have shared interests in public-sector human resource management and related topics.

585-00618D-12

20127196

813 (6) The department may adopt rules necessary to administer
 814 this section.

815 Section 12. Section 110.112, Florida Statutes, is amended
 816 to read:

817 110.112 ~~Affirmative action~~; Equal employment opportunity.—

818 (1) It is shall be the policy of the State Personnel System
 819 to assist in ensuring providing the assurance of equal
 820 employment opportunity through programs of affirmative and
 821 positive action that ~~will~~ allow full utilization of women and
 822 minorities.

823 (2)(a) The head of each state ~~executive~~ agency shall
 824 develop and implement an affirmative action plan in accordance
 825 with this section and applicable state and federal laws rules
 826 ~~adopted by the department and approved by a majority vote of the~~
 827 ~~Administration Commission before their adoption.~~

828 (a)(b) Each ~~executive~~ agency shall establish annual goals
 829 for ensuring the full utilization of groups underrepresented in
 830 its workforce as compared to the relevant labor market, as
 831 defined by the agency. Each ~~executive~~ agency shall design its
 832 affirmative action plan to meet its established goals.

833 (b)(c) An equal affirmative action ~~equal~~ employment
 834 opportunity officer shall be appointed by the head of each
 835 ~~executive~~ agency. The affirmative action ~~equal~~ employment
 836 ~~opportunity officer's responsibilities must include determining~~
 837 ~~annual goals, monitoring agency compliance, and providing~~
 838 ~~consultation to managers regarding progress, deficiencies, and~~
 839 ~~appropriate corrective action.~~

840 (c)(d) The department shall report information in its
 841 annual workforce report relating to the demographic composition

585-00618D-12

20127196

842 of the workforce of the State Personnel System as compared to
 843 the relevant state labor market the implementation, continuance,
 844 updating, and results of each executive agency's affirmative
 845 action plan for the previous fiscal year. The agencies shall
 846 provide the department with the information necessary to comply
 847 with this provision.

848 ~~(c) The department shall provide to all supervisory~~
 849 ~~personnel of the executive agencies training in the principles~~
 850 ~~of equal employment opportunity and affirmative action, the~~
 851 ~~development and implementation of affirmative action plans, and~~
 852 ~~the establishment of annual affirmative action goals. The~~
 853 ~~department may contract for training services, and each~~
 854 ~~participating agency shall reimburse the department for costs~~
 855 ~~incurred through such contract. After the department approves~~
 856 ~~the contents of the training program for the agencies, the~~
 857 ~~department may delegate this training to the executive agencies.~~

858 ~~(3) Each state attorney and public defender shall:~~

859 ~~(a) Develop and implement an affirmative action plan.~~

860 ~~(b) Establish annual goals for ensuring full utilization of~~
 861 ~~groups underrepresented in its workforce as compared to the~~
 862 ~~relevant labor market in this state. The state attorneys' and~~
 863 ~~public defenders' affirmative action plans must be designed to~~
 864 ~~meet the established goals.~~

865 ~~(c) Appoint an affirmative action equal employment~~
 866 ~~opportunity officer.~~

867 ~~(d) Report annually to the Justice Administrative~~
 868 ~~Commission on the implementation, continuance, updating, and~~
 869 ~~results of his or her affirmative action program for the~~
 870 ~~previous fiscal year.~~

585-00618D-12

20127196

871 (3)(4) Each The state agency, ~~its agencies and officers~~
 872 shall ensure freedom from discrimination in employment in
 873 accordance with applicable state and federal laws as provided by
 874 the Florida Civil Rights Act of 1992, by s. 112.044, and by this
 875 chapter.

876 (4) All recruitment literature that references State
 877 Personnel System position vacancies must contain the phrase "An
 878 Equal Opportunity Employer."

879 (5) An ~~Any~~ individual claiming to be aggrieved by an
 880 unlawful employment practice may file a complaint with the
 881 Florida Commission on Human Relations as provided by s. 760.11.

882 (6) The department may adopt rules necessary to administer
 883 shall review and monitor executive agency actions in carrying
 884 out the rules adopted by the department pursuant to this
 885 section.

886 Section 13. Section 110.1135, Florida Statutes, is created
 887 to read:

888 110.1135 Attendance and leave records.—Each state agency
 889 shall keep an accurate record of all hours of work performed by
 890 each employee, as well as a complete and accurate record of all
 891 authorized leave. The ultimate responsibility for the accuracy
 892 and proper maintenance of all attendance and leave records is
 893 with the agency head.

894 Section 14. Section 110.116, Florida Statutes, is amended
 895 to read:

896 110.116 Human resource information ~~Personnel information~~
 897 system; payroll procedures.—

898 (1) The department of Management Services shall establish
 899 and maintain, in coordination with the payroll system of the

585-00618D-12

20127196

900 Department of Financial Services, a complete human resource
 901 ~~personnel~~ information system for all authorized and established
 902 positions in the State Personnel System ~~service, with the~~
 903 ~~exception of employees of the Legislature, unless the~~
 904 ~~Legislature chooses to participate.~~ The department may contract
 905 with a vendor to provide the human resource personnel
 906 information system. The specifications shall be developed in
 907 conjunction with the payroll system of the Department of
 908 Financial Services and in coordination with the Auditor General.
 909 The Department of Financial Services shall determine that the
 910 position occupied by each employee has been authorized and
 911 established in accordance with ~~the provisions of~~ s. 216.251. The
 912 human resource information system must include ~~Department of~~
 913 ~~Management Services shall develop and maintain a position~~
 914 numbering system that identifies ~~will identify~~ each established
 915 position, and such information shall be a part of the payroll
 916 system of the Department of Financial Services. ~~The~~ With the
 917 ~~exception of employees of the Legislature, unless the~~
 918 ~~Legislature chooses to participate, this system must~~ shall
 919 include all civil ~~career~~ service positions and those positions
 920 exempted from the Civil ~~career~~ Service ~~provisions,~~
 921 notwithstanding the funding source of the salary payments, and
 922 information regarding persons receiving salary payments from
 923 other sources. Necessary revisions shall be made in the
 924 personnel and payroll procedures of the state to avoid
 925 duplication insofar as is feasible to do so. The information in
 926 the system must ~~A list shall~~ be organized by budget entity to
 927 show the employees or vacant positions within each budget
 928 entity. The information ~~This list~~ shall be made available to the

585-00618D-12

20127196

Speaker of the House of Representatives and the President of the Senate upon request.

(2) The department may adopt rules necessary to administer this section.

Section 15. Section 110.1245, Florida Statutes, is amended to read:

110.1245 ~~Savings sharing program~~; Bonus payments; other awards.—

~~(1)(a) The Department of Management Services shall adopt rules that prescribe procedures and promote a savings sharing program for an individual or group of employees who propose procedures or ideas that are adopted and that result in eliminating or reducing state expenditures, if such proposals are placed in effect and may be implemented under current statutory authority.~~

~~(b) Each agency head shall recommend employees individually or by group to be awarded an amount of money, which amount shall be directly related to the cost savings realized. Each proposed award and amount of money must be approved by the Legislative Budget Commission.~~

~~(c) Each state agency, unless otherwise provided by law, may participate in the program. The Chief Justice shall have the authority to establish a savings sharing program for employees of the judicial branch within the parameters established in this section. The program shall apply to all employees within the Career Service, the Selected Exempt Service, and comparable employees within the judicial branch.~~

~~(d) The department and the judicial branch shall submit annually to the President of the Senate and the Speaker of the~~

585-00618D-12

20127196

~~House of Representatives information that outlines each agency's level of participation in the savings sharing program. The information shall include, but is not limited to:~~

~~1. The number of proposals made.~~

~~2. The number of dollars and awards made to employees or groups for adopted proposals.~~

~~3. The actual cost savings realized as a result of implementing employee or group proposals.~~

(1)(2) State agencies may pay ~~In June of each year,~~ bonuses shall be paid to employees from funds authorized by the Legislature in an appropriation specifically for bonuses. Bonuses shall be distributed in accordance with the criteria and instructions provided in the General Appropriations Act. Each agency shall develop a plan for awarding lump-sum bonuses, which plan shall be submitted no later than September 15 of each year and approved by the Office of Policy and Budget in the Executive Office of the Governor. Such plan shall include, at a minimum, but is not limited to:

~~(a) A statement that bonuses are subject to specific appropriation by the Legislature.~~

~~(b) Eligibility criteria as follows:~~

~~1. The employee must have been employed prior to July 1 of that fiscal year and have been continuously employed through the date of distribution.~~

~~2. The employee must not have been on leave without pay consecutively for more than 6 months during the fiscal year.~~

~~3. The employee must have had no sustained disciplinary action during the period beginning July 1 through the date the bonus checks are distributed. Disciplinary actions include~~

585-00618D-12

20127196

987 ~~written reprimands, suspensions, dismissals, and involuntary or~~
 988 ~~voluntary demotions that were associated with a disciplinary~~
 989 ~~action.~~

990 ~~4. The employee must have demonstrated a commitment to the~~
 991 ~~agency mission by reducing the burden on those served,~~
 992 ~~continually improving the way business is conducted, producing~~
 993 ~~results in the form of increased outputs, and working to improve~~
 994 ~~processes.~~

995 ~~5. The employee must have demonstrated initiative in work~~
 996 ~~and have exceeded normal job expectations.~~

997 ~~6. The employee must have modeled the way for others by~~
 998 ~~displaying agency values of fairness, cooperation, respect,~~
 999 ~~commitment, honesty, excellence, and teamwork.~~

1000 ~~(c) A periodic evaluation process of the employee's~~
 1001 ~~performance.~~

1002 ~~(d) A process for peer input that is fair, respectful of~~
 1003 ~~employees, and affects the outcome of the bonus distribution.~~

1004 ~~(e) A division of the agency by work unit for purposes of~~
 1005 ~~peer input and bonus distribution.~~

1006 ~~(f) A limitation on bonus distributions equal to 35 percent~~
 1007 ~~of the agency's total authorized positions. This requirement may~~
 1008 ~~be waived by the Office of Policy and Budget in the Executive~~
 1009 ~~Office of the Governor upon a showing of exceptional~~
 1010 ~~circumstances.~~

1011 ~~(2)(3) Consistent with the requirements of s. 215.425(3),~~
 1012 ~~and limited to the funds provided in the agency's approved~~
 1013 ~~operating budget for salaries and benefits, each agency head may~~
 1014 ~~provide bonus awards to department head is authorized to incur~~
 1015 ~~expenditures to award suitable framed certificates, pins, and~~

585-00618D-12

20127196

1016 ~~other tokens of recognition to retiring state employees based on~~
 1017 ~~exemplary performance or whose service with the state has been~~
 1018 ~~satisfactory, in appreciation of their role in the achievement~~
 1019 ~~of the agency's mission, values, or goals and recognition of~~
 1020 ~~such service.~~

1021 (a) Each award ~~Such awards~~ may not ~~exceed more than \$1,000~~
 1022 ~~cost in excess of \$100 each~~ plus applicable taxes. ~~No employee~~
 1023 ~~may receive awards totaling more than \$1,000 plus applicable~~
 1024 ~~taxes per fiscal year.~~

1025 (b) By September 1, agencies shall report to the Governor,
 1026 the President of the Senate, and the Speaker of the House of
 1027 Representatives the dollar value and number of such cash awards
 1028 given in the previous fiscal year.

1029 (3)(4) Each agency department head may ~~is authorized to~~
 1030 ~~incur expenditures to award suitable framed certificates, pins,~~
 1031 ~~and or other noncash tokens of recognition. Each token to state~~
 1032 ~~employees who demonstrate satisfactory service in the agency or~~
 1033 ~~to the state, in appreciation and recognition of such service.~~
 1034 ~~Such awards may not cost more than \$150 in excess of \$100 each~~
 1035 ~~plus applicable taxes. Such tokens may be awarded to:~~

1036 (a) Current employees, in appreciation and recognition of
 1037 their service to the state.

1038 (b) Retiring employees, in appreciation and recognition of
 1039 their service to the state.

1040 (c) An appointed member of a state board or commission, in
 1041 appreciation and recognition of his or her service to the state
 1042 upon the expiration of the member's final term in such position.

1043 (4) The department may adopt rules necessary to administer
 1044 this section.

585-00618D-12

20127196

~~(5) Each department head is authorized to incur expenditures not to exceed \$100 each plus applicable taxes for suitable framed certificates, plaques, or other tokens of recognition to any appointed member of a state board or commission whose service to the state has been satisfactory, in appreciation and recognition of such service upon the expiration of such board or commission member's final term in such position.~~

Section 16. Section 110.125, Florida Statutes, is amended to read:

110.125 Administrative costs.—

(1) The administrative expenses and costs of operating the State Personnel System program established by this chapter shall be paid by the state various agencies of the state government, and each such agency shall include in its budget estimates its pro rata share of such cost as determined by the department of Management Services.

(a) To establish an equitable division of the costs, the amount to be paid by each agency shall be based on the number of authorized full-time equivalent positions appropriated to the agency, the average number of other personal services employees paid by the agency, and the total administrative expenses and costs of operating the State Personnel System determined in such proportion as the service rendered to each agency bears to the total service rendered under the provisions of this chapter. The amounts paid to the Department of Management Services which are attributable to positions within the Senior Management Service and the Selected Professional Service shall be used for the administration of such services, training activities for

585-00618D-12

20127196

~~positions within those services, and the development and implementation of a database of pertinent historical information on exempt positions.~~

(b) If a Should any state agency is become more than 90 days delinquent in paying payment of this obligation, the department shall certify to the Chief Financial Officer the amount due and the Chief Financial Officer shall transfer that the amount due to the department from any available debtor agency funds available.

(2) A governmental entity outside the State Personnel System which, by mutual agreement between the department and the entity, receives or uses services of more than a de minimis value from the personnel system shall pay the department for the administrative expenses and costs associated with those services as determined by the department. Each such entity shall include such cost in its budget estimates. If a governmental entity become more than 90 days delinquent in paying this obligation, the department shall certify to the Chief Financial Officer the amount due and the Chief Financial Officer shall transfer that amount from any available debtor entity funds.

(3) The department may adopt rules necessary to administer this section.

Section 17. Section 110.126, Florida Statutes, is amended to read:

110.126 Oaths, testimony, records; ~~penalties.~~

(1) The department may shall have power to administer oaths, subpoena witnesses, and compel the production of books, and papers, or other records, in written or electronic form, relevant pertinent to any investigation of personnel practices

585-00618D-12

20127196

or hearing authorized by this chapter. Any person who fails
~~shall fail~~ to appear in response to a subpoena or to answer any
 question or produce any books or papers relevant ~~pertinent~~ to
 any such investigation or hearing or who ~~shall~~ knowingly gives
 give false testimony commits ~~therein shall be guilty of~~ a
 misdemeanor of the first degree, punishable as provided in s.
 775.082 or s. 775.083.

(2) The department may adopt rules necessary to administer
this section.

Section 18. Section 110.127, Florida Statutes, is amended
 to read:

110.127 Penalties.—

(1) Any person who willfully violates any provision of this
 chapter or ~~of any~~ rules adopted pursuant to this chapter commits
~~the authority herein granted is guilty of~~ a misdemeanor of the
 second degree, punishable as provided in s. 775.082 or s.
 775.083.

(2) ~~The provisions of s. 112.011 to the contrary~~
 Notwithstanding s. 112.011, any person who is convicted of a
 misdemeanor under this chapter is ~~shall be, for a period of 5~~
~~years,~~ ineligible for appointment to or employment in a state
 position for 5 years in the state service and, if an employee of
 the state, shall forfeit his or her position.

(3) Imposition of the penalties provided in this section
~~may shall~~ not be in lieu of any action that ~~which~~ may be taken
 or penalties that ~~which~~ may be imposed pursuant to part III of
 chapter 112.

(4) The department may adopt rules necessary to administer
this section.

585-00618D-12

20127196

Section 19. Section 110.2037, Florida Statutes, is
 transferred, renumbered as section 110.182, Florida Statutes,
 and amended to read:

110.182 ~~110.2037~~ ~~Alternative benefits,~~ Tax-sheltered annual
 leave and sick leave payments and special compensation
 payments.—

(1) The department ~~may of Management Services has authority~~
~~to~~ adopt tax-sheltered plans under s. 401(a) of the Internal
 Revenue Code for ~~state~~ employees who are eligible for payment
 for accumulated leave. ~~The department,~~ Upon adoption of the
 plans, the department shall contract for a private vendor or
 vendors to administer the plans.

(a) These plans are ~~shall be~~ limited to ~~state~~ employees who
 are over age 55 and who are+ eligible for accumulated leave and
 special compensation payments and separating from employment
 with 10 years of service in accordance with the Internal Revenue
 Code, or who are participating in the Deferred Retirement Option
 Program on or after July 1, 2001.

(b) The plans must provide benefits in a manner that
 minimizes the tax liability of the state and participants.

(c) The plans must be funded by employer contributions of
 payments for accumulated leave or special compensation payments,
 or both, as specified by the department.

(d) The plans must have received all necessary federal and
 state approval as required by law, must not adversely impact the
 qualified status of the Florida Retirement System defined
 benefit or defined contribution plans or the pretax benefits
 program, and must comply with ~~the provisions of~~ s. 112.65.
 Adoption of any plan is contingent on: the department receiving

585-00618D-12

20127196

appropriate favorable rulings from the Internal Revenue Service; the department negotiating under the provisions of chapter 447, where applicable; and the Chief Financial Officer making appropriate changes to the state payroll system.

(e) The department's request for proposals by vendors for such plans may require that the vendors provide market-risk or volatility ratings from recognized rating agencies for each of their investment products.

(f) The department shall provide for a system of continuous quality assurance oversight to ensure that the program objectives are achieved and that the program is prudently managed.

(2) Within 30 days after termination of employment, an employee may elect to withdraw the moneys and no without penalty may be assessed by the plan administrator. If an any employee is adversely affected by payment of an excise tax or an any Internal Revenue Service penalty by withdrawing electing to withdraw funds within 30 days, the plan must shall include a provision that provides which will provide the employee with no less cash than if the employee had not participated in the plan.

(3) These contracts may be used by any other pay plans or personnel systems in the executive, legislative, or judicial branches of government upon approval of the appropriate administrative authority.

(4) Notwithstanding the terminal pay provisions of s. 112.913 ~~110.122~~, the department may contract for a tax-sheltered plan for leave and special compensation pay for employees who are terminating over age 55 and have with 10 years of service, and for employees participating in the Deferred Retirement

585-00618D-12

20127196

Option Program on or after July 1, 2001, and who are over age 55. The frequency of payments into the plan shall be determined by the department or as provided in the General Appropriations Act. This plan must or plans shall provide the greatest tax benefits to the employees and maximize the savings to the state.

(5) The department shall determine by rule the design of the plans and the eligibility of participants.

(6) ~~Nothing in~~ This section does not shall be construed to remove plan participants from the scope of s. 112.913(5) ~~110.122(5)~~.

(7) The department may adopt rules necessary to administer this section.

Section 20. Section 110.183, Florida Statutes, is created to read:

110.183 Collective bargaining.—The department shall coordinate with the Governor and the state agencies on personnel matters falling within the scope of collective bargaining and shall represent the Governor in collective bargaining negotiations and other collective bargaining matters as necessary. All discussions relative to collective bargaining between the department and the Governor, between the department and the agency heads, or between any of their respective representatives, are exempt from s. 286.011, and all work products relative to collective bargaining developed in conjunction with such discussions are confidential and exempt from s. 119.07(1).

Section 21. Section 110.184, Florida Statutes, is created to read:

110.184 Workforce report.—The department shall prepare a

585-00618D-12

20127196

workforce report on human resources in the State Personnel System. The report shall provide data and identify trends for planning and improving the management of the State Personnel System. The department shall annually submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 22. The Division of Statutory Revision is requested to rename part II of chapter 110, Florida Statutes, as "Civil Service."

Section 23. Section 110.202, Florida Statutes, is created to read:

110.202 Declaration of policy.—This part creates the Civil Service System within the State Personnel System as required by s. 14, Art. III of the State Constitution.

Section 24. Section 110.205, Florida Statutes, is amended to read:

110.205 Civil Career Service; exemptions.—

(1) CIVIL SERVICE CAREER POSITIONS.—The Civil career Service ~~to which this part applies~~ includes all positions within the State Personnel System not specifically exempted by this section part, notwithstanding any other provisions of law the Florida Statutes to the contrary notwithstanding.

(2) EXEMPT POSITIONS.—The ~~exempt positions that are not covered by this part~~ include the following positions are exempted from the Civil Service:

(a) Elected officers.—All officers of the executive branch elected by popular vote and persons appointed to fill vacancies in such offices. Unless otherwise fixed by law, the salary and benefits for an ~~any such~~ officer who serves as the head of an

585-00618D-12

20127196

agency ~~a department~~ shall be set by the Department of Management Services in accordance with the rules of the Senior Management Service.

(b) Legislative branch.—All members, officers, and employees of the legislative branch, except for the members, officers, and employees of the Florida Public Service Commission.

(c) Judicial branch.—All members, officers, and employees of the judicial branch.

(d) State universities.—All officers and employees of the state universities ~~and the academic personnel and academic administrative personnel of the Florida School for the Deaf and the Blind. In accordance with the provisions of s. 1002.36, the salaries for academic personnel and academic administrative personnel of the Florida School for the Deaf and the Blind shall be set by the board of trustees for the school, subject only to the approval of the State Board of Education.~~

~~(e) The Chief Information Officer in the Agency for Enterprise Information Technology. Unless otherwise fixed by law, the Agency for Enterprise Information Technology shall set the salary and benefits of this position in accordance with the rules of the Senior Management Service.~~

~~(e)-(f)~~ Members of boards and commissions.—All members of state boards and commissions, however selected. Unless otherwise fixed by law, the salary and benefits for any full-time board or commission member shall be set by the Department of Management Services in accordance with the rules of the Senior Management Service.

~~(g) Judges, referees, and receivers.~~

585-00618D-12

20127196

1277 ~~(h) Patients or inmates in state institutions.~~
 1278 ~~(f)(i) Time-limited positions.~~—All positions that are
 1279 established for a limited period of time for the purpose of
 1280 conducting a special study, project, or investigation and any
 1281 person paid from an other-personal-services appropriation.
 1282 Unless otherwise fixed by law, the salaries for such positions
 1283 and persons shall be set in accordance with rules established by
 1284 the employing agency for other-personal-services payments
 1285 pursuant to s. 112.907 ~~110.131~~.
 1286 ~~(g)(j) Executive-level positions.~~—The appointed secretaries
 1287 and the State Surgeon General, assistant secretaries, deputy
 1288 secretaries, and deputy assistant secretaries of all agencies
 1289 ~~departments~~; the executive directors, assistant executive
 1290 directors, deputy executive directors, and deputy assistant
 1291 executive directors of all agencies ~~departments~~; the directors
 1292 of all divisions and those positions determined by the
 1293 Department of Management Services to have managerial
 1294 responsibilities comparable to such positions, including which
 1295 ~~positions include~~, but are not limited to, program directors,
 1296 assistant program directors, district administrators, deputy
 1297 district administrators, general counsels, chief cabinet aides,
 1298 public information administrators or comparable position for a
 1299 cabinet officer, inspectors general, or legislative affairs
 1300 directors ~~the Director of Central Operations Services of the~~
 1301 ~~Department of Children and Family Services~~, the State
 1302 Transportation Development Administrator, State Public
 1303 Transportation and Modal Administrator, district secretaries,
 1304 district directors of transportation development, transportation
 1305 operations, transportation support, ~~and~~ the managers of the

585-00618D-12

20127196

1306 Department of Transportation offices specified in s.
 1307 20.23(4) (b), the county health department directors and county
 1308 health department administrators of the Department of Health,
 1309 and the one additional position that may be designated by each
 1310 agency and that reports directly to the agency head or to a
 1311 position in the Senior Management Service and whose additional
 1312 costs are absorbed from the existing budget of that agency ~~of~~
 1313 ~~the Department of Transportation~~. Unless otherwise fixed by law,
 1314 the Department of Management Services shall set the salary and
 1315 benefits of these positions in accordance with the rules of the
 1316 Senior Management Service; ~~and the county health department~~
 1317 ~~directors and county health department administrators of the~~
 1318 ~~Department of Health~~.
 1319 ~~(k) The personal secretary to the incumbent of each~~
 1320 ~~position exempted in paragraphs (a), (c), and (j). Unless~~
 1321 ~~otherwise fixed by law, the department shall set the salary and~~
 1322 ~~benefits of these positions in accordance with the rules of the~~
 1323 ~~Selected Exempt Service~~.
 1324 ~~(h)(i) Executive Office of the Governor.~~—All officers and
 1325 employees in the office of the Governor, including all employees
 1326 at the Governor's mansion, and employees within each separate
 1327 budget entity, as defined in chapter 216, assigned to the
 1328 Governor. Unless otherwise fixed by law, the salary and benefits
 1329 of these positions shall be set by the Department of Management
 1330 Services as follows:
 1331 1. The chief of staff, the assistant or deputy chief of
 1332 staff, general counsel, Director of Legislative Affairs, chief
 1333 inspector general, Director of Cabinet Affairs, Director of
 1334 Press Relations, Director of Planning and Budgeting, Director of

585-00618D-12

20127196

Administration, director of state-federal relations, Director of Appointments, Director of External Affairs, Deputy General Counsel, Governor's liaison for community development, chief of staff for the Lieutenant Governor, deputy director of planning and budgeting, policy coordinators, and the director of each separate budget entity shall have their salaries and benefits ~~set established~~ by the department in accordance with the rules of the Senior Management Service.

2. The salaries and benefits of positions not established in subparagraph 1. sub-subparagraph a. shall be set by the employing agency. Salaries and benefits of employees whose professional training is comparable to that of licensed professionals under paragraph (n) ~~(r)~~, or whose administrative responsibility is comparable to a bureau chief shall be set by the rules of the Selected Exempt Service. The Department of Management Services shall make the comparability determinations. Other employees shall have benefits set comparable to legislative staff, except leave shall be comparable to civil career service as if career service employees.

~~(i) (m)~~ Upper management positions.—All assistant division director, deputy division director, and bureau chief positions in any agency department, and those positions determined by the Department of Management Services to have managerial responsibilities comparable to such positions. Unless otherwise fixed by law, the salaries of benefits of these positions shall be set by the Department of Management Services in accordance with the rules of the Selected Exempt Service. These positions, ~~which~~ include, but are not limited to:

1. Positions in the Department of Health and the Department

585-00618D-12

20127196

of Children and Family Services which ~~that~~ are assigned primary duties of serving as the superintendent or assistant superintendent of an institution.

2. Positions in the Department of Corrections which ~~that~~ are assigned primary duties of serving as the warden, assistant warden, colonel, or major of an institution or which ~~that~~ are assigned primary duties of serving as the circuit administrator or deputy circuit administrator.

3. Positions in the Department of Transportation which ~~that~~ are assigned primary duties of serving as regional toll managers and managers of offices, as defined in s. 20.23(4)(b) and (5)(c).

4. Positions in the Department of Environmental Protection which ~~that~~ are assigned the duty of an environmental administrator or program administrator.

5. Positions in the Department of Health which ~~that~~ are assigned the duties of environmental administrator, assistant county health department director, and county health department financial administrator.

6. Positions in the Department of Children and Family Services which are assigned the duties of staff director, assistant staff director, district program manager, district program coordinator, district administrator, district administrative services director, district attorney, and the deputy director of central operations services.

~~Unless otherwise fixed by law, the department shall set the salary and benefits of the positions listed in this paragraph in accordance with the rules established for the Selected Exempt~~

585-00618D-12

20127196

Service.

(j) (a) Other managerial or policymaking positions.-

1. ~~a.~~ In addition to those positions exempted by other paragraphs of this subsection, each ~~agency department~~ head may designate a maximum of 20 policymaking or managerial positions, as defined by the Department of Management Services and approved by the Administration Commission, as being exempt from the Civil Career Service System. Civil Career service employees who occupy a position designated as a position in the Selected Exempt Service under this paragraph may shall have the right to remain in the Civil Career Service System by opting to serve in a position not exempted by the employing agency. Unless otherwise fixed by law, the Department of Management Services shall set the salary and benefits of these positions in accordance with the rules of the Selected Exempt Service; ~~provided, however, that if the agency head determines that the general counsel, chief Cabinet aide, public information administrator or comparable position for a Cabinet officer, inspector general, or legislative affairs director has both policymaking and managerial responsibilities and if the department determines that any such position has both policymaking and managerial responsibilities, the salary and benefits for each such position shall be established by the department in accordance with the rules of the Senior Management Service.~~

~~b. In addition, each department may designate one additional position in the Senior Management Service if that position reports directly to the agency head or to a position in the Senior Management Service and if any additional costs are absorbed from the existing budget of that department.~~

585-00618D-12

20127196

2. If otherwise exempt from the Civil Service, employees of the Public Employees Relations Commission, the Commission on Human Relations, and the Unemployment Appeals Commission, upon the certification of their respective commission heads, may, if otherwise qualified, be provided for ~~under this paragraph~~ as members of the Senior Management Service, ~~if otherwise qualified.~~ However, the deputy general counsel of the Public Employees Relations Commission shall be compensated in accordance with as members of the Selected Exempt Service.

