**The Florida Senate**

# COMMITTEE MEETING EXPANDED AGENDA

**GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY**
**Senator Ring, Chair**
**Senator Siplin, Vice Chair**

**MEETING DATE:** Wednesday, February 1, 2012
**TIME:** 3:30 —5:30 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 | **CS/CS/SB 206**<br>Rules / Rules Subcommittee on Ethics and Elections / Negron<br>(Similar CS/H 355) | Public Meetings; Requiring that a member of the public be given a reasonable opportunity to be heard before a board or commission takes official action on a proposition before the board or commission; providing that the opportunity to be heard is subject to rules or policies adopted by the board or commission; providing requirements for rules or policies governing the opportunity to be heard; providing that compliance with the requirements of the act is presumed under certain circumstances, etc.<br><br>EE 01/11/2012 Fav/CS<br>RC 01/23/2012 Fav/CS<br>GO 02/01/2012 Fav/CS | Fav/CS<br>Yeas 10 Nays 0 |
| 2 | **CS/SB 346**<br>Criminal Justice / Ring<br>(Compare H 223) | Flag Etiquette; Requiring that the Governor adopt a protocol on flag display; requiring the protocol to have guidelines for proper flag display and for lowering the state flag to half-staff on certain occasions; authorizing the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag, etc.<br><br>CJ 01/25/2012 Fav/CS<br>GO 02/01/2012 Favorable | Favorable<br>Yeas 10 Nays 0 |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 3 | **SB 412**<br>Bennett<br>(Identical H 403) | Assessment on the Sale of Masonry Units; Creating the "Concrete Masonry Products Research, Education, and Promotion Act"; creating the Florida Concrete Masonry Council, Inc., as a nonprofit corporation; authorizing the council to levy an assessment on the sale of masonry units by a manufacturer, under certain circumstances; prohibiting the council from participating or intervening in any political campaign; prohibiting the council from using any receipt to benefit its directors, officers, or other private persons; requiring that a manufacturer of concrete masonry products collect the assessment from a purchaser at the time of sale of a concrete masonry unit; authorizing the council to initiate legal action against a manufacturer that fails to remit the assessment, etc.<br><br>CA 12/05/2011 Favorable<br>GO 02/01/2012 Fav/CS<br>BC | Fav/CS<br>Yeas 9 Nays 0 |
| 4 | **SB 576**<br>Bennett<br>(Identical H 337) | Public-private Partnerships; Establishing the Florida Public-Private Partnership Act; providing for private entities to develop and operate public-purpose projects; requiring public entities to adopt and make publicly available specified guidelines for public-private agreements; providing an exemption from the Consultant's Competitive Negotiation Act and any interpretations, regulations, or guidelines of the Department of Management Services; providing requirements and procedures for interim and comprehensive agreements between private and public entities; providing for material default and remedies with respect to projects and agreements; establishing the Public-Private Partnership Advisory Commission, etc.<br><br>GO 02/01/2012 Favorable<br>CA<br>BC | Favorable<br>Yeas 9 Nays 0 |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 5 | **SB 1144**<br>Garcia<br>(Identical H 959) | Scrutinized Companies; Requiring the State Board of Administration to identify all companies in which public moneys are invested and which are doing certain types of business in or with Cuba or Syria; requiring the board to periodically contact all scrutinized companies and encourage them to refrain from engaging in certain types of business in or with Cuba or Syria; requiring the board to divest all publicly traded securities of a scrutinized company under certain conditions; prohibiting a state agency or local governmental entity from contracting for goods and services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Cuba List or the Scrutinized Companies with Activities in Syria List; requiring a contract provision that allows for termination of the contract if the company is found to have been placed on such list, etc.<br><br>GO 02/01/2012 Temporarily Postponed<br>BC | Temporarily Postponed |
| 6 | **SB 1358**<br>Hays<br>(Similar CS/H 1205) | Drug-Free Workplace Act; Removing the definition of the term “safety-sensitive position” and defining the term “random testing”; authorizing an agency within state government to conduct random drug testing every 3 months; removing provisions prohibiting a state agency from discharging or disciplining an employee under certain circumstances based on the employee’s first positive confirmed drug test; removing provisions limiting the circumstances under which an agency may discharge an employee in a special risk or safety-sensitive position; providing that an agency may discharge or discipline an employee following a first-time positive confirmed drug test result, etc.<br><br>HR 01/25/2012 Fav/1 Amendment<br>GO 02/01/2012 Fav/CS<br>BC | Fav/CS<br>Yeas 8 Nays 3 |
| 7 | **SM 1482**<br>Braynon<br>(Identical CS/HM 47) | War on Terror; Recognizing the death of Osama bin Laden as a positive step forward in the war on terrorism and declaring a continuing unity of commitment against terrorism, its crimes against humanity, and al-Qaeda, etc.<br><br>GO 02/01/2012 Favorable | Favorable<br>Yeas 9 Nays 0 |
| 8 | **SM 1486**<br>Braynon<br>(Identical HM 1293) | Taiwan Policy Act of 2011; Urging Congress to pass House Resolution 2918, the Taiwan Policy Act of 2011, etc.<br><br>GO 02/01/2012 Fav/CS | Fav/CS<br>Yeas 9 Nays 0 |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 9 | **SB 1498**<br>Ring<br>(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.<br><br>GO 01/26/2012 Temporarily Postponed<br>GO 02/01/2012 Fav/CS<br>BI<br>BC<br>RC | Fav/CS<br>Yeas 10 Nays 0 |
| 10 | **SB 1872**<br>Gibson<br>(Identical H 1041) | Small Business Participation in State Contracting; Directing that agencies avoid contract bundling under certain circumstances; requiring agencies to conduct market research and include written summaries and analysis of such research in solicitations for bundled contracts; requiring agencies to award a specified percentage of contracts to small businesses; requiring contract vendors to use small businesses in the state as subcontractors or subvendors; requiring the Florida Small Business Advocate to establish a system for reporting small business participation in state contracting, etc.<br><br>GO 02/01/2012 Fav/CS<br>BC | Fav/CS<br>Yeas 9 Nays 0 |
| 11 | **SB 2084**<br>Governmental Oversight and Accountability<br>(Similar CS/H 1261) | State Employment; Revising provisions relating to the establishment of the State Personnel System; providing the employment policies 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.<br><br>GO 02/01/2012 Temporarily Postponed<br>BC | Temporarily Postponed |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 12 | **SB 2086**<br>Governmental Oversight and Accountability<br>(Compare H 1263, H 1399, H 4141, H 7043, H 7057, H 7071, H 7073, H 7077, S 1824, S 1866) | 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 Office of Small Business Advocate, the Statewide Intermodal Transportation Advisory Council, the Health Information Systems Council, the Developmental Disabilities Compact Workgroup, and the Florida Institute for Nuclear Detection and Security; amending provisions relating to rule adoption by state agencies; requiring the rules ombudsman in the Executive Office of the Governor to assume certain duties formerly performed by the Small Business Regulatory Advisory Council, etc.<br><br>GO 02/01/2012 Favorable<br>BC | Favorable<br>Yeas 9 Nays 0 |
| 13 | **SB 2088**<br>Governmental Oversight and Accountability<br>(Compare H 365, S 910) | Municipal Police Pensions; Revising the definition of the term “compensation” or “salary”, etc.<br><br>GO 02/01/2012 Fav/CS<br>CA<br>BC | Fav/CS<br>Yeas 9 Nays 0 |
| | Other Related Meeting Documents | | |

# CourtSmart Tag Report

**Room:** EL 110 **Case:** **Type:**
**Caption:** Senate Committee on Governmental Oversight and Accountability **Judge:**

**Started: 2/1/2012 3:33:32 PM**
**Ends: 2/1/2012 4:38:29 PM Length: 01:04:58**

| | |
|---|---|
| **3:33:35 PM** | Call to order |
| **3:33:40 PM** | Call the role |
| **3:34:07 PM** | Quorum present |
| **3:34:14 PM** | TP 2084 |
| **3:34:31 PM** | CS/CS/SB 206 Presented by Senator Negron |
| **3:35:49 PM** | Amendment barcode 850158 |
| **3:36:08 PM** | Motion to adopt amendment |
| **3:36:12 PM** | Amendment barcode 594238 |
| **3:37:15 PM** | Motion to adopt the amendment |
| **3:37:21 PM** | Questions? |
| **3:37:31 PM** | Steve Uhlfelder, Florida Press Association |
| **3:37:38 PM** | Brian Pitts, Justice-2-Jesus |
| **3:39:46 PM** | David Cullen, Sierra Club Florida |
| **3:40:00 PM** | Senator Negron closes |
| **3:40:13 PM** | Senator Siplin - motion to report as CS |
| **3:40:18 PM** | Motion adopted |
| **3:40:25 PM** | Role call |
| **3:40:30 PM** | CS/CS/SB 206 reported favorable as CS/CS/CS/SB |
| **3:40:54 PM** | Tab 3 |
| **3:40:57 PM** | SB 412 presented by Senator Bennett |
| **3:42:00 PM** | Amendment barcode 393224 |
| **3:42:14 PM** | Motion to adopt amendment |
| **3:42:24 PM** | David Ramba, Masonry Association of Florida waives in support |
| **3:42:34 PM** | Kari Hebrank Masonry Association of Florida waives in support |
| **3:42:45 PM** | Brian Pitts, Justice-2-Jesus |
| **3:44:36 PM** | Senator Bennett closes |
| **3:44:45 PM** | Senator Wise - motion to report as CS |
| **3:44:53 PM** | Call Role |
| **3:45:02 PM** | CS/SB 412 reports favorably |
| **3:45:20 PM** | Senator Margolis records yes vote for SB 206 |
| **3:45:36 PM** | Tab 4 SB 576 presented by Senator Bennett |
| **3:46:57 PM** | Questions? |
| **3:47:01 PM** | David Cruz, Florida League of Cities, waives in support |
| **3:47:07 PM** | Richard Watson, Associate Builders and Contractors, waives in support |
| **3:47:16 PM** | Call role |
| **3:47:19 PM** | SB 576 reports favorably |
| **3:47:37 PM** | SB 1144 TP |
| **3:47:51 PM** | Tab 7 SM 1382 presented by Senator Braynon |
| **3:48:10 PM** | Questions? |
| **3:48:16 PM** | Waive close |
| **3:48:20 PM** | Call role |
| **3:48:23 PM** | SM 1482 reports favorably |
| **3:48:41 PM** | Tab 8 SM 1486 presented by Senator Braynon |
| **3:49:18 PM** | Amendment barcode 739986 |
| **3:49:36 PM** | Motion to adopt amendment |
| **3:49:44 PM** | Question? |
| **3:49:48 PM** | Senator Braynon waives close |
| **3:49:57 PM** | Senator Wise - motion to adopt as CS |
| **3:50:00 PM** | Call role |
| **3:50:03 PM** | CS/SM 1486 reports favorably |
| **3:50:21 PM** | Tab 6 SB 1358 presented by Senator Hays |
| **3:51:05 PM** | Amendment Barcode 625716 substitute for 654020 |

**3:51:37 PM** Motion to adopt amendment
**3:51:44 PM** Amendment barcode 875634 by Senator Benacquisto
**3:52:26 PM** Questions?
**3:52:34 PM** Lee Moffitt, Drug Free America Foundation, Inc, waives in support
**3:52:56 PM** Ron Bilboa, ACLU of FL waives in opposition
**3:53:04 PM** Michael Galletta, Teacher from Pasco County
**3:56:03 PM** Peggy Higgins, United School Employees of Pasco, waives in opposition
**3:56:14 PM** Lorena Ortiz, United School Employee of Pasco, waives in opposition
**3:56:32 PM** Gail Perry, Communication Workers of America
**3:59:02 PM** Lisa Dahl waives in opposition
**3:59:12 PM** Brian Pitts, Justice-2-Jesus
**4:01:16 PM** Doug Martin, AFSCME
**4:03:15 PM** Debate?
**4:03:17 PM** Senator Margolis comments
**4:04:55 PM** Senator Dean asks a question
**4:05:09 PM** Senator Hays responds
**4:05:21 PM** Senator Dean asks a question
**4:05:32 PM** Senator Hays responds
**4:05:56 PM** Senator Dean asks a question
**4:06:09 PM** Senator Hays responds
**4:06:32 PM** Senator Dean asks a question
**4:06:47 PM** Senator Latvala comments
**4:07:46 PM** Senator Montford comments
**4:07:57 PM** Senator Hays responds
**4:08:10 PM** Senator Garcia comments
**4:09:02 PM** Chairman Ring comments
**4:10:09 PM** Senator Hays closes
**4:11:08 PM** Senator Siplin - motion for CS
**4:11:22 PM** Call role
**4:11:27 PM** CS/SB 1358 reports favorably
**4:11:56 PM** Turns chair over to Senator Siplin
**4:12:09 PM** Tab 2 CS/SB 346 presented by Senator Ring
**4:13:13 PM** Questions?
**4:13:16 PM** Senator Ring waives close
**4:13:27 PM** Roll call
**4:13:35 PM** CS/SB 346 reports favorably
**4:13:54 PM** Tab 8 SB 1498 presented by Senator Ring
**4:14:26 PM** Amendment Barcode 799624
**4:15:27 PM** Questions?
**4:15:36 PM** Ashley Mayer, CFO of DTS, waives in support
**4:15:46 PM** Frank Meiners, Association of IT Council
**4:16:11 PM** Debate?
**4:16:25 PM** Amendment barcode 777268
**4:16:45 PM** Amendment adopted
**4:16:58 PM** Senator Ring waives close
**4:17:03 PM** Amendment adopted
**4:17:41 PM** Senator Ring closes
**4:17:48 PM** Roll call
**4:17:50 PM** Senator Montford - motions for CS
**4:18:01 PM** CS/SB 1498 reports favorably
**4:18:25 PM** Tab 12 SB 2086 Presented by Senator Ring
**4:19:15 PM** Questions?
**4:19:19 PM** Kenya Cory, Self
**4:20:56 PM** Senator Ring waives close
**4:21:05 PM** Call Role
**4:21:14 PM** SB 2086 reports favorably
**4:21:31 PM** Tab 10 SB 1872 presented by Senator Gibson
**4:21:53 PM** Amendment barcode 396014 presented by Senator Montford
**4:22:34 PM** Brain Pitts waives in support
**4:23:04 PM** Amendment adopted
**4:23:14 PM** Questions on the bill
**4:23:18 PM** Senator Bogdanoff asks a question

**4:23:28 PM** Senator Gibson responds
**4:23:48 PM** Senator Gibson closes
**4:24:07 PM** Senator Ring - motions for CS
**4:24:38 PM** Call roll
**4:24:42 PM** CS/SB 1872 reports favorably
**4:25:05 PM** Tab 13 SB 2088 presented by Senator Ring
**4:25:33 PM** Amendment barcode 862624
**4:26:45 PM** Lisa Henning waives in support
**4:27:07 PM** Kraig Conn, Florida League of Cities
**4:28:26 PM** Senator Latvala asks a question
**4:28:45 PM** Senator Ring responds
**4:29:29 PM** Mr. Conn responds
**4:29:53 PM** Senator Latvala asks a question
**4:30:09 PM** David Murrell, Florida Police Benevolent Association
**4:30:55 PM** Senator Latvala comments
**4:31:15 PM** Mr. Murrell responds
**4:31:27 PM** Senator Latvala comments
**4:31:50 PM** Amendment adopted
**4:32:13 PM** Late filed amendment barcode 324190
**4:32:34 PM** Presented by Senator Latvala
**4:33:26 PM** Senator Montford asks a question
**4:33:46 PM** Senator Latvala responds
**4:35:00 PM** Jim Tolley waives in support
**4:35:09 PM** Lisa Henning waives in support
**4:35:19 PM** Kraig Conn waives in support
**4:35:34 PM** Amendment adopted
**4:35:42 PM** Robert Suarez, Florida Professional Firefighters
**4:35:59 PM** Matt Pucket, Fl PBA
**4:36:15 PM** Senator Latvala - motions for CS
**4:36:35 PM** Senator Ring closes
**4:37:46 PM** Call roll
**4:37:50 PM** CS/SB 2088 reports favorably
**4:38:17 PM** Senator Latvala moves we rise

**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/CS/SB 206 |
| INTRODUCER: | Governmental Oversight and Accountability Committee, Rules Committee, Rules Subcommittee on Ethics and Elections, Senator Negron and others |
| SUBJECT: | Public Meetings |
| DATE: | January 27, 2012 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Carlton | Roberts | EE | **Fav/CS** |
| 2. | Carlton | Phelps | RC | **Fav/CS** |
| 3. | Seay | Roberts | GO | **Fav/CS** |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

CS/CS/CS/SB 206 requires boards or commissions of state executive agencies or authorities and local agencies or authorities to provide members of the public a reasonable opportunity to be heard on items of significant interest at, or proximately before, meetings where official action is taken, with certain exceptions. It provides that it is presumed that boards or commissions are in compliance with this section if they adopt and follow rules providing members of the public to be heard. The bill provides that a court shall assess attorney's fees against an agency or authority in violation of the "right to speak" requirement. The bill allows courts to assess attorney's fees against an individual who has filed such an action in bad faith. The bill provides that an action by a board or commission is not void if members of the public are not afforded the right to speak on a proposition. It authorizes, and in some cases requires, boards or commissions to adopt rules or policies to ensure the orderly conduct of public meetings.

This bill creates section 286.0114 of the Florida Statutes.

## II. Present Situation:

### State Constitution: Open Meetings

Article I, s. 24(b) of the State Constitution establishes the state's public policy regarding access to government meetings. The section requires 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, be open and noticed to the public.

### Government in the Sunshine Law

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., also known as the "Government in the Sunshine Law" or "Sunshine Law", requires 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, at which official acts are to be taken must be open to the public at all times. The board or commission must provide reasonable notice of all public meetings. Public meetings may not be held in certain locations that discriminate on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[1] Minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and be open to public inspection.[2]

### Right to Speak at Meetings

The State Constitution and the Florida Statutes are both silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida courts have heard two cases concerning whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings.

In *Keesler v. Community Maritime Park Associates, Inc.*,[3] the plaintiffs sued the Community Maritime Park Associates, Inc., ("CMPA") alleging that the CMPA violated the Sunshine law by not providing them the opportunity to speak at a meeting concerning the development of certain waterfront property. The plaintiffs argued that the phrase "open to the public" granted citizens the right to speak at public meetings. The First District Court of Appeal held:

> Relying on the language in *Marston*[4], the trial court determined that, although the Sunshine Law requires that meetings be open to the public, the law does not give the public the right to speak at the meetings. Appellants have failed to point to any case construing the phrase "open to the public" to grant the public the right to speak, and in

[1] Section 286.011(6), F.S.
[2] Section 286.011(2), F.S.
[3] 32 So.3d 659 (Fla. 1st DCA 2010).
[4] In *Wood v. Marston*, the Florida Supreme Court held that the University of Florida improperly closed meetings of a committee charged with soliciting and screening applicants for the deanship of the university's college of law. However, the *Marston* court noted "nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process." *Wood v. Marston*, 442 So.2d 934, 941 (Fla. 1983).