(k) Specialized managerial positions.-

1. The Department of Management Services shall set the salary and benefits for the following positions in accordance with the rules of the Selected Exempt Service.

a. Pursuant to s. 447.203(4), managerial employees who perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs and to whom one or more of the following applies: formulate or assist in formulating policies applicable to bargaining unit employees; assist in the preparation for the conduct of collective bargaining negotiations; administer agreements resulting from collective bargaining negotiations; have a significant role in personnel administration; have a significant role in employee relations; or have a significant role in the preparation or administration of the final budget for any public agency or institution or subdivision including having the authority to select and approve among alternative expenditures when necessary.

b. Pursuant to s. 447.203(5), employees who act in a confidential capacity to assist or aid managerial employees who

585-00618D-12 20127196__

are performing work and who have access to information that would provide an employee labor organization with an advantage at the bargaining table or in the administration of collective bargaining agreements.

c. All supervisory employees, including supervisors, administrators and directors, who customarily and regularly plan and direct the work of two or more full-time employees or the equivalent, and who communicate with, motivate, train, and evaluate employees, and who have the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline subordinate employees or, effectively, to recommend such action.

2. The exemptions provided in this paragraph are not applicable to the following:

a. Managerial and supervisory employees who are designated as special risk or special risk administrative support;

b. Attorneys who serve as administrative law judges pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a); and

c. Professional health care providers as defined in s. 110.1054, unless otherwise collectively bargained.

(1)(e) Public Service Commission.—The executive director, deputy executive director, general counsel, inspector general, official reporters, and division directors within the Public Service Commission and the personal secretary and personal assistant to each member of the Public Service Commission. Unless otherwise fixed by law, the salary and benefits of the executive director, deputy executive directors, general counsel, inspector general, and the directors of all divisions and those

585-00618D-12 20127196__

positions determined to have managerial responsibilities comparable to such positions ~~Director of Administration, Director of Appeals, Director of Auditing and Financial Analysis, Director of Communications, Director of Consumer Affairs, Director of Electric and Gas, Director of Information Processing, Director of Legal Services, Director of Records and Reporting, Director of Research, and Director of Water and Sewer~~ shall be set ~~by the department~~ in accordance with the rules of the Senior Management Service. The salary and benefits of the personal secretary and the personal assistant of each member of the commission and the official reporters shall be set by the Department of Management Services in accordance with the rules of the Selected Exempt Service, ~~notwithstanding any salary limitations imposed by law for the official reporters.~~

(m)(p) Department of Military Affairs.—

1. All military personnel of the Department of Military Affairs. Unless otherwise fixed by law, the salary and benefits for ~~such~~ military personnel shall be set by the Department of Military Affairs in accordance with the appropriate military pay schedule.

2. The salary and benefits of military police chiefs, military police officers, firefighter trainers, firefighter-rescuers, and electronic security system technicians shall be ~~have salary and benefits~~ the same as civil career service employees.

~~(q) The staff directors, assistant staff directors, district program managers, district program coordinators, district subdistrict administrators, district administrative services directors, district attorneys, and the Deputy Director~~

585-00618D-12

20127196

~~of Central Operations Services of the Department of Children and Family Services. Unless otherwise fixed by law, the Department shall establish the pay band and benefits for these positions in accordance with the rules of the Selected Exempt Service.~~

~~(n)-(r)~~ Professional licensure.—All positions not otherwise exempt under this subsection which require as a prerequisite to employment: licensure as a physician pursuant to chapter 458;~~r~~ licensure as an osteopathic physician pursuant to chapter 459;~~r~~ licensure as a chiropractic physician pursuant to chapter 460, including those positions that ~~which~~ are occupied by employees who are exempted from licensure pursuant to s. 409.352; licensure as an engineer pursuant to chapter 471, which are supervisory positions; or for 12 calendar months, which require as a prerequisite to employment that the employee have received the degree of Bachelor of Laws or Juris Doctor from a law school accredited by the American Bar Association and thereafter membership in The Florida Bar, except for any attorney who serves as an administrative law judge pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a). Unless otherwise fixed by law, the Department of Management Services shall set the salary and benefits for these positions in accordance with the rules of established for the Selected Exempt Service.

~~(o)-(s)~~ Statewide prosecutor.—The statewide prosecutor in charge of the Office of Statewide Prosecution of the Department of Legal Affairs and all employees in the office. The Department of Legal Affairs shall set the salary of these positions.

~~(p)-(t)~~ Executive directors of regulatory boards and commissions.—The executive director of each board or commission

585-00618D-12

20127196

established within the Department of Business and Professional Regulation or the Department of Health. Unless otherwise fixed by law, the Department of Management Services shall set ~~establish~~ the salary and benefits for these positions in accordance with the rules of established for the Selected Exempt Service.

~~(q)-(u)~~ State Board of Administration.—All officers and employees of the State Board of Administration. The State Board of Administration shall set the salary ~~salaries~~ and benefits of these positions.

~~(v)~~ Positions that are leased pursuant to a state employee lease agreement expressly authorized by the Legislature pursuant to s. 110.191.

~~(w)~~ Managerial employees, as defined in s. 447.203(4), confidential employees, as defined in s. 447.203(5), and supervisory employees who spend the majority of their time communicating with, motivating, training, and evaluating employees, and planning and directing employees' work, and who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees or effectively recommend such action, including all employees serving as supervisors, administrators, and directors. Excluded are employees also designated as special risk or special risk administrative support and attorneys who serve as administrative law judges pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a). Additionally, registered nurses licensed under chapter 464, dentists licensed under chapter 466, psychologists licensed under chapter 490 or chapter 491, nutritionists or dietitians licensed under part X of

585-00618D-12

20127196

~~chapter 468, pharmacists licensed under chapter 465, psychological specialists licensed under chapter 491, physical therapists licensed under chapter 486, and speech therapists licensed under part I of chapter 468 are excluded, unless otherwise collectively bargained.~~

(r)(*) Justice Administration Commission and similar entities.—All officers and employees of the Justice Administrative Commission, Office of the State Attorney, Office of the Public Defender, regional offices of capital collateral counsel, offices of criminal conflict and civil regional counsel, and Statewide Guardian Ad Litem Office, including the circuit guardian ad litem programs and the Florida Clerks of Court Operations Corporation.

(s) Florida School for the Deaf and the Blind.—In accordance with s. 1002.36, the salaries for academic personnel and academic administrative personnel of the Florida School for the Deaf and the Blind shall be set by the board of trustees for the school, subject only to the approval of the State Board of Education.

(t) Miscellaneous positions.—

1. The Chief Information Officer in the Agency for Enterprise Information Technology. Unless otherwise fixed by law, the agency shall set the salary and benefits of this position in accordance with the rules of the Senior Management Service.

2. The chief inspector of the boiler inspection program of the Department of Financial Services. The pay band of this position shall be set by the Department of Management Services in accordance with the classification and pay plan established

585-00618D-12

20127196

for the Selected Exempt Service.

3. The personal assistant to the incumbent of each position exempted in paragraph (a), paragraph (g), or subparagraph 1. Unless otherwise fixed by law, the Department of Management Services shall set the salary and benefits of these positions in accordance with the rules of the Selected Exempt Service.

4. Positions that are leased pursuant to a state employee lease agreement expressly authorized by the Legislature pursuant to s. 112.922.

5. Judges, referees, and receivers of the executive branch.

6. Positions held by patients or inmates in state institutions.

~~(3) PARTIAL EXEMPTION OF DEPARTMENT OF LAW ENFORCEMENT.~~—Employees of the Department of Law Enforcement shall be subject to the provisions of s. 110.227, except in matters relating to transfer.

~~(4) DEFINITION OF DEPARTMENT.~~ When used in this section, the term "department" shall mean all departments and commissions of the executive branch, whether created by the State Constitution or chapter 20; the office of the Governor; and the Public Service Commission; however, the term "department" shall mean the Department of Management Services when used in the context of the authority to establish pay bands and benefits.

~~(3)(5) POSITIONS EXEMPTED BY OTHER STATUTES.~~—If any position is exempted from the Civil career Service by any other statute and the personnel system to which that position is assigned is not specifically included in the statute, the position shall be placed in the Selected Exempt Service, and the Department of Management Services shall set ~~establish~~ the pay

585-00618D-12 20127196

band and benefits for that position in accordance with the rules of the Selected Exempt Service.

(4) RULES.—The Department of Management Services may adopt rules necessary to administer this section.

~~(6) EXEMPTION OF CHIEF INSPECTOR OF BOILER SAFETY PROGRAM, DEPARTMENT OF FINANCIAL SERVICES.—In addition to those positions exempted from this part, there is hereby exempted from the Career Service System the chief inspector of the boiler inspection program of the Department of Financial Services. The pay band of this position shall be established by the Department of Management Services in accordance with the classification and pay plan established for the Selected Exempt Service.~~

~~(7) CARRYING LEAVE FORWARD.—If an employee is transferred or otherwise moves from the Career Service System into the Selected Exempt Service, all of the employee's unused annual leave, unused sick leave, and unused compensatory leave shall carry forward with the employee.~~

Section 25. Section 110.208, Florida Statutes, is created to read:

110.208 Classification system.—The department shall establish and maintain a uniform classification system applicable to all positions in the Civil Service and shall be responsible for the overall coordination, review, and maintenance of the system. A position may not be filled until it has been classified in accordance with the system.

(1) The system must include:

(a) A position classification system using job families, occupational groups, and a broadband level structure for each occupation within an occupational group.

585-00618D-12 20127196

(b) A pay plan that provides broad-based pay bands for each occupational group.

(2) In establishing and administering the system, the department:

(a) Shall develop occupation profiles necessary for the establishment of new occupations or for the revision of existing occupations, and shall establish the appropriate occupation title and broadband level code for each occupation. The occupation profiles, titles, and codes are not rules within the meaning of s. 120.52.

(b) Shall be responsible for conducting periodic studies and surveys to ensure that the classification system is maintained on a current basis.

(c) May review in a postaudit capacity the action taken by an agency in classifying or reclassifying a position.

(d) Shall effect a classification change on any classification or reclassification action taken by an agency if the action taken by the agency was not based on the duties and responsibilities officially assigned the position as they relate to the concepts and description contained in the official occupation profile and the level definition provided in the occupational group characteristics adopted by the department.

(e) Shall adopt rules necessary to administer the classification system.

(3) Each state agency is responsible for the day-to-day application of the classification system established by the department. The agency:

(a) Shall maintain an up-to-date position description for each authorized and established position assigned to the agency.

585-00618D-12 20127196

The position description must include an accurate description of assigned duties and responsibilities and other pertinent information relating to a position and serves as a record of the official assignment of duties to the position. The description shall be used to compare positions in order to ensure the uniformity of classifications.

(b) May classify positions authorized by the Legislature or pursuant to s. 216.262, classify positions that are added in lieu of positions deleted pursuant to s. 216.262, and reclassify established positions. Classification and reclassification actions taken by an agency must be within the classification system occupations established by the department, shall be funded within the limits of currently authorized appropriations, and must be in accordance with the uniform procedures established by the department.

Section 26. Section 110.2085, Florida Statutes, is created to read:

110.2085 Pay plan.—

(1) The department shall establish and maintain an equitable pay plan that applies to all positions in the Civil Service and shall be responsible for the overall review, coordination, and administration of the pay plan.

(2) The department shall provide market-based pay bands for occupational groups and establish guidelines for state agencies to use when moving employees through such pay bands.

(a) The agencies may determine the appropriate salary within the pay bands using the guidelines developed by the department. Such pay bands, and the assignment of broadband levels to positions, are not rules within the meaning of s.

585-00618D-12 20127196

120.52.

(b) The department, in consultation with the Executive Office of the Governor and the legislative appropriations committees, shall conduct compensation surveys as necessary for the purpose of achieving an equitable, competitive, market-based pay policy.

(3) The department shall establish rules for the administration of pay additives and shall delegate to the state agencies, where appropriate, the authority to implement pay additives. The agency must use pay additives, as appropriate, within the guidelines established by the department and consistent with directions contained in the General Appropriations Act.

(a) The following pay additives are authorized:

1. Shift differentials.

2. On-call.

3. Hazardous duty.

4. Lead-worker duty.

5. Temporary special duties - general.

6. Temporary special duties - absent coworker.

7. Trainer duties.

8. Competitive area differentials.

9. Critical market pay.

(b) Each state agency shall include in its annual legislative budget request a proposed written plan for implementing temporary special duties - general pay additives during the next fiscal year. Proposed revisions to an approved plan which become necessary during the fiscal year must be submitted by the agency to the department for review and

585-00618D-12

20127196

recommendation to the Executive Office of the Governor. Such revisions may be implemented only after approval by the Executive Office of the Governor. A proposed revision is deemed to be action subject to s. 216.177.

(c) A new competitive area differential or a new critical market pay additive may not be implemented unless the department has reviewed and recommended such action and the Legislature has provided express authority to implement such action. This applies to an increase in the level of competitive area differentials and critical market pay additives, and to the initial establishment and implementation of a competitive area differential or critical market pay additive not in effect as of January 1, 2012.

(d) An agency may implement shift differential additives, on-call additives, hazardous duty additives, lead-worker additives, temporary special duties - absent coworker additives, and trainer additives as necessary to accomplish the mission of the agency and in accordance with department rules, instructions contained in the General Appropriations Act, and applicable collective bargaining agreements.

(e) The department shall annually provide to the Executive Office of the Governor and the Legislature a summary report of the pay additives implemented pursuant to this section.

(4) A state agency may implement salary increase and decrease corrections due to administrative errors.

(5) The department may adopt rules necessary to administer this section.

Section 27. Section 110.211, Florida Statutes, is amended to read:

585-00618D-12

20127196

110.211 Recruitment.—

(1) Recruiting shall be planned and carried out to ensure ~~in a manner that assures~~ open competition based upon current and projected ~~employing~~ agency needs, taking into consideration the number and types of positions to be filled and the labor market conditions, with special emphasis placed on recruiting efforts ~~that to~~ attract minorities, women, or other groups ~~that are~~ underrepresented in the workforce of a state ~~the employing~~ agency.

(2) Recruiting efforts to fill current or projected vacancies shall be carried out in the sound discretion of the agency head.

(3) Recruiting ~~shall seek efficiency in advertising and~~ may be assisted by a contracted vendor ~~responsible for maintenance of the personnel data.~~

(4) The department may adopt rules necessary to administer this section. All recruitment literature involving state position vacancies shall contain the phrase "An Equal Opportunity Employer/Affirmative Action Employer."

Section 28. Section 110.213, Florida Statutes, is amended to read:

110.213 Selection.—

(1) Selection for appointment from among the ~~most~~ qualified candidates ~~is shall be~~ the sole responsibility of the ~~employing~~ state agency. ~~All new employees must successfully complete at least a 1-year probationary period before attainment of permanent status.~~

(2) ~~Selection shall reflect efficiency and simplicity in hiring procedures.~~ The agency head or a ~~his or her~~ designee

585-00618D-12

20127196

1799 shall ~~be required to~~ document the qualifications of the selected
 1800 candidate to ensure that the candidate meets the position
 1801 ~~minimum~~ requirements as specified by the ~~employing agency;~~
 1802 meets the licensure, certification, or registration
 1803 requirements, if any, as specified by statute;~~;~~ and possesses
 1804 the requisite knowledge, skills, and abilities for the position.
 1805 No other documentation or justification is ~~shall be~~ required
 1806 before ~~prior to~~ selecting a candidate for a position.

1807 (3) The department may adopt rules necessary to administer
 1808 this section.

1809 Section 29. Section 110.2135, Florida Statutes, is amended
 1810 to read:

1811 110.2135 Veterans' preference ~~in employment, reemployment,~~
 1812 ~~promotion, and retention.-~~

1813 (1) Preference in employment, reemployment, promotion, and
 1814 retention shall be given to an eligible veteran pursuant to ss.
 1815 295.07, 295.08, 295.085, and 295.09 if as long as the veteran
 1816 meets the minimum eligibility requirements and has the
 1817 knowledge, skills, and abilities required for the particular
 1818 position.

1819 (2) A disabled veteran employed as the result of being
 1820 placed at the top of the appropriate employment list under ~~the~~
 1821 ~~provisions of~~ s. 295.08 or s. 295.085 shall be appointed for a
 1822 probationary period of 1 year. At the end of such period, if the
 1823 work of the veteran has been satisfactorily performed, the
 1824 veteran will acquire merit permanent employment status in his or
 1825 her position and ~~will~~ be subject to the employment rules of the
 1826 ~~department of Management Services~~ and the agency employing the
 1827 veteran ~~veteran's~~ ~~employing agency.~~

585-00618D-12

20127196

1828 (3) The department may adopt rules necessary to administer
 1829 this section.

1830 Section 30. Section 110.215, Florida Statutes, is amended
 1831 to read:

1832 110.215 Examinations and other employment qualification
 1833 assessments administered to persons having disabilities.-

1834 (1) The purpose of this section is to further the policy of
 1835 the State Personnel System to encourage and assist persons
 1836 having disabilities to achieve maximum personal and vocational
 1837 independence through useful and productive gainful employment by
 1838 eliminating unwarranted barriers to their qualifying
 1839 competitively for civil ~~state career~~ service jobs.

1840 (2) As used in this section, the term:

1841 ~~(a) "Agency" includes each department and agency of the~~
 1842 ~~state.-~~

1843 ~~(a)(b)~~ "Disability" means, with respect to an individual, a
 1844 physical or mental impairment that substantially limits one or
 1845 more of the major life activities of the individual, or a record
 1846 of having such an impairment, or being regarded as having such
 1847 an impairment.

1848 ~~(b)(c)~~ "Examination" includes employment tests and other
 1849 structured, systematic instruments used to assess the essential
 1850 knowledge, skills, abilities, minimum qualifications, and other
 1851 job-related requirements possessed by an applicant as a basis
 1852 for any employment decision by an agency.

1853 (3) An applicant for employment within the Civil State
 1854 ~~Career Service System~~ who has a disability that impairs sensory,
 1855 speaking, or manual skills may require an agency to administer
 1856 an ~~any~~ examination to him or her in a format and manner that

585-00618D-12

20127196

does not require use of an impaired skill, unless the test is designed to measure that skill. An applicant may request a reasonable accommodation in a test format on the basis of a disability.

(4) The department may adopt rules necessary to administer this section.

Section 31. Section 110.217, Florida Statutes, is amended to read:

110.217 Appointment actions and status ~~Appointments and promotion.~~

~~(1)(a) The department, in consultation with agencies that must comply with these rules,~~ shall develop uniform rules regarding original appointment, promotion, demotion, reassignment, lateral action, separation, and status which must be used by state employing agencies. ~~Such rules must be approved by the Administration Commission before their adoption by the department.~~

~~(b) Employing agencies may seek exceptions to these uniform rules by filing a petition with the Administration Commission. The Administration Commission shall approve an exception when the exception is necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or to permit persons in this state to receive tax benefits under federal law, or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the exception must be published in the Florida Administrative Weekly.~~

~~(c) Agency rules that provide exceptions to the uniform rules may not be filed with the Department of State unless the~~

585-00618D-12

20127196

~~Administration Commission has approved the exceptions. Each agency that adopts rules that provide exceptions to the uniform rules or that must comply with statutory requirements that conflict with the uniform rules must have a separate chapter published in the Florida Administrative Code that delineates clearly the provisions of the agency's rules which provide exceptions or are based upon a conflicting statutory requirement. Each alternative chosen from those authorized by the uniform rules must be specified. Each chapter must be organized in the same manner as the uniform rules.~~

(2) An employee appointed on probationary status shall attain merit status in his or her current position upon successful completion of at least a 1-year probationary period. An employee who has not attained merit status in his or her current position serves at the pleasure of the agency head and may be dismissed at the discretion of the agency head.

(3) If an employee who has received an internal agency promotion from a position in which the employee held merit status is to be dismissed from the promotional position for failure to meet the established performance standards of the promotional position while in probationary status, the agency, before dismissal, shall attempt to return the employee to his or her former position, or to a position with the same duties and responsibilities as the former position, if such a position is vacant. Such determinations by an agency are not appealable and this subsection does not apply to dismissals for any other reason.

~~(2) Each employing agency shall have the responsibility for the establishment and maintenance of rules and guidelines for~~

585-00618D-12

20127196

determining eligibility of applicants for appointment to positions in the career service.

(3) Eligibility shall be based on possession of required minimum qualifications for the job class and any required entry-level knowledge, skills, and abilities, and any certification and licensure required for a particular position.

(4) The employing agency shall be responsible for developing an employee career advancement program which shall assure consideration of qualified permanent employees in the agency or career service who apply. However, such program shall also include provisions to bring persons into the career service through open competition. Promotion appointments shall be subject to postaudit by the department.

(5) The department shall adopt any rules necessary to implement the provisions of this section. The rules must be approved by a majority vote of the Administration Commission prior to their adoption by the department.

Section 32. Section 110.219, Florida Statutes, is amended to read:

110.219 Attendance and leave; general policies.—

(1) The workday for each full-time state employee shall be 8 hours or as otherwise authorized ~~justified~~ by the agency head.

(2) Overtime may be required for any employee.

(3) The granting of any leave of absence, with or without pay, shall be in accordance with applicable state or federal laws and the rules of the State Personnel System ~~writing and shall be approved by the agency head. Those employees who, at the discretion of the agency, are~~ An employee who is granted a leave of absence remain employees of the agency ~~with or without~~

585-00618D-12

20127196

pay shall be an employee of the state while on such leave and shall be returned to the same or comparable position ~~or a~~ different position in the same class and same work location upon termination of the approved leave of absence in accordance with the rules of the State Personnel System. The agency head and the employee may agree in writing to other conditions and terms under which the leave is to be granted.

(4) Each agency shall keep an accurate record of all hours of work performed by each employee, as well as a complete and accurate record of all authorized leave which is approved. The ultimate responsibility for the accuracy and proper maintenance of all attendance and leave records shall be with the agency head.

(4)(5) Rules shall be adopted by The department shall adopt rules to administer in cooperation and consultation with the agencies to implement the provisions of this section; however, such rules must be approved by the Administration Commission prior to their adoption. Such rules must provide for, but need not be limited to:

(a) The maximum responsibility and authority resting with each agency head to administer attendance and leave matters in the agency within the parameters of the rules ~~adopted by the department.~~

(b) ~~Creditable service in which 1 month of Service credit as it relates to the accrual and payment of leave is awarded for each calendar month that the employee is on the payroll of a state agency or during which the employee is on authorized leave without pay.~~

(c) Holidays as provided in s. 112.929 ~~110.117~~.

585-00618D-12

20127196__

1973 (d) Overtime provisions.
 1974 (e) Annual leave provisions.
 1975 (f) Sick leave provisions.
 1976 (g) Parental leave provisions.
 1977 (h) Family medical leave provisions.
 1978 (i) Disability leave provisions.
 1979 (j) Compulsory disability leave provisions.
 1980 (k) Administrative leave provisions.
 1981 (l) Military leave provisions.
 1982 (m) Educational leave with pay provisions.
 1983 (n) Leave of absence without pay provisions.
 1984 ~~(6) The leave benefits provided to Senior Management~~
 1985 ~~Service employees shall not exceed those provided to employees~~
 1986 ~~in the Selected Exempt Service.~~
 1987 (5)(7) Subject to available funds, each December, a civil
 1988 permanent career service employee who has merit status or who
 1989 currently has probationary status due to a promotion that was
 1990 preceded by the attainment of merit status is entitled shall be
 1991 entitled, subject to available funds, to a payout of up to 24
 1992 hours of unused annual leave if the as follows:
 1993 ~~(a) A permanent career service employee has must have an~~
 1994 ~~annual leave balance of at least no less than 24 hours, after~~
 1995 ~~the payout, in order to qualify for this benefit.~~
 1996 (6)(b) A civil No permanent career service employee may not
 1997 shall receive a payout of greater than 240 hours over the course
 1998 of the employee's career within with the Civil Service state,
 1999 including any leave received at the time of separation.
 2000 Section 33. Section 110.221, Florida Statutes, is amended
 2001 to read:

585-00618D-12

20127196__

2002 110.221 Parental or family medical leave.-
 2003 (1) As used in this section, the term:
 2004 (a) "Family" means a child, parent, or spouse, and the
 2005 ~~term~~
 2006 (b) "Family medical leave" means leave requested by an
 2007 employee for a serious family illness including an accident,
 2008 disease, or condition that poses imminent danger of death,
 2009 requires hospitalization involving an organ transplant, limb
 2010 amputation, or other procedure of similar severity, or any
 2011 mental or physical condition that requires constant in-home
 2012 care. The term
 2013 (c) "Parental leave" means leave for the father or mother
 2014 of a child who is born to or adopted by that parent.
 2015 (2) The state may shall not:
 2016 (a) Terminate the employment of a civil service any
 2017 employee in the career service because of the pregnancy of the
 2018 employee or the employee's spouse or the adoption of a child by
 2019 that employee.
 2020 (b) Refuse to grant to a civil career service employee
 2021 parental or family medical leave without pay for a period not to
 2022 exceed 6 months. Such leave commences shall commence on a date
 2023 ~~that is~~ determined by the employee in consultation with the
 2024 attending physician following notification to the employer in
 2025 writing, and that is approved by the employer.
 2026 (c) Deny a civil career service employee the use of and
 2027 payment for annual leave credits for parental or family medical
 2028 leave. Such leave commences shall commence on a date determined
 2029 by the employee in consultation with the attending physician
 2030 following notification to the employer in writing.

585-00618D-12

20127196

(d) Deny a civil career service employee the use of and payment for accrued sick leave or family sick leave for any reason deemed necessary by a physician or as established by policy.

(e) Require that a civil career service employee take a mandatory parental or family medical leave.

(3) Upon returning at the end of parental or family medical leave of absence, such employee shall be reinstated to the same job or to an equivalent position that has with equivalent pay and with seniority, retirement, fringe benefits, and other service credits accumulated before ~~prior to~~ the leave period. If any portion of the parental or family medical leave is paid leave, the employee is ~~shall be~~ entitled to accumulate all benefits granted under paid leave status.

(4) The department may adopt rules necessary to administer this section.

Section 34. Section 110.224, Florida Statutes, is amended to read:

110.224 ~~Public~~ Employee performance evaluation system.—An A public employee performance evaluation system shall be established as a basis for evaluating and improving the performance of the state's workforce, to inform employees of strong and weak points in the employee's performance, to identify training needs, and to award lump-sum bonuses and other performance-based incentives in accordance with s. 110.1245 or other provisions of law 110.1245(2).

(1) Upon original appointment, promotion, demotion, or reassignment, a job description of the assigned position ~~assigned~~ must be made available to the civil career service

585-00618D-12

20127196

employee. The job description may be made available in an electronic format.

(2) Each employee shall ~~must~~ have a performance evaluation conducted at least annually which involves both, ~~and the employee must receive~~ an oral and written assessment of his or her performance ~~evaluation~~. The performance evaluation may include a plan of action for improvement of the employee's performance based on the work expectations or performance standards applicable to the position as determined by the agency head.

(3) The department may adopt rules necessary to administer this section ~~the public employee performance evaluation system which establish procedures for performance evaluation, review periods, and forms.~~

Section 35. Section 110.227, Florida Statutes, is amended to read:

110.227 Suspensions, dismissals, reductions in pay, demotions, layoffs, transfers, and grievances.—

(1) An ~~Any~~ employee who has satisfactorily completed at least a 1-year probationary period in his or her current position may be suspended or dismissed only for cause. Cause ~~includes shall include~~, but is not limited to, poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of ~~the provisions of~~ law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime. The agency head shall ensure that all employees of the agency have reasonable access to the agency's personnel policies and procedures ~~manual~~.

(2) ~~(a)~~ The department shall establish rules and procedures

585-00618D-12

20127196

for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees in the Civil career Service.

(a) Except with regard to law enforcement or correctional officers, firefighters, or professional health care providers, rules regarding layoff procedures ~~may shall~~ not include any provision system whereby a civil ~~career~~ service employee with greater seniority has the option of selecting a different position not being eliminated, but either vacant or already occupied by an employee who has ~~of~~ less seniority, and taking that position, commonly referred to as "bumping."

(b) For the implementation of layoffs as defined in s. 110.1054 ~~110.107~~, the department shall develop rules requiring retention of the agency's employees based upon objective measures that give consideration to comparative merit, demonstrated skills, the employee's experience, and the employee's length of service in the Civil Service. ~~Such rules shall be approved by the Administration Commission before their adoption by the department.~~

(3) ~~(a)~~ With regard to law enforcement or correctional officers, firefighters, or professional health care providers: ~~when~~

(a) ~~If~~ a layoff becomes necessary, such layoff shall be conducted within the competitive area identified by the agency head and approved by the department ~~of Management Services~~. Such competitive area shall be established taking into consideration the similarity of work; the organizational unit, which may be by agency, department, division, bureau, or other organizational unit; and the commuting area for the affected work ~~affected~~.

585-00618D-12

20127196

(b) ~~With regard to law enforcement or correctional officers, firefighters, or professional health care providers,~~ Layoff procedures shall be developed to establish the relative merit and fitness of employees and must shall include a formula for uniform application among all employees in the competitive area, taking into consideration the type of appointment, the length of service, and the evaluations of the employee's performance within the last 5 years of employment.

(4) A grievance process shall be available to civil ~~career~~ service employees who have satisfactorily completed at least a 1-year probationary period in their current positions. A grievance ~~is defined as the dissatisfaction that~~ occurs when an employee believes that any condition affecting the employee is unjust, inequitable, or a hindrance to the effective performance of his or her job duties ~~operation~~. Claims of discrimination and sexual harassment or claims related to suspensions, reductions in pay, demotions, and dismissals are not subject to the civil ~~career~~ service grievance process. The following procedures ~~shall~~ apply to any grievance filed pursuant to this subsection, except that all timeframes may be extended in writing by mutual agreement:

(a) Step One.—The employee must ~~may~~ submit a signed, written grievance on a form provided by the agency to his or her supervisor within 14 calendar days following the occurrence of the event giving rise to the grievance. The supervisor must meet with the employee to discuss the grievance and provide a written response to the employee within 7 business days following receipt of the grievance.

(b) Step Two.—If the employee is dissatisfied with the

585-00618D-12

20127196

response of his or her supervisor, the employee must ~~may~~ submit the written grievance to the agency head or ~~his or her~~ designee within 7 business days following receipt of the supervisor's written response. The agency ~~head's head or his or her~~ designee ~~may must~~ meet with the employee to discuss the grievance within 5 business days following receipt of the grievance. The agency head or his or her designee must respond in writing to the employee within 5 business days following receipt of the grievance or the meeting. The written decision of the agency head or designee is ~~shall be the final and binding authority~~ for all grievances filed pursuant to this subsection. Such grievances may not be appealed beyond Step Two.

(5)(a) A civil ~~career~~ service employee who has satisfactorily completed at least a 1-year probationary period and attained merit status in his or her current position and who is subject to a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal shall receive written notice of such action at least 10 calendar days before ~~prior to~~ the date such action is ~~to be~~ taken.

(a) Subsequent to such notice, and before ~~prior to~~ the date the action is ~~to be~~ taken, the affected employee shall be given an opportunity to appear before a designated agency official to rebut the agency or official taking the action to answer orally and in writing the charges against him or her orally or in writing. The notice ~~to the employee required by this paragraph~~ may be delivered to the employee personally or may be sent by certified mail with return receipt requested. Such actions are ~~shall be~~ appealable to the Public Employees Relations Commission

585-00618D-12

20127196

as provided in subsection (6). Written notice of ~~any~~ such appeal shall be filed by the employee with the commission within 21 calendar days after the date on which the notice of suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal is received by the employee.

(b) In extraordinary situations such as when the retention of a civil ~~career~~ service employee who has satisfactorily completed at least a 1-year probationary period in his or her current position may ~~would~~ result in damage to state property, may ~~would~~ be detrimental to the best interest of the state, or may ~~would~~ result in harm ~~injury~~ to the employee, a fellow employee, or some other person, such employee may be suspended or dismissed without 10 calendar days' prior notice ~~if, provided that~~ written or oral notice of such action, including evidence ~~of~~ the reasons therefor, and an opportunity to rebut the charges are furnished to the employee before ~~prior to~~ such dismissal or suspension. Such notice may be delivered to the employee personally or may be sent by certified mail with return receipt requested. ~~Agency compliance with the foregoing procedure requiring notice, evidence, and an opportunity for rebuttal must be substantiated.~~ Any employee who is suspended or dismissed pursuant to ~~the provisions of~~ this paragraph may appeal to the Public Employees Relations Commission as provided in subsection (6). Written notice of any such appeal shall be filed with the commission by the employee within 21 calendar days after the date on which the notice of suspension, ~~reduction in pay, demotion,~~ or dismissal is received by the employee.

(c) Merit status that was attained in a previous position ~~does not give rise to appeal rights under this section.~~

585-00618D-12

20127196

2205 (6) The following procedures ~~shall~~ apply to appeals filed
 2206 pursuant to subsection (5) with the Public Employees Relations
 2207 Commission, ~~hereinafter referred to as the commission:~~

2208 (a) The commission must conduct a hearing within 60
 2209 calendar days following the filing of a notice of appeal. An ~~No~~
 2210 extension of time for the hearing may not exceed 30 calendar
 2211 days, absent exceptional circumstances, and ~~no extension of time~~
 2212 may not be granted without the consent of all parties. Discovery
 2213 may be granted only upon the showing of extraordinary
 2214 circumstances. A party requesting discovery must ~~shall~~
 2215 demonstrate a substantial need for the information requested and
 2216 an inability to obtain relevant information by other means.
 2217 Except where inconsistent with the requirements of this
 2218 subsection, the provisions of s. 447.503(4) and (5) and chapter
 2219 120 apply to proceedings held pursuant to this subsection.

2220 (b) A person may represent himself or herself in
 2221 proceedings before the commission or may be represented by legal
 2222 counsel or by an ~~any~~ individual who qualifies as a
 2223 representative pursuant to rules adopted by the commission.

2224 (c) If the commission finds that cause did not exist for
 2225 the agency action, the commission shall reverse the decision of
 2226 the agency head and the employee shall be reinstated with or
 2227 without back pay. If the commission finds that cause existed for
 2228 the agency action, the commission shall affirm the decision of
 2229 the agency head. The commission may not reduce the penalty
 2230 imposed by the agency head, except in the case of law
 2231 enforcement or correctional officers, firefighters, and
 2232 professional health care providers, if the commission makes
 2233 specific written findings of mitigation.

585-00618D-12

20127196

2234 (d) A recommended order shall be issued by the hearing
 2235 officer within 30 days following the hearing. Exceptions to the
 2236 recommended order must ~~shall~~ be filed within 15 days after the
 2237 recommended order is issued. The final order shall be filed by
 2238 the commission within ~~no later than~~ 45 calendar days after the
 2239 hearing or after the filing of exceptions or oral arguments if
 2240 granted.

2241 (e) Final orders issued by the commission pursuant to
 2242 paragraph (d) are ~~shall be~~ reviewable as provided in s. 447.504.

2243 (7) Other than for law enforcement or correctional
 2244 officers, firefighters, and professional health care providers,
 2245 each suspension, dismissal, demotion, or reduction in pay must
 2246 be reviewed without consideration of any other case or set of
 2247 facts.

2248 (8) Employees of the Department of Law Enforcement are
 2249 subject to this section, except in matters relating to transfer.

2250 (9) The department may adopt rules necessary to administer
 2251 this section.

2252 ~~(8) A career service employee who is serving a probationary~~
 2253 ~~period in a position to which he or she has been promoted may be~~
 2254 ~~removed from that promotional position at any time during the~~
 2255 ~~probationary period but must be returned to his or her former~~
 2256 ~~position, or a comparable position, if such a position is~~
 2257 ~~vacant. If such a position is not available, before dismissal,~~
 2258 ~~the agency shall make a reasonable effort to retain the employee~~
 2259 ~~in another vacant position. This subsection does not apply to~~
 2260 ~~terminations for cause as described in subsection (1), nor does~~
 2261 ~~it create a right to "bump" an employee from an occupied~~
 2262 ~~position as described in paragraph (2)(a).~~

585-00618D-12

20127196

2263 Section 36. The Division of Statutory Revision is requested
 2264 to renumber part V of chapter 110, Florida Statutes, as part
 2265 III, consisting of ss. 110.302-110.3035, and to rename that part
 2266 as "Selected Exempt Service."

2267 Section 37. Section 110.601, Florida Statutes, is
 2268 transferred, renumbered as section 110.302, Florida Statutes,
 2269 and amended to read:

2270 110.302 ~~110.601~~ Declaration of policy.—This part creates a
 2271 system of personnel administration for management the purpose of
 2272 delivering which is to deliver high-quality performance by
 2273 selected exempt service ~~those~~ employees in the State Personnel
 2274 System ~~select exempt classifications~~ by facilitating the ~~state's~~
 2275 ability to attract and retain qualified personnel in these
 2276 positions, while also providing sufficient management
 2277 flexibility to ensure that the workforce is responsive to agency
 2278 needs. The Legislature recognizes that the public interest is
 2279 best served by developing and refining the technical and
 2280 managerial skills of these ~~its selected exempt service~~
 2281 ~~employees, and, to this end, technical training and management~~
 2282 ~~development programs are regarded as a major administrative~~
 2283 ~~function within agencies.~~

2284 Section 38. Section 110.602, Florida Statutes, is
 2285 transferred, renumbered as section 110.3021, Florida Statutes,
 2286 and amended to read:

2287 110.3021 ~~110.602~~ Selected Exempt Service; creation;
 2288 ~~coverage.~~—

2289 (1) The Selected Exempt Service is created as a separate
 2290 system of personnel administration for ~~select exempt~~ positions
 2291 in the State Personnel System which. ~~Such positions shall~~

585-00618D-12

20127196

2292 ~~include, and shall be limited to, those positions which~~ are
 2293 exempt from the Civil Career Service System pursuant to s.
 2294 110.205(2) and (5) and for which the salaries and benefits are
 2295 set by the department in accordance with the rules of the
 2296 Selected Exempt Service. ~~The department shall designate all~~
 2297 ~~positions included in the Selected Exempt Service as either~~
 2298 ~~managerial/policymaking, professional, or~~
 2299 ~~nonmanagerial/nonpolicymaking.~~

2300 (2) Employees in the Selected Exempt Service shall serve at
 2301 the pleasure of the agency head and are subject to personnel
 2302 actions at the discretion of the agency head. Personnel actions
 2303 that are tantamount to suspension, dismissal, reduction in pay,
 2304 demotion, or transfer are exempt from chapter 120.

2305 Section 39. 110.605, Florida Statutes, is transferred,
 2306 renumbered as section 110.3022, Florida Statutes, and amended to
 2307 read:

2308 110.3022 ~~110.605~~ Powers and duties; ~~personnel rules,~~
 2309 ~~records, reports, and performance appraisal.~~—The department is
 2310 responsible for the policy administration of the Selected Exempt
 2311 Service. In carrying out that function the department shall:

2312 (1) Provide broad, market-based pay bands for occupations
 2313 within the Selected Exempt Service and establish guidelines that
 2314 allow state agencies flexibility to move employees through the
 2315 pay bands. The agencies may determine the appropriate salary
 2316 within the bands using the guidelines adopted by the department.
 2317 The pay bands, and the assignment of bands to positions, do not
 2318 constitute rules within the meaning of s. 120.52.

2319 (2) Establish a classification system and a salary and
 2320 benefit plan for the Selected Exempt Service which provides for

585-00618D-12

20127196

2321 greater pay and benefits overall than are provided for the Civil
 2322 Service and less pay and benefits overall than are provided for
 2323 the Senior Management Service.

2324 (3) In consultation with the Executive Office of the
 2325 Governor and the appropriations committees of the Legislature,
 2326 conduct compensation surveys as necessary for achieving an
 2327 equitable, competitive, market-based compensation policy for
 2328 selected exempt service employees.

2329 (4) Establish a performance evaluation system for selected
 2330 exempt service employees which takes into consideration
 2331 individual and organizational efficiency, productivity, and
 2332 effectiveness.

2333 (5) Establish a system for documenting department actions
 2334 taken on agency requests for the approval of position exemptions
 2335 and pay increases for selected exempt service employees.

2336 (6)(1) The department shall Adopt and administer uniform
 2337 personnel rules, records, and reports relating to employees and
 2338 positions in the Selected Exempt Service, as well as any other
 2339 rules and procedures relating to personnel administration which
 2340 are necessary to carry out the purposes of this part.

2341 (a) The rules adopted by the department must comply with
 2342 all federal regulations necessary to permit the agencies to
 2343 receive federal funds.

2344 (b) Each agency shall operate within the uniform personnel
 2345 rules adopted by the department pursuant to this part.

2346 (c) Each agency shall maintain up-to-date records and
 2347 reports required by applicable rules.

2348 (d)(a) The department may shall develop uniform forms and
 2349 instructions to be used for personnel in reporting transactions

585-00618D-12

20127196

2350 ~~which involve changes in an employee's salary, status,~~
 2351 ~~performance, leave, fingerprint record, loyalty oath, payroll~~
 2352 ~~change, or appointment action or any additional transactions as~~
 2353 ~~the department deems may deem appropriate.~~

2354 ~~(b) The department shall develop a uniform performance~~
 2355 ~~appraisal system for employees and positions in the Selected~~
 2356 ~~Exempt Service covered by a collective bargaining agreement.~~
 2357 ~~Each employing agency shall develop a performance appraisal~~
 2358 ~~system for all other employees and positions in the Selected~~
 2359 ~~Exempt System. Such agency system shall take into consideration~~
 2360 ~~individual and organizational efficiency, productivity, and~~
 2361 ~~effectiveness.~~

2362 ~~(c) The employing agency must maintain, on a current basis,~~
 2363 ~~all records and reports required by applicable rules. The~~
 2364 ~~department shall periodically audit employing agency records to~~
 2365 ~~determine compliance with the provisions of this part and the~~
 2366 ~~rules of the department.~~

2367 ~~(d) The department shall develop a program of affirmative~~
 2368 ~~and positive actions that will ensure full utilization of women~~
 2369 ~~and minorities in Selected Exempt Service positions.~~

2370 ~~(2) Each employing agency shall operate within the uniform~~
 2371 ~~personnel rules adopted by the department pursuant to the~~
 2372 ~~provisions of this part. Each employing agency may adopt rules~~
 2373 ~~as necessary to implement the provisions of this part, but such~~
 2374 ~~rules shall not prescribe any personnel policies inconsistent~~
 2375 ~~with the provisions of this part or the rules of the department.~~

2376 ~~(3) The rules adopted by the department and each employing~~
 2377 ~~agency under this part shall comply with all federal regulations~~
 2378 ~~necessary to permit the state agencies to be eligible to receive~~

585-00618D-12

20127196

~~federal funds.~~

~~(4) The department shall adopt by rule procedures for Selected Exempt Service employees that require disclosure to the agency head of any application for or offer of employment, gift, contractual relationship, or financial interest with any individual, partnership, association, corporation, utility, or other organization, whether public or private, doing business with or subject to regulation by the agency.~~

~~(5) The secretary may periodically hire a consultant with expertise in personnel management to advise him or her with respect to the administration of the Selected Exempt Service.~~

Section 40. Section 110.3023, Florida Statutes, is created to read:

110.3023 Recruitment.—

(1) Each state agency is responsible for establishing a process for employing, advancing, and deploying selected exempt service staff to meet agency needs.

(2) If normal recruitment efforts of the agency through the use of the department's designated human resource information system, trade journals, or magazines are unsuccessful, the agency may contract with a person or firm to conduct a multistate search for hard-to-fill professional positions. The contracted search person or firm must satisfy the following criteria:

(a) Willingness to accept contingency contracts with fees up to 30 percent of the annual salary of the applicant, to be paid upon employment of an applicant produced by the search.

(b) Demonstrated capacity to perform effectively at competitive industry prices.

585-00618D-12

20127196

(c) Evidence of successful placements in the public sector by level and type of placement.

(d) Agreement for the delivery of services within 90 calendar days after the date of the requested search by the agency, unless an extension is granted by the agency.

(e) Ability to attract minorities and women as evidenced by applicant pools generated for previous clients.

Section 41. The Division of Statutory Revision is requested to renumber part III of chapter 110, Florida Statutes, as part IV, consisting of ss. 110.401-110.4035, and to rename that part as "Senior Management Service."

Section 42. Section 110.401, Florida Statutes, is amended to read:

110.401 Declaration of policy.—This part creates a uniform system of personnel administration for attracting, retaining, and developing highly competent, executive-level senior-level managers within the State Personnel System at the highest executive-management-level agency positions in order for the highly complex programs and agencies of state government to function effectively, efficiently, and productively. The Legislature recognizes that executive-level senior-level management is an established profession and that the public interest is best served by developing and refining the management skills of its senior management service employees. Accordingly, training and management development programs are regarded as a major administrative function within agencies.

Section 43. Section 110.402, Florida Statutes, is amended to read:

110.402 Senior Management Service; creation, coverage.—

585-00618D-12

20127196

(1) The Senior Management Service is created as a separate system of personnel administration for positions in the State Personnel System which perform executive branch the duties and responsibilities that of which are primarily and essentially policymaking or managerial in nature.

~~(2) Such positions are~~ The Senior Management Service shall be limited to those positions that which are exempt from the Civil Career Service under System by s. 110.205(2) and for which the salaries and benefits are set by the department in accordance with the rules of the Senior Management Service.

(2) Employees in the Senior Management Service shall serve at the pleasure of the agency head and are subject to personnel actions at the discretion of the agency head. Personnel actions that are tantamount to suspension, dismissal, reduction in pay, demotion, or transfer are exempt from chapter 120.

Section 44. Section 110.403, Florida Statutes, is amended to read:

110.403 Powers and duties of the department.—The department is responsible for the policy administration of the Senior Management Service. To carry out that function the department shall:

~~(1) In order to implement the purposes of this part, the Department of Management Services, after approval by the Administration Commission, shall adopt and amend rules providing for:~~

(1)(a) Establish a system for employing, advancing, and deploying senior management service employees which promoting, or reassigning managers that is responsive to organizational or program needs. In no event shall The number of positions

585-00618D-12

20127196

included in the Senior Management Service may not exceed 1.0 percent of the total full-time equivalent positions in the Civil career Service. The department may not approve the establishment of shall deny approval to establish any position within the Senior Management Service which exceeds ~~would exceed~~ the limitation established in this paragraph. The department shall report that the limitation has been reached to the Governor, the President of the Senate, and the Speaker of the House of Representatives, as soon as practicable after it such event occurs. ~~Employees in the Senior Management Service shall serve at the pleasure of the agency head and shall be subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head. Such personnel actions are exempt from the provisions of chapter 120.~~

(2) Provide broad, market-based pay bands for occupations within the Senior Management Service and establish guidelines that allow state agencies flexibility to move employees through the pay bands. The agencies may determine the appropriate salary within the bands using the guidelines established by the department. Such pay bands and the assignment of bands to positions do not constitute rules within the meaning of s. 120.52.

~~(b) A performance appraisal system which shall take into consideration individual and organizational efficiency, productivity, and effectiveness.~~

(3)(c) Establish a classification system plan and a salary and benefit plan for senior management service employees which that provides appropriate incentives for the recruitment and

585-00618D-12 20127196

retention of outstanding management personnel and provides for salary increases based on performance.

(4) In consultation with the Executive Office of the Governor and the appropriations committees of the Legislature, conduct compensation surveys as necessary for the purpose of achieving an equitable, competitive, market-based compensation policy for senior management service employees.

(5) Establish a performance evaluation system for senior management service employees which takes into consideration individual and organizational efficiency, productivity, and effectiveness.

~~(d) A system of rating duties and responsibilities for positions within the Senior Management Service and the qualifications of candidates for those positions.~~

(6)(e) Establish a system for documenting actions taken on agency requests for approval of position exemptions and special pay increases for senior management service employees.

(7) Adopt and administer personnel rules, records, and reports relating to employees and positions in the Senior Management Service, as well as any other rules or procedures relating to personnel administration which are necessary for carrying out the purposes of this part.

(a) The rules adopted by the department must comply with all federal regulations necessary for state agencies to receive federal funds.

(b) Each agency shall operate within the personnel rules adopted by the department pursuant to this part.

(c) The agency shall maintain up-to-date records and reports required by applicable rules.

585-00618D-12 20127196

(d) The department may develop uniform forms and instructions to be used in connection with personnel transactions as the department deems appropriate.

~~(f) Requirements regarding recordkeeping by agencies with respect to Senior Management Service positions. Such records shall be audited periodically by the Department of Management Services to determine agency compliance with the provisions of this part and the rules of the Department of Management Services.~~

~~(g) Other procedures relating to personnel administration to carry out the purposes of this part.~~

~~(h) A program of affirmative and positive action that will ensure full utilization of women and minorities in Senior Management Service positions.~~

~~(2) The powers, duties, and functions of the department of Management Services shall include responsibility for the policy administration of the Senior Management Service.~~

~~(3) The department shall have the following additional responsibilities:~~

~~(a) To establish and administer a professional development program that shall provide for the systematic development of managerial, executive, or administrative skills. Such a program shall include the following topics:~~

~~1. Improving the performance of individual employees. This topic provides skills in understanding and motivating individual performance, providing effective and timely evaluations of employees, and making recommendations on performance incentives and disincentives.~~

~~2. Improving the performance of groups of employees. This~~

585-00618D-12

20127196

~~topic provides skills in creating and maintaining productive workgroups and making recommendations on performance incentives and disincentives.~~

~~3. Relating the efforts of employees to the goals of the organization. This topic provides skills in linking the work of individual employees to the goals of the agency program, service, or activity.~~

~~4. Strategic planning. This topic provides the skills for defining agency business processes, measuring performance of such processes, and reengineering such processes for improved efficiency and effectiveness.~~

~~5. Team leadership. This topic provides skills in effective group processes for organizational motivation and productivity based on proven business and military applications that emphasize respect for and courtesy to the public.~~

~~(b) To promote public understanding of the purposes, policies, and programs of the Senior Management Service.~~

~~(c) To approve contracts of employing agencies with persons engaged in the business of conducting multistate executive searches to identify qualified and available applicants for Senior Management Service positions for which the department sets salaries in accordance with the classification and pay plan. Such contracts may be entered by the agency head only after completion of an unsuccessful in-house search. The department shall establish, by rule, the minimum qualifications for persons desiring to conduct executive searches, including a requirement for the use of contingency contracts. These rules shall ensure that such persons possess the requisite capacities to perform effectively at competitive industry prices. These~~

585-00618D-12

20127196

~~rules shall also comply with state and federal laws and regulations governing equal opportunity employment.~~

~~(4) All policies and procedures adopted by the department regarding the Senior Management Service shall comply with all federal regulations necessary to permit the state agencies to be eligible to receive federal funds.~~

~~(5) The department shall adopt, by rule, procedures for Senior Management Service employees that require disclosure to the agency head of any application for or offer of employment, gift, contractual relationship, or financial interest with any individual, partnership, association, corporation, utility, or other organization, whether public or private, doing business with or subject to regulation by the agency.~~

Section 45. Section 110.4035, Florida Statutes, is created to read:

110.4035 Recruitment.—

(1) Each state agency is responsible for establishing a process for employing, advancing, and deploying executive level managers to meet agency needs.

(2) If normal recruitment efforts are unsuccessful, the agency may contract with a person or firm to conduct a multistate search for executive level managers which satisfies the following criteria:

(a) Willingness to accept contingency contracts with fees that do not exceed 30 percent of the annual salary of the applicant, to be paid upon employment of the applicant produced by the search.

(b) Demonstrated capacity to perform effectively at competitive industry prices.

585-00618D-12

20127196

2611 (c) Evidence of successful placements in the public sector
 2612 by level and type of placement.

2613 (d) Agreement for the delivery of services within 90
 2614 calendar days after the date of the requested search by the
 2615 agency, unless an extension is granted by the agency.

2616 (e) Ability to attract minorities and women as evidenced by
 2617 applicant pools generated for previous clients.

2618 Section 46. The Division of Statutory Revision is requested
 2619 to create part IX of chapter 112, Florida Statutes, to be
 2620 entitled "State Employment," and consisting of ss. 112.906-
 2621 112.933, Florida Statutes.

2622 Section 47. Section 112.906, Florida Statutes, is created
 2623 to read:

2624 112.906 Definitions.—As used in this part, the term:

2625 (1) "Department" means the Department of Management
 2626 Services.

2627 (2) "Other personal services" has the same meaning as in s.
 2628 216.011(1).

2629 (3) "State agency" or "agency" means any official, officer,
 2630 commission, board, authority, council, committee, or department
 2631 of the executive branch or judicial branch of state government
 2632 as defined in chapter 216, unless otherwise exempted by law.

2633 (4) "State employee" or "employee" means an employee of a
 2634 state agency.

2635 Section 48. Section 110.131, Florida Statutes, is
 2636 transferred, renumbered as section 112.907, Florida Statutes,
 2637 and amended to read:

2638 112.907 110.131 Other-personal-services temporary
 2639 employment.—

585-00618D-12

20127196

2640 ~~(1) As used in this section, the term "agency" means any~~
 2641 ~~official, officer, commission, board, authority, council,~~
 2642 ~~committee, or department of the executive branch of state~~
 2643 ~~government and means any officer, court, commission, or other~~
 2644 ~~unit of the judicial branch of state government supported in~~
 2645 ~~whole or in part by appropriations made by the Legislature.~~

2646 (1)(2) An agency may employ any qualified individual in
 2647 other-personal-services temporary employment for 1,040 hours
 2648 within any 12-month period. For each other personal services
 2649 employee, the agency shall:

2650 (a) Maintain employee records identifying, at a minimum,
 2651 the person employed, hire date, type of other personal services
 2652 employment, and the number of hours worked.

2653 (b) Determine the appropriate rate of pay and ensure that
 2654 all payments are in compliance with the federal Fair Labor
 2655 Standards Act and state law.

2656 (c) Review, determine, and document by June 30 of each year
 2657 that the continuation of each other personal services employment
 2658 position is necessary to the mission of the agency. This review
 2659 process An extension beyond a total of 1,040 hours within an
 2660 agency for any individual requires a recommendation by the
 2661 agency head and approval by the Executive Office of the
 2662 Governor. Approval of extensions shall be made in accordance
 2663 with criteria established by the department. Each agency shall
 2664 maintain employee information as specified by the department
 2665 regarding each extension of other personal services temporary
 2666 employment. The time limitation established by this subsection
 2667 does not apply to board members; consultants; seasonal
 2668 employees; institutional clients employed as part of their

585-00618D-12

20127196

rehabilitation; bona fide, degree-seeking students in accredited secondary or postsecondary educational programs; employees hired to deal with an emergency situation that affects the public health, safety, or welfare; or employees hired for a project that is identified by a specific appropriation or time-limited grant.

(2) Unless specifically provided by law, other personal services employees are not eligible for any form of paid leave, paid holidays, paid personal day, participation in state group insurance or retirement benefits, or any other state employee benefit. Other personal services employees may be included in that part of an agency's recognition and reward program that recognizes and rewards employees who submit innovative ideas that increase productivity, eliminate or reduce state expenditures, improve operations, or generate additional revenue, or who meet or exceed the agency's established criteria for a project or goal.

(3) Each agency that is authorized to adopt rules governing the terms and conditions of employment may adopt rules necessary to administer this section.

~~(3) The department shall adopt rules providing that other-personal-services temporary employment in an employer-employee relationship shall be used for short-term tasks. Such rules shall specify the employment categories, terms, conditions, rate of pay, and frequency of other personal services temporary employment and the duration for which such employment may last; specify criteria for approving extensions beyond the time limitation provided in subsection (2); and prescribe recordkeeping and reporting requirements for other personal-~~

585-00618D-12

20127196

~~services employment.~~

~~(4) The department shall prepare written material explaining the terms and conditions of other personal services employment and shall provide master copies to each agency. Each agency shall provide each of its applicants for such employment with a copy thereof at the time of application and shall discuss the information contained thereon with each applicant at the time of interview or employment commencement, whichever occurs sooner.~~

~~(5) The department shall maintain information relating to other personal services employment for each agency. Such information shall include:~~

~~(a) The total amount of compensation for other personal services personnel, by employment category, for the preceding fiscal year.~~

~~(b) The name, social security number, employment category, employment commencement date, and number of hours worked for each individual whose initial other personal services temporary employment began before the start of the preceding fiscal year and who was still employed as an other personal services temporary employee at the end of the preceding fiscal year.~~

~~(6) (a) The provisions of subsections (2), (3), and (4) do not apply to any employee for whom the Board of Governors of the State University System, or the board's designee, or the Board of Trustees of the Florida School for the Deaf and the Blind is the employer as defined in s. 447.203(2); except that, for purposes of subsection (5), the Board of Trustees of the Florida School for the Deaf and the Blind shall comply with the recordkeeping and reporting requirements adopted by the~~

585-00618D-12

20127196

department pursuant to subsection (3) with respect to those other personal services employees exempted by this subsection.

(b) The provisions of subsections (2), (3), and (4) do not apply to any employee of the Division of Blind Services Library for the Blind and Physically Handicapped for whom the Division of Blind Services is the employer as defined in s. 447.203(2), except that, for purposes of subsection (5), the Division of Blind Services shall comply with the recordkeeping and reporting requirements adopted by the department pursuant to subsection (3) with respect to those other personal services employees exempted by this subsection.

(c) Notwithstanding the provisions of this section, the agency head or his or her designee may extend the other personal services employment of a health care practitioner licensed pursuant to chapter 458, chapter 459, chapter 460, chapter 461, chapter 463, part I of chapter 464, chapter 466, chapter 468, chapter 483, chapter 486, or chapter 490 beyond 2,080 hours and may employ such practitioner on an hourly or other basis.

(7) The Department of Management Services shall annually assess agencies for the regulation of other personal services on a pro rata share basis not to exceed an amount as provided in the General Appropriations Act.

Section 49. Section 110.1315, Florida Statutes, is transferred, renumbered as section 112.908, Florida Statutes, and amended to read:

112.908 ~~110.1315~~ Alternative retirement benefits; other personal services employees.—

(1) Upon review and recommendation of the department and

585-00618D-12

20127196

approval of the Executive Office of the Governor, the Department of Financial Services shall provide ~~department may contract for~~ the implementation of an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The Department of Financial Services may contract with ~~may provide for~~ a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b) (7) (F) of the Internal Revenue Code. The Department of Financial Services ~~department~~ may develop a request for proposals and solicit qualified vendors to compete for the award of the contract. A vendor shall be selected on the basis of the plan that best serves the interest of the participating employees and the state. The proposal must comply with all necessary federal and state laws and rules.

(2) The Department of Financial Services may adopt rules necessary to administer this section.

Section 50. Section 110.1128, Florida Statutes, is transferred and renumbered as section 112.909, Florida Statutes.

Section 51. Section 112.910, Florida Statutes, is created to read:

112.910 Equal employment opportunity.—

(1) It is the policy of this state to assist in ensuring equal employment opportunity through programs of affirmative and positive action which allow full utilization of women and minorities.

(2) The head of each executive agency shall develop and

585-00618D-12

20127196

2785 implement an affirmative action plan in accordance with this
 2786 section and applicable state and federal laws.

2787 (a) Each executive agency shall establish annual goals for
 2788 ensuring the full utilization of groups underrepresented in its
 2789 workforce as compared to the relevant labor market as defined by
 2790 the agency and shall design its affirmative action plan to meet
 2791 those goals.

2792 (b) The head of each executive agency shall appoint an
 2793 equal employment opportunity officer.