> light of the clear and unambiguous language in *Marston* (albeit dicta), we are not inclined to broadly construe the phrase as granting such a right here.[5]

The second case, *Kennedy v. St. Johns Water Management District*,[6] was argued before Florida's Fifth District Court of Appeal on October 13, 2011. At a particularly large meeting of the St. Johns Water Management District ("the District"), the overflow crowd was put in other rooms and provided a video feed of the meeting. Additionally, the District limited participation in the meeting by members of a group called "The St. Johns Riverkeeper." Only the St. Johns Riverkeeper representative and attorney were allowed to address the District board. Mr. Kennedy, who wanted to participate in the discussion, sued arguing that the Sunshine law requires that citizens be given the opportunity to be heard. Mr. Kennedy also alleged that the St. Johns Water Management District violated the Sunshine law by failing to have a large enough facility to allow all who were interested in attending the meeting to be present in the meeting room. On October 25, 2011, the Fifth District Court of Appeal affirmed the trial court's ruling that the District did not violate the Sunshine law as alleged.

## III. Effect of Proposed Changes:

**Section 1** creates s. 286.0114, F.S., providing that members of the public shall be given a reasonable opportunity to be heard on a proposition before the board or commission. The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the opportunity occurs at a meeting that is during the decision-making process and within reasonable proximity before the board or commission takes official action.

The opportunity to be heard is not required when a board or commission is considering:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
- An official act involving no more than a ministerial act; or
- A meeting in which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person, except as otherwise provided in law.

The bill permits a board or commission to adopt reasonable rules or policies to ensure the orderly conduct of public meetings. Boards and commissions subject to the Administrative Procedure Act (APA) in Chapter 120, F.S. are required to adopt rules governing the opportunity to be heard. Rules or policies of a board or commission that is subject to the APA must be limited to rules or policies that:

- Limit the time that an individual has to address the board or commission;
- Require, at meetings in which a large number of individuals wish to be heard, that a representative of a group or faction on an item, rather than all of the members of the group or faction, address the board or commission; or

[5] *Keesler*, *supra* note 3, at 660-61.
[6] 2011 WL 5124949 (Fla. 5th DCA 2011).

- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses.

If a board or commission adopts rules or policies in compliance with the law and follows the rules or policies when providing an opportunity for the public to be heard, it is presumed that the board or commission is acting in compliance with the requirement that citizens be given the opportunity to be heard.

**Section 2** provides an effective date of July 1, 2012.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Governmental entities may incur additional meeting related expenses because longer meetings may be required when considering items of great public interest. The amount of those potential expenses is indeterminate and will vary depending on the magnitude of each issue and the specific associated meeting requirements.

## 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 February 1, 2012:**
The CS by Governmental Oversight and Accountability differs from the earlier version of the bill in that it specifically provides that a commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision must allow members of the public a reasonable opportunity to be heard on a proposition. The CS also provides that: there is a presumption that a board or commission is in compliance with this section if they adopt and follow rules providing an opportunity for members of the public to be heard; providing that a court shall assess attorney's fees against an agency or authority that violates this section; providing that a court may assess attorney's fees against an individual filing such an action in bad faith; exempting state attorneys from the attorney's fees provision; providing that an action taken by a board or commission in violation of this section is not void, and providing that circuit courts have jurisdiction to issue injunctions to enforce this section upon the filing of an application for such injunction by any citizen of Florida.

**CS by Rules on January 23, 2012:**
The CS by Rules differs from CS/SB 206 in that it requires a reasonable opportunity to be heard; clarifies that the opportunity to be heard must occur before the agency takes action; and clarifies that there are no civil or criminal penalties for denying the opportunity to be heard on a proposition.

**CS by Ethics and Elections on January 11, 2012:**
The CS differs from the original bill in that it: requires only an opportunity to be heard; clarifies that the opportunity to be heard must occur at a meeting that meets the same notice requirements as the meeting at which the board or commission will be taking action; provides that a board or commission that is subject to the APA must promulgate only rules or policies that limit the amount of time an individual has to address the board or commission, require designation of a representative of groups or factions to address the board or commission, and allow the board or commission to adopt forms or procedures by which a member of the public can indicate his desire to be heard, to indicate his position on the proposition, and to designate a representative for himself or his group.

B. Amendments:

None.

850158

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 02/01/2012 | . | |
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| | . | |

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

**Senate Amendment (with title amendment)**

Delete line 25
and insert:
commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision. The opportunity to be heard need not occur at the

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 6
and insert:

850158

proposition before a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision; providing

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 02/01/2012 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with title amendment)**

Delete lines 62 - 66
and insert:
(4)(a) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, it is presumed that the board or commission is acting in compliance with this section.
(b) Whenever an action is filed against a board or commission of any state agency or authority of a county, municipal corporation, or political subdivision to enforce the

594238

provisions of this section, the court shall assess reasonable attorney fees against such agency or authority if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(c) Any action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

(d) The circuit courts shall have jurisdiction to issue injunctions for the purpose of enforcing this section upon the filing of an application for such injunction by any citizen of this state.

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

And the title is amended as follows:

Between lines 12 and 13

insert:

authorizing a court to assess reasonable attorney fees in actions filed against a board or commission; providing that any action taken by a board or commission which is found in violation of the act is not void; providing that circuit courts have jurisdiction to issue injunctions for purposes of the act;

**By** the Committees on Rules; and Rules Subcommittee on Ethics and Elections; and Senators Negron, Gaetz, and Evers

595-02196-12 2012206c2

A bill to be entitled

An act relating to public meetings; creating s. 286.0114, F.S.; requiring that a member of the public be given a reasonable opportunity to be heard before a board or commission takes official action on a proposition before the board or commission; providing that the opportunity to be heard is subject to rules or policies adopted by the board or commission; specifying certain exceptions; providing requirements for rules or policies governing the opportunity to be heard; providing that compliance with the requirements of the act is presumed under certain circumstances; requiring that a board or commission that is subject to ch. 120, F.S., adopt rules; providing an effective date.

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

Section 1. Section 286.0114, Florida Statutes, is created to read:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(1) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the item, if the opportunity occurs at a meeting that meets the same notice requirements as the meeting at which the board or commission takes official action on the item, occurs at



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



595-02196-12 2012206c2

a meeting that is during the decisionmaking process, and is within reasonable proximity before the meeting at which the board or commission takes the official action. The opportunity to be heard is subject to reasonable rules or policies adopted by the board or commission to ensure the orderly conduct of a public meeting, as provided in subsection (3).

(2) The requirements in subsection (1) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act; or

(c) A meeting in which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(3) Rules or policies of a board or commission adopted under subsection (5) must be limited to rules or policies that:

(a) Limit the time an individual has to address the board or commission;

(b) Require, at meetings in which a large number of individuals wish to be heard, that representatives of groups or factions on an item, rather than all of the members of the groups or factions, address the board or commission; or

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality



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

on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses.

(4) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, it is presumed that the board or commission is acting in compliance with this section.

(5) Each board or commission that is subject to chapter 120 shall adopt rules under ss. 120.536(1) and 120.54 to administer this section.

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



**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)

2-1-12
*Meeting Date*

Topic PUBLIC MEETINGS Bill Number 206 *(if applicable)*

Name DAVID CULLEN Amendment Barcode *(if applicable)*

Job Title

Address 1674 UNIVERSITY PKWY #296 Phone 941.323.2404
*Street*

~~SIERRA~~ SARASOTA 34243 E-mail cullensea@aol.com
*City* *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing SIERRA CLUB 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**

# APPEARANCE RECORD

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

Feb 1, 2012
*Meeting Date*

Topic Public Meetings Bill Number 206 *(if applicable)*

Name Steve UHLFELDER Amendment Barcode 594238 *(if applicable)*

Job Title ~~Attorney~~

Address 519 E. PARK Phone 980-6435
*Street*

Tall, #1 32301 E-mail Steve@SCLAW.net
*City* *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA PRESS 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)

2 / 1 /2012
*Meeting Date*

Topic _____ Bill Number 206 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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 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 346 |
| INTRODUCER: | Criminal Justice Committee, Senator Ring |
| SUBJECT: | Flag Etiquette |
| DATE: | January 27, 2012 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Erickson | Cannon | CJ | **Fav/CS** |
| 2. | Jenkins | Roberts | GO | **Favorable** |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

The bill also provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

This bill creates the following section of the Florida Statutes: 256.015.

## II. Present Situation:

The Governor's Office has a written protocol on when and for whom flags may be flown at half-staff.[1]

[1] *Flag Protocol, National and State Flags*, Office of the Governor (undated document) (on file with the Committee on Governmental Oversight and Accountability).

**National Flag Protocol**

According to the Governor's protocol, by order of the President of the United States or the Governor, the National flag shall be flown at half-staff upon the death of principal figures of the United States or State Government as a mark of respect to their memory, pursuant to 4 U.S.C. Section (7)(m) and United States General Service Administration Flag Policy. The National flag is flown at half-staff at all federal buildings, all state-owned buildings, and, in most cases, all courthouses and city halls[2] throughout Florida for specified periods for the following persons and occasions:

- President or former President of the United States.
- Vice President or former Vice President of the United States.
- Chief Justice, former Chief Justice, or an Associate Justice of the U.S. Supreme Court.
- Speaker of the U.S. House of Representatives.
- Secretary of an executive or military department.
- President Pro Tempore of the U.S. Senate.
- Majority Leader or Minority Leader of the U.S. House of Representatives.
- Governor or former Governor of Florida.
- Member or former member of the Florida Cabinet.
- Justice or former Justice of the Florida Supreme Court.
- Member or former member of Congress from Florida.
- Member or former member of the Florida Legislature.
- State, county, district, or city official.
- Prominent citizens.
- National occasions proclaimed by the President of the United States.

The Governor's protocol further states that, in 2007, Congress passed the "Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007" (now codified in 4 U.S.C. Section (7)(m)). This law provides that the Governor may proclaim that the National flag shall be flown at half-staff in the event of the death of a member of the Armed Forces who dies while serving on active duty. The Governor, by proclamation, may have the flag flown at half-staff at the State Capitol and the county courthouse and city hall where the deceased Armed Forces member resided.

**State Flag Protocol**

The Governor's protocol further states that the Governor may order or proclaim that the State flag shall be at half-staff upon the death of principal figures of the United States or State Government as a mark of respect to their memory, consistent with 4 U.S.C. Section (7)(m) and United States General Service Administration Flag Policy and following a Presidential proclamation or order or upon the Governor's initiative. The State flag is flown at half-staff at all

[2] If the decedent is a member or former member of Congress from Florida, the flag is flown at half-staff at all courthouses and city halls in the decedent's district. If the decedent is a member or former member of the Florida Legislature, or a state, county, district, or city official, the flag is flown at half-staff at all courthouses and city hills in the decedent's jurisdiction. If the decedent is an Armed Forces member, the flag is flown at half-staff at the county courthouse and city hall where the decedent resided.

state-owned buildings and, in most cases, all courthouses and city halls[3] throughout Florida for specified periods for all of the persons previously described in regard to flying the National flag at half-staff.

The Governor's protocol further states that, consistent with the "Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007," the Governor may proclaim that the State flag shall be flown at half-staff in the event of the death of a member of the Armed Forces who dies while serving on active duty. The Governor, by proclamation, may have the flag flown at half-staff at the State Capitol and the county courthouse and city hall where the deceased Armed Forces member resided.

Of particular relevance to the bill, the Governor's protocol further states that, if timely requested, the Governor may approve flying the State flag at half-staff for a police officer or firefighter who dies in the line of duty and for a state employee. The flag is flown at half-staff at the city hall and courthouse where the deceased lived. The Governor may use his discretion as to whether he/she will grant any request for state buildings or facilities or other local buildings or facilities (i.e., police department, fire station, etc.) on a case-by-case basis. The Executive Assistant of the Governor's Legal Office notifies the requestor by e-mail if the request is granted and the requestor notifies the appropriate local officials. The flag is flown one day only, from sunrise to sunset, giving deference to the family's day of preference.

The Governor's protocol further indicates that the Executive Office of the Governor (EOG) is notified of the death of a prominent citizen, Armed Forces member, police officer, firefighter or public official. The notification will usually come from a federal, state, district, county, or city official, department head, or family member or friend of the family.

Accompanying the Governor's protocol is a document entitled "Frequently Asked Questions." Information provided in response to one of the questions indicates that a constituent may request flags be flown at-half-staff for any reason not addressed in the protocol. The Governor has the discretion whether to grant or deny the request.

**Statutes/Flag Display**

While there are currently a number of statutes requiring display of the National flag, the State flag, and the POW-MIA flag,[4] there do not appear to be any statutes requiring that a flag be flown at half-staff for particular persons or in particular circumstances.

There does not appear to be any statute specific to flag display involving a law enforcement officer who dies in the line of duty. However, s. 256.15, F.S., provides that the official state Firefighter Memorial Flag to honor firefighters who have died in the line of duty may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.

[3] *Id.*
[4] *See* ss. 256.01, 256.02, 256.011, 256.032, 256.11, 256.12, 256.13, 256.14, 256.15, and 1000.06, F.S.

## III. Effect of Proposed Changes:

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

The bill also provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

The effective date of the act is 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:

The bill should not have any impact on the Governor's office since the Governor currently has a protocol on the display of the state flag.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Additional Information:

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

**CS by Criminal Justice on January 25, 2012:**

- Requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions for high-ranking officials, uniformed law enforcement and fire service personnel, and prominent citizens.
- Provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

B. Amendments:

None.

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

**By** the Committee on Criminal Justice; and Senator Ring

591-02361-12 2012346c1

A bill to be entitled

An act relating to flag etiquette; creating s. 256.015, F.S.; requiring that the Governor adopt a protocol on flag display; requiring the protocol to have guidelines for proper flag display and for lowering the state flag to half-staff on certain occasions; authorizing the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag; providing an effective date.

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

Section 1. Section 256.015, Florida Statutes, is created to read:

256.015 Display of flag.—

(1) The Governor shall adopt a protocol on flag display. The protocol must provide guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

(2) The Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

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



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

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | CS/SB 412 |
| INTRODUCER: | Governmental Oversight and Accountability Committee and Senator Bennett |
| SUBJECT: | Florida Concrete Masonry Council |
| DATE: | February 2, 2012 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Anderson | Yeatman | CA | **Favorable** |
| 2. | McKay | Roberts | GO | **Fav/CS** |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

This bill creates the "Concrete Masonry Products Research, Education, and Promotion Act." The bill creates the Florida Concrete Masonry Council, Inc., as a nonprofit corporation operating as a direct-support organization of the Florida Building Commission. This bill sets out the administrative powers and duties of the council, as well as what the council is prohibited from doing. The council created by this bill will be given the power to require that a manufacturer of concrete masonry products collect an assessment from a purchaser at the time of sale of a concrete masonry unit, under certain circumstances.

The bill provides for the appointment of the governing board of the council, and how the council should be maintained. Also, the council will be authorized by this bill to initiate legal action against a manufacturer that fails to remit the assessment. This bill provides a procedure for manufacturers to petition for a referendum to continue the assessment.

This bill creates unspecified sections of the Florida Statutes.

## II. Present Situation:

### Check-off Programs

Commodity check-off programs are cooperative efforts by groups of suppliers intended to enhance their individual and collective profitability. The term "check-off" refers to the collection of a fee and comes from the concept of checking off the appropriate box on a form to authorize a contribution for a specific purpose. These assessments are pooled together to finance programs to enhance producer welfare. As demonstrated in agriculture, lumber, and other industries, check-off programs provide a mechanism by which every producer supports research, education, and promotion efforts intended to expand markets.

### Examples of State Industry Marketing Structures

***Citrus Industry***

The Department of Citrus (Department) currently administers a single program responsible for citrus marketing, research, and regulation. Department responsibilities include adopting and enforcing rules and regulations related to minimum maturity and quality standards for citrus fruits, as well as their harvesting, packing, and processing. Also the Department conducts market and scientific research programs relating to citrus products. The Department is responsible for preparing and disseminating information to members of the citrus industry, including citrus growers, handlers, shippers, producers, and other industry-related persons and organizations. The Department promotes citrus products via advertising, public relations, and consumer/trade communications. The department is also responsible for implementing the policies of the Florida Citrus Commission, which serves as the board of directors for the agency.[1]

The Florida Department of Citrus has regulatory responsibility for all aspects of the citrus industry. The department is funded by the "box tax" and the equalizing excise tax. The box tax is an excise tax levied on each standard field box of fruit grown and placed into the primary channel of trade in Florida. The equalizing excise tax is assessed on processed citrus products imported into the state at a rate equal to the box tax. The majority of the proceeds of these taxes must be used by the department to advertise Florida citrus products.[2]

***Florida Beef Council***

The Florida Beef Council is a wholly-owned corporation of the Florida Cattlemen's Association. Created by the Beef Market Development Act, the Council functions as the promotional and educational arm of the beef industry in the state of Florida.[3]

Council activities are funded by beef producers through a federally mandated check-off program, paying one dollar per head on all cattle sold in the state. Half of those funds collected in Florida are designated for national promotion, research, consumer information, and industry information programs. The other half is used in Florida to disseminate nutritional and product information to

[1] Office of Program Policy Analysis and Government Accountability (OPPAGA), Florida Government Accountability Report, Department of Citrus, available at http://www.oppaga.state.fl.us/profiles/4127/ (last visited November 21, 2011).
[2] Section 601.15, F.S.
[3] Section 570.9135, F.S.

the media, food service and retail industries, school educators, health professionals, consumers, and producers. [4]

The Florida Beef Council's activities are governed by a board of directors comprised of representatives from all segments of the beef industry. [5]

***Florida Building Commission***

The Florida Building Commission is established in Ch. 553, F.S., within the Department of Business and Professional Regulation (DBPR) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.[6] The Commission is responsible for adopting and enforcing the Florida Building Code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.[7] The Florida Building Code is required to be updated every three years by the Florida Building Commission.[8] Pursuant to s. 553.73, F.S., the Commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations, and use the rule adoption procedures listed under Ch. 120, F.S., to approve amendments to the building code.[9]

## III. Effect of Proposed Changes:

**Section 1** provides for an unspecified section of Florida Statutes as follows:

***Short title***

May be cited as the "Concrete Masonry Products Research, Education, and Promotion Act."

***Definitions***

The bill defines the following terms used in the act:

- "Commission" means the Florida Building Commission.
- "Concrete masonry products" refers to a broad class of products, including, but not limited to, concrete masonry units and hardscape products such as concrete pavers and segmental retaining wall units that are manufactured on a block machine using dry-cast concrete.
- "Concrete masonry unit" means a concrete masonry product that is a man-made masonry unit having a nominal width of 3 inches or greater and manufactured by a block machine using dry-cast concrete. The term includes, but is not limited to, gray block, architectural block, concrete brick, concrete masonry units to be post-tensioned, concrete masonry units to be surface-bonded, sound wall block, and fence block. The term does not include concrete veneer units having a width of less than 3 inches, segmental retaining wall units, concrete pavers, clay brick, clay masonry units, precast panels, cast stone, adhered manufactured stone masonry veneer, calcium silicate units, lintels and sills, articulating concrete or revetment block, autoclave-aerated concrete, and dimension stone.

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[4] Florida Cattlemen Association, Beef Council, available at http://www.floridacattlemen.org/fbc.html (last visited November 21, 2011).
[5] *Id.*
[6] *See* s. 553.74(1)(a)-(w), F.S.
[7] Sections 553.73 and 553.74, F.S.
[8] Section 553.73(7)(a), F.S. *See also* Florida Department of Business & Professional Regulation, Florida Building Commission, http://www.floridabuilding.org/fbc/information/building_commission.htm (last visited November 21, 2011).
[9] *See* ss. 553.76, 553.775, and 553.73(7), F.S., respectively.

- "Council" means the Florida Concrete Masonry Council, Inc.
- "Machine cavity" means the open space in the mold of a block machine capable of forming a single masonry unit that has nominal plan dimensions of 8 inches by 16 inches.
- "Manufacturer" means a person engaged in the business of manufacturing concrete masonry units.
- "Masonry unit" means a noncombustible building product intended to be laid by hand or to be joined using mortar, grout, surface bonding, post-tensioning, or some combination of these methods.

***Florida Concrete Masonry Council, Inc.***

The bill creates a nonprofit corporation organized under the laws of this state and operating as a direct-support organization of the Florida Building Commission. The council may levy an assessment of 1 cent per concrete masonry unit that is produced and sold by a manufacturer in the state if the imposition of the assessment is approved by referendum of the state's concrete masonry manufacturers. The proceeds of the assessment shall be used to fund the activities of the council.

The council must:

- Plan, implement, and conduct programs of education, promotion, research, and consumer information and industry information which are designed to strengthen the market position of the concrete masonry industry in this state and in the nation, to maintain and expand domestic and foreign markets, and to expand the uses for concrete masonry products.
- Use the proceeds of the assessment for the purpose of funding research, education, promotion, and consumer and industry information of concrete masonry products in this state and in the nation.
- Coordinate research, education, promotion, industry, and consumer information programs with national programs or programs of other states.
- Develop new uses and markets for concrete masonry products.
- Develop and improve educational access to individuals seeking employment in the field of concrete masonry.
- Develop methods of improving the quality of concrete masonry products for the purpose of windstorm protection.
- Develop methods of improving the energy efficiency attributes of concrete masonry products.
- Inform and educate the public concerning the sustainability and economic benefits of concrete masonry products.
- Serve as a liaison within the concrete masonry and other construction industries of the state and elsewhere in matters that would increase efficiencies that ultimately benefit both the consumer and the concrete masonry industry.
- Buy, sell, mortgage, rent, or improve, in any manner that the council considers expedient, real property or personal property, or both.
- Publish and distribute such papers or periodicals as the board of directors considers necessary to encourage and accomplish the purposes of the council.
- Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the council.
- Approve an annual plan, budget, and audit for the council.

The council may not:

- Participate in a political campaign, or state or local ballot initiatives.
- Use receipts to benefit directors, officers, or other private persons, except that the council may pay reasonable compensation for services rendered by staff employees and may make payments and distributions to further the purposes of the act.
- Participate in activities prohibited for non-profit corporations under federal tax law.
- Pursue any activities that are not in furtherance of the council's specific and primary purposes.

***Governing Board***

The Florida Concrete Masonry Council, Inc., shall be governed by a board of directors composed of 15 members.

***Referendum on Assessments***

All concrete masonry manufacturers in this state may vote in a referendum to determine whether the council may levy an assessment of 1 cent per concrete masonry unit. The referendum shall pose the question: "Do you approve of authorizing the Florida Concrete Masonry Council, Inc., to levy an assessment, pursuant to Florida law, of $0.01 per concrete masonry unit sold by a manufacturer in this state, to be used for the education of concrete masonry workers, research, and the promotion of concrete masonry products?" The duration of an authorization to levy the assessment may not exceed 5 years following the date of the approval of the levy unless reauthorized.

***Administrative Powers and Duties of the Council***

The bill establishes the powers and duties of the council, including establishing an office in the state, the power to receive and disburse funds to be used in implementing the programs, the duty to keep books and records maintained in the ordinary course of business, and the duty to prepare reports as required. In addition, the council may conduct or contract for research programs, disseminate information benefiting the consumer and the concrete masonry industry, and respond to requests from government bodies concerning concrete. It may also sue and be sued as a council without individual members being liable for acts within the scope of the powers of the act. The council may borrow money and maintain emergency reserves in amounts not to exceed 50 percent of the anticipated annual income of the council. It can also appoint advisory groups, hire and administer a staff of employees, and cooperate with other entities having similar objectives. The council also has authority to send an authorized agent upon the premises of any market agency or agent, or collection agency or agent, to examine the accounts to ensure the payment of assessments due, and perform all other acts to further its objectives which are not prohibited by law.

***Acceptance of Grants and Gifts***

The bill authorizes the council to receive grants and donations provided that there are no restrictions that it considers to be inconsistent with the objectives of the program.

***Payments to Organizations***

The bill establishes procedures by which the council can fund other organizations for services rendered through a written agreement which is consistent with the objectives of the program.

***Collection of Moneys at Time of Sale***
Each manufacturer shall assess from the purchaser, at the time of sale by the manufacturer, the assessment levied by the council. The amount of the assessment must be separately stated on all receipts, invoices, or other evidence of sale as the "Florida Building Sustainability Fee."

***Vote On Continuing the Assessment***
Upon the delivery by certified mail to the council of petitions that represent at least 25 percent of all concrete masonry manufacturers that ask, "Shall the assessment authorized by the Concrete Masonry Products Research, Education, and Promotion Act continue?" the council shall, within 90 days after the receipt of the petitions, conduct a referendum to determine whether a majority of the votes cast in the referendum support the continuation of the Concrete Masonry Products Research, Education, and Promotion Act. All signatures must be collected within a 12-month period.

***Bylaws***
The council shall, by September 30, 2012, adopt bylaws to carry out the intents and purposes of the bill. The bill also provides procedures for amending the bylaws.

**Section 2** provides an effective date of July 1, 2012.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Mandatory check-off programs have been challenged on First Amendment grounds for compelling producers to fund speech with which a producer may not agree. In *United States v. United Foods, Inc.*, a mushroom producer refused to pay an assessment used primarily to fund advertisements promoting mushroom sales. The Supreme Court struck down the check off, finding that the assessments were not permitted under the First Amendment.[10] In another case, *Johanns v. Livestock Marketing Ass'n*, associations and individuals brought action against the US Department of Agriculture, seeking relief with respect to communications made using mandatory contributions collected from beef

[10] *United States v. United Foods, Inc.*,121 S.Ct. 2334 (2001)

producers pursuant to federal law. The Supreme Court held[11] that generic advertising funded by targeted assessment on beef producers was "government speech," not susceptible to First Amendment compelled-subsidy challenge.

This bill contains a referendum process by which all producers must vote on the assessment, with the outcome determined by simple majority. This referendum process would presumably be something a court would consider in evaluating whether the assessment is mandatory. In determining whether any communications made by the council are in effect government speech, which is not subject to a First Amendment compelled-subsidy challenge, a court would presumably look to the fact that the Legislature specified the types of information that council is authorized to disseminate.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The 1 cent charged per concrete masonry unit may be passed along to the consumer. This assessment would affect those who purchase large quantities of concrete blocks for construction. It is unknown how much revenue this will generate for the Florida Concrete Masonry Council. Concrete masonry manufacturers may experience an increase in the demand for concrete as a result of the masonry promotion programs and advertising.

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 February 1, 2012:**
The CS adds a provision that prohibits the council from participating in any state or local ballot initiative.

[11] *Johanns v. Livestock Marketing Ass'n*, 125 S.Ct. 2055 (2005)

B. Amendments:

None.

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

393224

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 02/01/2012 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment**

Delete line 147
and insert:
candidate for public office or on behalf of or in opposition to any state or local ballot initiative. This restriction includes, but is

**By** Senator Bennett

21-00383-12 2012412__

A bill to be entitled

An act relating to an assessment on the sale of masonry units; creating the "Concrete Masonry Products Research, Education, and Promotion Act"; providing definitions; creating the Florida Concrete Masonry Council, Inc., as a nonprofit corporation; authorizing the council to levy an assessment on the sale of masonry units by a manufacturer, under certain circumstances; specifying the powers and duties of the council; prohibiting the council from participating or intervening in any political campaign; prohibiting the council from using any receipt to benefit its directors, officers, or other private persons; prohibiting the council from engaging in certain activities or exercising certain powers; providing for the appointment of the governing board of the council; providing that board members serve without compensation; entitling members to receive reimbursement for per diem and travel expenses; authorizing the council to submit a referendum to manufacturers of masonry units for authorization to levy an assessment on the sale of concrete masonry units; providing for the administrative powers and duties of the council; authorizing the council to accept grants, donations, contributions, or gifts under certain circumstances; authorizing the council to make payments to other organizations under certain circumstances; requiring that a manufacturer of concrete masonry products collect the assessment from



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



21-00383-12 2012412__

a purchaser at the time of sale of a concrete masonry unit; authorizing the council to initiate legal action against a manufacturer that fails to remit the assessment; providing a procedure for manufacturers to petition for a referendum to continue the assessment; requiring the council to adopt bylaws; providing an effective date.

WHEREAS, the Legislature intends to promote the growth of the concrete masonry industry in this state; to assure the public that a superior, sustainable construction material is produced by a skilled and educated workforce; to provide for the general economic welfare of the state and of the producers, contractors, and end-use consumers of masonry products; and to provide the masonry industry of this state with the authority to establish a self-financed, self-governed program to help develop, maintain, and expand the state, national, and foreign markets for masonry products and services that are mined, manufactured, produced, or processed in this state, NOW, THEREFORE,

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

Section 1. Concrete Masonry Products Research, Education, and Promotion Act.—

(1) SHORT TITLE.—This section may be cited as the "Concrete Masonry Products Research, Education, and Promotion Act."

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

(a) "Commission" means the Florida Building Commission.



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

(b) "Concrete masonry products" refers to a broad class of products, including, but not limited to, concrete masonry units and hardscape products such as concrete pavers and segmental retaining wall units that are manufactured on a block machine using dry-cast concrete.

(c) "Concrete masonry unit" means a concrete masonry product that is a man-made masonry unit having a nominal width of 3 inches or greater and manufactured by a block machine using dry-cast concrete. The term includes, but is not limited to, gray block, architectural block, concrete brick, concrete masonry units to be post-tensioned, concrete masonry units to be surface-bonded, sound wall block, and fence block. The term does not include concrete veneer units having a width of less than 3 inches, segmental retaining wall units, concrete pavers, clay brick, clay masonry units, precast panels, cast stone, adhered manufactured stone masonry veneer, calcium silicate units, lintels and sills, articulating concrete or revetment block, autoclave-aerated concrete, and dimension stone.

(d) "Council" means the Florida Concrete Masonry Council, Inc.

(e) "Machine cavity" means the open space in the mold of a block machine capable of forming a single masonry unit that has nominal plan dimensions of 8 inches by 16 inches.

(f) "Manufacturer" means a person engaged in the business of manufacturing concrete masonry units.

(g) "Masonry unit" means a noncombustible building product intended to be laid by hand or to be joined using mortar, grout, surface bonding, post-tensioning, or some combination of these methods.





(3) FLORIDA CONCRETE MASONRY COUNCIL, INC.; CREATION; PURPOSES.—

(a) There is created the Florida Concrete Masonry Council, Inc., a nonprofit corporation organized under the laws of this state and operating as a direct-support organization of the commission.

(b) The council may levy an assessment of 1 cent per concrete masonry unit that is produced and sold by a manufacturer in the state if the imposition of the assessment is approved by referendum pursuant to subsection (5). The proceeds of the assessment shall be used to fund the activities of the council. With respect to the administration of the assessment, the council shall:

1. Develop, implement, and monitor a collection system for the assessment which must be administered by an independent third party.

2. Conduct referenda under subsections (5) and (11).

(c) The council shall:

1. Plan, implement, and conduct programs of education, promotion, research, and consumer information and industry information which are designed to strengthen the market position of the concrete masonry industry in this state and in the nation, to maintain and expand domestic and foreign markets, and to expand the uses for concrete masonry products.

2. Use the proceeds of the assessment for the purpose of funding research, education, promotion, and consumer and industry information of concrete masonry products in this state and in the nation.

3. Coordinate research, education, promotion, industry, and

consumer information programs with national programs or programs of other states.

4. Develop new uses and markets for concrete masonry products.

5. Develop and improve educational access to individuals seeking employment in the field of concrete masonry.

6. Develop methods of improving the quality of concrete masonry products for the purpose of windstorm protection.

7. Develop methods of improving the energy efficiency attributes of concrete masonry products.

8. Inform and educate the public concerning the sustainability and economic benefits of concrete masonry products.

9. Serve as a liaison within the concrete masonry and other construction industries of the state and elsewhere in matters that would increase efficiencies that ultimately benefit both the consumer and the concrete masonry industry.

10. Buy, sell, mortgage, rent, or improve, in any manner that the council considers expedient, real property or personal property, or both.

11. Publish and distribute such papers or periodicals as the board of directors considers necessary to encourage and accomplish the purposes of the council.

12. Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the council.

13. Approve an annual plan, budget, and audit for the council.

(d)1. The council may not participate or intervene in any





political campaign on behalf of or in opposition to any candidate for public office. This restriction includes, but is not limited to, a prohibition against publishing or distributing any statement.

2. The net receipts of the council may not in any part inure to the benefit of or be distributable to its directors, its officers, or other private persons, except that the council may pay reasonable compensation for services rendered by staff employees and may make payments and distributions in furtherance of the purposes of this section.

3. Notwithstanding any other provision of law, the council may not carry on any other activity not permitted to be carried on by a corporation:

a. That is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code; or

b. To which charitable contributions are deductible under s. 170(c)(2) of the Internal Revenue Code.

4. Notwithstanding any other statement of the purposes and responsibilities of the council, the council may not engage in any activity or exercise any power that is not in furtherance of its specific and primary purposes.

(4) GOVERNING BOARD.—

(a) The Florida Concrete Masonry Council, Inc., shall be governed by a board of directors composed of 15 members as follows:

1. Nine members representing concrete masonry manufacturers. Of these board members, at least five must be a representative of a manufacturer that is a member of the Masonry Association of Florida. These members must be representatives of

concrete masonry manufacturers of various sizes. A manufacturer may not be represented by more than one member of the board.

2. One member representing the Florida Building Commission.

3. One member representing the Florida Homebuilders Association.

4. One member having expertise in apprenticeship or vocational training.

5. Two members who are masonry contractors and who are members of the Masonry Association of Florida.

6. One member who is not a masonry contractor or manufacturer or an employee of a masonry contractor or manufacturer, but who is otherwise a stakeholder in the masonry industry.

(b) The initial board of directors shall be appointed by the chair of the commission based on recommendations from the Masonry Association of Florida. Five of the initial board members shall be appointed to a 1-year term. Five shall be appointed for a 2-year term. The remaining board members shall be appointed for a 3-year term. Thereafter, each member shall be appointed to serve a 3-year term and may be reappointed to serve an additional consecutive term. After the initial appointments are made, each subsequent vacancy must be filled in accordance with the bylaws of the council. A member may not serve more than two consecutive terms. A member representing a manufacturer or a contractor must be employed by a manufacturer or contractor engaging in the trade or manufacture of concrete masonry products for at least 5 years immediately preceding the first day of his or her service on the board. All members of the board shall serve without compensation. However, the board members are





entitled to reimbursement for per diem and travel expenses incurred in carrying out the intents and purposes of this section in accordance with s. 112.061, Florida Statutes.

(c) The council shall elect from its members a chair, vice chair, and a secretary-treasurer to a 2-year term. The chair of the board must be a concrete masonry manufacturer.

(d) The council shall provide for its officers through its bylaws, including the ability to set forth offices and responsibilities and form committees necessary for the administration of this section.

(e) If a member of the board is absent for two consecutive, officially called meetings, the board of directors may declare that position vacant.

(f) The council shall provide through its bylaws a mechanism for selecting board members which will require the council to solicit candidates from throughout the concrete masonry industry. The mechanism must ensure a fair and equitable representation on the board of manufacturers of various sizes and manufacturers from regions throughout the state.

(5) REFERENDUM ON ASSESSMENTS.—All concrete masonry manufacturers in this state may vote in a referendum to determine whether the council may levy an assessment of 1 cent per concrete masonry unit. The referendum shall pose the question: “Do you approve of authorizing the Florida Concrete Masonry Council, Inc., to levy an assessment, pursuant to Florida law, of $0.01 per concrete masonry unit sold by a manufacturer in this state, to be used for the education of concrete masonry workers, research, and the promotion of concrete masonry products?” The ballot provided to each

manufacturer must be accompanied with a copy of this section. The duration of an authorization to levy the assessment may not exceed 5 years following the date of the approval of the levy unless reauthorized pursuant to subsection (11).

(a) A referendum held under this section must be conducted by the Bureau of Economic and Business Research at the University of Florida by secret ballot in a manner prescribed by the council and approved by the commission. The council may solicit and accept contributions to fund costs incurred for the referendum.

(b) Notice of a referendum to be held under this section must be given by certified mail to each manufacturer at least 30 days before the referendum is held.

(c) Each manufacturer is entitled to at least one vote plus one vote for every 10 machine cavities that are owned by the manufacturer and located in this state 90 days before the date of the referendum. However, a manufacturer may not have more than four votes. Proof of identification of the manufacturing of concrete masonry products and of the number of machine cavities must be presented before voting.

(d) A simple majority vote shall determine any issue that requires a referendum under this section.

(6) ADMINISTRATIVE POWERS AND DUTIES OF THE COUNCIL.—

(a) The council shall:

1. Receive and disburse funds, as prescribed elsewhere in this section, to be used in administering and implementing this section.