2794 (c) By October 1 of each year, each executive agency that
 2795 is not part of the State Personnel System shall report to the
 2796 Executive Office of the Governor information relating to the
 2797 implementation, continuance, updating, and results of the
 2798 agency's affirmative action plan for the previous fiscal year.

2799 (3) Each state attorney and public defender shall:

2800 (a) Develop and implement an affirmative action plan.

2801 (b) Establish annual goals for ensuring the full
 2802 utilization of groups underrepresented in its workforce as
 2803 compared to the relevant labor market in this state and design
 2804 its affirmative action plan to meet those goals.

2805 (c) Appoint an affirmative action equal employment
 2806 opportunity officer.

2807 (d) Report annually to the Justice Administrative
 2808 Commission on the implementation, continuance, updating, and
 2809 results of his or her affirmative action program for the
 2810 previous fiscal year.

2811 (4) An individual claiming to be aggrieved by an unlawful
 2812 employment practice may file a complaint with the Florida
 2813 Commission on Human Relations as provided under s. 760.11.

585-00618D-12

20127196

2814 Section 52. Section 112.911, Florida Statutes, is created
 2815 to read:

2816 112.911 Nondiscrimination in employment.—

2817 (1) It is the policy of the state that all appointments,
 2818 terminations, assignments, and maintenance of status,
 2819 compensation, privileges, and other terms and conditions of
 2820 employment be made without regard to age, sex, race, color,
 2821 religion, national origin, political affiliation, marital
 2822 status, disability, or genetic information unless a specific
 2823 requirement constitutes a bona fide occupational qualification.

2824 (2) The state, its agencies, and officers shall ensure
 2825 freedom from discrimination in employment as provided by the
 2826 Florida Civil Rights Act of 1992, s. 112.044, and this chapter.

2827 Section 53. Section 110.1221, Florida Statutes, is
 2828 transferred, renumbered as section 112.912, Florida Statutes,
 2829 and amended to read:

2830 112.912 ~~110.1221~~ Sexual harassment policy; ~~executive agency~~
 2831 ~~rules.~~—It is the policy of the state that sexual harassment is a
 2832 form of discrimination. Each agency that has authority to adopt
 2833 rules governing the terms and conditions of employment The
 2834 ~~department~~ shall adopt uniform sexual harassment rules
 2835 ~~applicable to all executive agencies.~~ Such ~~the~~ rules must define
 2836 the term "sexual harassment" in a manner consistent with the
 2837 federal definition.

2838 Section 54. Section 110.122, Florida Statutes, is
 2839 transferred, renumbered as section 112.913, Florida Statutes,
 2840 and amended to read:

2841 112.913 ~~110.122~~ Terminal payment for accumulated sick
 2842 leave.—

585-00618D-12

20127196

(1) All state branches, ~~departments,~~ and agencies that are authorized ~~which have the authority~~ to establish or approve personnel policies for employees and to employ personnel and establish the conditions of their employment shall establish policies ~~that~~ to provide terminal "incentive" pay for accumulated and unused sick leave to each employee upon ~~normal or regular retirement for reason other than disability~~ or upon termination of employment, or to the employee's beneficiary if service is terminated by death if, provided such retirement, termination, or death occurs after 10 years of creditable state employment.

(2) Each entity that is authorized to adopt rules governing the terms and conditions of employment ~~The employing entity~~ shall establish and publish rules governing the accumulation and use of sick leave. The employing entity shall and maintain accurate and reliable records showing the amount of sick leave that ~~which~~ has accumulated and is unused by the employee at the time of retirement, death, or termination.

(3) The payments authorized by this section shall be determined by using the rate of pay received by the employee at the time of retirement, termination, or death, applied to the sick leave time for which the employee is qualified to receive terminal "incentive" pay under the rules adopted ~~by the department pursuant to the provisions of this section. The rules and policies must provide adopted pursuant to this section shall permit~~ terminal pay for sick leave equal to one-fourth one-eighth of all unused sick leave credit ~~accumulated prior to October 1, 1973, plus one-fourth of all unused sick leave accumulated on or after October 1, 1973.~~ However, terminal pay

585-00618D-12

20127196

allowable for unused sick leave may accumulated on or after ~~October 1, 1973,~~ shall not exceed a maximum of 480 hours of actual payment. ~~Employees shall be required to use all sick leave accumulated prior to October 1, 1973, before using sick leave accumulated on or after October 1, 1973.~~

(4) The payments made pursuant to this section are ~~shall~~ not salary payments ~~be considered~~ in any state-administered retirement system ~~as salary payments~~ and may ~~shall~~ not be used in determining the average final compensation of an employee in any state-administered retirement system.

(5) All rights and benefits provided under this section shall be forfeited by an ~~any~~ employee:

(a) Who is found guilty in a court of competent jurisdiction of committing, aiding, or abetting any embezzlement or theft from the employee's employer or bribery in connection with the employment, committed before prior to retirement or 10 years of 10-year normal creditable state employment termination;

(b) Whose employment is terminated by reason of the employee having admitted committing, aiding, or abetting an embezzlement or theft from his or her employer or by reason of bribery;

(c) Who, prior to 10 years of 10-year normal creditable state employment termination or retirement is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees; or

(d) Who has been found guilty by a court of competent jurisdiction of violating any state law prohibiting strikes by public employees, ~~shall forfeit all rights and benefits under this section.~~

585-00618D-12

20127196

(6) An employee whose employment terminates as a result of an act committed subject to this subsection ~~may shall~~ not be given credit for unused sick leave accumulated ~~before prior to~~ termination ~~if should~~ the employee ~~is be~~ reemployed at a later date.

Section 55. Section 110.121, Florida Statutes, is transferred, renumbered as section 112.914, Florida Statutes, and amended to read:

112.914 ~~110.121~~ Sick leave pool.—Each entity that ~~department or agency of the state which~~ has authority to adopt rules governing the accumulation and use of sick leave for employees, and that which maintains accurate and reliable records showing the amount of sick leave which has been accumulated and is unused by employees, may, in accordance with ~~guidelines which shall be established by the Department of Management Services,~~ adopt rules establishing for the ~~establishment of a plan that allows allowing~~ participating employees to pool and use sick leave ~~and allowing any sick leave thus pooled to be used by any participating employee who has used all of the sick leave that has been personally accrued by him or her. Although not limited to the following,~~ Such rules must shall provide, but need not be limited to:

(1) Minimum eligibility criteria ~~That employees shall be eligible for participation in the sick leave pool after 1 year of employment with the state or agency of the state, provided that such employee has accrued a minimum amount of unused sick leave, which minimum shall be established by rule.~~

(2) That participation in the sick leave pool ~~is shall, at~~ is shall, at all times, be voluntary on the part of the employees.

585-00618D-12

20127196

(3) That any sick leave pooled shall be removed from the personally accumulated sick leave balance of the employee contributing such leave.

(4) That any sick leave in the pool which ~~leave~~ is used by a participating employee ~~is shall be~~ used only for the employee's personal illness, accident, or injury.

(5) That a participating employee ~~may shall not be eligible to~~ use sick leave accumulated in the pool until all of his or her personally accrued sick, annual, and compensatory leave, and personal day, have has been used.

(6) The ~~A~~ maximum number of hours ~~days~~ of sick leave in the pool which any one employee may use.

(7) That a participating employee who uses sick leave from the pool ~~is shall not be~~ required to recontribute such sick leave to the pool, except as otherwise provided in this section.

(8) That an employee who cancels his or her membership in the sick leave pool ~~may shall not be eligible to~~ withdraw the hours ~~days~~ of sick leave contributed by that employee to the pool.

(9) That an employee who moves transfers from a one position in one agency state government to a another position in another agency state government may transfer from one pool to another if ~~the eligibility criteria of the pools are comparable or the administrators of the pools have agreed on the a formula~~ for transfer of credits.

(10) That alleged abuse of the use of the sick leave pool shall be investigated, and, on a finding of wrongdoing, the employee must shall repay all of the sick leave credits drawn from the sick leave pool and ~~is shall be~~ subject to such other

585-00618D-12

20127196

disciplinatory action as is determined by the agency head.

(11) That sick leave credits may be drawn from the sick leave pool by a part-time employee on a pro rata basis.

Section 56. Section 110.119, Florida Statutes, is transferred, renumbered as section 112.915, Florida Statutes, and amended to read:

112.915 ~~110.119~~ Administrative leave for military-service-connected ~~reexamination or treatment with respect to service-connected~~ disability.—

(1) ~~An Any~~ employee of the state who has been rated by the United States Department of Veterans Affairs or its predecessor to have incurred a service-connected disability and has been scheduled by the United States Department of Veterans Affairs to be reexamined or treated for the disability shall be granted administrative leave for such reexamination or treatment without loss of pay or benefits. However, such in no event shall the paid leave may not under this section exceed 48 hours per 6 calendar ~~days~~ a year.

~~(2) The department may adopt any rule necessary to carry out the purpose of this section.~~

Section 57. Section 110.120, Florida Statutes, is transferred, renumbered as section 112.916, Florida Statutes, and amended to read:

112.916 ~~110.120~~ Administrative leave for disaster service volunteers.—

(1) SHORT TITLE.—This section ~~shall be known and~~ may be cited as the "Florida Disaster Volunteer Leave Act."

(2) DEFINITIONS.—As used in this section, the following terms shall apply:

585-00618D-12

20127196

(a) "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(b) "Disaster" includes disasters designated at level II and above in the American National Red Cross regulations and procedures.

(3) LEAVE OF ABSENCE.—An employee of a state agency who is a certified disaster service volunteer of the American Red Cross may be granted a leave of absence with pay for up to not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the American Red Cross. Such leave of absence may be granted upon the request of the American Red Cross and upon the approval of the employer ~~employee's employing~~ agency. An employee granted leave under this section may ~~shall~~ not be deemed ~~to be~~ an employee of the state for purposes of workers' compensation. Leave under this section ~~act~~ may be granted only for services related to a disaster occurring within the boundaries of the State of Florida, except that, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the boundaries of the United States.

Section 58. Section 110.1091, Florida Statutes, is transferred, renumbered as section 112.917, Florida Statutes, and amended to read:

112.917 ~~110.1091~~ Employee assistance programs; public records exemption.—

(1) ~~A An~~ An employing state agency may provide a counseling, therapeutic, or other professional treatment program to assist a ~~any~~ state employee who has a behavioral disorder, medical

585-00618D-12

20127196

disorder, or substance abuse problem or who has an emotional difficulty that affects the employee's job performance. ~~The Each employing state agency may designate community diagnostic and referral resources as necessary to implement the provisions of this subsection.~~

(2) A state employee's personal identifying information contained in records held by ~~a an employing~~ state agency relating to an employee's participation in an employee assistance program is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 59. Section 110.151, Florida Statutes, is transferred, renumbered as section 112.918, Florida Statutes, and amended to read:

112.918 ~~110.151~~ ~~State officers' and employees'~~ Child care services.—

(1) ~~A state agency may establish The Department of Management Services shall approve, administer, and coordinate child care services for state officers' and employees' children or dependents. Duties shall include, but not be limited to, reviewing and approving requests from state agencies for child care services, providing technical assistance on child care program startup and operation, and assisting other agencies in conducting needs assessments, designing centers, and selecting service providers.~~ Primary emphasis for child care services shall be given to children who are not subject to compulsory school attendance pursuant to part II of chapter 1003, and, to the extent possible, emphasis shall be placed on child care for children aged 2 and under.

585-00618D-12

20127196

(2) Child care programs may be located in state-owned office buildings, educational facilities and institutions, custodial facilities and institutions, and, with the consent of the President of the Senate and the Speaker of the House of Representatives, in buildings or spaces used for legislative activities. In addition, centers may be located in privately owned buildings conveniently located to the place of employment of those ~~officers and~~ employees to be served by the centers. If a child care program is located in a state-owned office building, educational facility or institution, or custodial facility or institution, or in a privately owned building leased by the state, a portion of the service provider's rental fees for child care space may be waived by the sponsoring agency in accordance with the rules of the department's Facilities Program ~~Department of Management Services~~. Additionally, the sponsoring state agency may be responsible for the maintenance, utilities, and other operating costs associated with the child care center.

(3) Except as otherwise provided in this section, the cost of child care services shall be offset by fees charged to employees who use the ~~child care~~ services. Requests for proposals may provide for a sliding fee schedule based on, ~~with fees charged on the basis of~~ the employee's household income.

(4) The provider of proposed child care services shall be selected by competitive contract. ~~Requests for proposals shall be developed with the assistance of, and subject to the approval of, the Department of Management Services.~~ Management of the contract with the service provider is ~~shall be~~ the responsibility of the sponsoring state agency.

(5) An operator selected to provide services must comply

585-00618D-12

20127196

with all state and local standards for the licensure and operation of child care facilities, maintain adequate liability insurance coverage, and assume financial and legal responsibility for the operation of the program. ~~Neither~~ The operator of and not any personnel employed by or at a child care facility may not ~~shall~~ be deemed to be employees of the state. However, the sponsoring state agency may be responsible for the operation of the child care center if when:

(a) A second request for proposals fails to procure a qualified service provider; or

(b) The service provider's contract is canceled and attempts to procure another qualified service provider are unsuccessful;

~~and plans for direct operation are approved by the Department of Management Services.~~

(6) In the areas where the state has an insufficient number of employees to justify a worksite center, a state agency may join in a consortium arrangement using ~~utilizing~~ available state facilities with not-for-profit corporations or other public employers to provide child care services to ~~both~~ public employees and employees of private sector employers. The consortium agreement must first address the unmet child care needs of the children of the public employees whose employers are members of the consortium, and then address the child care needs of private sector employees.

~~(7) The Department of Management Services may adopt any rules necessary to achieve the purposes of this section.~~

Section 60. Section 110.181, Florida Statutes, is

Page 107 of 192

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585-00618D-12

20127196

transferred and renumbered as section 112.919, Florida Statutes.

Section 61. Section 110.1225, Florida Statutes, is transferred, renumbered as section 112.920, Florida Statutes, and amended to read:

112.920 ~~110.1225~~ Furloughs.—~~If When~~ a deficit is projected ~~by the Revenue Estimating Conference pursuant to s. 216.136(3),~~ in any state agency fund that supports salary and benefit appropriations, the agency ~~Administration Commission~~ may, upon the approval by the Governor or the Chief Justice of the Supreme Court, propose a furlough plan to the Legislative Budget Commission ~~Legislature~~, which must approve or disapprove such plan. The plan must identify all affected positions and ensure that all affected employees within a budget entity are subject to the same reduction of hours for the same number of pay periods with a commensurate reduction in pay. If authorized by the Legislature as a cost-savings measure to address anticipated short-term shortfalls to funds that support salary and benefit appropriations for a specified fiscal year, an agency may also impose furloughs as directed by the Legislature in the General Appropriations Act. For the purposes of this section, the term "furlough" means a temporary reduction in the regular hours of employment administered as leave without pay.

Section 62. Section 110.1155, Florida Statutes, is transferred and renumbered as section 112.921, Florida Statutes.

Section 63. Section 110.191, Florida Statutes, is transferred, renumbered as section 112.922, Florida Statutes, and amended to read:

112.922 ~~110.191~~ State employee leasing.—

(1) ~~If In situations where~~ the Legislature has expressly

Page 108 of 192

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

585-00618D-12

20127196

authorized a the state, ~~an agency, or the judicial branch as~~
 defined in s. 110.107 to lease employees, the Executive Office
 of the Governor for the executive branch or the Chief Justice
 for the judicial branch may authorize ~~any of~~ the following
 actions related to such state employee leasing activities if,
~~provided that~~ the direct cost of such actions is to be paid or
 reimbursed within 30 days after payment by the entity or person
 to whom the employees are leased:

(a) Creation of ~~Create~~ a separate budget entity from which
 leased employees are ~~shall be~~ paid and the transfer of the
 positions authorized to be leased to that budget entity.

(b) ~~Provide~~ Increases in the operating budget entity.

(c) ~~Authorized~~ Lump-sum salary bonuses to leased
 employees. ~~However,~~ any lump-sum salary bonus above the
 automatic salary increases which may be contained in the General
 Appropriations Act must be funded from private sources.

(d) ~~Approve~~ Increases in salary rate for positions that
~~which~~ are leased. ~~However,~~ any salary rate above the automatic
 salary increases which may be contained in the General
 Appropriations Act must be funded from private sources.

(e) The waiver of ~~Waive~~ any requirement for automatic
 salary increases that ~~which~~ may be contained in the General
 Appropriations Act.

(2) Positions that ~~which~~ are in the Senior Management
 Service ~~System~~ or the Selected Exempt Service ~~System~~ on the day
 before the state employee lease agreement takes effect ~~shall~~
 remain in the respective system if the duties performed by the
 position during the assignment of the state employee lease
 agreement are comparable as determined by the department. Those

585-00618D-12

20127196

senior management service ~~system~~ or selected exempt service
~~system~~ positions that ~~which~~ are not determined comparable by the
 department, and positions that ~~which~~ are in other pay plans on
 the day before the lease agreement takes effect, ~~shall~~ have the
 same salaries and benefits provided to employees of the Office
 of the Governor pursuant to s. 110.205(2)(h)2. ~~110.205(2)(1)2.~~

Section 64. Section 110.1082, Florida Statutes, is
 transferred, renumbered as section 112.923, Florida Statutes,
 and amended to read:

112.923 ~~110.1082~~ Telephone voice mail ~~systems and telephone~~
~~menu options~~ systems.-

(1) ~~A~~ No state employee may not use ~~shall utilize~~ a voice
 mail system when the employee is at his or her regularly
 assigned work station where his or her telephone is functional
 and available for use, unless:

(a) The telephone device is in use, ~~and/or~~;

(b) The ~~Such~~ voice mail system alerts the caller to, and
 provides the caller with access to, a nonelectronic attendant;
 or

(c) ~~The~~ ~~Such~~ voice mail system automatically transfers the
 caller to a nonelectronic attendant.

(2) Telephone menu options systems used by state agencies
~~must, departments, or other state government units will~~ alert
 the caller to, and provide the caller with access to, a
 nonelectronic attendant.

(3) Agency heads shall ~~will~~ ensure compliance with ~~the~~
~~provisions of~~ this section.

Section 65. Section 110.1165, Florida Statutes, is
 transferred, renumbered as section 112.924, Florida Statutes,

585-00618D-12

20127196

and subsections (1) and (2) of that section are amended to read:

112.924 ~~110.1165~~ Executive branch personnel errors; limitation of actions for compensation.—

(1) An agency of the executive branch, including the State University System, shall establish procedures for the receipt, consideration, and disposition of a claim regarding pay or benefits brought by an employee if the ~~when that~~ employee is damaged as a result of being provided with erroneous written information by the ~~employing~~ agency regarding his or her pay or benefits, and the employee detrimentally relies upon such written information. In order to qualify for the relief ~~provided by this section~~, the employee's reliance on the representation must have been reasonable and based ~~only~~ upon only the written representations made by those persons authorized by the agency head to make such representations. ~~Furthermore,~~ The erroneous calculation and payment of an employee's salary, wages, or benefits is not among the written representations that ~~which~~ will trigger relief under this section.

(2) An agency of the executive branch, including the State University System, may ~~is authorized to~~ take appropriate ~~such~~ action ~~as may be appropriate~~ to provide a remedy for an employee concerning his or her claim regarding detrimental reliance on erroneous written information provided by the ~~employing~~ agency relating to pay and benefits if, provided ~~such~~ remedy is within the purview of the agency's authority. The agency may not ~~has no~~ ~~authority whatsoever~~ to modify the state retirement system or the state insurance program. Any monetary remedy afforded by the agency must fall within the agency's budgetary authority. Any person dissatisfied with the outcome of this process may file

585-00618D-12

20127196

~~either~~ a grievance pursuant to the agency's internal grievance process or an appeal to the Division of Administrative Hearings pursuant to chapter 120, but not both.

Section 66. Section 110.113, Florida Statutes, is transferred, renumbered as section 112.925, Florida Statutes, and amended to read:

112.925 ~~110.113~~ Pay periods for state officers and employees; salary payments by direct deposit.—

(1) ~~The normal pay period for salaries of state officers and employees shall be 1 month.~~ The Department of Financial Services shall issue ~~either~~ monthly or biweekly salary payments to state officers and employees by state warrants or by direct deposit pursuant to s. 17.076 ~~or make semimonthly salary payments by direct deposit pursuant to s. 17.076,~~ as requested by each state employment system and the head of each state agency and approved by the ~~Executive Office of the Governor and the Department of Financial Services.~~

(2) As a condition of employment, a ~~person appointed to a position in state~~ employee must ~~government is required to~~ participate in the direct deposit program pursuant to s. 17.076. An employee may request an exemption from ~~the provisions of this subsection~~ if the ~~when such~~ employee can demonstrate a hardship or if the ~~when such~~ employee is in an other-personal-services position.

Section 67. Section 110.114, Florida Statutes, is transferred and renumbered as section 112.926, Florida Statutes.

Section 68. Section 112.927, Florida Statutes, is created to read:

112.927 Human resource information system.—The department

585-00618D-12 20127196
 3249 may contract with other agencies or state governmental entities
 3250 outside the State Personnel System to establish and maintain
 3251 positions and use the human resource information system
 3252 established under s. 110.116 for its human resource
 3253 functionality as well as benefits administration. The use and
 3254 operation of the human resource information system shall be
 3255 based upon the design rules set forth by the department, and
 3256 such agencies and state governmental entities may be required to
 3257 conform their respective human resource business rules and
 3258 practices to the business rules and practices existing within
 3259 the human resource information system in order to minimize
 3260 additional system customization and to maximize system
 3261 efficiencies. Payment for usage shall be in accordance with s.
 3262 110.125(2).

3263 Section 69. Section 110.1127, Florida Statutes, is
 3264 transferred, renumbered as section 112.928, Florida Statutes,
 3265 and amended to read:

3266 112.928 110.1127 Employee background screening and
 3267 investigations security checks.-

3268 (1) Except as provided in subsection (2), each state agency
 3269 shall designate those positions that, based on the position
 3270 duties, require security background screening. All persons and
 3271 employees in such positions must undergo employment screening in
 3272 accordance with chapter 435, using level 1 screening standards,
 3273 as a condition of employment and continued employment.

3274 (2)(1) Each state employing agency shall designate those
 3275 employee positions that, because of the special trust or
 3276 responsibility or sensitive location, require security
 3277 background investigations. All persons and employees in such

585-00618D-12 20127196
 3278 positions must undergo employment screening in accordance with
 3279 chapter 435, using level 2 screening standards of those
 3280 positions, require that persons occupying those positions be
 3281 subject to a security background check, including
 3282 fingerprinting, as a condition of employment and continued
 3283 employment.

3284 ~~(2)~~ (a) All positions within the Division of Treasury of the
 3285 Department of Financial Services are deemed to be positions of
 3286 special trust or responsibility. Persons seeking or holding such
 3287 positions, and a person may be disqualified for employment ~~in~~
 3288 ~~any such position~~ by reason of:

3289 1. The conviction or prior conviction of a crime that which
 3290 is reasonably related to the nature of the position sought or
 3291 held by the individual; or

3292 2. The entering of a plea of nolo contendere or, when a
 3293 jury verdict of guilty is rendered but adjudication of guilt is
 3294 withheld, with respect to a crime that which is reasonably
 3295 related to the nature of the position sought or held by the
 3296 individual.

3297 ~~(b) All employees of the division shall be required to~~
 3298 ~~undergo security background investigations, including~~
 3299 ~~fingerprinting, as a condition of employment and continued~~
 3300 ~~employment.~~

3301 ~~(b)(3)~~ (a) All positions in programs providing care to
 3302 children, the developmentally disabled, or vulnerable adults for
 3303 15 hours or more per week; all permanent and temporary employee
 3304 positions of the central abuse hotline; and all persons working
 3305 under contract who have access to abuse records are deemed to be
 3306 persons and positions of special trust or responsibility, ~~and~~

585-00618D-12

20127196

~~require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter.~~

~~1.(b)~~ The employing agency may grant exemptions from disqualification from working with children, the developmentally disabled, or vulnerable adults as provided in s. 435.07.

~~(e) All persons and employees in such positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.~~

~~2.(d)~~ It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

~~a.1-~~ Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications for a position of special trust;

~~b.2-~~ Use ~~records~~ information contained in records for purposes other than background screening or investigation for employment, or release ~~such records~~ information to other persons for purposes other than preemployment screening or investigation ~~for employment.~~

~~3.(e)~~ It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person to willfully, knowingly, or intentionally ~~to~~ use juvenile records information for any purposes other than those specified

585-00618D-12

20127196

in this section or to release such information to other persons for purposes other than those specified in this section.

~~(3)-(4)~~ Any person who is required to undergo such a security background screening or investigation and who refuses to cooperate in such screening or investigation or refuses to submit fingerprints shall be disqualified for employment in such position or, if employed, shall be dismissed.

~~(4)-(5)~~ ~~Such~~ Background screening and investigations shall be conducted at the expense of the employing agency. ~~If~~ When fingerprinting is required, the fingerprints ~~of the employee or applicant for employment~~ shall be taken by the ~~employing~~ agency or by an authorized law enforcement officer, and submitted to the Department of Law Enforcement for processing, and, if ~~forwarding, when~~ requested by the employing agency, forwarded to the United States Department of Justice for processing. The ~~employing~~ agency shall reimburse the Department of Law Enforcement for any costs incurred for ~~by it in the~~ processing ~~of~~ the fingerprints.

Section 70. Section 110.117, Florida Statutes, is transferred, renumbered as section 112.929, Florida Statutes, and amended to read:

112.929 ~~110.117~~ Paid holidays and personal day.—

(1) The following holidays are ~~shall be~~ paid holidays observed by all state branches and agencies:

(a) New Year's Day.

(b) Birthday of Martin Luther King, Jr., third Monday in January.

(c) Memorial Day.

(d) Independence Day.

585-00618D-12

20127196__

3365 (e) Labor Day.
 3366 (f) Veterans' Day, November 11.
 3367 (g) Thanksgiving Day.
 3368 (h) Friday after Thanksgiving.
 3369 (i) Christmas Day.
 3370 (j) If any of these holidays falls on Saturday, the
 3371 preceding Friday shall be observed as a holiday. If any of these
 3372 holidays falls on Sunday, the following Monday shall be observed
 3373 as a holiday.

3374 (2) The Governor may declare, ~~if when~~ appropriate, a state
 3375 day of mourning in observance of the death of a person in
 3376 recognition of service rendered to the state or nation.

3377 (3) Each full-time employee in an authorized and
 3378 established position is entitled to one personal day holiday
 3379 each year. Each part-time employee is entitled to a personal day
 3380 holiday each year, which shall be calculated based on the full-
 3381 time equivalency of the position proportionately to the personal
 3382 holiday allowed to a full-time employee. The Such personal day
 3383 holiday shall be credited to eligible employees on July 1 of
 3384 each year and must to be taken by prior to June 30 of the
 3385 following year or forfeited. The personal day must be taken as a
 3386 whole day and may not be used incrementally. Members of the
 3387 teaching and research faculty of the State University System and
 3388 administrative and professional positions exempted under s.
 3389 110.205(2)(d) are not eligible for this benefit.

3390 (4) Other personal services employees are not eligible for
 3391 paid holidays or a personal day.

3392 Section 71. Section 112.930, Florida Statutes, is created
 3393 to read:

Page 117 of 192

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585-00618D-12

20127196__

3394 112.930 Telework program.-
 3395 (1) For the purposes of this section, the term "telework"
 3396 means an alternative work arrangement that allows an employee to
 3397 conduct all or some of his or her work away from the official
 3398 work site during all or a portion of the employee's established
 3399 work hours on a regular basis. The term does not include, and a
 3400 telework agreement is not required for:

3401 (a) Performance of required work duties away from the
 3402 official work site and outside of established work hours on an
 3403 occasional basis and sporadically working away from the official
 3404 work site during all or some portion of the established work
 3405 hours. These arrangements may be used by an agency to
 3406 accommodate extenuating circumstances by allowing an employee to
 3407 maintain productivity outside of the official work site.

3408 (b) Duties and responsibilities that, by their nature, are
 3409 performed routinely in the field away from the official work
 3410 site.

3411 (2) An agency may establish telework as an integral part of
 3412 the normal business operations of the agency and require that
 3413 specific work be performed through telework arrangements.
 3414 Telework may also be used as part of an agency's continuity of
 3415 operations plan where appropriate. An agency shall provide
 3416 telework as an optional alternative work arrangement to support
 3417 employee needs and implement telework arrangements where deemed
 3418 appropriate.

3419 (3) Each agency shall review all established positions and
 3420 designate those positions that the agency deems appropriate for
 3421 telework. The agency shall ensure this information is current
 3422 and available to its employees and managers. In addition, each

Page 118 of 192

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585-00618D-12

20127196

agency shall identify all currently participating employees and their respective positions in the human resource information system used by that agency.

(4) Agencies that have a telework program shall develop an agency plan that addresses the agency's telework policies and procedures. At a minimum, an agency telework plan must:

(a) Establish criteria for evaluating the ability of employees to satisfactorily perform in a telework arrangement.

(b) Establish performance standards that ensure that employees participating in the program maintain satisfactory performance levels.

(c) Ensure teleworkers are subject to the same rules and disciplinary actions as other employees.

(d) Establish the reasonable conditions that the agency plans to impose in order to ensure appropriate use and maintenance of any equipment issued by the agency.

(e) Establish a system for monitoring the productivity of teleworking employees which ensures that the work output remains at a satisfactory level and that the duties and responsibilities of the position remain suitable for a telework arrangement.

(f) Establish the appropriate physical and electronic information security controls to be maintained by a teleworker at the telework site.

(g) Prohibit employees engaged in telework from conducting face-to-face state business at their residence.