2. Maintain a permanent record of its business proceedings.

3. Maintain a permanent, detailed record of its financial





dealings.

4. Prepare, for review by the concrete masonry industry in this state, periodic reports and an annual report for each fiscal year of its activities, and file the annual report with the commission.

5. Prepare, for review by the concrete masonry industry in this state, periodic reports and an annual accounting for each fiscal year of all receipts and expenditures, and retain a certified public accountant for this purpose.

6. Appoint a licensed banking institution to serve as the depository for program funds and handle disbursements of those funds.

7. Maintain frequent communication with public officers at the state and national levels, including the commission.

8. Maintain an office in this state.

(b) The council may:

1. Conduct or contract for scientific research with any accredited university, college, or similar institution, and enter into other contracts or agreements that will aid in carrying out the purposes of this section, including contracts for the purchase or acquisition of facilities or equipment necessary to carry out the purposes of this section.

2. Disseminate reliable information benefiting the consumer and the concrete masonry industry.

3. Provide to governmental bodies, on request, information relating to subjects of concern to the concrete masonry industry, and act jointly or in cooperation with the state or Federal Government, and agencies thereof, in the development or administration of programs that the council considers to be

consistent with the objectives of this section.

4. Sue and be sued as a council without individual liability of the members for acts of the council when acting within the scope of the powers of this section and in the manner prescribed by the laws of this state.

5. Borrow from licensed lending institutions money in amounts that are not cumulatively greater than 50 percent of the council's anticipated annual income.

6. Maintain a financial reserve for emergency use, the total of which must not exceed 50 percent of the council's anticipated annual income.

7. Appoint advisory groups composed of representatives from organizations, institutions, governments, or businesses related to or interested in the welfare of the concrete masonry industry and the end-use consumer.

8. Employ subordinate officers and employees of the council, prescribe their duties, and fix their compensation and terms of employment.

9. Cooperate with any local, state, regional, or nationwide organization or agency engaged in work or activities consistent with the objectives of the program.

10. Cause any duly authorized agent or representative to enter upon the premises of any market agency, market agent, collection agency, or manufacturer and examine or cause to be examined by the authorized agent only books, papers, and records that deal with the payment of the assessment provided for in this section or with the enforcement of this section.

11. Do all other things necessary to further the intent of this section which are not prohibited by law.





(7) ACCEPTANCE OF GRANTS AND GIFTS.—The council may accept grants, donations, contributions, or gifts from any source if the use of such resources is not restricted in any manner that the council considers to be inconsistent with the objectives of this section.

(8) PAYMENTS TO ORGANIZATIONS.—

(a) The council may make payments to other organizations for work or services performed which are consistent with the objectives of the program.

(b) Before making payments described in this subsection, the council must secure a written agreement that the organization receiving payment will:

1. Furnish at least annually, or more frequently on request of the council, written or printed reports of program activities and reports of financial data that are relative to the council's funding of such activities; and

2. Agree to have appropriate representatives attend business meetings of the council as reasonably requested by the chair of the council.

(c) The council may require adequate proof of security bonding on the payments to any individual, business, or other organization.

(9) COLLECTION OF MONEYS AT TIME OF SALE.—

(a) Each manufacturer shall assess from the purchaser, at the time of sale by the manufacturer, the assessment levied by the council. The amount of the assessment must be separately stated on all receipts, invoices, or other evidence of sale as the "Florida Building Sustainability Fee."

(b) The manufacturer shall collect all such moneys and

forward them quarterly to the council, and the council shall provide appropriate business forms for the convenience of the collecting agent in executing this duty.

(c) The council shall maintain within its financial records a separate accounting of all moneys received under this subsection. The council shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant pursuant to rules adopted by the Auditor General under s. 11.45, Florida Statutes.

(d) The assessment is due and payable upon the sale of concrete masonry units that are produced in this state, regardless of the location of the purchaser. The assessment constitutes a personal debt of the manufacturer of concrete masonry units who collects the assessment or who otherwise owes the assessment. If a manufacturer fails to remit any properly due assessment, the council may bring a civil action against the manufacturer in the circuit court of any county for the collection thereof, and may add a penalty in the amount of 10 percent of the assessment owed, the cost of enforcing the collection of the assessment, court costs, and reasonable attorney's fees. The action shall be tried and judgment rendered as in any other cause of action for debts due and payable. All assessments, penalties, and enforcement costs are due and payable to the council.

(10) VOTE ON CONTINUING THE ASSESSMENT.—Upon the delivery by certified mail to the council of petitions that represent at least 25 percent of the votes allocated under subsection (5) and that ask, "Shall the assessment authorized by the Concrete Masonry Products Research, Education, and Promotion Act





continue?" the council shall, within 90 days after the receipt of the petitions, conduct a referendum to determine whether a majority of the votes cast in the referendum support the continuation of the Concrete Masonry Products Research, Education, and Promotion Act. All signatures must be collected within a 12-month period. A referendum held under this subsection may not be held more than one time in a 3-year period. Before each referendum, votes shall be reallocated using the method described in subsection (5).

(11) BYLAWS.—The council shall, by September 30, 2012, adopt bylaws to carry out the intents and purposes of this section. These bylaws may be amended upon 30-days' notice to board members at any regular or special meeting called for this purpose. The bylaws must conform to the requirements of this section but may also address any matter not in conflict with the general laws of this state.

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)

2-1-12
*Meeting Date*

Topic MASONRY PRODUCTS

Bill Number SB 412 *(if applicable)*

Name KARI HEBRANK

Amendment Barcode *(if applicable)*

Job Title

Address 120 S. Monroe St. *Street*

Phone 566-1824

TALLAHASSEE FL 32301 *City State Zip*

E-mail ~~Khebrank~~ Kari@rambaconsulting.com

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

Representing MASONRY ASSOC. OF FLORIDA

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

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

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

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

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)

2/1/2012
*Meeting Date*

Topic

Bill Number 412 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH *Street*

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 for this meeting.***

S-001 (10/20/11)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

2/1/12
*Meeting Date*

Topic Sale of Masonry Units

Bill Number SB 412 *(if applicable)*

Name David Ramba

Amendment Barcode *(if applicable)*

Job Title

Address 120 S. Monroe St.
*Street*
Tallahassee, FL
*City* *State* *Zip*

Phone 727-7087

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Masonry Assoc. of 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 576 |
| INTRODUCER: | Senator Bennett |
| SUBJECT: | Public-Private Partnerships |
| DATE: | January 28, 2012 REVISED: |

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

## I. Summary:

This bill creates the Florida Public-Private Partnership Act to facilitate public-private partnerships, when cost-effective, to construct public-purpose projects as an alternative to the Consultants' Competitive Negotiation Act. The bill specifies the requirements for such partnership, and creates a Public-Private Partnership Advisory Commission.

The bill creates section 287.05712 of the Florida Statutes.

## II. Present Situation:

### Public-Private Partnerships

***Overview***

A public-private partnership (PPP) is a contractual agreement formed between a public agency and a private sector entity that allows for greater private sector participation in the delivery and financing of public building and infrastructure projects.[1] Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public.[2] In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.[3]

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[1] *See* The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, available at: http://www.fhwa.dot.gov/ipd/p3/defined/index.htm (last visited on January 25, 2012).
[2] *See generally* The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: http://ncppp.org/howpart/index.shtml#define.
[3] *Id.*

There are different types of PPPs with varying levels of private sector involvement. The most common is called a Design-Build-Finance-Operate (DBFO) transaction, where the government grants a private sector partner the right to develop a new piece of public infrastructure.[4] The private entity takes on full responsibility and risk for delivery and operation of the public project against pre-determined standards of performance established by government. The private entity is paid through the revenue stream generated by the project, which could take the form of a user charge (such as a highway toll) or, in some cases, an annual government payment for performance (often called a "shadow toll" or "availability charge"). Any increases in the user charge or payment for performance typically are set out in advance and regulated by a binding contract.[5]

Another PPP procurement process is the Unsolicited Proposal Procurement Model (UPPM). This allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.[6] Generally, the public entity requires a processing or review fee to cover costs for the technical and legal review.[7]

***Florida Department of Transportation Public-Private Partnership***

The Florida Department of Transportation (FDOT) currently has a public-private partnership program in place.[8] The Florida Legislature declared that there is a public need for rapid construction of safe and efficient transportation facilities for the purpose of travel within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.[9]

Florida law provides that a private transportation facility constructed pursuant to s. 334.30, F.S., must comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions that FDOT determines to be in the public's best interest.[10]

Current law allows FDOT to advance projects programmed in the adopted 5-year work program using funds provided by public-private partnerships or private entities to be reimbursed from FDOT funds for the project.[11] In accomplishing this, FDOT may use state resources to participate in funding and financing the project as provided for under FDOT's enabling legislation for projects on the State Highway System.[12]

FDOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation

[4] *See* The Oregon Department of Transportation, The Power of Public-Private Partnerships, available at: http://www.oregon.gov/ODOT/HWY/OIPP/docs/PowerofPublicPrivate050806.pdf.
[5] *Id.*
[6] *See Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, at 3.
[7] *Id.*
[8] *See* s. 334.30, F.S.
[9] Section 334.30, F.S.
[10] Section 334.30(3), F.S.
[11] Section 334.30(1), F.S.
[12] *Id.*

facilities.[13] If FDOT receives an unsolicited solicitation or proposal, it is required to publish a notice in the Florida Administrative Weekly and a newspaper of general circulation stating that FDOT has received the proposal and it will accept other proposals for the same project.[14] In addition, FDOT requires an initial payment of $50,000 accompany any unsolicited proposal to cover the costs of evaluating the proposal.[15]

Current law governing FDOT's PPP provides for a solicitation process that is similar to the Consultants' Competitive Negotiation Act[16]. FDOT may request proposals from private entities for public-private transportation projects.[17] The partnerships must be qualified by FDOT as part of the procurement process outlined in the procurement documents.[18] These procurement documents must include provisions for performance of the private entity and payment of subcontractors, including surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees.[19] FDOT must rank the proposals in the order of preference. [20] FDOT may then begin negotiations with the top firm. If that negotiation is unsuccessful, FDOT must terminate negotiations and move to the second-ranked firm, and if unsuccessful again, move to the third-ranked firm.[21] FDOT must provide independent analyses of the proposed PPP that demonstrates the cost effectiveness and overall public benefit prior to moving forward with the procurement and prior to awarding the contract.[22]

Current law authorizes FDOT to use innovative finance techniques associated with PPPs, including federal loans, commercial bank loans, and hedges against inflation from commercial banks or other private sources.[23] PPP agreements under s. 334.30, F.S., must be limited to a term not to exceed 50 years. In addition, FDOT may not utilize more than 15 percent of total federal and state funding in any given year to fund PPP projects.[24]

**Procurement of Personal Property and Services**

Chapter 287, F.S., regulates state agency[25] procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[26] The Division

[13] *Id.*
[14] Section 334.30(6)(a), F.S.
[15] *See* Fla. Admin. Code R. 14-107.0011
[16] *See* s. 287.055, F.S.
[17] Section 334.30(6)(a), F.S.
[18] Section 334.30(6)(b), F.S.
[19] Section 334.30(6)(c)
[20] *See* s. 334.30(6)(d), F.S., [i]n ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the project.
[21] Section 334.30(6)(d), F.S.
[22] Section 334.30(6)(e), F.S.
[23] Section 334.30(8), F.S.
[24] Section 334.30(13), F.S.
[25] As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[26] *See* ss. 287.032 and 287.042, F.S.

of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[27]

Current law requires contracts for commodities or contractual services in excess of $35,000 to be procured utilizing a competitive solicitation process.[28,29]

***The Consultants' Competitive Negotiation Act***

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted in 1973,[30] to specify the procedures to follow when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.[31]

Currently, the CCNA specifies the process to follow when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper.[32] The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed $325,000.
- A planning or study activity, when the fee for professional services exceeds $35,000.

The CCNA provides a two-phase selection process.[33] In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the three bidders, ranked in order of preference, that it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the three most highly qualified bidders including: willingness to meet time and budget requirements; past performance; location; recent, current, and projected firm workloads; volume of work previously awarded to the firm; and whether the firm is certified as a minority business.[34]

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[27] Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.

[28] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold provided in s. 287.017, F.S., to be competitively bid.

[29] As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

[30] Chapter 73-19, L.O.F.

[31] Chapter 88-108, L.O.F.

[32] Section 287.055, F.S.

[33] Section 287.055(4) and (5), F.S.

[34] *See* s. 287.055(4)(b), F.S.

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Current law defines the term "compensation" to mean "the amount paid by the agency for professional services," regardless of whether stated as compensation or as other types of rates.[35]

In the second phase, the "competitive negotiation," the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

**Procurement of Construction Services**

Chapter 255, F.S., regulates construction services[36] for public property and publically owned buildings. The Department of Management Services is responsible for establishing, through administrative rules, the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state.[37]

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[38] In addition, such projects must be advertised in the Florida Administrative Weekly at least 21 days prior to the bid opening.[39,40] Counties, municipalities, special districts[41],

[35] Section 287.055(2)(d), F.S.
[36] As defined in s. 255.072(2), F.S., "construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term "construction services" does not include contracts or work performed for the Department of Transportation.
[37] Section 255.29, F.S.
[38] *See* 60D-5.0073, F.A.C.; *see also* s. 255.0525, F.S.
[39] Section 255.0525(1), F.S.
[40] State construction projects that are projected to exceed $500,000 are required to be published 30 days prior to bid opening in the Florida Administrative Weekly, and at least once in a newspaper of general circulation in the county where the project is located. *See* s. 255.0525(1), F.S.
[41] As defined in s. 189.403(1), F.S., "special district" means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts must be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of $300,000.[42]

## III. Effect of Proposed Changes:

### Florida Public-Private Partnership Act and Definitions

The bill creates the Florida Public-Private Partnership Act (Act) in s. 287.05712, F.S., and specifies relevant definitions. "Public entity" means the state and any agency or related authority; any county, city, or town and any other political subdivision of the state; any public body politic and corporate; or any regional entity that serves a public purpose. "Qualifying project" means any public-purpose facility or project, including a public school building and any functionally related and subordinate facility, including any stadium or other facility primarily used for school events; a building or facility that meets a public purpose and is developed or operated by or for any public entity; improvements, including equipment, of buildings to be principally used by a public entity; and water or wastewater management facility and other related infrastructure.

### Legislative Findings and Intent

In subsection (2), the bill specifies that the Legislature finds that there is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of public projects, that such public need may not be wholly satisfied by existing methods of procurement, and that it has been demonstrated that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public. The Legislature declares it is the intent of this section to encourage investment in the state by private entities, to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need, and to provide the greatest possible flexibility to public and private entities to contract for the provision of public services.

### Adoption of Guidelines

Subsection (3) requires a responsible public entity to adopt and make publicly available guidelines that are sufficient to enable the responsible public entity to comply, before requesting or considering a proposal for a qualifying project. The guidelines must be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible public entity. State entity guidelines must include opportunities for competition through public notice, reasonable criteria for choosing among competing proposals, and suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.

For a public entity that is not an agency or institution of the state, the guidelines may include the provisions set forth in this subsection at the discretion of the public entity. However, the guidelines must include a requirement that the responsible public entity engage the services of qualified professionals, which may include an architect, professional engineer, or certified public

[42] *See* s. 255.20(1), F.S.

accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and the long and short-term costs of any request by a private entity for approval of a qualifying project unless the governing body of the responsible public entity determines that such analysis shall be performed by employees of the responsible public entity. The guidelines must also include a mechanism for the appropriating body to review a proposed interim or comprehensive agreement prior to execution.

**Procurement Procedures**

Subsection (4) provides that the Consultant's Competitive Negotiation Act and related DMS interpretations, regulations, or guidelines do not apply to the Florida Public-Private Partnership Act. A public entity is not required to select the proposal with the lowest bid offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include:

- The proposed costs of the qualifying facility.
- The general reputation, industry experience, and financial capacity of the private entity.
- The proposed design of the qualifying project.
- The eligibility of the facility for accelerated selection, review, and documentation timelines under the public entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan.
- The private entity's plans to employ local contractors and residents.
- Other criteria that the responsible public entity deems appropriate.

A public entity that is a school board or a county, city, or town may enter into an interim or comprehensive agreement under this section only with the approval of the local governing body.

**Consideration and Approval of Qualifying Projects**

A public entity may request proposals or invite bids from private entities for the development or operation of qualifying projects pursuant to the public notice and procurement provisions of the Act. A private entity may request the approval of the responsible public entity for a qualifying project; the request must include specified information, unless waived by the public entity. Upon receipt of a proposal, the public entity must determine whether to accept the proposal for consideration. The public entity may reject any proposal initiated by a private entity at any time.

The responsible public entity may approve the development or operation of an education facility, a water or wastewater management facility and related infrastructure, technology infrastructure or other public infrastructure, or a government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if certain conditions are met.

**Agreements**

Before, or in connection with the negotiation of a comprehensive agreement, the public entity may enter into an interim agreement with the private entity. The interim agreement may:

- Permit the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and

development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain any other provisions related to any aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the public entity. Subsection (7) specifies that the comprehensive agreement must provide for:
- Delivery of maintenance, performance, and payment bonds and letters of credit.
- Review of plans and specifications.
- Inspection of the qualifying project.
- Maintenance of a policy or policies of public liability insurance.
- Monitoring the practices of the private entity by the public entity.
- Reimbursement to be paid to the public entity for services provided by the public entity.
- Filing of appropriate financial statements on a periodic basis.
- Policies and procedures governing the rights and responsibilities of the public entity and the private entity in the event the comprehensive agreement is terminated or there is a material default by the private entity.
- User fees, lease payments, or service payments as may be established by agreement of the parties.
- Duties of the private entity, including terms and conditions that the responsible public entity determines serve the public purpose of this section.

The comprehensive agreement may include other specified provisions.

**Affected Jurisdictions**

Any private entity requesting approval from, or submitting a proposal to, a public entity must notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project must, within 60 days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. The comments must be given consideration by the responsible public entity before entering a comprehensive agreement with a private entity.

**Powers and Duties of the Private Entity**

Subsection (9) specifies that the private entity can collect lease payments, impose user fees, or enter into service contracts in connection with use thereof, determine financing for the project, and other specified duties.

**Defaults and remedies**

In the event of a material default by the private entity, the public entity may elect to assume the responsibilities and duties of the private entity of the qualifying project. If so, it will succeed to all of the right, title, and interest in the project, subject to any liens on revenues previously granted by the private entity to any person providing financing. A public entity having the power of condemnation under state law may exercise the power of condemnation to acquire the qualifying project in the event of a material default by the private entity.

**Financing**

Any financing of a qualifying project may be made pursuant to an interim or comprehensive agreement between the public entity and the private entity. The private entity and the public entity may propose to use any and all funding resources that may be available and may issue debt, equity, or other securities or obligations; enter into leases; access any designed trust funds; borrow or accept grants from any state infrastructure bank; and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying facility. The public entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this section and may enter into any contracts required to receive such assistance.

**Sovereign Immunity**

The sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee thereof with respect to a project is not waived by the Act. Counties, cities, and towns in which a qualifying project is located possess sovereign immunity with respect to the project's design, construction, and operation.

**Construction**

Subsection (13) provides that the Act is to be liberally construed to effectuate its purposes.

**Advisory Commission**

Subsection (14) establishes a Public-Private Partnership Advisory Commission to review the implementation of the Act, and to provide recommendations for any revisions necessary to further support public-private partnership opportunities in the state. The commission consists of 12 members, as follows:

- Two members of the House of Representatives, appointed by the Speaker of the House of Representatives.
- Two members of the Senate, appointed by the President of the Senate.
- Eight members appointed by the Governor, as follows:
- Four local government officials.
- Two state agency representatives.
- Two representatives of the private sector.

All terms are for 4 years, except those members of the House of Representatives and Senate, who will serve on the commission until the expiration of their terms of office or until their successors qualify. The members of the commission will elect a chairperson and a vice chairperson. The commission shall hold public meetings at least quarterly or upon the call of the chairperson. Members of the commission are entitled to receive per diem and travel expenses as provided in s. 112.061, F.S. Administrative staff support will be provided by the Executive Office of the Governor. Beginning on December 13, 2013, and each year subsequently, the commission must submit a report providing comments on the implementation of the Act and recommendations for future revisions to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

**Pledging Credit**
Article VII, s. 10 of the Florida Constitution states:

> Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:
>
> (a) the investment of public trust funds;
>
> (b) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities;
>
> (c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract

or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.

(d) a municipality, county, special district, or agency of any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

The bill permits private entities to issue debt, equity, or other securities and obligations, and to secure financing, with a pledge of security interest. These activities, if turned over to the state agency, either voluntarily or by default, could implicate constitutional prohibitions on pledging credit if security interests are granted, as authorized in the bill.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

## 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 Bennett

21-00626-12 2012576__

A bill to be entitled

An act relating to public-private partnerships; creating s. 287.05712, F.S.; establishing the Florida Public-Private Partnership Act; providing definitions; providing legislative findings and intent; providing for private entities to develop and operate public-purpose projects; requiring public entities to adopt and make publicly available specified guidelines for public-private agreements; providing requirements and procedures for procurement, consideration, and approval of projects; providing an exemption from the Consultant's Competitive Negotiation Act and any interpretations, regulations, or guidelines of the Department of Management Services; providing requirements and procedures for interim and comprehensive agreements between private and public entities; providing for affected local governments to comment on proposed projects; providing powers and duties for private entities; providing for material default and remedies with respect to projects and agreements; providing for federal, state, and local financing; providing sovereign immunity for public entities with respect to specified project activities; providing for construction and effect of the act; establishing the Public-Private Partnership Advisory Commission; providing commission duties; providing for appointment and reimbursement of commission members; requiring the commission to submit annual reports to the Governor and the Legislature; providing an



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



21-00626-12 2012576__

effective date.

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

Section 1. Section 287.05712, Florida Statutes, is created to read:

287.05712 Florida Public-Private Partnership Act.-

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

(a) "Affected local jurisdiction" means any county, city, or town in which all or a portion of a qualifying project is located.

(b) "Appropriating body" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

(c) "Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity.

(d) "Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

(e) "Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

(f) "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use



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of a qualifying project.

(g) "Material default" means any default by the private entity in the performance of its duties that jeopardizes adequate service to the public from a qualifying project.

(h) "Operate" means to finance, maintain, improve, equip, modify, repair, or operate.

(i) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.

(j) "Proposal" means a detailed proposal accepted by a responsible public entity beyond a conceptual level of review and at which time issues such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(k) "Public entity" means the state and any agency or authority thereof; any county, city, or town and any other political subdivision of the state; any public body politic and corporate; or any regional entity that serves a public purpose.

(l) "Qualifying project" means any:

1. Public-purpose facility or project, including, but not limited to, a public school building and any functionally related and subordinate facility, including any stadium or other facility primarily used for school events.

2. Building or facility that meets a public purpose and is developed or operated by or for any public entity.

3. Improvements, including equipment, of buildings to be principally used by a public entity.

4. Water or wastewater management facility and other



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related infrastructure.

(m) "Responsible public entity" means an agency or institution of the state that has the authority to develop or operate a qualifying project.

(n) "Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, from any public entity, or from any agency or instrumentality of the foregoing in aid of a qualifying project.

(o) "Service contract" means a contract entered into between a public entity and the private entity.

(p) "Service payments" means payments to the private entity of a qualifying project pursuant to a service contract.

(q) "User fees" means the rates, tolls, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

(r) "Water or wastewater management facility" means a project for treatment, storage, disposal, or distribution of water or wastewater.

(2) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of public projects, including educational facilities, water or wastewater management facilities and



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infrastructure, technology infrastructure, and any other public infrastructure and government facilities within the state that serve a public need and purpose, and that such public need may not be wholly satisfied by existing methods of procurement.

2. There are inadequate resources to develop new educational facilities, water or wastewater management facilities and infrastructure, technology infrastructure and other public infrastructure and government facilities for the benefit of citizens of the state, and it has been demonstrated that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.

3. There are state and federal tax incentives that promote partnerships between public and private entities to operate and develop qualifying projects.

4. An action under subsection (4) serves the public purpose of this section if such action facilitates the timely development or operation of qualifying projects.

(b) The Legislature declares it is the intent of this section to encourage investment in the state by private entities, to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need, and to provide the greatest possible flexibility to public and private entities to contract for the provision of public services.

(3) ADOPTION OF GUIDELINES BY RESPONSIBLE PUBLIC ENTITIES.—

(a) A responsible public entity shall, before requesting or considering a proposal for a qualifying project, adopt and make





publicly available guidelines that are sufficient to enable the responsible public entity to comply with this section. Such guidelines shall be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible public entity.

(b) For a responsible public entity that is an agency or institution of the state, the guidelines shall include, but are not limited to:

1. Opportunities for competition through public notice and availability of representatives of the responsible public entity to meet with private entities considering a proposal.

2. Reasonable criteria for choosing among competing proposals.

3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.

4. Authorization for accelerated selection and review and documentation timelines for proposals involving a qualifying project that the responsible public entity deems a priority.

5. Financial review and analysis procedures that shall include, at a minimum, a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project. These procedures shall also include requirements for the disclosure of such analysis to the appropriating body for review prior to execution of an interim or comprehensive agreement.

6. Consideration of the nonfinancial benefits of a proposed qualifying project.

7. A mechanism for the appropriating body to review a proposed interim or comprehensive agreement prior to execution.

8. Establishment of criteria for the creation of and the responsibilities of a public-private partnership oversight committee with members representing the responsible public entity and the appropriating body. Such criteria shall include the scope, costs, and duration of the qualifying project, as well as whether the project involves or impacts multiple public entities. The oversight committee, if formed, shall be an advisory committee to review the terms of any proposed interim or comprehensive agreement.

9. Analysis of the adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition.

10. Establishment of criteria, key decision points, and approvals required to ensure that the responsible public entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement.

11. The posting and publishing of public notice of a private entity's request for approval of a qualifying project, including:

a. Specific information and documentation to be released regarding the nature, timing, and scope of the qualifying project.

b. A reasonable time period as determined by the responsible public entity to encourage competition and public-private partnerships in accordance with the goals of this section, such reasonable period to be at least 45 days, during which time the responsible public entity shall receive competing proposals.





c. A requirement for advertising the public notice and posting a notice on the Internet.

(c) For a responsible public entity that is not an agency or institution of the state, the guidelines may include the provisions set forth in this subsection at the discretion of the public entity. However, the guidelines shall include:

1. A requirement that the responsible public entity engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and the long and short-term costs of any request by a private entity for approval of a qualifying project unless the governing body of the responsible public entity determines that such analysis shall be performed by employees of the responsible public entity.

2. A mechanism for the appropriating body to review a proposed interim or comprehensive agreement prior to execution.

(4) PROCUREMENT PROCEDURES FOR RESPONSIBLE PUBLIC ENTITIES.—The Consultant's Competitive Negotiation Act under s. 287.055 and any interpretations, regulations, or guidelines of the Department of Management Services do not apply to this section. However, a responsible public entity may enter into an interim or comprehensive agreement as follows:

(a) A responsible public entity shall not be required to select the proposal with the lowest bid offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include:

1. The proposed costs of the qualifying facility.

2. The general reputation, industry experience, and financial capacity of the private entity.

3. The proposed design of the qualifying project.

4. The eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan.

5. The private entity's plans to employ local contractors and residents.

6. Other criteria that the responsible public entity deems appropriate.

(b) A responsible public entity shall proceed in accordance with the guidelines adopted under subsection (3) unless it determines that proceeding in accordance with the guidelines is likely to be advantageous to the responsible public entity and the public, based on:

1. The probable scope, complexity, or priority of the project.

2. Risk sharing, including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity.

3. An increase in funding, dedicated revenue source, or other economic benefit that would not otherwise be available.

When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to subsection (3), it shall state the reasons for its determination in writing.





(c) A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project until the responsible public entity has adopted and made publicly available guidelines that are sufficient to enable the responsible public entity to comply with this section.

(d) A responsible public entity that is a school board or a county, city, or town may enter into an interim or comprehensive agreement under this section only with the approval of the local governing body.

(5) CONSIDERATION AND APPROVAL OF QUALIFYING PROJECTS.—

(a) A responsible public entity may request proposals or invite bids from private entities for the development or operation of qualifying projects pursuant to the public notice and procurement provisions of this section. A private entity may request the approval of the responsible public entity for a qualifying project.

(b) A request by a private entity for approval of a qualifying project shall be accompanied by the following material and information unless waived by the responsible public entity:

1. A topographic map with a scale of 1:2,000 or other appropriate scale indicating the location of the qualifying project.

2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for

activities to be performed by both the public and private entity.

3. A statement setting forth the method by which the private entity proposes to secure any necessary property interests required for the qualifying project.

4. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that is similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction.

5. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals.

6. A list of public water or wastewater management facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings.

7. A statement setting forth the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity.

8. The names and addresses of the persons who may be contacted for further information concerning the request.

9. User fees, lease payments, and other service payment over the term of an interim or comprehensive agreement and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time.

10. Additional material and information as the responsible





public entity may reasonably request.

(c) Upon receipt of a proposal to develop or operate a qualifying project, the responsible public entity shall determine whether to accept the proposal for consideration. The responsible public entity may reject any proposal initiated by a private entity at any time. If the responsible public entity determines not to accept the proposal for consideration, the responsible public entity shall return the proposal to the private entity, including all fees and accompanying documentation.

(d) The responsible public entity may approve the development or operation of an education facility, a water or wastewater management facility and related infrastructure, technology infrastructure or other public infrastructure, or a government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if:

1. There is a public need for or benefit derived from a project of the type the private entity proposes as a qualifying project.

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities.

3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

(e) In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or

the advice of external advisors or consultants having relevant experience.

(f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial, technical, and other necessary advisors or consultants.

(g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend such date.

(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.

(6) INTERIM AGREEMENT.—Before or in connection with the negotiation of a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. The interim agreement may:

(a) Permit the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities.

(b) Establish the process and timing of the negotiation of the comprehensive agreement.

(c) Contain any other provisions related to any aspect of the development or operation of a qualifying project that the





responsible public entity and the private entity deem appropriate.

(7) COMPREHENSIVE AGREEMENT.—

(a) Before developing or operating the qualifying project, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of maintenance, performance, and payment bonds and letters of credit in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity for those components of the qualifying project that involve construction.

2. Review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standards acceptable to the responsible public entity. This subparagraph does not require the private entity to complete the design of a qualifying project prior to the execution of a comprehensive agreement.

3. Inspection of the qualifying project by the responsible public entity to ensure that the operator's activities are acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement.

4. Maintenance of a policy or policies of public liability insurance, copies of which shall be filed with the responsible public entity accompanied by proofs of coverage, and self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to

enable the continued operation of the qualifying project.

5. Monitoring the practices of the private entity by the responsible public entity to ensure that the qualifying project is properly maintained.

6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity.

7. Filing of appropriate financial statements on a periodic basis.

8. Policies and procedures governing the rights and responsibilities of the responsible public entity and the private entity in the event the comprehensive agreement is terminated or there is a material default by the private entity. Such policies and guidelines shall include conditions governing assumption of the duties and responsibilities of the private entity by the responsible public entity and the transfer or purchase of property or other interests of the private entity by the responsible public entity.

9. User fees, lease payments, or service payments as may be established by agreement of the parties. A copy of any service contract shall be filed with the responsible public entity. In negotiating user fees under this subsection, the parties shall establish payments or fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees, lease payments, or service payments provided for comply with this section. User fees or lease payments established in the comprehensive agreement as a source of revenues may be in



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



addition to, or in lieu of, service payments.

10. Duties of the private entity, including terms and conditions that the responsible public entity determines serve the public purpose of this section.

(b) The comprehensive agreement may include:

1. An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

2. Provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the private entity and the persons specified therein as providing financing for the qualifying project, including terms and conditions to which the private entity and the responsible public entity mutually agree, including but limited to, provisions regarding unavoidable delays or a loan of public funds to the private entity to develop or operate one or more qualifying projects.

3. Provisions where the authority and duties of the private entity under this section shall cease, and the qualifying project is dedicated to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

(c) Any changes in the terms of the comprehensive agreement, as agreed upon by the responsible public entity and the private entity, shall be added to the comprehensive agreement by written amendment.

(d) The comprehensive agreement may provide for the



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development or operation of phases or segments of the qualifying project.

(8) AFFECTED LOCAL JURISDICTIONS.—

(a) Any private entity requesting approval from, or submitting a proposal to, a responsible public entity shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

(b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project shall, within 60 days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. Such comments shall be given consideration by the responsible public entity before entering a comprehensive agreement with a private entity.

(9) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

(a) The private entity has all power allowed by law generally to a private entity having the same form of organization as the private entity and shall have the power to develop or operate the qualifying project and collect lease payments, impose user fees, or enter into service contracts in connection with use thereof.

(b) The private entity may own, lease, or acquire any other right to use or operate the qualifying project.

(c) Any financing of the qualifying project may be in such amounts and upon such terms and conditions as may be determined by the private entity. Without limiting the generality of the





foregoing, the private entity may issue debt, equity, or other securities or obligations; enter into sale and leaseback transactions; and secure any financing with a pledge of, security interest in, or lien on any or all of its property, including all of its property interests in the qualifying project.

(d) In operating the qualifying project, the private entity may make classifications according to reasonable categories for assessment of user fees and, with the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to similar facilities.

(e) The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity, all in accordance with the provisions of an interim or comprehensive agreement.

2. Maintain, or provide by contract for the maintenance or upgrade of the qualifying project, if required by an interim or comprehensive agreement.

3. Cooperate with the responsible public entity in making best efforts to establish any interconnection with the qualifying project requested by the responsible public entity.

4. Comply with the provisions of an interim or comprehensive agreement and any lease or service contract.

(f) A private entity of a qualifying project is not prohibited from providing additional services for the qualifying project to public or private entities other than the responsible public entity so long as the provision of additional service

does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to an interim or comprehensive agreement.

(10) MATERIAL DEFAULT; REMEDIES.—

(a) In the event of a material default by the private entity, the responsible public entity may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title, and interest in such qualifying project, subject to any liens on revenues previously granted by the private entity to any person providing financing thereof.

(b) Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has provided financing for the qualifying project, and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

(c) The responsible public entity may terminate, with cause, an interim or comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.

(d) The responsible public entity may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds, or lines of credit.

(e) In the event the responsible public entity elects to take over a qualifying project, the responsible public entity may develop or operate the qualifying project, impose user fees,





impose and collect lease payments for the use thereof and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in developing and operating the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the private entity by the election to take over the qualifying project. Assumption of the development or operation of the qualifying project shall not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues.

(11) FEDERAL, STATE, AND LOCAL FINANCING.—

(a) Any financing of a qualifying project may be in such amounts and upon such terms and conditions as determined by an interim or comprehensive agreement between the responsible public entity and the private entity. Without limiting the generality of the terms and conditions of the financing, the private entity and the responsible public entity may propose to use any and all funding resources that may be available and may,

to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations; enter into leases; access any designed trust funds; borrow or accept grants from any state infrastructure bank; and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying facility.

(b) The responsible public entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this section and may enter into any contracts required to receive such assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the Legislature. The responsible public entity may determine that it serves the public purpose of this section for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality thereof.

(12) SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. Counties, cities, and towns in which a qualifying project is located possess sovereign immunity with respect to the project's design,





construction, and operation.

(13) CONSTRUCTION AND EFFECT.—This section shall be liberally construed to effectuate the purposes thereof. This section does not affect the authority of the responsible public entity to take action that would impact the debt capacity of the state.

(14) PUBLIC-PRIVATE PARTNERSHIP ADVISORY COMMISSION.—

(a) The Public-Private Partnership Advisory Commission is established to review the implementation of this section and to provide recommendations for any revisions necessary to further support public-private partnership opportunities in the state.

(b) The commission shall consist of 12 members, as follows:

1. Two members of the House of Representatives, appointed by the Speaker of the House of Representatives.

2. Two members of the Senate, appointed by the President of the Senate.

3. Eight members appointed by the Governor, as follows:

a. Four local government officials.

b. Two state agency representatives.

c. Two representatives of the private sector.

All terms are for 4 years, except those members of the House of Representatives and Senate, who shall serve on the commission until the expiration of their terms of office or until their successors qualify.

(c) The members of the commission shall elect a chairperson and a vice chairperson. The commission shall hold public meetings at least quarterly or upon the call of the chairperson. A majority of the commission constitutes a quorum.

(d) Members of the commission are entitled to receive per diem and travel expenses as provided in s. 112.061.

(e) Administrative staff support shall be provided by the Executive Office of the Governor, as appropriate.

(f) A copy of the minutes from each commission meeting shall be provided to and maintained by the Governor, the President of Senate, and the Speaker of the House of Representatives.