(5) Agencies that approve employees to use telework as an optional alternative work arrangement shall:

(a) Require a written agreement between the teleworker and the agency which specifies the terms and conditions of the

585-00618D-12

20127196

telework arrangement and provides for the termination of an employee's participation in the program if the employee's continued participation is not in the best interest of the agency.

(b) Ensure that participation by an employee is voluntary and that the employee may discontinue participation after providing reasonable notice to the agency.

(6) Agencies that require certain employees to telework as a part of normal business operations shall:

(a) Include the requirement to telework and the associated terms and conditions as part of the position description, specifying the minimum amount of telework time required.

(b) Provide at least 30 calendar days' written notice to affected employees of intent to impose or remove a requirement to telework.

(c) Provide at least 15 calendar days' written notice to affected employees of intent to revise the terms and conditions of their current telework arrangement.

(d) Provide equipment and supplies to an employee necessary to carry out job functions from the telework site.

(e) Specify the telework requirement in any recruitment activities.

(7) Agencies that have a telework program shall establish and track performance measures that support telework program analysis and report data annually to the department's Facilities Program in accordance with s. 255.249(3)(d). Such measures must include, but need not be limited to, those that quantify:

(a) Financial impacts associated with changes in office space requirements resulting from the telework program. State

585-00618D-12 20127196

3481 agencies operating in office space owned or managed by the
 3482 department shall consult the Facilities Program to ensure
 3483 consistency with the strategic leasing plan required under s.
 3484 255.249(3)(b).
 3485 (b) Energy consumption changes resulting from the telework
 3486 program.
 3487 (c) Greenhouse gas emission changes resulting from the
 3488 telework program.
 3489 (8) Agencies that have a telework program shall post the
 3490 agency telework plan and any pertinent supporting documents on
 3491 the agency website to allow access by employees and the public.
 3492 (9) Agencies may approve other-personal-services employees
 3493 to participate in telework programs.
 3494 (10) Each agency that is authorized to adopt rules
 3495 governing the terms and conditions of employment may adopt rules
 3496 necessary to administer this section.
 3497 Section 72. Section 112.931, Florida Statutes, is created
 3498 to read:
 3499 112.931 Savings sharing program.—Each state agency that is
 3500 authorized to adopt rules governing the terms and conditions of
 3501 employment may adopt rules that prescribe procedures and promote
 3502 a savings sharing program for an individual or group of
 3503 employees who propose procedures or ideas that are adopted and
 3504 that result in eliminating or reducing state expenditures if
 3505 such proposals are placed in effect and may be implemented under
 3506 current statutory authority.
 3507 (1) The agency head shall recommend employees individually
 3508 or by group for a monetary award that is directly related to the
 3509 cost savings realized. Each proposed award and the amount of the

Page 121 of 192

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585-00618D-12 20127196

3510 award must be approved by the Legislative Budget Commission.
 3511 (2) Unless otherwise provided by law, all state agencies
 3512 may participate in the program. The Chief Justice may establish
 3513 a savings sharing program for employees of the judicial branch
 3514 within the parameters established under this section. The
 3515 program applies to all employees within the Civil Service, the
 3516 Selected Exempt Service, and comparable employees within the
 3517 judicial branch.
 3518 (3) The department and the judicial branch shall annually
 3519 submit information to the President of the Senate and the
 3520 Speaker of the House of Representatives which outlines each
 3521 agency's level of participation in the program. At a minimum,
 3522 the information must include:
 3523 (a) The number of proposals made.
 3524 (b) The number of awards and amount of money awarded to
 3525 employees or groups for adopted proposals.
 3526 (c) The actual cost savings realized as a result of
 3527 implementing the proposals.
 3528 Section 73. Section 110.1156, Florida Statutes, is
 3529 transferred and renumbered as section 112.932, Florida Statutes.
 3530 Section 74. Section 112.933, Florida Statutes, is created
 3531 to read:
 3532 112.933 Penalties.—
 3533 (1) Any person who willfully violates any provision of this
 3534 part or any rules adopted pursuant to this part commits a
 3535 misdemeanor of the second degree, punishable as provided in s.
 3536 775.082 or s. 775.083.
 3537 (2) Notwithstanding s. 112.011, any person who is convicted
 3538 of a misdemeanor under this part is ineligible for appointment

Page 122 of 192

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585-00618D-12

20127196

to or employment in a state position for 5 years. If such person is an employee of the state, he or she must forfeit his or her position.

(3) Imposition of the penalties provided in this section may not be in lieu of any action that may be taken or penalties that may be imposed pursuant to part III of this chapter.

Section 75. The Division of Statutory Revision is requested to create part X of chapter 112, Florida Statutes, to be entitled "State Administered Benefits," and consisting of ss. 112.940-112.952, Florida Statutes.

Section 76. Section 110.1227, Florida Statutes, is transferred, renumbered as section 112.940, Florida Statutes, and paragraph (c) of subsection (1) of that section is amended to read:

112.940 ~~110.1227~~ Florida Employee Long-Term-Care Plan Act.—

(1) The Legislature finds that state expenditures for long-term-care services continue to increase at a rapid rate and that the state faces increasing pressure in its efforts to meet the long-term-care needs of the public.

(c) ~~This section does not affect act in no way affects the authority of the~~ Department of Management Services' authority pursuant to s. 112.942 ~~110.123~~.

Section 77. Section 110.1228, Florida Statutes, is transferred, renumbered as section 112.941, Florida Statutes, and subsection (2) of that section is amended to read:

112.941 ~~110.1228~~ Participation by small counties, small municipalities, and district school boards located in small counties.—

(2) The governing body of a small county or small

585-00618D-12

20127196

municipality or a district school board may apply for participation in the state group health insurance program authorized in s. 112.942 ~~110.123~~ and the prescription drug coverage program authorized by s. 112.946 ~~110.12315~~ by submitting an application along with a \$500 nonrefundable fee to the department.

Section 78. Section 110.123, Florida Statutes, is transferred, renumbered as section 112.942, Florida Statutes, and paragraphs (f) and (h) of subsection (3) and paragraph (c) of subsection (4) of that section are amended to read:

112.942 ~~110.123~~ State group insurance program.—

(3) STATE GROUP INSURANCE PROGRAM.—

(f) Except as provided for in subparagraph (h)2., the state contribution toward the cost of any plan in the state group insurance program shall be uniform with respect to all state employees in a state collective bargaining unit participating in the same coverage tier in the same plan. This section does not prohibit the development of separate benefit plans for officers and employees exempt from the Civil ~~career~~ Service or the development of separate benefit plans for each collective bargaining unit.

(h)1. In lieu of participating in the state group health insurance plan, a person eligible to participate in the state group insurance program may be authorized by department rules adopted by the department, in lieu of participating in the state group health insurance plan, to exercise an option to elect membership in a health maintenance organization (HMO) plan which is under contract with the state in accordance with criteria established by this section and adopted by said rules. The offer

585-00618D-12

20127196

of optional membership in an HMO a health maintenance organization plan permitted by this paragraph may be limited or conditioned by rule as may be necessary to meet the requirements of state and federal laws.

2. The department shall contract with HMOs health maintenance organizations seeking to participate in the state group insurance program through a request for proposal or other procurement process, as developed by the Department of Management Services and determined to be appropriate.

a. The department shall establish a schedule of minimum benefits for HMO health maintenance organization coverage which includes, and that schedule shall include: physician services; inpatient and outpatient hospital services; emergency medical services, including out-of-area emergency coverage; diagnostic laboratory and diagnostic and therapeutic radiologic services; mental health, alcohol, and chemical dependency treatment services meeting the minimum requirements of state and federal law; skilled nursing facilities and services; prescription drugs; age-based and gender-based wellness benefits; and other benefits as may be required by the department. Additional services may be provided subject to the contract between the department and the HMO. As used in this paragraph, the term "age-based and gender-based wellness benefits" includes aerobic exercise, education in alcohol and substance abuse prevention, blood cholesterol screening, health risk appraisals, blood pressure screening and education, nutrition education, program planning, safety belt education, smoking cessation, stress management, weight management, and women's health education.

b. The department may establish uniform deductibles,

Page 125 of 192

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585-00618D-12

20127196

copayments, coverage tiers, or coinsurance schedules for all participating HMO plans.

c. The department may require detailed information from each HMO health maintenance organization participating in the procurement process, including information pertaining to organizational status, experience in providing prepaid health benefits, accessibility of services, financial stability of the plan, quality of management services, accreditation status, quality of medical services, network access and adequacy, performance measurement, ability to meet the department's reporting requirements, and the actuarial basis of the proposed rates and other data determined by the director to be necessary for the evaluation and selection of HMO health maintenance organization plans and negotiation of appropriate rates for these plans. Upon receipt of proposals by HMO health maintenance organization plans and the evaluation of those proposals, the department may enter into negotiations with all of the plans or a subset of the plans, as the department determines appropriate. ~~Nothing shall preclude~~ The department may negotiate from negotiating regional or statewide contracts with HMO health maintenance organization plans if when this is cost-effective and ~~when~~ the department determines that the plan offers high value to enrollees.

d. The department may limit the number of HMOs that it contracts with in each service area based on the nature of the bids the department receives, the number of state employees in the service area, or any unique geographical characteristics of the service area. The department shall establish by rule service areas throughout the state.

Page 126 of 192

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

585-00618D-12

20127196__

e. All persons participating in the state group insurance program may be required to contribute toward ~~towards~~ a total state group health premium that may vary depending upon the plan and coverage tier selected by the enrollee and the level of state contribution authorized by the Legislature.

3. The department may ~~is authorized to~~ negotiate and to contract with specialty psychiatric hospitals for mental health benefits, on a regional basis, for alcohol, drug abuse, and mental and nervous disorders. ~~The department may establish,~~ Subject to the approval of the Legislature pursuant to subsection (5), the department may establish ~~any~~ such regional plan upon completion of an actuarial study to determine any impact on plan benefits and premiums.

4. ~~In addition to contracting pursuant to subparagraph 2., the department may enter into contract with any HMO to participate in the state group insurance program which:~~

a. ~~Serves greater than 5,000 recipients on a prepaid basis under the Medicaid program;~~

b. ~~Does not currently meet the 25-percent non-Medicare/non-Medicaid enrollment composition requirement established by the Department of Health excluding participants enrolled in the state group insurance program;~~

c. ~~Meets the minimum benefit package and copayments and deductibles contained in sub-subparagraphs 2.a. and b.;~~

d. ~~Is willing to participate in the state group insurance program at a cost of premiums that is not greater than 95 percent of the cost of HMO premiums accepted by the department in each service area; and~~

e. ~~Meets the minimum surplus requirements of s. 641.225.~~

585-00618D-12

20127196__

~~The department is authorized to contract with HMOs that meet the requirements of sub-subparagraphs a.-d. prior to the open enrollment period for state employees. The department is not required to renew the contract with the HMOs as set forth in this paragraph more than twice. Thereafter, the HMOs shall be eligible to participate in the state group insurance program only through the request for proposal or invitation to negotiate process described in subparagraph 2.~~

4.5. All enrollees in a state group health insurance plan, a TRICARE supplemental insurance plan, or an HMO ~~any health maintenance organization~~ plan have the option of changing to another ~~any other~~ health plan ~~that is~~ offered by the state within an ~~any~~ open enrollment period designated by the department. Open enrollment shall be held at least once each calendar year.

5.6. ~~If When~~ a contract between a treating provider and the state-contracted HMO ~~health maintenance organization~~ is terminated for any reason other than for cause, each party must ~~shall~~ allow an ~~any~~ enrollee for whom treatment was active to continue coverage and care when medically necessary, through completion of treatment of a condition for which the enrollee was receiving care at the time of the termination, until the enrollee selects another treating provider, or until the next open enrollment period ~~offered~~, whichever is later ~~longer~~, but no later ~~longer~~ than 6 months after termination of the contract. Each party to the terminated contract must ~~shall~~ allow an enrollee who has initiated a course of prenatal care, regardless of the trimester in which care was initiated, to continue care

585-00618D-12

20127196

and coverage until completion of postpartum care. This does not prevent a provider from refusing to continue to provide care to an enrollee who is abusive, noncompliant, or in arrears in payments for services provided. For care continued under this subparagraph, the program and the provider ~~shall~~ continue to be bound by the terms of the terminated contract. Changes made within 30 days before termination of a contract are effective only if agreed to by both parties.

~~6.7-~~ Any HMO participating in the state group insurance program shall submit health care utilization and cost data to the department, in such form and ~~in such~~ manner as the department requires ~~shall require~~, as a condition of participating in the program. The department shall enter into negotiations with its contracting HMOs to determine the nature and scope of the data submission and the final requirements, format, penalties associated with noncompliance, and timetables for submission. These determinations shall be adopted by rule.

~~7.8-~~ The department may establish and direct, with respect to collective bargaining issues, a comprehensive package of insurance benefits that may include supplemental health and life coverage, dental care, long-term care, vision care, and other benefits it determines necessary to enable state employees to select from among benefit options that best suit their individual and family needs.

a. Based upon a desired benefit package, the department shall issue a request for proposal or invitation to negotiate for health insurance providers interested in participating in the state group insurance program, and ~~the department shall~~ issue a request for proposal or invitation to negotiate for

585-00618D-12

20127196

insurance providers interested in participating in the non-health-related components of the state group insurance program. Upon receipt of all proposals, the department may enter into contract negotiations with insurance providers submitting bids or negotiate a specially designed benefit package. Insurance providers offering or providing supplemental coverage as of May 30, 1991, which qualify for pretax benefit treatment pursuant to s. 125 of the Internal Revenue Code of 1986, with 5,500 or more state employees currently enrolled may be included ~~by the department~~ in the supplemental insurance benefit plan established by the department without participating in a request for proposal, submitting bids, negotiating contracts, or negotiating a specially designed benefit package. These contracts must ~~shall~~ provide state employees with the most cost-effective and comprehensive coverage available; however, ~~no~~ state or agency funds may not be contributed ~~shall be contributed~~ toward the cost of any part of the premium of such supplemental benefit plans. With respect to dental coverage, the division shall include in any solicitation or contract for any state group dental program ~~made after July 1, 2001,~~ a comprehensive indemnity dental plan option that ~~which~~ offers enrollees a completely unrestricted choice of dentists. If a dental plan is endorsed, or in some manner recognized as the preferred product, such plan must ~~shall~~ include a comprehensive indemnity dental plan option that ~~which~~ provides enrollees with a completely unrestricted choice of dentists.

b. Pursuant to ~~the applicable provisions of~~ s. 112.951 ~~110.161~~, and s. 125 of the Internal Revenue Code of 1986, the department shall enroll in the pretax benefit program those

585-00618D-12 20127196

3771 state employees who voluntarily elect coverage in any of the
3772 supplemental insurance benefit plans as provided by sub-
3773 subparagraph a.

3774 c. This subparagraph does not ~~Nothing herein contained~~
3775 ~~shall be construed to~~ prohibit insurance providers from
3776 continuing to provide or offer supplemental benefit coverage to
3777 state employees as provided under existing agency plans.

3778 (4) PAYMENT OF PREMIUMS; CONTRIBUTION BY STATE; LIMITATION
3779 ON ACTIONS TO PAY AND COLLECT PREMIUMS.—

3780 (c) During each policy or budget year, no state agency
3781 shall contribute a greater dollar amount of the premium cost for
3782 its officers or employees for any plan option under the state
3783 group insurance program than any other agency for similar
3784 officers and employees, nor shall any greater dollar amount of
3785 premium cost be made for employees in one state collective
3786 bargaining unit than for those in any other state collective
3787 bargaining unit. Nothing in this section prohibits the use of
3788 different levels of state contributions for positions exempt
3789 from Civil career Service.

3790 Section 79. Section 110.12301, Florida Statutes is
3791 transferred, renumbered as section 112.943, Florida Statutes,
3792 and amended to read:

3793 112.943 ~~110.12301~~ Competitive procurement of postpayment
3794 claims review services.—The Division of State Group Insurance is
3795 directed to competitively procure:

3796 (1) Postpayment claims review services for the state group
3797 health insurance plans established pursuant to s. 112.942
3798 ~~110.123~~. Compensation under the contract shall be paid from
3799 amounts identified as claim overpayments that are made by or on

585-00618D-12 20127196

3800 behalf of the health plans and that are recovered by the vendor.
3801 The vendor may retain that portion of the amount recovered as
3802 provided in the contract. The contract must require the vendor
3803 to maintain all necessary documentation supporting the amounts
3804 recovered, retained, and remitted to the division; and

3805 (2) A contingency-based contract for dependent eligibility
3806 verification services for the state group insurance program;
3807 however, compensation under the contract may not exceed
3808 historical claim costs for the prior 12 months for the dependent
3809 populations disenrolled as a result of the vendor's services.
3810 The division may establish a 3-month grace period and hold
3811 subscribers harmless for past claims of ineligible dependents.
3812 The Department of Management Services shall submit budget
3813 amendments pursuant to chapter 216 in order to obtain budget
3814 authority necessary to expend funds from the State Employees'
3815 Group Health Self-Insurance Trust Fund for payments to the
3816 vendor as provided in the contract. The Department of Management
3817 Services shall adopt rules providing a process for verifying
3818 dependent eligibility.

3819 Section 80. Section 110.12302, Florida Statutes is
3820 transferred and renumbered as section 112.944, Florida Statutes.

3821 Section 81. Section 110.12312, Florida Statutes, is
3822 transferred, renumbered as section 112.945, Florida Statutes,
3823 and amended to read:

3824 112.945 ~~110.12312~~ Open enrollment period for retirees.—On
3825 or after July 1, 1997, the Department of Management Services
3826 shall provide for an open enrollment period for retired state
3827 employees who want to obtain health insurance coverage under ss.
3828 112.942 and 112.946 ~~110.123 and 110.12315~~. The options offered

585-00618D-12

20127196

during the open enrollment period must provide the same health insurance coverage as the coverage provided to active employees under the same premium payment conditions in effect for covered retirees, including eligibility for health insurance subsidy payments under s. 112.363. A person who separates from employment subsequent to May 1, 1988, but whose date of retirement occurs on or after August 1, 1995, is eligible as of the first open enrollment period occurring after July 1, 1997, with an effective date of January 1, 1998, as long as the retiree's enrollment remains in effect.

Section 82. Section 110.12315, Florida Statutes, is transferred and renumbered as section 112.946, Florida Statutes.

Section 83. Section 110.1232, Florida Statutes, is transferred, renumbered as section 112.947, Florida Statutes, and amended to read:

112.947 ~~110.1232~~ Health insurance coverage for persons retired under state-administered retirement systems before January 1, 1976, and for spouses.—Notwithstanding any provisions of law to the contrary, the Department of Management Services shall provide health insurance coverage under the state group insurance program for persons who retired before January 1, 1976, under any of the state-administered retirement systems and who are not covered by social security and for the spouses and surviving spouses of such retirees who are also not covered by social security. Such health insurance coverage shall provide the same benefits as provided to other retirees who are entitled to participate under s. 112.942 ~~110.123~~. The claims experience of this group shall be commingled with the claims experience of other members covered under s. 112.942 ~~110.123~~.

585-00618D-12

20127196

Section 84. Section 110.1234, Florida Statutes, is transferred and renumbered as section 112.948, Florida Statutes.

Section 85. Section 110.1238, Florida Statutes, is transferred and renumbered as section 112.949, Florida Statutes.

Section 86. Section 110.1239, Florida Statutes, is transferred and renumbered as section 112.950, Florida Statutes.

Section 87. Section 110.161, Florida Statutes, is transferred, renumbered as section 112.951, Florida Statutes, and paragraph (a) of subsection (6) of that section is amended to read:

112.951 ~~110.161~~ State employees; pretax benefits program.—

(6) The Department of Management Services is authorized to administer the pretax benefits program established for all employees so that employees may receive benefits that are not includable in gross income under the Internal Revenue Code of 1986. The pretax benefits program:

(a) Shall allow employee contributions to premiums for the state group insurance program administered under s. 112.942 ~~110.123~~ to be paid on a pretax basis unless an employee elects not to participate.

Section 88. Section 112.952, Florida Statutes, is created to read:

112.952 Penalties.—

(1) Any person who willfully violates any provision of this part or any rules adopted pursuant to this part commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Notwithstanding s. 112.011, any person who is convicted of a misdemeanor under this part is ineligible for appointment

585-00618D-12

20127196

to or employment in a state position for 5 years, and, if an employee of the state, must forfeit his or her position.

(3) Imposition of the penalties provided in this section may not be in lieu of any action that may be taken or penalties that may be imposed pursuant to part III of this chapter.

Section 89. The Division of Statutory Revision is requested to renumber part IV of chapter 110, Florida Statutes, as part XI of chapter 112, consisting of ss. 112.961-112.965, and to rename that part as "State Volunteer Services."

Section 90. Section 110.501, Florida Statutes, is transferred, renumbered as section 112.961, Florida Statutes, reordered, and amended to read:

112.961 ~~110.501~~ Definitions.—As used in this part, the term act:

(3)(1) "Volunteer" means any person who, of his or her own free will, provides goods or services, or conveys an interest in or otherwise consents to the use of real property pursuant to chapter 260, to any ~~state department or agency~~, or nonprofit organization, with no monetary or material compensation. A person registered and serving in Older American Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. No. 93-113), shall also be defined as a volunteer and shall incur no civil liability as provided by s. 768.1355. A volunteer shall be eligible for payment of volunteer benefits as specified in Pub. L. No. 93-113, this section, and s. 430.204.

~~(2) "Regular-service volunteer" means any person engaged in specific voluntary service activities on an ongoing or continuous basis.~~

Page 135 of 192

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

585-00618D-12

20127196

~~(3) "Occasional-service volunteer" means any person who offers to provide a one-time or occasional voluntary service.~~

(1)(4) "Material donor" means any person who provides funds, materials, employment, or opportunities for clients of state ~~departments or~~ agencies, without monetary or material compensation.

(2) "State agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch or judicial branch of state government as defined in chapter 216, unless otherwise exempted by law.

Section 91. Section 110.502, Florida Statutes, is transferred, renumbered as section 112.962, Florida Statutes, and amended to read:

112.962 ~~110.502~~ Scope of act; status of volunteers.—

(1) Every state department or state agency may, with the approval of the agency head, through the head of the department or agency, secretary of the department, or executive director of the department, is authorized to recruit, train, and accept, without regard to the requirements of the Civil State Career Service System as set forth in part II of this chapter, the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors, to assist in programs administered by the department or agency.

(2) Volunteers recruited, trained, or accepted by a any state department or agency are shall not be subject to any provisions of law relating to state employment, a to any collective bargaining agreement between the state and an any employees' association or union, or to any laws relating to hours of work, rates of compensation, leave time, and employee

Page 136 of 192

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

585-00618D-12

20127196

benefits, except those consistent with s. 112.964 ~~110.504~~.

However, all volunteers shall comply with applicable department or agency rules. Volunteers may be required by the agency to submit to security background screenings.

(3) Every state department or agency using utilizing the services of volunteers is hereby authorized to provide such incidental reimbursement or benefit consistent with s. 112.964 ~~the provisions of s. 110.504~~, including transportation costs, lodging, and subsistence, identification and safety apparel, recognition, and other accommodations as the department or agency deems necessary to assist, recognize, reward, or encourage volunteers in performing their functions. An ~~No~~ department or agency may not ~~shall~~ expend or authorize an expenditure greater than therefor in excess of the amount provided for to the department or agency by appropriation in any fiscal year.

(4) Persons working with state agencies pursuant to this part are ~~shall be~~ considered as unpaid independent volunteers and are ~~shall~~ not be entitled to unemployment compensation.

Section 92. Section 110.503, Florida Statutes, is transferred, renumbered as section 112.963, Florida Statutes, and amended to read:

112.963 ~~110.503~~ Responsibilities of state departments and agencies.—Each state department or agency using utilizing the services of volunteers shall take such actions as are:

(1) ~~Take such actions as are~~ Necessary and appropriate to develop meaningful opportunities for volunteers involved in state-administered programs.

(2) Necessary to ensure that volunteers are provided with

585-00618D-12

20127196

the state agency's policies and procedures applicable to their volunteer activities. ~~Comply with the uniform rules adopted by the Department of Management Services governing the recruitment, screening, training, responsibility, use, and supervision of volunteers.~~

(3) ~~Take such actions as are~~ Necessary to ensure that volunteers understand their duties and responsibilities.

(4) Necessary to ensure that a state employee whose primary employment consists of duties and responsibilities similar to those associated with volunteer activities is not considered for volunteer work if such work would require payment for overtime in accordance with the Fair Labor Standards Act.

~~(4) Take such actions as are necessary and appropriate to ensure a receptive climate for citizen volunteers.~~

~~(5) Provide for the recognition of volunteers who have offered continuous and outstanding service to state-administered programs. Each department or agency using the services of volunteers is authorized to incur expenditures not to exceed \$100 each plus applicable taxes for suitable framed certificates, plaques, or other tokens of recognition to honor, reward, or encourage volunteers for their service.~~

~~(6) Recognize prior volunteer service as partial fulfillment of state employment requirements for training and experience pursuant to rules adopted by the Department of Management Services.~~

Section 93. Section 110.504, Florida Statutes, is transferred, renumbered as section 112.964, Florida Statutes, and amended to read:

112.964 ~~110.504~~ Volunteer benefits.—

585-00618D-12

20127196

(1) Meals may be furnished without charge to ~~regular-~~
~~service~~ volunteers serving state agencies if departments,
~~provided~~ the scheduled assignment extends over an established
meal period, ~~and to occasional-service volunteers at the~~
~~discretion of the department head.~~ An agency may not ~~No~~
~~department shall~~ expend or authorize any expenditure greater
than in excess of the amount provided for by appropriation in
any fiscal year.

(2) Lodging, if available, may be furnished temporarily, in
case of an agency ~~a department~~ emergency, at no charge to
~~regular service~~ volunteers.

(3) Transportation reimbursement may be furnished to those
volunteers whose presence is determined to be necessary to the
agency department. Volunteers may use utilize state vehicles in
the performance of agency-related ~~department-related~~ duties. An
~~agency may not~~ ~~No department shall~~ expend or authorize an
expenditure greater than in excess of the amount appropriated in
any fiscal year.

(4) Volunteers are ~~shall be~~ covered by state liability
protection in accordance with the definition of a volunteer and
~~the provisions of~~ s. 768.28.

(5) Volunteers are ~~shall be~~ covered by workers'
compensation in accordance with chapter 440.

(6) Incidental recognition benefits or incidental
nonmonetary awards may be furnished to volunteers serving in
state agencies departments to award, recognize, or encourage
volunteers for their service. The awards may not cost more than
~~in excess of~~ \$150 ~~\$100~~ each plus applicable taxes.

(7) Volunteers, including volunteers receiving a stipend as

585-00618D-12

20127196

provided by the Domestic Service Volunteer Act of 1973, as
amended, ~~{Pub. L. No. 93-113}, are shall be~~ covered by s.
768.1355, the Florida Volunteer Protection Act.

Section 94. Section 112.965, Florida Statutes, is created
to read:

112.965 Penalties.—

(1) Any person who willfully violates any provision of this
part or any rules adopted pursuant to this part commits a
misdemeanor of the second degree, punishable as provided in s.
775.082 or s. 775.083.

(2) Notwithstanding s. 112.011, any person who is convicted
of a misdemeanor under this part is ineligible for appointment
to or employment in a state position for 5 years, or, if an
employee of the state, must forfeit his or her position.

(3) Imposition of the penalties provided in this section
may not be in lieu of any action that may be taken or penalties
that may be imposed pursuant to part III of this chapter.

Section 95. Sections 110.115, 110.118, 110.124, 110.129,
110.1521, 110.1522, 110.1523, 110.171, 110.201, 110.2035,
110.21, 110.406, 110.603, 110.604, and 110.606, Florida
Statutes, are repealed.

Section 96. Paragraph (b) of subsection (1) of section
11.13, Florida Statutes, is amended to read:

11.13 Compensation of members.—

(1)

(b) On Effective July 1, 1986, and each July 1 of each year
~~thereafter,~~ the annual salaries of members of the Senate and
House of Representatives shall be adjusted by the average
percentage increase in the salaries of civil state career

585-00618D-12 20127196

service employees for the fiscal year just concluded. The Appropriations Committee of each house shall certify to the Office of Legislative Services the average percentage increase in the salaries of civil state career service employees before July 1 of each year. The Office of Legislative Services shall, as of July 1 of each year, determine the adjusted annual salaries as provided in this paragraph herein.

Section 97. Paragraph (c) of subsection (1) of section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.—

(1) For the purposes of this section:

(c) "Individuals substantially affected" means natural persons who have established a real and sufficiently immediate injury in fact due to the findings, conclusions, or recommendations of a final report of a state agency inspector general, who are the subject of the audit or investigation, and who do not have or are not currently afforded an existing right to an independent review process. The term does not include:

1. Employees of the state, including civil career service, probationary, other personal service, selected exempt service, and senior management service employees, ~~are not covered by this definition. This definition also does not cover~~

2. Former employees of the state if the final report of the state agency inspector general relates to matters arising during a former employee's term of state employment. ~~This definition does not apply to~~

3. Persons who are the subject of audits or investigations conducted pursuant to ss. 112.3187-112.31895 or s. 409.913 or which are otherwise confidential and exempt under s. 119.07.