(g) Beginning on December 13, 2013, and each year thereafter, the commission shall submit a report providing comments on the implementation of this section and recommendations for future revisions to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

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



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**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

2/1/12
*Meeting Date*

Topic Public - Private Partnership
Bill Number SB 576 *(if applicable)*

Name David Cruz
Amendment Barcode *(if applicable)*

Job Title Legislative Advocate

Address P. O. Box 1757
*Street*
Tallahassee FL 32302
*City* *State* *Zip*

Phone 305-322-3645

E-mail DCruz@FLCities.com

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)

2/1/12
*Meeting Date*

Topic Public Private Partnerships
Bill Number 576 *(if applicable)*

Name Richard Watson
Amendment Barcode *(if applicable)*

Job Title Legislative Counsel

Address P.O. Box 10038
*Street*
Tallahassee FL 32302
*City* *State* *Zip*

Phone

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Assoc Bldrs & Contractors

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 1144 |
| INTRODUCER: | Senator Garcia |
| SUBJECT: | Scrutinized Companies |
| DATE: | January 27, 2012 REVISED: |

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

## I. Summary:

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

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

## II. Present Situation:

### The State Board of Administration

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

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

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

**Divestiture from Cuba**

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

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

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

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

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

**The Protecting Florida's Investments Act**

In 2007, the Legislature enacted[2] the Protecting Florida's Investments Act (PFIA). The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities and are required to divest those securities if the companies do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

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

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

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.

- Quarterly presentation to the Trustees of a "Scrutinized Companies" list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA's website, along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.

- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients' assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.

- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations. Such correspondence continues semiannually.

- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment. The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.

- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company's initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.

- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.

- Quarterly reporting of the following to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to Sudan, and the United States Presidential Special Envoy to Iran.[3] The report must include the following:

    - A summary of correspondence with engaged companies;
    - A listing of all investments sold, redeemed, divested, or withdrawn;
    - A listing of all prohibited investments;

[3] Section 215.473(4)(b), F.S.

  - A description of any progress related to external managers offering PFIA compliant funds; and
  - A list of all publicly traded securities held directly by the state.

- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.

- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:

  - Darfur genocide has been halted for at least 12 months;
  - Sanctions imposed against the Government of Sudan are revoked;
  - Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;
  - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;
  - Sanctions imposed against the government of Iran are revoked; or
  - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.

- Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment. If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment. Such condition is required to be updated semiannually.

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

**Fiduciary Standards**

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

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

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

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

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

> discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
> (A) for the exclusive purpose of:
> (i) providing benefits to participants and their beneficiaries; and
> (ii) defraying reasonable expenses of administering the plan;
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
> (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

## III. Effect of Proposed Changes:

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

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

- The company has business operations that involve contracts with or provision of supplies or services to the government of Cuba, companies in which the government of Cuba has any direct or indirect equity share, consortiums or projects commissioned by the government of Cuba, or companies involved in consortiums or projects commissioned by the government of Cuba and:
    - More than 10 percent of the company's total revenues or assets are linked to Cuba, and the company has failed to take substantial action; or
    - The company has, with actual knowledge, on or after January 1, 1959, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period.

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

- The company has business operations that involve contracts with or provision of supplies or services to the government of Syria, companies in which the government of Syria has any direct or indirect equity share, consortiums or projects commissioned by the government of Syria, or companies involved in consortiums or projects commissioned by the government of Syria and:

    - More than 10 percent of the company's total revenues or assets are linked to Syria and involve oil-related activities, and the company has failed to take substantial action; or
    - The company has, with actual knowledge, on or after March 8, 1963, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Syria's ability to develop the petroleum resources of Syria.

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

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

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

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

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

The bill takes effect July 1, 2012.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

## VI. Technical Deficiencies:

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

## VII. Related Issues:

None.

## VIII. Additional Information:

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

None.

B. Amendments:

None.

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

**By** Senator Garcia

40-01080-12 20121144__

A bill to be entitled

An act relating to scrutinized companies; amending s. 215.473, F.S.; providing legislative findings; revising and providing definitions; requiring the State Board of Administration to identify all companies in which public moneys are invested and which are doing certain types of business in or with Cuba or Syria; requiring the board to create and maintain certain scrutinized companies lists that name all such companies; requiring the board to periodically contact all scrutinized companies and encourage them to refrain from engaging in certain types of business in or with Cuba or Syria; requiring the board to inform scrutinized companies of their status as a scrutinized company and to provide notice of the opportunity to clarify the nature of the company's business activities; providing for removal of a company from the list under certain conditions; requiring the board to divest all publicly traded securities of a scrutinized company under certain conditions; providing for reintroduction of a company onto the list; providing exceptions to the divestment requirement; prohibiting the board from acquiring securities of scrutinized companies that have active business operations; providing an exemption to the divestment requirement and investment prohibition; providing an additional exception from the divestment requirement and the investment prohibition for certain indirect holdings in actively managed investment



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40-01080-12 20121144__

funds; providing procedures of the board with respect to requesting removal of scrutinized companies from actively managed investment funds and defined contribution plans or the creation of a similar fund that excludes such companies; providing reporting requirements of the board; providing for cessation of assembly of the Scrutinized Companies with Activities in Cuba List and the Scrutinized Companies with Activities in Syria List, cessation of engagement and divestment of such companies, and restoration of authority to reinvest in such companies under specified conditions; authorizing the board to cease divesting or reinvesting in certain companies having scrutinized active business operations under specified conditions; amending s. 287.135, F.S.; prohibiting a state agency or local governmental entity from contracting for goods and services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Cuba List or the Scrutinized Companies with Activities in Syria List; requiring a contract provision that allows for termination of the contract if the company is found to have been placed on such list; providing exceptions; requiring certification upon submission of a bid or proposal for a contract, or before a company enters into or renews a contract, with an agency or governmental entity that the company is not on the Scrutinized Companies with Activities in Cuba List or the Scrutinized Companies with Activities in Syria



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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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





country, and

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

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

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

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

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

WHEREAS, the oppressive Assad regime blatantly murders

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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

read:

215.473 Divestiture by the State Board of Administration; Sudan; Iran; Cuba; Syria.—

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

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

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

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

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

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

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

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

4. Other similar actions.





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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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any of the following criteria:

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

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

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

2. The company is complicit in the Darfur genocide.

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



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

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

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

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

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



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

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

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

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

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





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

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

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

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

mineral-extraction activities; or power-production activities.

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

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

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

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

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

(2) IDENTIFICATION OF COMPANIES.—

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





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

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

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

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

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

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

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

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

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

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

(a) *Engagement.*—

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

2. For each company identified in this paragraph that has



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

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

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



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inactive business operations. A company may be removed from one list but remain on the other list, in which case the company shall be subject to the provisions applicable to the list on which the company remains.

(b) *Divestment.*—

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

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

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



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of companies on the Scrutinized Companies with Activities in Sudan List, ~~or~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, or the Scrutinized Companies with Activities in Syria List that have active business operations, except as provided in paragraph (d).

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

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

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



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plans requesting that they consider removing scrutinized companies from the investment offerings or create an alternative investment offering devoid of scrutinized companies. If the manager creates an alternative investment offering and the offering is deemed by the public fund to be consistent with prudent investor standards, the public fund shall consider including such investment offering in the plan.

(4) REPORTING.—

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

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



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



1. A summary of correspondence with companies engaged by the public fund under subparagraphs (3)(a)2. and 3.;

2. All investments sold, redeemed, divested, or withdrawn in compliance with paragraph (3)(b);

3. All prohibited investments under paragraph (3)(c);

4. Any progress made under paragraph (3)(e); and

5. A list of all publicly traded securities held directly by this state.

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

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

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

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

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



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

not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or

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

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

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





destruction and support international terrorism;

2. The United States revokes all sanctions imposed against the government of Iran; or

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

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

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

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

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

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

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

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

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

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

(6) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public





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

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

having scrutinized active business operations. This act does not apply to reinvestment in companies on the grounds that they have ceased to have scrutinized active business operations.

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

287.135 Prohibition against contracting with scrutinized companies.—

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) One of the following occurs:

1. The local governmental entity makes a public finding





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

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

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

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

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

within 90 days after receipt of the notice, the agency or the local governmental entity shall bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay the penalty described in subparagraph 1. and all reasonable attorney ~~attorney's~~ fees and costs, including any costs for investigations that led to the finding of false certification.

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

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

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

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

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





engaged in scrutinized business operations.

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

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

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

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

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)

2/1/2012
*Meeting Date*

Topic _____ Bill Number 1144 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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 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)

Feb. 1, 2012
*Meeting Date*

Topic COMPANIES SCRUTINIZED BY THE SBA Bill Number SB 1144 *(if applicable)*

Name LARRY CARMICHAEL Amendment Barcode _____ *(if applicable)*

Job Title LEGISLATIVE CHAIRMAN

Address 1407 DEVILS DIP *Street* Phone 850-877-7618

TALLAHASSEE, FL 32308-5140 *City* *State* *Zip* E-mail l_kcarmichael@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing FLORIDA RETIRED EDUCATORS ASSN

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 1358 |
| INTRODUCER: | Governmental Oversight and Accountability Committee and Senator Hays |
| SUBJECT: | Employee Drug Testing |
| DATE: | January 27, 2012 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Davlantes | Stovall | HR | **Fav/1 amendment** |
| 2. | Seay | Roberts | GO | **Fav/CS** |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

CS/SB 1358 expands the authorization of public employers to drug test employees to allow for random drug testing of all employees every 3 months. It further requires that the random sample chosen for the testing must be computer-generated by an independent third party. The CS provides that a random sample may not constitute more than 10 percent of the total employee population. The bill also allows state agencies to administer drug tests to all job applicants. The bill revises the definition of "job applicant." The bill provides that an employer must determine whether an employee who tested positive is fit to continue in their current job duties while participating in an employee assistance program. The bill replaces references to "safety-sensitive" positions with "mandatory-testing" positions. The bill allows a public employer to terminate the employment of any employee who receives a first-time positive drug test. The bill deletes provisions relating to public employees' collective bargaining rights for drug testing.

This bill substantially amends sections 112.0455, 440.102 and 944.474 of the Florida Statutes.

## II. Present Situation:

### Drug-Free Workplace Act

In 1989, the Legislature first enacted the Drug-Free Workplace Act (Act).[1] The Legislature's intent in enacting the Act was to "promote the goal of drug-free workplaces within government through fair and reasonable drug testing methods for the protection of public employees and employers"; "encourage employers to provide employees who have drug use problems an opportunity to participate in an employee assistance program or alcohol and drug rehabilitation program"; and "provide for confidentiality of testing results." The Act sets out the specific guidelines to be followed by state agencies who wish to test employees.

The Act currently provides that no employer may discharge, discipline, or discriminate against an employee on the sole basis of the employee's first positive drug test under certain conditions.[2] The Act does permit state employers to discharge or discipline a "special-risk employee" for the first positive confirmed drug test result.[3] In addition, the Act authorizes, but does not require, employers to "require job applicants to submit a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusal to hire the job applicant."[4] Section 112.0455, F.S. currently defines job applicants as "a person who has applied for a special risk or safety-sensitive position with an employer and has been offered employment conditioned upon successfully passing a drug test."[5]

The Act also authorizes, but does not require, public employers to drug test:

- An employee whom the employer has reasonable suspicion to believe is using or has used drugs.[6]
- An employee as part of a routinely scheduled fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.
- An employee who in the course of employment enters an employee assistance program for drug-related problems, or an alcohol and drug rehabilitation program, as a follow-up for a specified time frame.[7]

Employers without drug testing programs must give at least 60 days notice to all employees before beginning such a program.[8] Before any testing begins, all employees must be given a written statement which provides:

- The employer's policy on drug abuse;
- Drug testing indications and procedures;

[1] Ch. 89-173, L.O.F.
[2] Section 112.0455(8)(n)1, F.S.
[3] Section 112.0455(8)(n)3, F.S. Special risk employees are defined as one who is required as a condition of employment to be certified under chapter 633, F.S. (Fire Prevention Control) or chapter 943, F.S. (Department of Law Enforcement). Section 112.0455(5)(n), F.S.
[4] Section 112.0455(7)(a), F.S.
[5] Section 112.0455(5)(f), F.S.
[6] Section 112.0455(5)(j), F.S.
[7] Section 112.0455(7), F.S.
[8] Section 112.0455(6), F.S.

- Actions taken against violators of the drug policy;
- A confidentiality statement;
- A list of common medications which may interfere with drug tests;
- A list of local employee assistance and substance abuse rehabilitation programs;
- A statement that the employee has 5 business days after receiving a positive drug test to explain the results to the employer and may contest the test result; and
- A statement regarding any collective bargaining agreement related to drug testing and the right to appeal to the Public Employees Relations Commission.[9]

**Workers' Compensation Law**

The Workers' Compensation Law, contained in Chapter 440, F.S., provides legislative intent to promote drug-free workplaces and sets out notice and procedural requirements for employee drug testing.[10] The requirements in Ch. 440, F.S. are applicable to both private and public employers. An employer is not required to request an employee or job applicant to undergo drug testing.[11]

If an employer implements drug testing that conforms to the statutory standards and procedures and to applicable rules, such employer is eligible for workers' compensation and employer's liability insurance discounts.[12]

Current law provides that drug-free workplace program requirements are a mandatory topic of negotiations with any certified collective bargaining agent for nonfederal public sector employers that operate under a collective bargaining agreement.[13] If applicable, random drug testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented.[14]

**Department of Corrections Employee Drug Testing**

Current law authorizes the Department of Corrections to randomly drug test all employees.[15]

**Executive Order 11-58**

Executive Order Number 11-58, signed by the Governor on March 22, 2011, requires pre-employment and random drug testing for state employees.[16]

A representative of public employees sued the Governor, alleging that the drug-testing policies required by the order constitute a suspicionless search without a special need in violation of the

[9] *Id.*
[10] *See* ss. 440.101 and 440.102, F.S.
[11] *See* s. 440.102(2), F.S.
[12] Section 440.102(2), F.S.
[13] Section 440.102(13), F.S.
[14] Section 440.102(7)(g), F.S.
[15] Section 944.474(2), F.S.
[16] Executive Order 11-58, Office of the Governor, *available at* http://www.flgov.com/wp-content/uploads/orders/2011/11-58-testing.pdf (last visited January 30, 2012).

Fourth Amendment of the United States Constitution.[17] Both parties have requested summary judgment and are awaiting a decision by a federal district judge.[18]

## III. Effect of Proposed Changes:

**Section 1** amends s. 112.0455, F.S., expanding the definition of "job applicant" to include any person who has applied for a position with an employer and has been offered employment contingent to passing a drug test; creating a definition for "random testing"; removing the definition for "safety-sensitive position"; providing that an employer may conduct random testing once every 3 months; providing that the random sample chosen for the testing must be computer-generated by an independent third party; providing that a random sample may not constitute more than 10 percent of the total employee population of an agency; deleting a provision prohibiting a public employer from discharging, disciplining, or discriminating against an employee (other than a special-risk employee) on the sole basis of the employee's first positive confirmed drug test under certain conditions.

This section also consolidates the provisions relating to continued employment of employees in special risk or safety-sensitive positions. By removing the current definition for "safety-sensitive position", the bill amends the provisions related to employees in such positions to prescribe duties an employee would be automatically deemed unable to safely and effectively perform while participating in an employee assistance program. Such duties are those that require an employee to:

- Carry a firearm;
- Work closely with an employee who carries a firearm;
- Perform life-threatening procedures;
- Work with heavy or dangerous machinery;
- Work as a safety inspector;
- Work with children;
- Work with detainees in the correctional system;
- Work with confidential information or documents pertaining to criminal investigations;
- Work with controlled substances;
- Hold a position subject to s. 110.1127, F.S.;[19] or
- Hold a position in which a momentary lapse in attention could result in injury or death of another person.

If an employer refers the employee to an employee assistance program, the employee will be placed in a job assignment which the employer has determined can be performed during treatment if the employee cannot safely and effectively perform job duties in their current position. If an alternative job assignment is unavailable, the employee is placed on leave status.

[17] *See* "Complaint," *American Federation of State, County and Municipal Employees Council 79, and Richard Flamm, v. Rick Scott*, Case No. 1:11-cv-21976-UU (S.D. Fla. 2011).
[18] *See* "Plaintiff's Motion for Summary Judgment" and "Defendant's Motion for Summary Judgment and Incorporated Memorandum of Law," *American Federation of State, County and Municipal Employees Council 79, and Richard Flamm, v. Rick Scott*, Case No. 1:11-cv-21976-UU (S.D. Fla. 2011).
[19] Section 110.1127, F.S. requires security background checks for employees in specified positions of special responsibility or sensitive location.

**Section 2** amends s. 440.102, F.S., removing the current definition for "safety-sensitive position" and replacing the term with "mandatory-testing position"; defining "mandatory-testing position" to mean "with respect to a public employer, a job assignment that requires the employee to" engage in any of the activities which an employee would be deemed unable to safely and effectively perform while participating in an employee assistance program under the Drug-Free Workplace Act; providing that an employer may receive discounts under s. 627.0915, F.S., if an employer maintains a drug-free workplace program broader in scope than the minimum standards established in this section; deleting provisions relating to nonfederal public employees' collective bargaining rights for drug testing.[20]

**Section 3** amends s. 944.474, F.S., authorizing the Department of Corrections (DOC) to develop a drug testing program for all job applicants; removing a reference to "safety-sensitive."

**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.

D. Other Constitutional Issues:

**Fourth Amendment**

Mandatory drug testing programs have been challenged in courts numerous times. The United States Supreme Court has ruled in four situations that suspicionless drug testing is constitutional and does not violate the Fourth Amendment, which protects an individual's rights against unreasonable search and seizure.[21] These situations include suspicionless drug testing of:

[20] In addition to these statutory requirements for collective bargaining, Art. I, s. 6 of the Florida Constitution provides that "[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." The Florida Supreme Court has previously ruled that although mandatory collective bargaining is necessary for random drug testing of police officers absent express legislation, such testing is permissible and a managerial prerogative not requiring negotiations when there is some evidence of drug involvement by specific officers. *See Fraternal Order of Police v. City of Miami*, 609 So.2d 31, 32 (Fla. 1992).

[21] A concurring opinion in *Katz v. United States*, 389 U.S. 347, 36-61 (1967), set out the "reasonable expectation of privacy test" – when a person manifests a subjective expectation of privacy that society accepts as reasonable, that person has a "reasonable expectation of privacy" protected by the Fourth Amendment. Therefore, if there is no reasonable expectation of privacy, no Fourth Amendment violation can occur.

- Students in extracurricular activities;[22]
- Student athletes;[23]
- Certain Customs employees;[24] and
- Railroad employees after major accidents.[25]

In these cases, the court focused on the special need of the government, the unique situation involved (school setting, drug enforcement, and major train accidents), and public safety.