585-00618D-12 20127196

Section 98. Subsection (6) of section 20.21, Florida Statutes, is amended to read:

20.21 Department of Revenue.—There is created a Department of Revenue.

(6) Notwithstanding s. 112.942 ~~the provisions of s. 110.123~~, relating to the state group insurance program, the department may pay, or participate in the payment of, premiums for health, accident, and life insurance for its full-time out-of-state employees, pursuant to such rules as it may adopt, which and such payments are shall be in addition to the employees' ~~the regular salaries of such full-time out-of-state employees.~~

Section 99. Paragraph (e) of subsection (1) and subsection (6) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(1)

(e) ~~The Any~~ secretary ~~appointed after July 5, 1989~~, and the assistant secretaries are shall be exempt from part IV ~~the provisions of part III~~ of chapter 110 and shall receive compensation commensurate with their qualifications and competitive with compensation for comparable responsibility in the private sector.

(6) Notwithstanding ~~the provisions of~~ s. 110.205, the Department of Management Services may is authorized to exempt positions within the Department of Transportation which are comparable to positions within the Senior Management Service pursuant to s. 110.205(2)(g) ~~110.205(2)(j)~~ or positions that

585-00618D-12

20127196

which are comparable to positions in the Selected Exempt Service under s. 110.205(2)(i) ~~110.205(2)(m)~~.

Section 100. Subsection (2) of section 20.255, Florida Statutes, is amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(2)(a) There shall be three deputy secretaries who are to be appointed by and shall serve at the pleasure of the secretary. The secretary may assign any deputy secretary the responsibility to supervise, coordinate, and formulate policy for any division, office, or district. The following special offices are established and headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary:

1. Office of Chief of Staff;
2. Office of General Counsel;
3. Office of Inspector General;
4. Office of External Affairs;
5. Office of Legislative Affairs;
6. Office of Intergovernmental Programs; and
7. Office of Greenways and Trails.

(b) There shall be six administrative districts involved in regulatory matters of waste management, water resource management, wetlands, and air resources, which shall be headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary. Divisions of the department may have one assistant or two deputy division directors, as required to facilitate effective operation.

The managers of all divisions and offices specifically named in

585-00618D-12

20127196

this section and the directors of the six administrative districts are exempt from part II of chapter 110 and are included in the Senior Management Service in accordance with s. 110.205(2)(g) ~~110.205(2)(j)~~.

Section 101. Paragraph (d) of subsection (19) of section 24.105, Florida Statutes, is amended to read:

24.105 Powers and duties of department.—The department shall:

(19) Employ division directors and other staff as may be necessary to carry out the provisions of this act; however:

(d) The department shall establish and maintain a personnel program for its employees, including a personnel classification and pay plan that ~~which~~ may provide ~~any or all of~~ the benefits provided in the Senior Management Service or Selected Exempt Service. Each officer or employee of the department ~~is~~ shall be a member of the Florida Retirement System. The retirement class of each officer or employee ~~is~~ shall be the same as other persons performing comparable functions for other agencies. Employees of the department shall serve at the pleasure of the secretary and are ~~shall be~~ subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the secretary. Such personnel actions are exempt from ~~the provisions of~~ chapter 120. All employees of the department are exempt from the Civil Career Service System provided in chapter 110 and, notwithstanding ~~the provisions of~~ s. 110.205(3) ~~110.205(5)~~, are not included in ~~either~~ the Senior Management Service or the Selected Exempt Service. However, all employees of the department are subject to all standards of conduct adopted by rule for civil career service and senior

585-00618D-12

20127196

management employees pursuant to chapter 110. In the event of a conflict between standards of conduct applicable to employees of the Department of the Lottery, the more restrictive standard applies shall apply. Interpretations as to the more restrictive standard may be provided by the Commission on Ethics upon request of an advisory opinion pursuant to s. 112.322(3)(a), and for purposes of this subsection, the opinion shall be considered final action.

Section 102. Paragraph (d) of subsection (4) of section 24.122, Florida Statutes, is amended to read:

24.122 Exemption from taxation; state preemption; inapplicability of other laws.—

(4) Any state or local law providing any penalty, disability, restriction, or prohibition for the possession, manufacture, transportation, distribution, advertising, or sale of any lottery ticket, including chapter 849, shall not apply to the tickets of the state lottery operated pursuant to this act; nor shall any such law apply to the possession of a ticket issued by any other government-operated lottery. In addition, activities of the department under this act are exempt from the provisions of:

(d) Section 112.907 ~~110.134~~, relating to other personal services.

Section 103. Paragraph (b) of subsection (1) of section 30.071, Florida Statutes, is amended to read:

30.071 Applicability and scope of act.—

(1) This act applies to all deputy sheriffs, with the following exceptions:

(b) Deputy sheriffs in a county that, by special act of the

585-00618D-12

20127196

Legislature, local charter, ordinance, or otherwise, has established a civil ~~or career~~ service system that ~~which~~ grants collective bargaining rights for deputy sheriffs, including, but not limited to, deputy sheriffs in the following counties: Broward, Miami-Dade, Duval, Escambia, and Volusia.

Section 104. Subsection (4) of section 43.16, Florida Statutes, is amended to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(4)(a) The Justice Administrative Commission shall employ an executive director and fix his or her salary. The executive director shall employ any necessary personnel for the efficient performance of the commission according to a classification and pay plan annually approved by the commission.

(b) Pursuant to s. 110.205(2)(r), all employees of ~~or~~ within the commission are exempt from the Civil Career Service System ~~provided in chapter 110~~ and, notwithstanding s. 110.205(3) ~~110.205(5)~~, are not included in the Senior Management Service or the Selected Exempt Service. The commission shall annually approve a classification plan and salary and benefits plan.

(c) Employees in permanent positions must be offered benefits comparable to those offered under the Civil Career Service System.

(d) The commission may offer benefits greater than ~~in excess of~~ those offered under the Civil Career Service System only to employees who are appointed to positions designated as having managerial or policymaking duties or positions requiring membership in The Florida Bar.

585-00618D-12

20127196

4235 (e) By January ~~15th~~ 15th of each year, the commission shall
 4236 submit to the Executive Office of the Governor, the President of
 4237 the Senate, and the Speaker of the House of Representatives a
 4238 listing of all positions receiving benefits greater than those
 4239 ~~benefits~~ offered under the Civil Career Service System. Any
 4240 change in the positions that are offered greater benefits or any
 4241 change in the level of benefits is subject to the notice and
 4242 objection procedures of s. 216.177.

4243 Section 105. Subsection (4) of section 104.31, Florida
 4244 Statutes, is amended to read:

4245 104.31 Political activities of state, county, and municipal
 4246 officers and employees.—

4247 (4) Nothing contained in this section or in any county or
 4248 municipal charter shall be deemed to prohibit any public
 4249 employee from expressing his or her opinions on any candidate or
 4250 issue or from participating in any political campaign during the
 4251 employee's off-duty hours, so long as such activities are not in
 4252 conflict with ~~the provisions of~~ subsection (1) or s. 110.1075
 4253 ~~110.233~~.

4254 Section 106. Subsection (4) of section 106.24, Florida
 4255 Statutes, is amended to read:

4256 106.24 Florida Elections Commission; membership; powers;
 4257 duties.—

4258 (4) The commission shall appoint an executive director, who
 4259 shall serve under the direction, supervision, and control of the
 4260 commission. The executive director, with the consent of the
 4261 commission, shall employ such staff as are necessary to
 4262 adequately perform the functions of the commission, within
 4263 budgetary limitations. All employees, except the executive

585-00618D-12

20127196

4264 director and attorneys, are subject to part II of chapter 110.
 4265 The executive director shall serve at the pleasure of the
 4266 commission and ~~is~~ be subject to part ~~IV~~ III of chapter 110,
 4267 except that the commission shall have complete authority for
 4268 setting the executive director's salary. Attorneys employed by
 4269 the commission ~~are~~ shall be subject to part III ~~V~~ of chapter
 4270 110.

4271 Section 107. Subsection (4) of section 112.044, Florida
 4272 Statutes, is amended to read:

4273 112.044 Public employers, employment agencies, labor
 4274 organizations; discrimination based on age prohibited;
 4275 exceptions; remedy.—

4276 (4) APPEAL; CIVIL SUIT AUTHORIZED.—Any employee of the
 4277 state ~~who is~~ within the Civil Career Service System established
 4278 by chapter 110 ~~and~~ who is aggrieved by a violation of this act
 4279 may appeal to the Public Employees Relations Commission under
 4280 the conditions and following the procedures prescribed in part
 4281 II of chapter 447. Any person other than an employee ~~who is~~
 4282 within the Civil Career Service System ~~established by chapter~~
 4283 ~~110~~, or any person employed by the Public Employees Relations
 4284 Commission, who is aggrieved by a violation of this act may
 4285 bring a civil action ~~in any court of competent jurisdiction~~ for
 4286 such legal or equitable relief as will effectuate the purposes
 4287 of this act.

4288 Section 108. Section 112.0805, Florida Statutes, is amended
 4289 to read:

4290 112.0805 Employer notice of insurance eligibility to
 4291 employees who retire.—~~An~~ Any employer who provides insurance
 4292 coverage under s. 112.942 ~~110.123~~ or s. 112.0801 shall notify

585-00618D-12

20127196

those employees who retire of their eligibility to participate in either the same group insurance plan or self-insurance plan as provided in ss. 112.942 ~~110.123~~ and 112.0801, or the insurance coverage ~~as~~ provided by this law.

Section 109. Paragraph (a) of subsection (9) of section 112.313, Florida Statutes, is amended to read:

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.3021 ~~110.602~~ or any person having authority over policy or procurement employed by the Department of the Lottery.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

Page 149 of 192

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585-00618D-12

20127196

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

b. "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

c. "State agency" means an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control.

3. A ~~No~~ member of the Legislature, appointed state officer, or statewide elected officer may not ~~shall~~ personally represent

Page 150 of 192

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

585-00618D-12

20127196

another person or entity for compensation before the government body or agency of which the individual was an officer or member for a ~~period of~~ 2 years following vacation of office. ~~A~~ No member of the Legislature may not ~~shall~~ personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a civil ~~Career~~ service ~~System~~ position that was transferred to the Selected Exempt Service ~~System~~ under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a ~~period of~~ 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph is ~~shall be~~ subject to the penalties provided in s. 112.317 and a civil penalty ~~of~~ an amount equal to the compensation that ~~which~~ the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

a. A person employed by the Legislature or other agency before ~~prior to~~ July 1, 1989;

b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;

c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;

d. A person who has reached normal retirement age as

585-00618D-12

20127196

defined in s. 121.021(29), and who has retired under the provisions of chapter 121 by July 1, 1991; or

e. Any appointed state officer whose term of office began before January 1, 1995, unless reappointed to that office on or after January 1, 1995.

Section 110. Paragraph (b) of subsection (1) of section 112.3145, Florida Statutes, is amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(1) For purposes of this section, unless the context otherwise requires, the term:

(b) "Specified state employee" means:

1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a full-time state employee who serves as counsel or assistant counsel to any state agency, the Deputy Chief Judge of Compensation Claims, a judge of compensation claims, an administrative law judge, or a hearing officer.

2. Any person employed in the office of the Governor or in the office of any member of the Cabinet if that person is exempt from the Civil ~~Career~~ Service ~~System~~, except persons employed in clerical, secretarial, or similar positions.

3. The State Surgeon General or each appointed secretary, assistant secretary, deputy secretary, executive director, assistant executive director, or deputy executive director of each state department, commission, board, or council; unless otherwise provided, the division director, assistant division director, deputy director, bureau chief, and assistant bureau chief of any state department or division; or any person having

585-00618D-12

20127196

the power normally conferred upon such persons, by whatever title.

4. The superintendent or institute director of a state mental health institute established for training and research in the mental health field or the warden or director of any major state institution or facility established for corrections, training, treatment, or rehabilitation.

5. Business managers, purchasing agents having the power to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY ONE, finance and accounting directors, personnel officers, or grants coordinators for any state agency.

6. Any person, other than a legislative assistant exempted by the presiding officer of the house that employs ~~by which~~ the legislative assistant ~~is employed~~, who is employed in the legislative branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions.

7. Each employee of the Commission on Ethics.

Section 111. Paragraph (a) of subsection (2) of section 112.363, Florida Statutes, is amended to read:

112.363 Retiree health insurance subsidy.—

(2) ELIGIBILITY FOR RETIREE HEALTH INSURANCE SUBSIDY.—

(a) A person who is retired under a state-administered retirement system, or a beneficiary who is a spouse or financial dependent entitled to receive benefits under a state-administered retirement system, is eligible for health insurance subsidy payments ~~provided~~ under this section; except that pension recipients under ss. 121.40, 238.07(18)(a), and 250.22, recipients of health insurance coverage under s. 112.947 ~~110.1232~~, or any other special pension or relief act ~~are shall~~

Page 153 of 192

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

585-00618D-12

20127196

not ~~be~~ eligible for such payments.

Section 112. Subsections (11) and (38) of section 121.021, Florida Statutes, are amended to read:

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

(11) "Officer or employee" means any person receiving salary payments for work performed in a regularly established position and, if employed by a municipality, a metropolitan planning organization, or a special district, employed in a covered group. The term does not apply to state employees covered by a leasing agreement under s. 112.922 ~~110.191~~, other public employees covered by a leasing agreement, or a coemployer relationship.

(38) "Continuous service" means creditable service as a member, beginning with the first day of employment with an employer covered under a state-administered retirement system consolidated herein and continuing for as long as the member remains in an employer-employee relationship with the ~~an~~ employer ~~covered under this chapter~~. An absence of 1 calendar month or more from an employer's payroll ~~is shall be~~ considered a break in continuous service, except for periods of absence during which an employer-employee relationship continues to exist and such period of absence is creditable under this chapter or under one of the existing systems consolidated herein. However, a law enforcement officer as defined in s. 121.0515(3)(a) who was a member of a state-administered retirement system under chapter 122 or chapter 321 and who resigned and was subsequently reemployed in a law enforcement

Page 154 of 192

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

585-00618D-12 20127196

4467 position within 12 calendar months of such resignation by an
 4468 employer under a such state-administered retirement system is
 4469 ~~shall be deemed not~~ to have ~~not~~ experienced a break in service.
 4470 Further, with respect to a state-employed law enforcement
 4471 officer who meets the criteria specified in s. 121.0515(3)(a),
 4472 if the absence from the employer's payroll is the result of a
 4473 "layoff" as defined in s. 110.1054 ~~110.107~~ or a resignation to
 4474 run for an elected office that meets the criteria specified in
 4475 s. 121.0515(3)(a), no break in continuous service shall be
 4476 deemed to have occurred if the member is reemployed as a state
 4477 law enforcement officer or is elected to an office that ~~which~~
 4478 meets the criteria specified in s. 121.0515(3)(a) within 12
 4479 calendar months after the date of the layoff or resignation,
 4480 notwithstanding the fact that such period of layoff or
 4481 resignation is not creditable service under this chapter. A
 4482 withdrawal of contributions constitutes ~~will constitute~~ a break
 4483 in service. Continuous service also includes past service
 4484 purchased under this chapter if, ~~provided such~~ service is
 4485 continuous ~~within this definition~~ and the rules established by
 4486 the administrator. The administrator may establish
 4487 administrative rules and procedures for applying this definition
 4488 to creditable service authorized under this chapter. Any
 4489 correctional officer, as defined in s. 943.10, whose
 4490 participation in the state-administered retirement system is
 4491 terminated due to the transfer of a county detention facility
 4492 through a contractual agreement with a private entity pursuant
 4493 to s. 951.062, is ~~shall be~~ deemed an employee with continuous
 4494 service in the Special Risk Class if, ~~provided~~ return to
 4495 employment with the former employer takes place within 3 years

585-00618D-12 20127196

4496 due to contract termination or the officer is employed by a
 4497 covered employer in a special risk position within 1 year after
 4498 his or her initial termination of employment by such transfer of
 4499 its detention facilities to the private entity.
 4500 Section 113. Paragraph (f) of subsection (2) of section
 4501 121.051, Florida Statutes, is amended to read:
 4502 121.051 Participation in the system.—
 4503 (2) OPTIONAL PARTICIPATION.—
 4504 (f)1. If an employer that participates in the Florida
 4505 Retirement System undertakes the transfer, merger, or
 4506 consolidation of governmental services or assumes the functions
 4507 and activities of an employing governmental entity that was not
 4508 an employer under the system, the employer must notify the
 4509 department at least 60 days before such action and provide
 4510 documentation as required by the department. Such ~~The~~ transfer,
 4511 merger, or consolidation ~~of governmental services or assumption~~
 4512 ~~of governmental functions and activities~~ must occur between
 4513 public employers. The current or former employer may pay the
 4514 employees' past service cost, unless prohibited under this
 4515 chapter. This subparagraph does not apply to the transfer,
 4516 merger, or consolidation of governmental services or assumption
 4517 of functions and activities of a public entity under a leasing
 4518 agreement having a coemployer relationship. Employers and
 4519 employees of a public governmental employer whose service is
 4520 covered by a leasing agreement under s. 112.922 ~~110.191~~, any
 4521 other leasing agreement, or a coemployer relationship may not
 4522 ~~are not eligible to~~ participate in the Florida Retirement
 4523 System.
 4524 2. If the agency to which a member's employing unit is

585-00618D-12 20127196
 transferred, merged, or consolidated does not participate in the Florida Retirement System, a member may elect in writing to remain in the ~~Florida Retirement~~ system or to transfer to the local retirement system operated by the agency. If the agency does not participate in a local retirement system, the member shall continue membership in the Florida Retirement System. In either case, membership continues for as long as the member is employed by the agency to which his or her unit was transferred, merged, or consolidated.

Section 114. Paragraph (a) of subsection (1) of section 121.055, Florida Statutes, is amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1) (a) Participation in the Senior Management Service Class ~~is shall be~~ limited to and compulsory for any member of the Florida Retirement System who holds a position in the Senior Management Service of the State of Florida, established under by part ~~IV III~~ of chapter 110, unless such member elects, within the time specified herein, to participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

Section 115. Paragraph (a) of subsection (2) of section 121.35, Florida Statutes, is amended to read:

121.35 Optional retirement program for the State University System.—

(2) ELIGIBILITY FOR PARTICIPATION IN OPTIONAL PROGRAM.—

(a) Participation in the optional retirement program is

585-00618D-12 20127196
~~provided by this section shall be~~ limited to persons who are otherwise eligible for membership or renewed membership in the Florida Retirement System and who are employed in one of the following State University System positions:

1. Positions classified as instructional and research faculty which are exempt from the Civil ~~career~~ Service under the ~~provisions of~~ s. 110.205(2) (d).

2. Positions classified as administrative and professional which are exempt from the Civil ~~career~~ Service under the ~~provisions of~~ s. 110.205(2) (d).

3. The Chancellor and the university presidents.

Section 116. Section 145.19, Florida Statutes, is amended to read:

145.19 Annual percentage increases based on increase for civil ~~state career~~ service employees; limitation.—

(1) As used in this section, the term:

(a) "Annual factor" means 1 plus the lesser of:

1. The average percentage increase in the salaries of civil ~~state career~~ service employees for the current fiscal year as determined by the Department of Management Services or as provided in the General Appropriations Act; or

2. Seven percent.

(b) "Cumulative annual factor" means the product of all annual factors certified under this act ~~before prior to~~ the fiscal year for which salaries are being calculated.

(c) "Initial factor" means a factor of 1.292, which is a product, rounded to the nearest thousandth, of an earlier cost-of-living increase factor authorized by chapter 73-173, Laws of Florida, and intended by the Legislature to be preserved in

585-00618D-12

20127196

adjustments to salaries made ~~before the prior to~~ enactment of chapter 76-80, Laws of Florida, multiplied by the annual increase factor authorized by chapter 79-327, Laws of Florida.

(2) Each fiscal year, the salaries of all officials listed in this chapter, s. 1001.395, and s. 1001.47 shall be adjusted. The adjusted salary rate is shall be the product, rounded to the nearest dollar, of the salary rate granted by the appropriate section of this chapter, s. 1001.395, or s. 1001.47 multiplied first by the initial factor, then by the cumulative annual factor, and finally by the annual factor. The Department of Management Services shall certify the annual factor and the cumulative annual factors. Any special qualification salary received under this chapter, s. 1001.47, or the annual performance salary incentive available to elected superintendents under s. 1001.47 shall be added to the such adjusted salary rate. The special qualification salary is shall be \$2,000, ~~but shall not exceed \$2,000.~~

Section 117. Subsection (2) of section 216.011, Florida Statutes, is amended to read:

216.011 Definitions.—

(2) For purposes of this chapter, terms related to the State Personnel System ~~are personnel affairs of the state~~ shall be defined as set forth in s. 110.1054 ~~110.107~~.

Section 118. Paragraph (b) of subsection (10) of section 216.181, Florida Statutes, is amended to read:

216.181 Approved budgets for operations and fixed capital outlay.—

(10)

(b) Lump-sum salary bonuses may be provided only if

585-00618D-12

20127196

specifically appropriated or provided pursuant to ~~s. 110.1245 or~~ s. 216.1815.

Section 119. Subsection (2) of section 260.0125, Florida Statutes, is amended to read:

260.0125 Limitation on liability of private landowners whose property is designated as part of the statewide system of greenways and trails.—

(2) A ~~Any~~ private landowner who consents to designation of his or her land as part of the statewide system of greenways and trails pursuant to s. 260.016(2)(d) without compensation is shall be considered a volunteer, as defined in s. 112.961 ~~110.501~~, and is shall be covered by state liability protection pursuant to s. 768.28, ~~including s. 768.28(9).~~

Section 120. Section 287.175, Florida Statutes, is amended to read:

287.175 Penalties.—A violation of this part or a rule adopted hereunder, pursuant to applicable constitutional and statutory procedures, constitutes misuse of public position as defined in s. 112.313(6), and is punishable as provided in s. 112.317. The Chief Financial Officer shall report incidents of suspected misuse to the Commission on Ethics, and the commission shall investigate possible violations of this part or rules adopted hereunder when reported by the Chief Financial Officer, notwithstanding ~~the provisions of~~ s. 112.324. Any violation of this part or a rule is adopted hereunder shall be presumed to have been committed with wrongful intent, but such presumption is rebuttable. ~~Nothing in~~ This section is not intended to deny rights provided to civil career service employees by s. 110.227.

Section 121. Paragraph (a) of subsection (4) of section

585-00618D-12

20127196

295.07, Florida Statutes, is amended to read:

295.07 Preference in appointment and retention.—

(4) The following positions are exempt from this section:

(a) Those positions that are exempt from the Civil state Career Service System under s. 110.205, (2) ~~+~~. However, all positions under the University Support Personnel System of the State University System as well as all civil Career service System positions under the Florida Community College System and the School for the Deaf and the Blind, or the equivalent of such positions at state universities, community colleges, or the School for the Deaf and the Blind, are included.

Section 122. Paragraph (a) of subsection (1) of section 295.09, Florida Statutes, is amended to read:

295.09 Reinstatement or reemployment; promotion preference.—

(1) (a) If ~~When~~ an employee of the state or any of its political subdivisions employed in a position subject or not subject to a civil career service system or other merit-type system, with the exception of those positions that ~~which~~ are exempt pursuant to s. 295.07(4), has served in the Armed Forces of the United States and is discharged or separated ~~therefrom~~ with an honorable discharge, the state or its political subdivision shall reemploy or reinstate such person to the same position that he or she held ~~before~~ prior to such service in the armed forces, or to an equivalent position, if ~~provided~~ such person returns to the position within 1 year after ~~of~~ his or her date of separation or, in cases of extended active duty, within 1 year after ~~of~~ the date of discharge or separation subsequent to the extension. Such person shall also be awarded preference

Page 161 of 192

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585-00618D-12

20127196

in promotion and shall be promoted ahead of all others who are as well qualified or less qualified for the position. If ~~When~~ an examination for promotion is used ~~utilized~~, such person shall be awarded preference points, as provided in s. 295.08, and shall be promoted ahead of all those who appear in an equal or lesser position on the promotional register if, ~~provided~~ he or she first successfully passes the examination for the promotional position.

Section 123. Subsection (3) of section 296.04, Florida Statutes, is amended to read:

296.04 Administrator; duties and qualifications; responsibilities.—

(3) The administrator position shall be assigned to the Selected Exempt Service under part III ~~V~~ of chapter 110. The director shall give veterans' preference in selecting an administrator, as provided in ss. 295.07 and 295.085. In addition, the administrator must have at least a 4-year degree from an accredited university or college and 3 years of administrative experience in a health care facility, or any equivalent combination of experience, training, and education totaling 7 years in work relating to administration of a health care facility.

Section 124. Subsection (2) of section 296.34, Florida Statutes, is amended to read:

296.34 Administrator; qualifications, duties, and responsibilities.—

(2) The position shall be assigned to the Selected Exempt Service under part III ~~V~~ of chapter 110. The director shall give veterans preference in selecting an administrator, as provided

Page 162 of 192

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585-00618D-12 20127196

in ss. 295.07 and 295.085. The administrator, at the time of entering employment and at all times while employed as the administrator must hold a current valid license as a nursing home administrator under part II of chapter 468.

Section 125. Subsection (2) of section 381.00315, Florida Statutes, is amended to read:

381.00315 Public health advisories; public health emergencies.—The State Health Officer is responsible for declaring public health emergencies and issuing public health advisories.

(2) Individuals who assist the State Health Officer at his or her request on a volunteer basis during a public health emergency are entitled to the benefits specified in s. 112.964(2)-(5) ~~110.504(2), (3), (4), and (5).~~

Section 126. Paragraph (e) of subsection (3) of section 381.85, Florida Statutes, is amended to read:

381.85 Biomedical and social research.—

(3) REVIEW COUNCIL FOR BIOMEDICAL AND SOCIAL RESEARCH.—

(e) The council shall be staffed by an executive director and a secretary who shall be appointed by the council and who ~~are shall be exempt from the provisions of~~ part II of chapter 110 relating to the Civil Career Service System.

Section 127. Paragraph (a) of subsection (3) of section 394.47865, Florida Statutes, is amended to read:

394.47865 South Florida State Hospital; privatization.—

(3) (a) Current South Florida State Hospital employees who are affected by the privatization shall be given first preference for continued employment by the contractor. The department shall make reasonable efforts to find suitable job

585-00618D-12 20127196

placements for employees who wish to remain within the state Civil Career Service System.

Section 128. Section 402.3057, Florida Statutes, is amended to read:

402.3057 Persons not required to be refingerprinted or rescreened.—Notwithstanding any other provision of law ~~to the contrary notwithstanding~~, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, and teachers and noninstructional personnel who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in ~~such provisions as~~ ss. 112.928 ~~110.1127(3)~~, 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6), are shall not be required to be refingerprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

Section 129. Paragraph (a) of subsection (2) of section 402.55, Florida Statutes, is amended to read:

402.55 Management fellows program.—

(2) The departments are authorized to establish a management fellows program in order to provide highly qualified career candidates for key administrative and managerial positions in the departments. Such program shall include, but is not limited to:

(a) The identification annually by the secretaries, the assistant secretaries, and the district administrator in each

585-00618D-12

20127196__

district of one high-potential civil ~~career~~ service employee each, to be designated and appointed to serve as a full-time health and rehabilitative services management fellow for a ~~period of~~ 1 year.

Section 130. Subsection (4) of section 402.7305, Florida Statutes, is amended to read:

402.7305 Department of Children and Family Services; procurement of contractual services; contract management.—

(4) CONTRACT MONITORING REQUIREMENTS AND PROCESS.—The department shall establish contract monitoring units staffed by civil ~~career~~ service employees who report to a member of the Selected Exempt Service or Senior Management Service and who have been properly trained to perform contract monitoring. At least one member of the contract monitoring unit must possess specific knowledge and experience in the contract's program area. The department shall establish a contract monitoring process that includes, but is not limited to, the following requirements:

(a) Performing a risk assessment at the start of each fiscal year and preparing an annual contract monitoring schedule that considers the level of risk assigned. The department may monitor any contract at any time regardless of whether such monitoring was originally included in the annual contract monitoring schedule.

(b) Preparing a contract monitoring plan, including sampling procedures, before performing onsite monitoring at external locations of a service provider. The plan must include a description of the programmatic, fiscal, and administrative components that will be monitored on site. If appropriate,

Page 165 of 192

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585-00618D-12

20127196__

clinical and therapeutic components may be included.

(c) Conducting analyses of the performance and compliance of an external service provider by means of desk reviews if the external service provider will not be monitored on site during a fiscal year.

(d) Unless the department sets forth in writing the need for an extension, providing a written report presenting the results of the monitoring within 30 days after the completion of the onsite monitoring or desk review.

(e) Developing and maintaining a set of procedures describing the contract monitoring process.

Notwithstanding any other provision of this section, the department shall limit monitoring of a child-caring or child-placing services provider under this subsection to only once per year. Such monitoring may not duplicate administrative monitoring that is included in the survey of a child welfare provider conducted by a national accreditation organization specified under s. 402.7306(1).

Section 131. Subsection (2) of section 402.731, Florida Statutes, is amended to read:

402.731 Department of Children and Family Services certification programs for employees and service providers; employment provisions for transition to community-based care.—

(2) The department shall develop and implement employment programs to attract and retain competent staff to support and facilitate the transition to privatized community-based care. Such ~~employment~~ programs must ~~shall~~ include lump-sum bonuses, salary incentives, relocation allowances, or severance pay. The

Page 166 of 192

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585-00618D-12

20127196

4815 department shall also contract for the delivery or
 4816 administration of outplacement services. The department shall
 4817 establish time-limited exempt positions as provided in s.
 4818 110.205(2)(f) ~~110.205(2)(i)~~, in accordance with the authority
 4819 provided in s. 216.262(1)(c)1. Employees appointed to fill such
 4820 exempt positions shall have the same salaries and benefits as
 4821 civil career service employees.