The United States Supreme Court has held one suspicionless drug test unconstitutional. In *Chandler v. Miller*, the state of Georgia required all candidates for designated state offices to certify that they had taken a drug test and that the result was negative in order to run for state office.[26] In ruling the drug testing unconstitutional, the court held that,

> "Where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable'…But where, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search."[27]

Federal district courts in Florida have ruled on the constitutionality of random drug testing of public employees and of blanket drug testing of job applicants with a public employer, holding that:

- A state agency's random drug testing policy was unconstitutional as applied to a strategic planning analyst because the employee did not present a concrete risk of real harm;[28] and
- A city's suspicionless drug testing of all new applicants as a condition of employment was unconstitutional because the city produced no concrete evidence or history of drug use among its employees and failed to specifically identify any governmental interest sufficiently compelling to justify testing all job applicants.[29]

An issue that has not been ruled upon in the context of suspicionless public employee and job applicant drug testing in federal courts with jurisdiction in Florida is that of an employee's or applicant's consent to the drug test. Some appellate courts have considered consent of the employee when holding that a physical search of a public employee or his or her property is not an unconstitutional search.[30] In addition, the Third Circuit has held

[22] *Board of Education of Pottawatomie County v. Earls*, 536 U.S. 822 (U.S. 2002).
[23] *Vernonia School District v. Acton*, 515 U.S. 646 (U.S. 1995).
[24] *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (U.S. 1989).
[25] *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (U.S. 1989).
[26] *Chandler v. Miller*, 520 U.S. 305 (1997).
[27] *Id.* at 323.
[28] *Wenzel v. Bankhead*, 351 F.Supp.2d 1316 (N.D. Fla. 2004).
[29] *Baron v. Hollywood*, 93 F.Supp.2d 1337 (S.D. Fla. 2000).
[30] For example, *see United States v. Sihler*, 562 F.2d 349, 350 (5th Cir. 1977) (holding, in part, that a search of a prison guard did not violate the Fourth Amendment because the guard had "voluntarily accepted and continued an employment which subjected him to search on a routine basis") and *United States v. Esser*, 284 Fed. Appx. 757, 758-759 (11th Cir. 2008) (citing *Sihler* and holding that in light of a post office regulation that purses were subject to inspection, a postal employee consented to the search of her purse "by virtue of her voluntary employment and her decision to bring her purse on postal property").

that a public job applicant's consent to a drug test satisfied the Fourth Amendment's reasonableness requirement.[31] In the same ruling, however, the Third Circuit cited a prior case, saying that it "is the law of [the Third Circuit] that 'silent submission' to a drug test 'on pain of dismissal from employment' does not constitute consent."[32]

Other issues that may be arguable are whether the suspicionless drug testing of public employees or job applicants contravenes reasonable expectations of privacy and whether the government has a special need for such drug testing that outweighs the privacy interests of such employees and applicants.

**Contracts Clause**

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.[33] "[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear."[34] If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.[35] The factors that a court will consider when balancing the impairment of contracts with the public purpose include: whether the law was enacted to deal with a broad, generalized economic or social problem; whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.[36] An impairment of contracts issue may arise if a current collective bargaining agreement containing drug testing provisions in conflict with those in this bill exists and a public employer who is a party to such agreement chooses to use the expanded drug testing authorization in this bill.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

[31] *Kerns v. Chalfont-New Britain Twp. Joint Sewage Auth.*, 263 F.3d 61, 65-55 (3d Cir. 2001).
[32] *Id.* at 66. The cited case, *Bolden v. SEPTA*, 953 F.2d 807 (3d Cir. 1991), held in part that an employee's silent submission to drug testing required as a prerequisite to his return to work was not a voluntary consent to search (*id.* at 824).
[33] Article I, s. 10, U.S. Const.; Art. I, s. 10, Fla. Const.
[34] *Pomponio v. Claridge of Pompano Condominiums, Inc.*, 378 So.2d 774 (Fla. 1979). *See also General Motors Corp. v. Romein*, 503 U.S. 181 (1992).
[35] *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980); *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3rd DCA 1982). *See also Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983) (construing the federal constitutional provision). An important public purpose would be a purpose protecting the public's health, safety, or welfare. *See Khoury v. Carvel Homes South, Inc.*, 403 So.2d 1043 (Fla. 1st DCA 1981).
[36] *Pomponio v. Claridge of Pompano Condominiums, Inc.*, 378 S0.2d 774 (Fla. 1979).

B. Private Sector Impact:

The bill's extension of certain insurance discounts to employers with a broader drug-free workplace program than the minimum standards set out in statute may result in an indeterminate reduction in expenditures of private employers.

C. Government Sector Impact:

State agencies may incur increased costs due to the drug testing of additional job applicants and random testing of employees. However, the bill provides that tests are to be administered at each agency's discretion.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

Lines 368-372 state that if an employer refers an employee to an employee assistance program, the employer must determine whether the employee is able to safely and effectively perform his or her job duties while in the program. However, the bill makes no reference to when such a determination must be made. Presumably, the decision should be made before the employee begins an employee assistance program, but this provision is introduced in the bill's title (line 23) as occurring anytime before the employee completes the program.

## 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 February 1, 2012:**
The CS differs from the original bill in that:

- It makes several technical changes recommended by the Health Regulation Committee.
- It further amends the Drug-Free Workplace Act by requiring that the random sample chosen for the testing must be computer-generated by an independent third party. It provides that a random sample may not constitute more than 10 percent of the total employee population of an agency.

B. Amendments:

None.

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

**Senate Amendment**

Delete line 169
and insert:

once every 3 months. The random sample chosen for the testing must be computer-generated by an independent third party. A random sample may not constitute more than 10 percent of the total employee population.

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

**Senate Amendment (with title amendment)**

Delete lines 357 - 582
and insert:
(10) EMPLOYER PROTECTION.—
(h) An employer may discharge or discipline ~~shall refer~~ an employee following ~~with~~ a first-time positive confirmed drug test result. If the employer does not discharge the employee, the employer may refer the employee to an employee assistance program or an alcohol and drug rehabilitation program in which the employee may participate at the expense of the employee or pursuant to a health insurance plan~~, unless such employee is~~

875634

~~discharged as provided in subparagraph (8)(n)3. If the results of a subsequent confirmed drug test are positive, the employer may discharge or discipline the employee~~.

1. If an employer refers an employee to an employee assistance program or an alcohol and drug rehabilitation program, the employer must determine whether the employee is able to safely and effectively perform the job duties assigned to the employee while the employee participates in such a program.

2. An employee whose assigned duties require the employee to carry a firearm, work closely with an employee who carries a firearm, perform life-threatening procedures, work with heavy or dangerous machinery, work as a safety inspector, work with children, work with detainees in the correctional system, work with confidential information or documents pertaining to criminal investigations, work with controlled substances, hold a position subject to s. 110.1127, or hold a position in which a momentary lapse in attention could result in injury or death to another person, is deemed unable to safely and effectively perform the job duties assigned to the employee while the employee participates in the employee assistance program or alcohol and drug rehabilitation program.

3. If an employer refers an employee to an employee assistance program or an alcohol and drug rehabilitation program and the employer determines that the employee is unable, or the employee is deemed unable, to safely and effectively perform the job duties assigned to the employee before he or she completes such a program, the employer shall place the employee in a job assignment that the employer determines the employee can safely

875634

and effectively perform while participating in the program.

4. If a job assignment in which the employee may safely and effectively perform is unavailable, the employer shall place the employee on leave status while the employee is participating in an employee assistance program or an alcohol and drug rehabilitation program. If placed on leave status without pay, the employee may use accumulated leave credits before being placed on leave without pay.

(i) ~~Nothing in~~ This section does not ~~shall be construed to~~ prohibit an employer from conducting medical screening or other tests required by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests.

~~(j) An employer shall place a safety-sensitive position employee whose drug test result is confirmed positive in a non-safety-sensitive position, or if such a position is unavailable, on leave status while the employee participates in an employee assistance program or an alcohol and drug rehabilitation program. If placed on leave status without pay, the employee shall be permitted to use any accumulated leave credits prior to being placed on leave without pay.~~

~~(k) A special risk employee may be discharged or disciplined on the first positive confirmed drug test result when illicit drugs, pursuant to s. 893.13, are confirmed. No special risk employee shall be permitted to continue work in a~~

875634

~~safety-sensitive position, but may be placed either in a non-safety-sensitive position or on leave status while participating in an employee assistance program or an alcohol and drug rehabilitation program.~~

Section 2. Paragraphs (j) and (o) of subsection (1), subsection (2), paragraph (g) of subsection (7), and subsections (11), (13), (14), and (15) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(j) "Job applicant" means a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a drug test, and may have begun work pending the results of the drug test. For a public employer, "job applicant" means only a person who has applied for a special-risk or mandatory-testing ~~safety-sensitive~~ position.

(o) "Mandatory-testing position" means, with respect to a public employer, a job assignment that requires the employee to carry a firearm, work closely with an employee who carries a firearm, perform life-threatening procedures, work with heavy or dangerous machinery, work as a safety inspector, work with children, work with detainees in the correctional system, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a

875634

job assignment that requires an employee security background check pursuant to s. 110.1127; or a job assignment in which a momentary lapse in attention could result in injury or death to another person ~~"Safety-sensitive position" means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a position subject to s. 110.1127; or a position in which a momentary lapse in attention could result in injury or death to another person~~.

(2) DRUG TESTING.—An employer may test an employee or job applicant for any drug described in paragraph (1)(c). In order to qualify as having established a drug-free workplace program under this section and to qualify for the discounts provided under s. 627.0915 and deny medical and indemnity benefits under this chapter, an employer must, at a minimum, implement drug testing that conforms to the standards and procedures established in this section and all applicable rules adopted pursuant to this section as required in subsection (4). However, an employer does not have a legal duty under this section to request an employee or job applicant to undergo drug testing. If an employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section and in applicable rules, the employer is ineligible for discounts under s. 627.0915. However, an employer qualifies for discounts under s. 627.0915 if the employer maintains a drug-free workplace program that is broader in scope than that

875634

provided for by the standards and procedures established in this section. An employer who qualifies ~~All employers qualifying~~ for and receives ~~receiving~~ discounts provided under s. 627.0915 must be reported annually by the insurer to the department.

(7) EMPLOYER PROTECTION.—

(g) This section does not prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or testing is limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests. Such screening or testing need not be in compliance with the rules adopted by the Agency for Health Care Administration under this chapter or under s. 112.0455. A public employer may, through the use of an unbiased selection procedure, conduct random drug tests of employees occupying mandatory-testing ~~safety-sensitive~~ or special-risk positions if the testing is performed in accordance with drug-testing rules adopted by the Agency for Health Care Administration and the department. ~~If applicable, random drug testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented.~~

(11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-SENSITIVE~~ OR SPECIAL-RISK POSITIONS.—

(a) If an employee who is employed by a public employer in a mandatory-testing ~~safety-sensitive~~ position enters an employee

875634

assistance program or drug rehabilitation program, the employer must assign the employee to a position other than a mandatory-testing ~~safety-sensitive~~ position or, if such position is not available, place the employee on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

(b) An employee who is employed by a public employer in a special-risk position may be discharged or disciplined by a public employer for the first positive confirmed test result if the drug confirmed is an illicit drug under s. 893.03. A special-risk employee who is participating in an employee assistance program or drug rehabilitation program may not be allowed to continue to work in any special-risk or mandatory-testing ~~safety-sensitive~~ position of the public employer, but may be assigned to a position other than a mandatory-testing ~~safety-sensitive~~ position or placed on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

~~(13) COLLECTIVE BARGAINING RIGHTS.—~~

~~(a) This section does not eliminate the bargainable rights as provided in the collective bargaining process if applicable.~~

~~(b) Drug-free workplace program requirements pursuant to this section shall be a mandatory topic of negotiations with any certified collective bargaining agent for nonfederal public sector employers that operate under a collective bargaining agreement.~~

(13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure

875634

adopted by an employer pursuant to this chapter shall be applied equally to all employee classifications where the employee is subject to workers' compensation coverage.

(14) ~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction contractor regulated under part I of chapter 489, and each electrical contractor and alarm system contractor regulated under part II of chapter 489, who contracts to perform construction work under a state contract for educational facilities governed by chapter 1013, for public property or publicly owned buildings governed by chapter 255, or for state correctional facilities governed by chapter 944 shall implement a drug-free workplace program under this section.

Section 3. Section 944.474, Florida Statutes, is amended to read:

944.474 Legislative intent; employee wellness program; drug and alcohol testing.—

(1) It is the intent of the Legislature that the state correctional system provide a safe and secure environment for both inmates and staff. A healthy workforce is a productive workforce, and security of the state correctional system can best be provided by strong and healthy employees. The Department of Corrections may develop and implement an employee wellness program. The program may include, but is not limited to, wellness education, smoking cessation, nutritional education, and overall health-risk reduction, including the effects of using drugs and alcohol.

(2) An employee ~~Under no circumstances shall employees~~ of the department may not test positive for illegal use of controlled substances. An employee of the department may not be

875634

under the influence of alcohol while on duty. In order to ensure that these prohibitions are adhered to by all employees of the department and notwithstanding s. 112.0455, the department may develop a program for the drug testing of all job applicants and for the random drug testing of all employees. The department may randomly evaluate employees for the contemporaneous use or influence of alcohol through the use of alcohol tests and observation methods. Notwithstanding s. 112.0455, the department may develop a program for the reasonable suspicion drug testing of employees who are in mandatory-testing ~~safety-sensitive~~ or special risk positions, as defined in s. 112.0455(5) or s. 440.102(1)(o), respectively, for the controlled substances listed in s. 893.03(3)(d). The reasonable suspicion drug testing authorized by this subsection shall be conducted in accordance with s. 112.0455, but may also include testing upon reasonable suspicion based on violent acts or violent behavior of an employee who is on or off duty. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 that are necessary to administer this subsection.

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

And the title is amended as follows:

Delete lines 13 - 57

and insert:

safety-sensitive position; providing that an agency may discharge or discipline an employee following a first-time positive confirmed drug test result;

875634

authorizing an agency to refer an employee to an employee assistance program or an alcohol and drug rehabilitation program if the employee is not discharged; requiring participation in an employee assistance program or an alcohol and drug rehabilitation program at the employee's own expense or pursuant to a health insurance plan; requiring the employer to determine if the employee is able to safely and effectively perform the job duties assigned to the employee before the employee enters the employee assistance program or the alcohol and drug rehabilitation program; deeming that certain specified job activities cannot be performed safely and effectively while the employee is participating in the employee assistance program or the alcohol and drug rehabilitation program; requiring the employer to transfer the employee to a job assignment that he or she can perform safely and effectively while the employee participates in the employee assistance program or the alcohol and drug rehabilitation program; requiring the employer to place the employee on leave status while the employee is participating in an employee assistance program or an alcohol and drug rehabilitation program if such a position is unavailable; authorizing the employee to use accumulated leave credits before being placed on leave without pay; amending s. 440.102, F.S.; revising the definition of the term "job applicant"; removing the definition of the term "safety-sensitive position" and

875634

replacing it with the definition for the term "mandatory-testing position"; providing that an employer remains qualified for an insurer rate plan that discounts rates for worker's compensation and employer's liability insurance policies if the employer maintains a drug-free workplace program that is broader in scope than that provided for by the standards and procedures established in the act; authorizing a public employer, using an unbiased selection procedure, to conduct random drug tests of employees occupying mandatory-testing or special-risk positions if the testing is performed in accordance with drug-testing rules adopted by the Agency for Health Care Administration; requiring that a public sector employer assign a public sector employee to a position other than a mandatory-testing position if the employee enters an employee assistance program or alcohol and drug rehabilitation program; removing provisions

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

**Senate Substitute for Amendment (654020)**

Delete line 169
and insert:

once every 3 months. The random sample chosen for the testing must be computer-generated by an independent third party. A random sample may not constitute more than 10 percent of the total employee population.

**By** Senator Hays

20-00710D-12 20121358__

A bill to be entitled

An act relating to the Drug-Free Workplace Act; amending s. 112.0455, F.S.; removing the definition of the term "safety-sensitive position" and defining the term "random testing"; authorizing an agency within state government to conduct random drug testing every 3 months; removing provisions prohibiting a state agency from discharging or disciplining an employee under certain circumstances based on the employee's first positive confirmed drug test; removing provisions limiting the circumstances under which an agency may discharge an employee in a special risk or safety-sensitive position; providing that an agency may discharge or discipline an employee following a first-time positive confirmed drug test result; authorizing an agency to refer an employee to an employee assistance program or an alcohol and drug rehabilitation program if the employee is not discharged; requiring participation in an employee assistance program at the employee's own expense; requiring the employer to determine if the employee is able to safely and effectively perform the job duties assigned to the employee before the employee completes the employee assistance program; deeming that certain specified job activities cannot be performed safely and effectively while the employee is participating in the employee assistance program; requiring the employer to transfer the employee to a job assignment that he or she can perform safely and effectively



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



20-00710D-12 20121358__

while the employee participates in the employee assistance program; requiring the employer to place the employee on leave status while the employee is participating in an employee assistance program if such a position is unavailable; authorizing the employee to use accumulated leave credits before being placed on leave without pay; amending s. 440.102, F.S.; revising the definition of the term "job applicant" as it pertains to a public employer; removing the definition of the term "safety-sensitive position" and replacing it with the definition for the term "mandatory-testing position;" providing that an employer remains qualified for an insurer rate plan that discounts rates for worker's compensation and employer's liability insurance policies if the employer maintains a drug-free workplace program that is broader in scope than that provided for by the standards and procedures established in the act; authorizing a public employer, using an unbiased selection procedure, to conduct random drug tests of employees occupying mandatory-testing or special-risk positions if the testing is performed in accordance with drug-testing rules adopted by the Agency for Health Care Administration; requiring that a public sector employer assign a public sector employee to a position other than a mandatory-testing position if the employee enters an employee assistance program or drug rehabilitation program; removing provisions related to collective bargaining rights for nonfederal



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

public sector employers; conforming cross-references; amending s. 944.474, F.S.; revising provisions governing employees of the state correctional system, to conform to changes made by the act; providing an effective date.

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

Section 1. Subsections (5), (7), and (8) and paragraphs (h), (i), (j), and (k) of subsection (10) of section 112.0455, Florida Statutes, are amended to read:

112.0455 Drug-Free Workplace Act.—

(5) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(a) "Drug" means alcohol, including distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines; cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; methaqualone; opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or a metabolite of any of the substances listed herein.

(b) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites.

(c) "Initial drug test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests must ~~shall~~ use an immunoassay procedure or an equivalent, or must ~~shall~~ use a more accurate scientifically accepted method approved by the Agency for Health





Care Administration as ~~such~~ more accurate technology becomes available in a cost-effective form.

(d) "Confirmation test," "confirmed test," or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. This confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

(e) "Chain of custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, storing specimens, and reporting of test results.