4822 Section 132. Section 409.1757, Florida Statutes, is amended
 4823 to read:

4824 409.1757 Persons not required to be refingerprinted or
 4825 rescreened. Notwithstanding any other provision of law ~~to the~~
 4826 ~~contrary notwithstanding~~, human resource personnel who have been
 4827 fingerprinted or screened pursuant to chapters 393, 394, 397,
 4828 402, and this chapter, and teachers who have been fingerprinted
 4829 pursuant to chapter 1012, who have not been unemployed for more
 4830 than 90 days thereafter, and who under the penalty of perjury
 4831 attest to the completion of such fingerprinting or screening and
 4832 to compliance with ~~the provisions of~~ this section and the
 4833 standards for good moral character as contained in such
 4834 provisions as ss. 112.928 ~~110.1127(3)~~, 393.0655(1), 394.457(6),
 4835 397.451, 402.305(2), and 409.175(6), are ~~shall~~ not be required
 4836 to be refingerprinted or rescreened in order to comply with any
 4837 caretaker screening or fingerprinting requirements.

4838 Section 133. Subsection (1) of section 409.9205, Florida
 4839 Statutes, is amended to read:

4840 409.9205 Medicaid Fraud Control Unit.—

4841 (1) Except as provided in s. 110.205, all positions in the
 4842 Medicaid Fraud Control Unit of the Department of Legal Affairs
 4843 are ~~hereby~~ transferred to the Civil Career Service ~~System~~.

Page 167 of 192

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585-00618D-12

20127196

4844 Section 134. Section 414.37, Florida Statutes, is amended
 4845 to read:

4846 414.37 Public assistance overpayment recovery
 4847 privatization; reemployment of laid-off ~~career service~~
 4848 employees.—Should civil career service employees of the
 4849 Department of Children and Family Services be subject to layoff
 4850 after July 1, 1995, due to the privatization of public
 4851 assistance overpayment recovery functions, the privatization
 4852 contract must ~~shall~~ require the contracting firm to give
 4853 priority consideration to employment of such employees. In
 4854 addition, a task force composed of representatives from the
 4855 Department of Children and Family Services and the Department of
 4856 Management Services shall be established to provide reemployment
 4857 assistance to such employees.

4858 Section 135. Subsection (7) of section 427.012, Florida
 4859 Statutes, is amended to read:

4860 427.012 The Commission for the Transportation
 4861 Disadvantaged.—There is created the Commission for the
 4862 Transportation Disadvantaged in the Department of
 4863 Transportation.

4864 (7) The commission shall appoint an executive director who
 4865 shall serve under the direction, supervision, and control of the
 4866 commission. The executive director, with the consent of the
 4867 commission, shall employ such personnel as ~~may be~~ necessary to
 4868 perform adequately the functions of the commission within
 4869 budgetary limitations. Employees of the commission are exempt
 4870 from the Civil Career Service ~~System~~.

4871 Section 136. Paragraph (o) of subsection (1) of section
 4872 440.102, Florida Statutes, is amended to read:

Page 168 of 192

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585-00618D-12

20127196

4873 440.102 Drug-free workplace program requirements.—The
 4874 following provisions apply to a drug-free workplace program
 4875 implemented pursuant to law or to rules adopted by the Agency
 4876 for Health Care Administration:

4877 (1) DEFINITIONS.—Except where the context otherwise
 4878 requires, as used in this act:

4879 (o) "Safety-sensitive position" means, with respect to a
 4880 public employer, a position in which a drug impairment
 4881 constitutes an immediate and direct threat to public health or
 4882 safety, such as a position that requires the employee to carry a
 4883 firearm, perform life-threatening procedures, work with
 4884 confidential information or documents pertaining to criminal
 4885 investigations, or work with controlled substances; a position
 4886 subject to s. 112.928 ~~110.1127~~; or a position in which a
 4887 momentary lapse in attention could result in injury or death to
 4888 another person.

4889 Section 137. Subsection (2) of section 447.203, Florida
 4890 Statutes, is amended to read:

4891 447.203 Definitions.—As used in this part:

4892 (2) "Public employer" or "employer" means the state or any
 4893 county, municipality, or special district, or any subdivision or
 4894 agency thereof, which the commission determines has sufficient
 4895 legal distinctiveness ~~properly~~ to properly carry out the
 4896 functions of a public employer. With respect to all public
 4897 employees determined by the commission as properly belonging to
 4898 a statewide bargaining unit composed of state civil career
 4899 service ~~system~~ employees or selected exempt professional service
 4900 employees, the Governor is ~~shall be deemed to be~~ the public
 4901 employer; and the Board of Governors of the State University

585-00618D-12

20127196

4902 System, or the board's designee, ~~is shall be deemed to be~~ the
 4903 public employer with respect to all public employees of each
 4904 constituent state university. The board of trustees of a
 4905 community college is ~~shall be deemed to be~~ the public employer
 4906 with respect to all employees of the community college. The
 4907 district school board is ~~shall be deemed to be~~ the public
 4908 employer with respect to all employees of the school district.
 4909 The Board of Trustees of the Florida School for the Deaf and the
 4910 Blind is ~~shall be deemed to be~~ the public employer with respect
 4911 to the academic and academic administrative personnel of the
 4912 Florida School for the Deaf and the Blind. The Governor is ~~shall~~
 4913 ~~be deemed to be~~ the public employer with respect to all
 4914 employees in the Correctional Education Program of the
 4915 Department of Corrections established pursuant to s. 944.801.

4916 Section 138. Subsection (8) and paragraph (a) of subsection
 4917 (9) of section 447.207, Florida Statutes, are amended to read:

4918 447.207 Commission; powers and duties.—

4919 (8) The commission or its designated agent shall hear
 4920 appeals arising out of any suspension, reduction in pay,
 4921 demotion, or dismissal of any permanent employee in the Civil
 4922 ~~State Career Service System~~ in the manner provided in s.
 4923 110.227.

4924 (9) Pursuant to s. 447.208, the commission or its
 4925 designated agent shall hear appeals, and enter such orders as it
 4926 deems appropriate, arising out of:

4927 ~~(a) Section 110.124, relating to termination or transfer of~~
 4928 ~~State Career Service System employees aged 65 or older.~~

4929 (a) (b) Section 112.044(4), relating to age discrimination.

4930 (b) (c) Section 295.11, relating to reasons for not

585-00618D-12

20127196

4931 employing a preferred veteran applicant.

4932 Section 139. Section 447.209, Florida Statutes, is amended
4933 to read:

4934 447.209 Public employer's rights.—It is the right of the
4935 public employer to determine unilaterally the purpose of each of
4936 its constituent agencies, set standards of services to be
4937 offered to the public, and exercise control and discretion over
4938 its organization and operations. It is also the right of the
4939 public employer to direct its employees, take disciplinary
4940 action for proper cause, and relieve its employees from duty
4941 because of lack of work or for other legitimate reasons.
4942 However, the exercise of such rights does ~~shall~~ not preclude
4943 employees or their representatives from raising grievances,
4944 should decisions on the above matters have the practical
4945 consequence of violating the terms and conditions of any
4946 collective bargaining agreement in force or any civil ~~or career~~
4947 service rule ~~regulation~~.

4948 Section 140. Section 447.401, Florida Statutes, is amended
4949 to read:

4950 447.401 Grievance procedures.—Each public employer and
4951 bargaining agent shall negotiate a grievance procedure to be
4952 used for the settlement of disputes between employer and
4953 employee, or group of employees, involving the interpretation or
4954 application of a collective bargaining agreement. Such grievance
4955 procedure shall have as its terminal step a final and binding
4956 disposition by an impartial neutral, mutually selected by the
4957 parties; however, if ~~when~~ the issue under appeal is an
4958 allegation of abuse, abandonment, or neglect by an employee
4959 under s. 39.201 or s. 415.1034, the grievance may not be decided

585-00618D-12

20127196

4960 until the abuse, abandonment, or neglect of a child has been
4961 judicially determined. However, an arbiter or other neutral may
4962 ~~shall not have the power to~~ add to, subtract from, modify, or
4963 alter the terms of a collective bargaining agreement. If an
4964 employee organization is certified as the bargaining agent of a
4965 unit, the grievance procedure ~~then~~ in existence may be the
4966 subject of collective bargaining, and any agreement that ~~which~~
4967 is reached supersedes ~~shall supersede~~ the previously existing
4968 procedure. All public employees shall have the right to a fair
4969 and equitable grievance procedure administered without regard to
4970 membership or nonmembership in any organization, except that
4971 certified employee organizations may ~~shall~~ not be required to
4972 process grievances for employees who are not members of the
4973 organization. A civil ~~career~~ service employee may use ~~shall have~~
4974 ~~the option of utilizing~~ the civil service appeal procedure, an
4975 unfair labor practice procedure, or a grievance procedure
4976 established under this section, but such employee may not avail
4977 ~~is precluded from availing~~ himself or herself of ~~to~~ more than
4978 one of these procedures.

4979 Section 141. Paragraph (a) of subsection (2) of section
4980 456.048, Florida Statutes, is amended to read:

4981 456.048 Financial responsibility requirements for certain
4982 health care practitioners.—

4983 (2) The board or department may grant exemptions upon
4984 application by practitioners meeting any of the following
4985 criteria:

4986 (a) Any person licensed under chapter 457, s. 458.3475, s.
4987 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or
4988 chapter 467 who practices exclusively as an officer, employee,

585-00618D-12 20127196
 4989 or agent of the Federal Government or of the state or its
 4990 agencies or its subdivisions. For the purposes of this
 4991 subsection, an agent of the state, its agencies, or its
 4992 subdivisions is a person who is eligible for coverage under any
 4993 self-insurance or insurance program authorized by ~~the provisions~~
 4994 ~~of s. 768.28(16) or who is a volunteer as defined in s. 112.961~~
 4995 ~~under s. 110.501(1).~~

4996 Section 142. Section 551.116, Florida Statutes, is amended
 4997 to read:

4998 551.116 Days and hours of operation.—Slot machine gaming
 4999 areas may be open daily throughout the year. The slot machine
 5000 gaming areas may be open a total cumulative amount of 18 hours
 5001 per day on Monday through Friday, ~~and~~ 24 hours per day on
 5002 Saturday and Sunday, and on those holidays specified in s.
 5003 112.929 110.117(1).

5004 Section 143. Subsection (29) of section 570.07, Florida
 5005 Statutes, is amended to read:

5006 570.07 Department of Agriculture and Consumer Services;
 5007 functions, powers, and duties.—The department shall have and
 5008 exercise the following functions, powers, and duties:

5009 (29) To advance funds monthly to civil career service
 5010 employees to be used for the purchase of official state samples
 5011 for state examination. Each monthly advance shall be ~~in an~~
 5012 ~~amount~~ equal to one-twelfth of the actual expenses paid the
 5013 position for samples in the previous fiscal year or, in the case
 5014 of a new position, one-twelfth of the expenses paid for samples
 5015 of a similar classification in the previous fiscal year;
 5016 however, in the event of unusual circumstances, such advances
 5017 may be increased for up to a period not to exceed 60 days.

585-00618D-12 20127196
 5018 Advances shall be granted only to civil career service employees
 5019 who have executed a proper power of attorney with the department
 5020 to ensure the collection of such advances if not timely repaid.

5021 Section 144. Paragraph (b) of subsection (3) of section
 5022 601.10, Florida Statutes, is amended to read:

5023 601.10 Powers of the Department of Citrus.—The Department
 5024 of Citrus shall have and shall exercise such general and
 5025 specific powers as are delegated to it by this chapter and other
 5026 statutes of the state, which powers shall include, but shall not
 5027 be confined to, the following:

5028 (3) To employ and, at its pleasure, discharge an executive
 5029 director as it deems necessary and to outline his or her powers
 5030 and duties and fix his or her compensation.

5031 (b) The Department of Citrus may pay, or participate in the
 5032 payment of, premiums for health, accident, and life insurance
 5033 for its full-time employees, pursuant to such rules ~~or~~
 5034 ~~regulations~~ as it may adopt; and such payments are in addition
 5035 to the regular salaries of such full-time employees. The payment
 5036 of such or similar benefits to its employees in foreign
 5037 countries, including, but not limited to, social security,
 5038 retirement, and other similar fringe benefit costs, may be in
 5039 accordance with laws in effect in the country of employment,
 5040 except that ~~no benefits will be payable to employees~~ not
 5041 authorized for other state employees are not payable to its
 5042 employees, as provided in the Civil Career Service System.

5043 Section 145. Subsection (6) of section 624.307, Florida
 5044 Statutes, is amended to read:

5045 624.307 General powers; duties.—

5046 (6) The department and office may each employ actuaries who

585-00618D-12

20127196

shall be at-will employees and who shall serve at the pleasure of the Chief Financial Officer, in the case of department employees, or at the pleasure of the director of the office, in the case of office employees. Actuaries employed pursuant to this paragraph ~~must~~ shall be members of the Society of Actuaries or the Casualty Actuarial Society and ~~are~~ shall be exempt from the ~~Civil Career Service System~~ established under chapter 110. The salaries of the actuaries employed pursuant to this paragraph ~~shall be set in accordance with s. 216.251(2)(a)5. and~~ shall be set at levels ~~which are~~ commensurate with those salary levels paid to actuaries by the insurance industry.

Section 146. Subsection (3) of section 624.437, Florida Statutes, is amended to read:

624.437 "Multiple-employer welfare arrangement" defined; certificate of authority required; penalty.—

(3) This section does not apply to a multiple-employer welfare arrangement ~~that which~~ offers or provides benefits ~~that which~~ are fully insured by an authorized insurer, to an arrangement ~~that which~~ is exempt from state insurance regulation in accordance with Pub. L. No. 93-406, the Employee Retirement Income Security Act, or to the state group health insurance program administered under s. 112.942 pursuant to s. 110.123.

Section 147. Paragraph (h) of subsection (4) of section 627.6488, Florida Statutes, is amended to read:

627.6488 Florida Comprehensive Health Association.—

(4) The association shall:

(h) Contract with preferred provider organizations and health maintenance organizations giving due consideration to those ~~the preferred provider organizations and health~~

Page 175 of 192

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585-00618D-12

20127196

~~maintenance~~ organizations ~~that which~~ have contracted with the state group health insurance program pursuant to s. 112.942 ~~110.123~~. If cost-effective and available in the county where the policyholder resides, the board, upon application or renewal of a policy, shall place a high-risk individual, as established under s. 627.6498(4)(a)4., with the plan case manager who shall determine the most cost-effective quality care system or health care provider and shall place the individual in such system or with such health care provider. If cost-effective and available in the county where the policyholder resides, the board, with the consent of the policyholder, may place a low-risk or medium-risk individual, as established under s. 627.6498(4)(a)4., with the plan case manager who may determine the most cost-effective quality care system or health care provider and shall place the individual in such system or with such health care provider. Before ~~Prior to~~ and during the implementation of case management, the plan case manager shall obtain input from the policyholder, parent, or guardian.

Section 148. Paragraph (a) of subsection (1) of section 627.649, Florida Statutes, is amended to read:

627.649 Administrator.—

(1) The board shall select an administrator, through a competitive bidding process, to administer the plan. The board shall evaluate bids submitted under this subsection based on criteria established by the board, which criteria shall include:

(a) The administrator's proven ability to handle large group accident and health insurance, ~~and~~ Due consideration shall be given to an ~~any~~ administrator who has acted as a third-party administrator for the state group health insurance program

Page 176 of 192

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585-00618D-12

20127196

5105 pursuant to s. 112.942 ~~110.123~~.

5106 Section 149. Paragraph (a) of subsection (2) and subsection
5107 (3) of section 627.6498, Florida Statutes, are amended to read:
5108 627.6498 Minimum benefits coverage; exclusions; premiums;
5109 deductibles.—

5110 (2) BENEFITS.—

5111 (a) The plan shall offer major medical expense coverage
5112 similar to that provided by the state group health insurance
5113 program under s. 112.942, ~~as defined in s. 110.123~~ except as
5114 specified in subsection (3), to every eligible person who is not
5115 eligible for Medicare. Major medical expense coverage offered
5116 under the plan must ~~shall~~ pay an eligible person's covered
5117 expenses, subject to limits on the deductible and coinsurance
5118 payments authorized under subsection (4), up to a lifetime limit
5119 of \$500,000 per covered individual. The maximum limit may ~~under~~
5120 ~~this paragraph shall~~ not be altered by the board, and an ~~no~~
5121 actuarially equivalent benefit may not be substituted by the
5122 board.

5123 (3) COVERED EXPENSES.—The coverage ~~to be~~ issued by the
5124 association must ~~shall~~ be patterned after the state group health
5125 insurance program as provided in s. 112.942 ~~defined in s.~~
5126 ~~110.123~~, including its benefits, exclusions, and other
5127 limitations, except as otherwise provided in this act. The plan
5128 may cover the cost of experimental drugs that ~~which~~ have been
5129 approved for use by the Food and Drug Administration on an
5130 experimental basis if the cost is less than the usual and
5131 customary treatment. Such coverage applies ~~shall~~ only apply to
5132 those insureds who are in the case management system upon the
5133 approval of the insured, the case manager, and the board.

585-00618D-12

20127196

5134 Section 150. Subsection (4) of section 627.6617, Florida
5135 Statutes, is amended to read:

5136 627.6617 Coverage for home health care services.—

5137 (4) The provisions of this section ~~do shall~~ not apply to a
5138 multiple-employer welfare arrangement as defined in s.
5139 624.437(1) and in the State Health Plan as provided in s.
5140 112.942 ~~110.123~~.

5141 Section 151. Paragraph (d) of subsection (2) of section
5142 627.6686, Florida Statutes, is amended to read:

5143 627.6686 Coverage for individuals with autism spectrum
5144 disorder required; exception.—

5145 (2) As used in this section, the term:

5146 (d) "Health insurance plan" means a group health insurance
5147 policy or group health benefit plan offered by an insurer which
5148 includes the state group insurance program provided under s.
5149 112.942 ~~110.123~~. The term does not include a ~~any~~ health
5150 insurance plan offered in the individual market which, ~~any~~
5151 ~~health insurance plan that~~ is individually underwritten, or ~~any~~
5152 ~~health insurance plan~~ provided to a small employer.

5153 Section 152. Paragraph (b) of subsection (7) of section
5154 849.086, Florida Statutes, is amended to read:

5155 849.086 Cardrooms authorized.—

5156 (7) CONDITIONS FOR OPERATING A CARDROOM.—

5157 (b) A ~~Any~~ cardroom operator may operate a cardroom at the
5158 pari-mutuel facility daily throughout the year, if the
5159 permitholder meets the requirements under paragraph (5)(b). The
5160 cardroom may be open a total ~~cumulative amount~~ of 18 hours per
5161 day on Monday through Friday, and 24 hours per day on Saturday
5162 and Sunday, and on the holidays specified in s. 112.929

585-00618D-12

20127196

~~110.117(1).~~

Section 153. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled

Page 179 of 192

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585-00618D-12

20127196

guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except

Page 180 of 192

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585-00618D-12

20127196

that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, unless ~~except when~~ the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 112.928 ~~110.1127(3)~~, s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.

585-00618D-12

20127196

415.102(5), chapter 916, s. 985.644, chapter 400, or chapter 429;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or

7. Is seeking authorization from a seaport listed in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

Section 154. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.— The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.

585-00618D-12 20127196

916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal

585-00618D-12 20127196

history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except ~~if when~~ the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract

585-00618D-12 20127196

5337 with the Department of Children and Family Services, the Agency
 5338 for Health Care Administration, the Agency for Persons with
 5339 Disabilities, or the Department of Juvenile Justice or to be
 5340 employed or used by such contractor or licensee in a sensitive
 5341 position having direct contact with children, the
 5342 developmentally disabled, the aged, or the elderly as provided
 5343 in s. 112.928 ~~110.1127(3)~~, s. 393.063, s. 394.4572(1), s.
 5344 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
 5345 415.102(5), s. 415.103, chapter 916, s. 985.644, chapter 400, or
 5346 chapter 429;

5347 6. Is seeking to be employed or licensed by the Department
 5348 of Education, any district school board, any university
 5349 laboratory school, any charter school, any private or parochial
 5350 school, or any local governmental entity that licenses child
 5351 care facilities;

5352 7. Is attempting to purchase a firearm from a licensed
 5353 importer, licensed manufacturer, or licensed dealer and is
 5354 subject to a criminal history check under state or federal law;
 5355 or

5356 8. Is seeking authorization from a Florida seaport
 5357 identified in s. 311.09 for employment within or access to one
 5358 or more of such seaports pursuant to s. 311.12.

5359 Section 155. Subsection (2) of section 945.043, Florida
 5360 Statutes, is amended to read:

5361 945.043 Department-operated day care services.—

5362 (2) The department is exempt from s. 112.918 ~~the~~
 5363 ~~requirements of s. 110.151.~~

5364 Section 156. Subsection (1) of section 946.525, Florida
 5365 Statutes, is amended to read:

585-00618D-12 20127196

5366 946.525 Participation by the corporation in the state group
 5367 health insurance and prescription drug programs.—

5368 (1) The board of directors of the corporation established
 5369 under this part may apply for participation in the state group
 5370 health insurance program authorized under s. 112.942 ~~in s.~~
 5371 ~~110.123~~ and the prescription drug coverage program authorized
 5372 under s. 112.946 ~~by s. 110.12315~~ by submitting an application
 5373 along with a \$500 nonrefundable fee to the Department of
 5374 Management Services.

5375 Section 157. Paragraph (e) of subsection (4) of section
 5376 985.045, Florida Statutes, is amended to read:

5377 985.045 Court records.—

5378 (4) A court record of proceedings under this chapter is not
 5379 admissible in evidence in any other civil or criminal
 5380 proceeding, except that:

5381 (e) Records of proceedings under this chapter may be used
 5382 to prove disqualification under ss. 112.928 ~~110.1127~~, 393.0655,
 5383 394.457, 397.451, 402.305, 402.313, 409.175, 409.176, and
 5384 985.644.

5385 Section 158. Paragraph (k) of subsection (2) of section
 5386 1001.705, Florida Statutes, is amended to read:

5387 1001.705 Responsibility for the State University System
 5388 under s. 7, Art. IX of the State Constitution.—

5389 (2) CONSTITUTIONAL DUTIES OF THE BOARD OF GOVERNORS OF THE
 5390 STATE UNIVERSITY SYSTEM.—In accordance with s. 7, Art. IX of the
 5391 State Constitution, the Board of Governors of the State
 5392 University System has the duty to operate, regulate, control,
 5393 and be fully responsible for the management of the whole
 5394 publicly funded State University System and the board, or the

585-00618D-12 20127196__

5395 board's designee, has responsibility for:

5396 (k) Establishing a personnel system for all state
5397 university employees; however, the Department of Management
5398 Services shall retain authority over state university employees
5399 for programs established in ss. 112.942 ~~110.123~~, 112.947
5400 ~~110.1232~~, 112.948 ~~110.1234~~, 112.949 ~~110.1238~~, and 112.951
5401 ~~110.161~~, and in chapters 121, 122, and 238.

5402 Section 159. Paragraph (b) of subsection (6) of section
5403 1001.706, Florida Statutes, is amended to read:

5404 1001.706 Powers and duties of the Board of Governors.—

5405 (6) POWERS AND DUTIES RELATING TO PERSONNEL.—

5406 (b) The Department of Management Services shall retain
5407 authority over state university employees for programs
5408 established in ss. 112.942 ~~110.123~~, 112.947 ~~110.1232~~, 112.948
5409 ~~110.1234~~, 112.949 ~~110.1238~~, and 112.951 ~~110.161~~ and in chapters
5410 121, 122, and 238. Unless specifically authorized by law,
5411 neither the Board of Governors nor a state university may offer
5412 group insurance programs for employees as a substitute for or as
5413 an alternative to the health insurance programs offered pursuant
5414 to chapter 112 ~~110~~.

5415 Section 160. Paragraph (c) of subsection (5) of section
5416 1001.74, Florida Statutes, is amended to read:

5417 1001.74 Powers and duties of university boards of
5418 trustees.—

5419 (5) POWERS AND DUTIES RELATING TO PERSONNEL.—

5420 (c) The Department of Management Services shall retain
5421 authority over state university employees for programs
5422 established in ss. 112.942 ~~110.123~~, 112.947 ~~110.1232~~, 112.948
5423 ~~110.1234~~, 112.949 ~~110.1238~~, and 112.951 ~~110.161~~ and in chapters

585-00618D-12 20127196__

5424 121, 122, and 238. Unless specifically authorized by law,
5425 neither the Board of Governors nor a state university may offer
5426 group insurance programs for employees as a substitute for or as
5427 an alternative to the health insurance programs offered pursuant
5428 to chapter 112 ~~110~~.

5429 Section 161. Paragraph (f) of subsection (4) and paragraph
5430 (f) of subsection (8) of section 1002.36, Florida Statutes, are
5431 amended to read:

5432 1002.36 Florida School for the Deaf and the Blind.—

5433 (4) BOARD OF TRUSTEES.—

5434 (f) The board of trustees shall:

5435 1. Prepare and submit legislative budget requests for
5436 operations and fixed capital outlay, in accordance with chapter
5437 216 and ss. 1011.56 and 1013.60, to the Department of Education
5438 for review and approval. The department must analyze the amount
5439 requested for fixed capital outlay to determine if the request
5440 is consistent with the school's campus master plan, educational
5441 plant survey, and facilities master plan. Projections of
5442 facility space needs may exceed the norm space and occupant
5443 design criteria established in the State Requirements for
5444 Educational Facilities.

5445 2. Approve and administer an annual operating budget in
5446 accordance with ss. 1011.56 and 1011.57.

5447 3. Require all funds received other than gifts, donations,
5448 bequests, funds raised by or belonging to student clubs or
5449 student organizations, and funds held for specific students or
5450 in accounts for individual students to be deposited in the State
5451 Treasury and expended as authorized in the General
5452 Appropriations Act.

585-00618D-12

20127196

4. Require all purchases to be in accordance with the provisions of chapter 287 except for purchases made with funds received as gifts, donations, or bequests; funds raised by or belonging to student clubs or student organizations; or funds held for specific students or in accounts for individual students.

5. Administer and maintain personnel programs for all employees of the board of trustees and the Florida School for the Deaf and the Blind who shall be state employees, including the personnel classification and pay plan established in accordance with ss. 110.205(2)(s) ~~110.205(2)(d)~~ and 216.251(2)(a)2. for academic and academic administrative personnel, the provisions of chapter 110, and the provisions of law that grant authority to the Department of Management Services over such programs for state employees.

6. Give preference in appointment and retention in positions of employment as provided within s. 295.07(1).

7. Ensure that the Florida School for the Deaf and the Blind complies with s. 1013.351 concerning the coordination of planning between the Florida School for the Deaf and the Blind and local governing bodies.

8. Ensure that the Florida School for the Deaf and the Blind complies with s. 112.061 concerning per diem and travel expenses of public officers, employees, and authorized persons with respect to all funds other than funds received as gifts, donations, or bequests; funds raised by or belonging to student clubs or student organizations; or funds held for specific students or in accounts for individual students.

9. Adopt a master plan that ~~which~~ specifies the mission and

Page 189 of 192

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585-00618D-12

20127196

objectives of the Florida School for the Deaf and the Blind. The plan shall include, but not be limited to, procedures for systematically measuring the school's progress toward meeting its objectives, analyzing changes in the student population, and modifying school programs and services to respond to such changes. The plan shall be for a period of 5 years and shall be reviewed for needed modifications every 2 years. The board of trustees shall submit the initial plan and subsequent modifications to the Speaker of the House of Representatives and the President of the Senate.

10. Designate a portion of the school as "The Verle Allyn Pope Complex for the Deaf," in tribute to the late Senator Verle Allyn Pope.

(8) CAMPUS POLICE.—

(f) The board of trustees shall adopt rules, including, without limitation, rules for the appointment, employment, and removal of campus police in accordance with the Civil State Career Service under chapter 110 System and shall establish in writing a policy manual, that includes, without limitation, procedures for managing routine law enforcement situations and emergency law enforcement situations. The board of trustees shall furnish a copy of the policy manual to each of the campus police officers it employs. A campus police officer appointed by the board of trustees must have completed the training required by the school in the special needs and proper procedures for dealing with students served by the school.

Section 162. Section 1012.62, Florida Statutes, is amended to read:

1012.62 Transfer of sick leave and annual leave.—In

Page 190 of 192

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585-00618D-12

20127196

5511 implementing ~~the provisions of~~ ss. 402.22(1)(d) and
 5512 1001.42(4)(m), educational personnel in Department of Children
 5513 and Family Services residential care facilities who are employed
 5514 by a district school board may request, and the district school
 5515 board shall accept, a lump-sum transfer of accumulated sick
 5516 leave for such personnel to the maximum allowed by policies of
 5517 the district school board, notwithstanding ~~the provisions of~~ s.
 5518 112.913 ~~110.122~~. Educational personnel in Department of Children
 5519 and Family Services residential care facilities who are employed
 5520 by a district school board under ~~the provisions of~~ s.
 5521 402.22(1)(d) may request, and the district school board shall
 5522 accept, a lump-sum transfer of accumulated annual leave for each
 5523 person employed by the district school board in a position in
 5524 the district eligible to accrue vacation leave under the
 5525 policies of the district school board.

5526 Section 163. Subsection (5) of section 1012.79, Florida
 5527 Statutes, is amended to read:

5528 1012.79 Education Practices Commission; organization.—

5529 (5) The commission, by a vote of three-fourths of the
 5530 membership, shall employ an executive director, who shall be
 5531 exempt from the Civil Career Service. The executive director may
 5532 be dismissed by a majority vote of the membership.

5533 Section 164. Subsection (6) of section 1012.88, Florida
 5534 Statutes, is amended to read:

5535 1012.88 Florida College System institution police.—

5536 (6) The Florida College System institution, with the
 5537 approval of the Department of Law Enforcement, shall adopt
 5538 rules, including, without limitation, rules for the appointment,
 5539 employment, and removal of Florida College System institution

585-00618D-12

20127196

5540 police in accordance with the Civil state Career Service under
 5541 chapter 110 System and shall establish in writing a policy
 5542 manual, that includes, without limitation, procedures for
 5543 managing routine law enforcement situations and emergency law
 5544 enforcement situations. The Florida College System institution
 5545 shall furnish a copy of the policy manual to each of the police
 5546 officers it employs.

5547 Section 165. Section 1012.96, Florida Statutes, is amended
 5548 to read:

5549 1012.96 IFAS extension personnel; federal health insurance
 5550 ~~programs notwithstanding the provisions of s. 110.123.—~~

5551 Notwithstanding s. 112.942, the Institute of Food and
 5552 Agricultural Sciences at the University of Florida may pay the
 5553 employer's share of premiums to the Federal Health Benefits
 5554 Insurance Program from its appropriated budget for any
 5555 cooperative extension employee of the institute having both
 5556 state and federal appointments and participating in the Federal
 5557 Civil Service Retirement System.

5558 Section 166. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-26-2012

Meeting Date

Topic State Employment

Bill Number 7196
(if applicable)

Name Butch Cromwell

Amendment Barcode _____
(if applicable)

Job Title Retired Plumber / pipe fitter

Address 12313 NE 7th Ave
Street

Phone (352) 318 0903

Gainesville FL 32641
City State Zip

E-mail _____

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-26-12

Meeting Date

Topic STATE EMPLOYMENT

Bill Number 7196
(if applicable)

Name LARRY DUPREE

Amendment Barcode _____
(if applicable)

Job Title _____

Address 8301 N. RIVER HIGHLANDS PL
Street

Phone _____

TAMPA FL 33617
City State Zip

E-mail _____

Speaking: ☐ For ☒ Against ☐ Information

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/26/12
Meeting Date

Topic STATE Employment Bill Number SB 7196
Name GLYNDA LINTON Amendment Barcode _____
Job Title Author (if applicable)
Address 1 SW 58 Ave Phone 954 648-5571
Plantation FL 33317 E-mail glynda.linton@yahoo.com
City State Zip
Speaking: ☐ For ☒ Against ☐ Information
Representing Self
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic STATE EMPLOYMENT Bill Number SB 7196
Name ANTHONY MARCIANO Amendment Barcode _____
Job Title SGT. BROWARD SHERIFF'S OFFICE (if applicable)
Address 1531 NW 27TH AVE Phone 954-632-6878
POMPANO BEACH FL 33069 E-mail _____
City State Zip
Speaking: ☐ For ☒ Against ☐ Information
Representing MYSELF
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/12
Meeting Date

Topic State Employment Bill Number 7196
Name Doug Martin Amendment Barcode _____
Job Title Legislative Director (if applicable)
Address 3064 Highland Oaks Terr. Phone 850-212-7447
Street City State Zip E-mail dmartin@afscme.org
Speaking: ☐ For ☒ Against ☐ Information
Representing AFSCME Florida Council 79
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/2012
Meeting Date

Topic STATE EMPLOYMENT Bill Number 7196
Name GAIL MARIE PERRA Amendment Barcode _____
Job Title CHAIR (if applicable)
Address PO Box 1766 Phone 954 850-4053
Street City State Zip E-mail workingfolk@hotmail.com
Speaking: ☐ For ☒ Against ☐ Information
Representing COMMUNICATIONS WORKERS OF AMERICA
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 1-26-12

Topic STATE Employment Bill Number SB 7196
(if applicable)

Name Gayle Roberts Amendment Barcode _____
(if applicable)

Job Title Food & Nutrition Manager

Address 2265 S.W. 33 Way Phone 954-683-7312
Ft. Lauderdale FL 33312
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 1/26/12

Topic STATE Employment Bill Number 7196
(if applicable)

Name ROBERT SUAREZ Amendment Barcode _____
(if applicable)

Job Title VICE PRESIDENT, FLORIDA FOREFIGHTERS

Address 345 W. MADISON STREET Phone _____
Miami FL 33
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

Representing FLORIDA PROFESSIONAL FOREFIGHTERS

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/12
Meeting DateTopic State EmploymentBill Number SB 7196
(if applicable)Name Rich TemplinAmendment Barcode _____
(if applicable)

Job Title _____

Address 135 S. Monroe
Street

Phone _____

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: ☐ For ☒ Against ☐ InformationRepresenting Florida AKZ-C16Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/12
Meeting DateTopic State EmploymentBill Number 7196
(if applicable)Name Ken WilliamsAmendment Barcode _____
(if applicable)

Job Title _____

Address 7411 Meadow Drive
StreetPhone 813-886-1753Tampa FL 33634
City State Zip

E-mail _____

Speaking: ☐ For ☒ Against ☐ InformationRepresenting myselfAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date JAN. 26, 2012

Topic State Employment Bill Number 7196 (if applicable)

Name SHARON D. LARSON Amendment Barcode _____ (if applicable)

Job Title Director - Division of Human Resource Management (DHS)

Address 4050 Esplanade Way Phone 850 922-5449

Tallahassee FL 32399-0950 E-mail Sharon.Larson@DHS.myflorida.com

City State Zip

Speaking: ☐ For ☐ Against ☒ Information

Representing _____

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 1-26-2012

Topic State Employment Bill Number 7196 (if applicable)

Name TJ Williams Amendment Barcode _____ (if applicable)

Job Title HVAC/R mechanic Journeyman.

Address 281 Old Hawthorne Rd Phone (352) 481-4467

Hawthorne FL 32640 E-mail _____

City State Zip

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

1/26/12

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

Meeting Date

Topic

STATE EMPLOYMENT

Bill Number

7196

(if applicable)

Name

Dean Parkerson

Amendment Barcode

(if applicable)

Job Title

South Florida Council of Fire Figs

Address

Street

Phone

City

State

Zip

E-mail

Speaking:

☐

For

☐

Against

☐

Information

Representing

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☐

No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7198

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Repeal of Boards and Commissions

DATE: January 24, 2012

REVISED: _____

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

I. Summary:

This proposed committee bill is the result of the Governor's office review of boards, councils, and commissions. The results of the review offered that several boards, councils, and commissions have been inactive for several years with no active appointees, fulfilled their statutory duties, or have duplicative responsibilities with another office's duties. This bill repeals several entities that have been targeted for repeal as a result of the review.

This bill repeals sections 110.123(13), 258.155, 288.7001, 288.7002, 339.64(5), 381.90, 624.916, and 1004.63 of the Florida Statutes.

This bill substantially amends sections 120.54 and 120.745 of the Florida Statutes.

II. Present Situation:

Florida Institute of Nuclear Detection and Security Board of Advisors

The 2004 legislature passed legislation creating the Florida Institute of Nuclear Detection and Security (FINDS) and its board of advisors.¹ FINDS' primary objective is to serve as "a design-basis center for research, development, testing, and engineering projects that directly address and satisfy critical nuclear detection and security needs facing the state and nation."² The board of advisors is composed of eight members who serve without compensation.³ The statute also requires FINDS to submit an annual report on its progress, with recommendations on nuclear

¹ Section 2, ch. 2004-261, L.O.F.

² *Id.*

³ Section 1004.63(6)(a), F.S.

security and detection, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.⁴

The board is organized at the University of Florida. The professors who were responsible for overseeing FINDS and its annual report have left the University for positions at out-of-state institutions. As a result, the institute is not presently functioning at the University of Florida. Additionally, no annual report was ever submitted to the Governor's Office, nor has any Governor appointed members to the board since 2004. The University of Florida has indicated that there are no professors or staff supporting the institute or plans for any meetings or production of an annual report.

Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council

The Gamble Plantation Historic State Park is located in Ellenton in Manatee County.⁵ The state park is widely believed to be the site where the Confederate Secretary of State, Judah P. Benjamin, sought refuge until he could flee to Europe.⁶ In 1925, the Daughters of the Confederacy donated the plantation and surrounding land to the State.⁷ In 1980, the Legislature created the advisory council for the Judah P. Benjamin Memorial at Gamble Plantation State Park.⁸ That advisory role has since been taken over by the Gamble Plantation Preserve Alliance, a Citizen Support Organization registered with the Department of Environmental Protection's Division of Parks and Recreation.⁹

Florida State Employee Wellness Council

The Florida State Employee Wellness Council was created by legislation passed during the 2006 legislative session.¹⁰ The council was created to advise the Department of Management Services (DMS) on providing health education information to state employees and to assist DMS in developing minimum benefits for all health care providers when providing age- and gender-based wellness benefits.¹¹

The Department of Management Services has stated that this council has not been active for several years.¹² The council's last recorded meeting occurred in June 2008 and the last members appointed to the council termed out in December 2010. No new appointments have been made to the council. The Office of Program Policy Analysis and Government Accountability (OPPAGA) has previously recommended abolishing the council as it did not appear to be fulfilling its

⁴ Section 1004.63(8), F.S.

⁵ Gamble Plantation Historic State Park, <http://www.floridastateparks.org/gambleplantation/> (last visited Jan. 18, 2012).

⁶ *Id.*

⁷ *Id.*

⁸ Sections 1-2, ch. 80-536, L.O.F.

⁹ The Florida Department of Environmental Protection Division of Parks and Recreation has indicated that it is unopposed to the repeal of s. 258.155, F.S. More information about Citizen Support Organizations within the Division of Parks and Recreation is available at <http://www.floridastateparks.org/getinvolved/friendsgroups.cfm> (last visited Jan. 18, 2012).

¹⁰ Section 9, ch. 2006-269, L.O.F.

¹¹ *Id.*

¹² E-mail correspondence with Stephanie Leeds, Legislative Affairs Director, Department of Management Services (Dec. 14, 2011) (on file with the Senate Committee on Governmental Oversight and Accountability).

statutory mission and because council duties related to wellness programs had been assigned to other state entities.¹³

Developmental Disabilities Compact Workgroup

The Developmental Disabilities Compact Workgroup was created by the “Window of Opportunity Act” passed during the 2008 legislative session.¹⁴ Workgroup members are composed of representatives of all health insurers licensed under Ch. 624, F.S.; representatives of all licensed health maintenance organizations (HMOs); representatives of employers with self-insured health benefit plans; two designees of the Governor; a designee of the Senate President; and a designee of the Speaker of the House of Representatives.¹⁵ The workgroup was tasked with negotiating a compact that includes a binding agreement among the participants relating to insurance and access to services for persons with developmental disabilities.¹⁶ The statute directed the Office of Insurance Regulation to convene the workgroup by August 31, 2008 to provide a forum to comment on the negotiated compact.¹⁷

The health insurance providers that were subject to this provision had the option of either entering the compact or offering a mandate that would achieve the same goals. All but one company opted for the mandate, and the compact was dissolved in late 2008. The workgroup has been inactive since that time.¹⁸

Health Information Systems Council

The Health Information Systems Council was created by the Information Resource Management Reform Act passed during the 1997 legislative session.¹⁹ The Council’s primary duty is “to facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities.”²⁰ The Florida Department of Health reports that the council has been inactive and not funded since 2003.²¹

Small Business Regulatory Advisory Council

The Small Business Regulatory Advisory Council (SBRAC) was created by the Small Business Regulatory Relief Act passed during the 2008 legislative session.²² The council’s primary duties include providing state agencies with input regarding proposed rules or programs that may

¹³ Department of Management Services Advisory Committees Assessment, Office of Program Policy Analysis and Government Accountability (OPPAGA), Dec. 2008, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/08-S11.pdf>.

¹⁴ Section 2, ch. 2008-30, L.O.F.

¹⁵ Section 624.916(2), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ The Office of Insurance Regulation has indicated that it is unopposed to the repeal of s. 624.916(2), F.S.

¹⁹ Section 27, ch. 97-286, L.O.F.

²⁰ Section 381.90(2), F.S.

²¹ E-mail correspondence with Leonard Zeiler, Legislative Affairs Director, Florida Department of Health (Jan. 4, 2012) (on file with the Senate Committee on Governmental Oversight and Accountability).

²² Section 2, ch. 2008-149, L.O.F.

adversely affect small business; considering requests from small business owners to review rules or programs adopted by an agency; reviewing rules promulgated by an agency to determine whether a rule places an unnecessary burden on small business or affects their private property rights and make recommendations to the agency to mitigate the adverse effects; and reviewing agency rules in conjunction with the agency sunset review process.²³ The council's membership is composed of nine members who are current or former small business owners, three appointed by the Governor, three appointed by the Senate President, and three appointed by the Speaker of the House of Representatives.²⁴

Upon taking office, Governor Scott issued Executive Order 11-01 establishing the Office of Fiscal Accountability and Regulatory Reform (OFARR). OFARR was given specific duties pertaining to agency rulemaking – specifically ensuring that agency-created rules do not hinder government performance and that they are fiscally responsible. The Governor's office has indicated that SBRAC's rule review responsibilities are duplicative of the duties and activities of OFARR. Additionally, the office of the rules ombudsman within the Executive Office of the Governor shares many of the same statutory duties and responsibilities with SBRAC.²⁵ SBRAC was not funded in the current fiscal year.

Statewide Intermodal Transportation Advisory Council

The 2003 legislature created the Statewide Intermodal Transportation Advisory Council (SITAC) through passage of an omnibus transportation bill.²⁶ SITAC was created to advise and make recommendations to the Legislature and the Department of Transportation (DOT) on the policies, planning, and funding of intermodal transportation projects.²⁷

SITAC assisted in developing the initial Strategic Intermodal System plan in 2005. The Strategic Intermodal System plan is developed by the DOT in conjunction with metropolitan planning organizations, regional planning councils, local governments, SITAC, and other transportation providers.²⁸ No further appointments to SITAC have been made since January 2005 and the council no longer officially convenes. Although SITAC has not officially convened since December 2004, the DOT has confirmed that all of the SITAC members' organizations continue to be involved in the ongoing planning and updating of the Strategic Intermodal System plan.

III. Effect of Proposed Changes:

Section 1 repeals s. 110.123(13), F.S., relating to the Florida State Employee Wellness Council.

Section 2 repeals s. 258.155, F.S., relating to the Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council.

Section 3 repeals s. 288.7001, F.S., relating to the Small Business Regulatory Advisory Council.

²³ Section 288.7001(3)(c), F.S.

²⁴ Section 288.7001(3)(a), F.S.

²⁵ See s. 288.7015, F.S.

²⁶ Section 49, ch. 2003-286, L.O.F.

²⁷ *Id.*

²⁸ Section 339.64(1), F.S.

Section 4 repeals s. 288.7002, F.S., relating to the Office of the Small Business Advocate.

Section 5 repeals s. 339.64(5), F.S., relating to the Statewide Intermodal Transportation Advisory Council.

Section 6 repeals s. 381.90, F.S., relating to the Health Information Systems Council.

Section 7 repeals s. 624.916, F.S., relating to the Developmental Disabilities Compact.

Section 8 repeals s. 1004.63, F.S., relating to the Florida Institute of Nuclear Detection and Security.

Section 9 amends s. 120.54, F.S., replacing references to the Small Business Regulatory Advisory Council with the rules ombudsman in the Executive Office of the Governor; requiring the rules ombudsman to assume certain duties formerly performed by the Small Business Regulatory Advisory Council; and deleting a requirement that the Office of Program Policy Analysis and Government Accountability (OPPAGA) conduct a study and issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the impact on small business of certain proposed agency rules that have been rejected.

Section 10 amends s. 120.745, F.S., replacing references to the Small Business Regulatory Advisory Council with the rules ombudsman in the Executive Office of the Governor; and requiring the rules ombudsman to assume certain duties formerly performed by the Small Business Regulatory Advisory Council.

Section 11 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01392B-12

20127198__

1 A bill to be entitled
 2 An act relating to state agencies; repealing s.
 3 110.123(13), F.S., relating to the Florida State
 4 Employee Wellness Council; repealing s. 258.155, F.S.,
 5 relating to the Judah P. Benjamin Memorial at Gamble
 6 Plantation Historical Site Advisory Council; repealing
 7 s. 288.7001, F.S., relating to the Small Business
 8 Regulatory Advisory Council; repealing s. 288.7002,
 9 F.S., relating to the Office of Small Business
 10 Advocate; repealing s. 339.64(5), F.S., relating to
 11 the Statewide Intermodal Transportation Advisory
 12 Council; repealing s. 381.90, F.S., relating to the
 13 Health Information Systems Council; repealing s.
 14 624.916, F.S., relating to the Developmental
 15 Disabilities Compact Workgroup; repealing s. 1004.63,
 16 F.S., relating to the Florida Institute for Nuclear
 17 Detection and Security; amending ss. 120.54 and
 18 120.745, F.S., relating to rule adoption by state
 19 agencies; requiring the rules ombudsman in the
 20 Executive Office of the Governor to assume certain
 21 duties formerly performed by the Small Business
 22 Regulatory Advisory Council; deleting provisions that
 23 require the Office of Program Policy Analysis and
 24 Government Accountability, upon request, to conduct a
 25 study and issue a report to the Governor, the
 26 President of the Senate, and the Speaker of the House
 27 of Representatives regarding the impact on small
 28 business of certain proposed agency rules that have
 29 been rejected; providing an effective date.

Page 1 of 7

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

585-01392B-12

20127198__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Subsection (13) of section 110.123, Florida
 34 Statutes, is repealed.
 35 Section 2. Section 258.155, Florida Statutes, is repealed.
 36 Section 3. Section 288.7001, Florida Statutes, is repealed.
 37 Section 4. Section 288.7002, Florida Statutes, is repealed.
 38 Section 5. Subsection (5) of section 339.64, Florida
 39 Statutes, is repealed.
 40 Section 6. Section 381.90, Florida Statutes, is repealed.
 41 Section 7. Section 624.916, Florida Statutes, is repealed.
 42 Section 8. Section 1004.63, Florida Statutes, is repealed.
 43 Section 9. Paragraph (b) of subsection (3) of section
 44 120.54, Florida Statutes, is amended to read:
 45 120.54 Rulemaking.—
 46 (3) ADOPTION PROCEDURES.—
 47 (b) *Special matters to be considered in rule adoption.*—
 48 1. Statement of estimated regulatory costs.—Before the
 49 adoption, amendment, or repeal of any rule other than an
 50 emergency rule, an agency is encouraged to prepare a statement
 51 of estimated regulatory costs of the proposed rule, as provided
 52 by s. 120.541. However, an agency must prepare a statement of
 53 estimated regulatory costs of the proposed rule, as provided by
 54 s. 120.541, if:
 55 a. The proposed rule will have an adverse impact on small
 56 business; or
 57 b. The proposed rule is likely to directly or indirectly
 58 increase regulatory costs in excess of \$200,000 in the aggregate

Page 2 of 7

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585-01392B-12

20127198

in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management

585-01392B-12

20127198

practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council and the Department of Economic Opportunity~~ at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council~~ and provided to the agency no later than 21 days after the council's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council~~, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive

585-01392B-12

20127198

117 ~~Office of the Governor Small Business Regulatory Advisory~~
 118 ~~Council. The Small Business Regulatory Advisory Council may make~~
 119 ~~a request of the President of the Senate and the Speaker of the~~
 120 ~~House of Representatives that the presiding officers direct the~~
 121 ~~Office of Program Policy Analysis and Government Accountability~~
 122 ~~to determine whether the rejected alternatives reduce the impact~~
 123 ~~on small business while meeting the stated objectives of the~~
 124 ~~proposed rule. Within 60 days after the date of the directive~~
 125 ~~from the presiding officers, the Office of Program Policy~~
 126 ~~Analysis and Government Accountability shall report to the~~
 127 ~~Administrative Procedures Committee its findings as to whether~~
 128 ~~an alternative reduces the impact on small business while~~
 129 ~~meeting the stated objectives of the proposed rule. The Office~~
 130 ~~of Program Policy Analysis and Government Accountability shall~~
 131 ~~consider the proposed rule, the economic impact statement, the~~
 132 ~~written statement of the agency, the proposed alternatives, and~~
 133 ~~any comment submitted during the comment period on the proposed~~
 134 ~~rule. The Office of Program Policy Analysis and Government~~
 135 ~~Accountability shall submit a report of its findings and~~
 136 ~~recommendations to the Governor, the President of the Senate,~~
 137 ~~and the Speaker of the House of Representatives. The~~
 138 ~~Administrative Procedures Committee shall report such findings~~
 139 ~~to the agency, and the agency shall respond in writing to the~~
 140 ~~Administrative Procedures Committee if the Office of Program~~
 141 ~~Policy Analysis and Government Accountability found that the~~
 142 ~~alternative reduced the impact on small business while meeting~~
 143 ~~the stated objectives of the proposed rule. If the agency will~~
 144 ~~not adopt the alternative, it must also provide a detailed~~
 145 ~~written statement to the committee as to why it will not adopt~~

585-01392B-12

20127198

146 ~~the alternative.~~

147 Section 10. Paragraphs (a) and (c) of subsection (5) of
 148 section 120.745, Florida Statutes, are amended to read:

149 120.745 Legislative review of agency rules in effect on or
 150 before November 16, 2010.—

151 (5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED
 152 REPORT.—Each agency shall perform a compliance economic review
 153 and report for all rules, including separate reviews of
 154 subparts, listed under Group 1 "Group 1 rules" or Group 2 "Group
 155 2 rules" pursuant to subparagraph (2)(g)3. Group 1 rules shall
 156 be reviewed and reported on in 2012, and Group 2 rules shall be
 157 reviewed and reported on in 2013.

158 (a) No later than May 1, each agency shall:

159 1. Complete a compliance economic review for each entire
 160 rule or subpart in the appropriate group.

161 2. File the written certification of the agency head with
 162 the committee verifying the completion of each compliance
 163 economic review required for the respective year. The
 164 certification shall be dated and published as an addendum to the
 165 report required in subsection (3). The duty to certify
 166 completion of the required compliance economic reviews is the
 167 responsibility solely of the agency head as defined in s.
 168 120.52(3) and may not be delegated to any other person. If the
 169 defined agency head is a collegial body, the written
 170 certification must be prepared by the chair or equivalent
 171 presiding officer of that body.

172 3. Publish a copy of the compliance economic review,
 173 directions on how and when interested parties may submit lower
 174 cost regulatory alternatives to the agency, and the date the

585-01392B-12

20127198

notice is published in the manner provided in subsection (7).

4. Publish notice of the publications required in subparagraphs 2. and 3. in the manner provided in subsection (7).

5. Submit each compliance economic review to the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council~~ for its review.

(c) No later than August 1, the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council~~ may submit lower cost regulatory alternatives to any rule to the agency that adopted the rule. No later than June 15, other interested parties may submit lower cost regulatory alternatives to any rule.

Section 11. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

January 26, 2012

Meeting Date

Topic _____

Bill Number SPB 7198

(if applicable)

Name Patricia Nelson

Amendment Barcode _____

(if applicable)

Job Title Deputy Director/Rules Ombudsman

Address 1702 The Capitol

Phone (850) 487-1880

Street

Tallahassee, FL 32399-0001

E-mail patricia.nelson@laspbs.state.fl.us

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

Representing Executive Office of the Governor, Off. of Fiscal Accountability and Regulatory Reform

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7200

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Municipal Police Pensions

DATE: January 24, 2012

REVISED: _____

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

I. Summary:

The bill clarifies that a maximum of 300 hours of overtime may be included for purposes of calculating municipal police pension plan benefits.

This bill amends section 185.02 of the Florida Statutes.

II. Present Situation:

Local Retirement Systems and Plans

The Division of Retirement of the Department of Management Services (DMS) reports¹ that as of September 30, 2011, there are 492 defined benefit plans sponsored by 251 local governments. The vast majority of the plans, 486, are local government defined benefit systems that provide benefits to 69,178 retirees, with 106,541 active employees, and total plan assets of \$23.9 billion.² The average annual pension in these local plans is \$24,485, and the average annual required contribution rate as a percentage of payroll is 25.74 percent.

The “Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund” Acts

The Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund Acts, located in chapters 175 and 185, Florida Statutes, declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, and in

¹ Division of Management Services, *Florida Local Government Retirement Systems*, 2011 Annual Report.

² The other 6 plans are school board early retirement programs that provide benefits to 1,617 retirees, with active plan membership of 8,613, and total plan assets of \$58.7 million.

implementing the provisions of s. 14, Art. X of the State Constitution. Pursuant to ss. 175.021(1) and 185.01(1), F.S., all municipal and special district firefighters, and all municipal police officers retirement trust fund systems or plans, must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds. The Division of Retirement within the Department of Management Services is the primary state agency responsible for administrative oversight, including monitoring for actuarial soundness, of the funds in the Municipal Police Officers' Retirement Trust Fund and the Firefighters' Pension Trust Fund.³

The Police Officers Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amounts up to .85 percent of the gross receipts on premiums for policies issued within the municipality boundary.⁴ This excise tax is also payable to the Department of Revenue and the net proceeds are transferred to the appropriate fund at the Division of Retirement. In 2010, premium tax distributions to municipalities from the Police Officers Retirement Trust Fund amounted to \$57.4 million.⁵

Additional revenues for both funds come from a five percent employee contribution through salary, employer contributions, fines for employees violating board rules and regulations, and other sources.⁶

Changes to Local Pensions in 2011

The 2011 Legislature enacted⁷ sweeping changes to local government pension plans, by providing for the following:

- Local plans' actuarial reports are required to include the present value of all benefits, using a standard rate of return, to promote comparisons between plans;
- DMS is required to post on their website a five-year history of each plan's funded ratio, and local plans are required to link to this DMS website;
- Actuarial or cash surpluses in a local plan may not be used outside the plan;
- Local plans may not reduce contributions required to fund normal cost;
- For all local plans, accrued sick or annual leave may not be included in calculations of retirement benefits; overtime may be included, but is capped at 300 hours; and
- With approval of the members, firefighter and police plans are allowed to increase member contributions without increasing member benefits.

Definition of Salary in Municipal Police Pension Plans

The 300 hour cap on the amount of overtime hours to be included in the calculation of retirement benefits was added to ss. 112.66, 175.032, and 185.02, F.S., by SB 1128. The provisions for

³ See ss. 175.121 and 185.10, F.S.

⁴ Section 185.08, F.S.

⁵ Division of Management Services, *Municipal Police Officers and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2010.pdf (last visited on January 20, 2012).

⁶ See ss. 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

⁷ Chapter 2011-216, L.O.F.; Senate Bill 1128.

general public retirement systems (Chapter 112, F.S.) and firefighter pensions (Chapter 175, F.S.) did not have existing provisions allowing any overtime hours to be included in the calculation of retirement benefits. Section 185.02(4), F.S., had the following definition before amendment by SB 1128:

“Compensation” or “salary” means the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, a local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes, but in no event shall such overtime limit be less than 300 hours per officer per calendar year.

After amendment, the section reads as follows:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

The pre-SB 1128 provision sets the limit at no less than 300 hours, effectively acting as a floor or minimum of 300 hours. The post-SB 1128 language has been interpreted to mean that after July 1, 2011, the 300 hour floor has been replaced by a 300 hour cap. The DMS Division of Retirement has not yet taken final agency action on its interpretation of the provision, but appears to be taking the position that SB 1128 did not *replace* the floor with a cap, but supplemented the 300 floor with a 300 hour cap. In other words, the employer must include at least 300 hours of overtime in the calculation, but may not include more than 300 hours. If the division deems that a firefighter or police pension plan created pursuant to Chapters 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

III. Effect of Proposed Changes:

The bill amends s. 185.02(4), F.S., to delete the “overtime limit may not be less than 300 hours” language, which should clarify that the definition has a maximum cap of 300 hours, with no required minimum.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Municipal police pension plans could incur lower pension plan costs with this clarification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01547-12

20127200

A bill to be entitled

An act relating to municipal police pensions; amending s. 185.02, F.S.; revising the definition of the term "compensation" or "salary"; providing an effective date.

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

Section 1. Subsection (4) of section 185.02, Florida Statutes, is amended to read:

185.02 Definitions.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(4) "Compensation" or "salary" means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; ~~however, such overtime limit may not be less than 300 hours per officer per calendar year.~~ For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning

585-01547-12

20127200

except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

(a) Any retirement trust fund or plan that meets the requirements of this chapter does not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each police officer covered by the retirement trust fund or plan.

(b) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member would receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this chapter.

(c) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for that plan year may not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation, as amended by the Omnibus Budget Reconciliation Act of 1993, which limitation of \$150,000 shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member before the first plan year beginning on or after January 1, 1996, the limitation on compensation may not be less than the

585-01547-12

20127200

59 maximum compensation amount that was allowed to be taken into
60 account under the plan ~~as~~ in effect on July 1, 1993, which
61 limitation shall be adjusted for changes in the cost of living
62 since 1989 in the manner provided by Internal Revenue Code s.
63 401(a) (17) (1991) .

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 1/26/12

Topic _____ Bill Number SPB 7200
(if applicable)

Name Kraig Conn Amendment Barcode _____
(if applicable)

Job Title _____

Address 301 S. Broadway Phone 222 9684
Street

Tall FL 32301 E-mail _____
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida League of Cities

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Pension S Bill Number 7200
(if applicable)

Name Lisa Henning Amendment Barcode _____
(if applicable)

Job Title Director Legislative Affairs

Address 242 Office Plaza Phone 850-766-8808
Street

Tallahassee FL 32301 E-mail _____
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

Representing Fraternal Order of Police

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-26-12

Meeting Date

Topic Retirement Bill Number 7200 (if applicable)

Name David Marshall Amendment Barcode _____ (if applicable)

Job Title Director Legislative Services - PBA

Address 300 E. Broward St. Phone _____

Street

Tallahassee, FL 32301

City

State

Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida PBA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)