(f) "Job applicant" means a person who has applied for a ~~special risk or safety-sensitive~~ position with an employer and has been offered employment conditioned upon successfully passing a drug test.

(g) "Employee" means a ~~any~~ person who works for salary, wages, or other remuneration for an employer.

(h) "Employer" means an ~~any~~ agency within state government that employs individuals for salary, wages, or other remuneration.

(i) "Prescription or nonprescription medication" means a drug or medication obtained pursuant to a prescription as defined by s. 893.02 or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or

injuries.

(j) "Random testing" means a drug test conducted on employees who are selected through the use of a computer-generated random sample of an employer's employees.

(k) ~~(j)~~ "Reasonable suspicion drug testing" means drug testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Reasonable suspicion drug testing may ~~shall~~ not be required except upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question. Among other things, such facts and inferences may be based upon:

1. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug.

2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.

3. A report of drug use, provided by a reliable and credible source, which has been independently corroborated.

4. Evidence that an individual has tampered with a drug test during employment with the current employer.

5. Information that an employee has caused, or contributed to, an accident while at work.

6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.





(l) ~~(k)~~ "Specimen" means a tissue, hair, or product of the human body capable of revealing the presence of drugs or their metabolites.

(m) ~~(l)~~ "Employee assistance program" means an established program for employee assessment, counseling, and possible referral to an alcohol and drug rehabilitation program.

~~(m) "Safety-sensitive position" means any position, including a supervisory or management position, in which a drug impairment would constitute an immediate and direct threat to public health or safety.~~

(n) "Special risk" means employees who are required as a condition of employment to be certified under chapter 633 or chapter 943.

(7) TYPES OF TESTING.—An employer may conduct ~~is authorized~~, but is not required~~,~~ to conduct, the following types of drug tests:

(a) *Job applicant testing.*—An employer may require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusal to hire the job applicant.

(b) *Reasonable suspicion.*—An employer may require an employee to submit to reasonable suspicion drug testing.

(c) *Random testing.*—An employer may conduct random testing once every 3 months.

(d) ~~(c)~~ *Routine fitness for duty.*—An employer may require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment

classification or group.

(e)~~(d)~~ *Followup testing.*—If the employee in the course of employment enters an employee assistance program for drug-related problems, or an alcohol and drug rehabilitation program, the employer may require the ~~said~~ employee to submit to a drug test as a followup to such program, and on a quarterly, semiannual, or annual basis for up to 2 years thereafter.

(8) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(a) A sample shall be collected with due regard to the privacy of the individual providing the sample, and in a manner reasonably calculated to prevent substitution or contamination of the sample.

(b) Specimen collection shall be documented, and the documentation procedures shall include:

1. Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results.

2. A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication, or other relevant medical information. Such form shall provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information does ~~shall~~ not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed results.





(c) Specimen collection, storage, and transportation to the testing site shall be performed in a manner that ~~which~~ will reasonably preclude specimen contamination or adulteration.

(d) Each initial and confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, shall be conducted by a licensed laboratory as described in subsection (12).

(e) A specimen for a drug test may be taken or collected by any of the following persons:

1. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment.

2. A qualified person employed by a licensed laboratory.

(f) A person who collects or takes a specimen for a drug test conducted pursuant to this section shall collect an amount sufficient for two drug tests as determined by the Agency for Health Care Administration.

(g) Any drug test conducted or requested by an employer may occur before, during, or immediately after the regular work period of the employee, and shall be deemed to be performed during work time for the purposes of determining compensation and benefits for the employee.

(h) Every specimen that produces a positive confirmed result shall be preserved by the licensed laboratory that conducts the confirmation test for a period of at least 210 days from the time the results of the positive confirmation test are mailed or otherwise delivered to the employer. However, if an

employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee or job applicant's expense, at another laboratory, licensed and approved by the Agency for Health Care Administration, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory that ~~which~~ performed the test for the employer is ~~shall be~~ responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(i) Within 5 working days after receipt of a positive confirmed test result from the testing laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant.

(j) The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(k) Within 5 working days after receiving notice of a positive confirmed test result, the employee or job applicant may submit information to an employer explaining or contesting the test results, and why the results do not constitute a violation of the employer's policy.

(l) If an employee or job applicant's explanation or





challenge of the positive test results is unsatisfactory to the employer, a written explanation as to why the employee or job applicant's explanation is unsatisfactory, along with the report of positive results, shall be provided by the employer to the employee or job applicant. All such documentation shall be kept confidential and exempt from the provisions of s. 119.07(1) by the employer pursuant to subsection (11) and shall be retained by the employer for at least 1 year.

(m) An ~~No~~ employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test.

~~(n) In addition to the limitation under paragraph (m):~~

~~1. Except as provided in subparagraph 3., no employer may discharge, discipline, or discriminate against an employee on the sole basis of the employee's first positive confirmed drug test, unless the employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under a health insurance plan, an employee assistance program or an alcohol and drug rehabilitation program, and:~~

~~a. The employee has either refused to participate in the employee assistance program or the alcohol and drug rehabilitation program or has failed to successfully complete such program, as evidenced by withdrawal from the program before its completion or a report from the program indicating unsatisfactory compliance, or by a positive test result on a confirmation test after completion of the program; or~~

~~b. The employee has failed or refused to sign a written~~

~~consent form allowing the employer to obtain information regarding the progress and successful completion of an employee assistance program or an alcohol and drug rehabilitation program.~~

~~2. An employee in a safety-sensitive position shall be placed by the employer in a non-safety-sensitive position, or if such position is unavailable, on leave status while participating in an employee assistance program or an alcohol and drug rehabilitation program. If placed on leave status without pay, the employee shall be permitted to use any accumulated leave credits prior to being placed on leave without pay.~~

~~3. A special risk employee may be discharged or disciplined for the first positive confirmed drug test result when illicit drugs, pursuant to s. 893.13, are confirmed. No special risk employee shall be permitted to continue work in a safety-sensitive position, but may be placed either in a non-safety-sensitive position or on leave status while participating in an employee assistance program or an alcohol and drug rehabilitation program.~~

(n) ~~(o)~~ Upon successful completion of an employee assistance program or an alcohol and drug rehabilitation program, the employee shall be reinstated to the same or equivalent position that was held prior to such rehabilitation.

(o) ~~(p)~~ An ~~No~~ employer may not discharge, discipline, or discriminate against an employee, or refuse to hire a job applicant, on the basis of any prior medical history revealed to the employer pursuant to this section.

(p) ~~(q)~~ An employer who performs drug testing or specimen



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



collection shall use chain-of-custody procedures as established by the Agency for Health Care Administration to ensure proper recordkeeping, handling, labeling, and identification of all specimens to be tested.

(q) ~~(r)~~ An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees.

(r) ~~(s)~~ An employee or job applicant shall pay the costs of any additional drug tests not required by the employer.

(s) ~~(t)~~ An ~~No~~ employer may not ~~shall~~ discharge, discipline, or discriminate against an employee solely upon voluntarily seeking treatment, while under the employ of the employer, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered an alcohol and drug rehabilitation program. However, special risk employees may be subject to discharge or disciplinary action when the presence of illicit drugs, pursuant to s. 893.13, is confirmed.

(t) ~~(u)~~ If ~~Where~~ testing is conducted based on reasonable suspicion, each employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential and exempt from the provisions of s. 119.07(1) by the employer pursuant to subsection (11) and retained by the employer for at least 1 year.

(u) ~~(v)~~ If an employee is unable to participate in outpatient rehabilitation, the employee may be placed on leave



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status while participating in an employee assistance program or an alcohol and drug rehabilitation program. If placed on leave-without-pay status, the employee shall be permitted to use any accumulated leave credits prior to being placed on leave without pay. Upon successful completion of an employee assistance program or an alcohol and drug rehabilitation program, the employee shall be reinstated to the same or equivalent position that was held prior to such rehabilitation.

(10) EMPLOYER PROTECTION.—

(h) An employer may discharge or discipline ~~shall refer~~ an employee following ~~with~~ a first-time positive confirmed drug test result. If the employer does not discharge the employee, the employer may refer the employee to an employee assistance program or an alcohol and drug rehabilitation program in which the employee may participate at the expense of the employee or pursuant to a health insurance plan~~, unless such employee is discharged as provided in subparagraph (8)(n)3. If the results of a subsequent confirmed drug test are positive, the employer may discharge or discipline the employee~~.

1. If an employer refers an employee to an employee assistance program, the employer must determine whether the employee is able to safely and effectively perform the job duties assigned to the employee while the employee participates in the employee assistance program.

2. An employee whose assigned duties require the employee to carry a firearm, work closely with an employee who carries a firearm, perform life-threatening procedures, work with heavy or dangerous machinery, work as a safety inspector, work with children, work with detainees in the correctional system, work



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with confidential information or documents pertaining to criminal investigations, work with controlled substances, hold a position subject to s. 110.1127, or hold a position in which a momentary lapse in attention could result in injury or death to another person, is deemed unable to safely and effectively perform the job duties assigned to the employee while the employee participates in the employee assistance program.

3. If an employer refers an employee to an employee assistance program and the employer determines that the employee is unable, or the employee is deemed unable, to safely and effectively perform the job duties assigned to the employee before he or she completes the employee assistance program, the employer shall place the employee in a job assignment that the employer determines the employee can safely and effectively perform while participating in the employee assistance program.

4. If a job assignment in which the employee may safely and effectively perform is unavailable, the employer shall place the employee on leave status while the employee is participating in an employee assistance program. If placed on leave status without pay, the employee may use accumulated leave credits before being placed on leave without pay.

(i) ~~Nothing in~~ This section does not ~~shall be construed to~~ prohibit an employer from conducting medical screening or other tests required by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written



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consent of the employee is obtained for other tests.

~~(j) An employer shall place a safety-sensitive position employee whose drug test result is confirmed positive in a non-safety-sensitive position, or if such a position is unavailable, on leave status while the employee participates in an employee assistance program or an alcohol and drug rehabilitation program. If placed on leave status without pay, the employee shall be permitted to use any accumulated leave credits prior to being placed on leave without pay.~~

~~(k) A special risk employee may be discharged or disciplined on the first positive confirmed drug test result when illicit drugs, pursuant to s. 893.13, are confirmed. No special risk employee shall be permitted to continue work in a safety-sensitive position, but may be placed either in a non-safety-sensitive position or on leave status while participating in an employee assistance program or an alcohol and drug rehabilitation program.~~

Section 2. Paragraphs (j) and (o) of subsection (1), subsection (2), paragraph (g) of subsection (7), and subsections (11), (13), (14), and (15) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(j) "Job applicant" means a person who has applied for a position with an employer and has been offered employment



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conditioned upon successfully passing a drug test, and may have begun work pending the results of the drug test. For a public employer, "job applicant" means only a person who has applied for a special-risk or mandatory-testing ~~safety-sensitive~~ position.

(o) "Mandatory-testing position" means, with respect to a public employer, a job assignment that requires the employee to carry a firearm, work closely with an employee who carries a firearm, perform life-threatening procedures, work with heavy or dangerous machinery, work as a safety inspector, work with children, work with detainees in the correctional system, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a job assignment that requires an employee security background check pursuant to s. 110.1127; or a job assignment in which a momentary lapse in attention could result in injury or death to another person. ~~"Safety-sensitive position" means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a position subject to s. 110.1127; or a position in which a momentary lapse in attention could result in injury or death to another person.~~

(2) DRUG TESTING.—An employer may test an employee or job applicant for any drug described in paragraph (1)(c). In order to qualify as having established a drug-free workplace program under this section and to qualify for the discounts provided



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under s. 627.0915 and deny medical and indemnity benefits under this chapter, an employer must, at a minimum, implement drug testing that conforms to the standards and procedures established in this section and all applicable rules adopted pursuant to this section as required in subsection (4). However, an employer does not have a legal duty under this section to request an employee or job applicant to undergo drug testing. If an employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section and in applicable rules, the employer is ineligible for discounts under s. 627.0915. However, an employer qualifies for discounts under s. 627.0915 if the employer maintains a drug-free workplace program that is broader in scope than that provided for by the standards and procedures established in this section. An employer who qualifies ~~All employers qualifying~~ for and receives ~~receiving~~ discounts provided under s. 627.0915 must be reported annually by the insurer to the department.

(7) EMPLOYER PROTECTION.—

(g) This section does not prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or testing is limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests. Such screening or testing need not be in compliance with the rules adopted by the Agency for Health Care Administration under this chapter or





under s. 112.0455. A public employer may, through the use of an unbiased selection procedure, conduct random drug tests of employees occupying mandatory-testing ~~safety-sensitive~~ or special-risk positions if the testing is performed in accordance with drug-testing rules adopted by the Agency for Health Care Administration and the department. ~~If applicable, random drug testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented.~~

(11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-SENSITIVE~~ OR SPECIAL-RISK POSITIONS.—

(a) If an employee who is employed by a public employer in a mandatory-testing ~~safety-sensitive~~ position enters an employee assistance program or drug rehabilitation program, the employer must assign the employee to a position other than a mandatory-testing ~~safety-sensitive~~ position or, if such position is not available, place the employee on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

(b) An employee who is employed by a public employer in a special-risk position may be discharged or disciplined by a public employer for the first positive confirmed test result if the drug confirmed is an illicit drug under s. 893.03. A special-risk employee who is participating in an employee assistance program or drug rehabilitation program may not be allowed to continue to work in any special-risk or mandatory-testing ~~safety-sensitive~~ position of the public employer, but may be assigned to a position other than a mandatory-testing

~~safety-sensitive~~ position or placed on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

~~(13) COLLECTIVE BARGAINING RIGHTS.—~~

~~(a) This section does not eliminate the bargainable rights as provided in the collective bargaining process if applicable.~~

~~(b) Drug-free workplace program requirements pursuant to this section shall be a mandatory topic of negotiations with any certified collective bargaining agent for nonfederal public sector employers that operate under a collective bargaining agreement.~~

(13)~~(14)~~ APPLICABILITY.—A drug testing policy or procedure adopted by an employer pursuant to this chapter shall be applied equally to all employee classifications where the employee is subject to workers' compensation coverage.

(14)~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction contractor regulated under part I of chapter 489, and each electrical contractor and alarm system contractor regulated under part II of chapter 489, who contracts to perform construction work under a state contract for educational facilities governed by chapter 1013, for public property or publicly owned buildings governed by chapter 255, or for state correctional facilities governed by chapter 944 shall implement a drug-free workplace program under this section.

Section 3. Section 944.474, Florida Statutes, is amended to read:

944.474 Legislative intent; employee wellness program; drug and alcohol testing.—



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



(1) It is the intent of the Legislature that the state correctional system provide a safe and secure environment for both inmates and staff. A healthy workforce is a productive workforce, and security of the state correctional system can best be provided by strong and healthy employees. The Department of Corrections may develop and implement an employee wellness program. The program may include, but is not limited to, wellness education, smoking cessation, nutritional education, and overall health-risk reduction, including the effects of using drugs and alcohol.

(2) An employee ~~Under no circumstances shall employees~~ of the department may not test positive for illegal use of controlled substances. An employee of the department may not be under the influence of alcohol while on duty. In order to ensure that these prohibitions are adhered to by all employees of the department and notwithstanding s. 112.0455, the department may develop a program for the drug testing of all job applicants and for the random drug testing of all employees. The department may randomly evaluate employees for the contemporaneous use or influence of alcohol through the use of alcohol tests and observation methods. Notwithstanding s. 112.0455, the department may develop a program for the reasonable suspicion drug testing of employees who are in ~~safety-sensitive or~~ special risk positions, as defined in s. 112.0455(5), for the controlled substances listed in s. 893.03(3)(d). The reasonable suspicion drug testing authorized by this subsection shall be conducted in accordance with s. 112.0455, but may also include testing upon reasonable suspicion based on violent acts or violent behavior of an employee who is on or off duty. The department shall adopt



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rules pursuant to ss. 120.536(1) and 120.54 that are necessary to administer this subsection.

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



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

654020

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: FAV | . | |
| 01/25/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Health Regulation (Garcia) recommended the following:

**Senate Amendment**

Delete line 169
and insert:
once every three months. A random sample may not constitute more than 30 percent of the total employee population.

THE FLORIDA SENATE

# APPEARANCE RECORD

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

2/1/12
*Meeting Date*

Topic Drug-free WorkPlace

Bill Number 1358 *(if applicable)*

Name RON BILBAO

Amendment Barcode *(if applicable)*

Job Title SR. LEGISLATIVE ASSOCIATE

Address 4500 Biscayne Blvd, #340 *Street*

Phone 919-923-7288

Miami FL 33137 *City State Zip*

E-mail rbilbao@aclufl.org

Speaking: ☐ For ☑ Against ☐ Information

Representing ACLU of 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

# APPEARANCE RECORD

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

Feb 1 2012
*Meeting Date*

Topic Drug Free Workplaces

Bill Number 1358 *(if applicable)*

Name H. Lee Moffitt

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 3327 NW Perimeter Rd *Street*

Phone 813 831-1500

Palm City FL 34990 *City State Zip*

E-mail MrSpeaker@aol.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Drug Free America Foundation, Inc

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

2-1-12
*Meeting Date*

Topic Drug Free Workplace — Bill Number 1358 *(if applicable)*

Name Michael Galletta — Amendment Barcode *(if applicable)*

Job Title Teacher

Address 10269 Bannister St *Street* — Phone 352-238-8787

Spring Hill *City* FL *State* 34608 *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.*

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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)

2/1/2012
*Meeting Date*

Topic Drug-Free Workplace Act — Bill Number 1358 *(if applicable)*

Name Peggy Higgins — Amendment Barcode *(if applicable)*

Job Title 4th Grade Teacher

Address 10984 Echo Loop *Street* — Phone 727-992-6615

New Port Richey *City* 34654 *Zip* — E-mail posifriction@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Representing United School Employees of Pasco County

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)

2/1/12
*Meeting Date*

Topic Drug free workplace Act
Bill Number 1358 *(if applicable)*

Name Lorena Ortiz
Amendment Barcode *(if applicable)*

Job Title Secondary School History Teacher

Address 31518 Earn Dr *Street*
Phone 813 428-0051

Wesley Chapel FL 33545 *City State Zip*
E-mail tolex.2000@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Representing United School Employees of Pasco County

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)

2/1/2012
*Meeting Date*

Topic CAUSE/DRUG FREE
Bill Number 1358 *(if applicable)*

Name GAIL MARIE PERRY
Amendment Barcode *(if applicable)*

Job Title CHAIR

Address PO Box 1764 *Street*
Phone 954/850 4055

POMPANO BCH FLA 33061 *City State Zip*
E-mail workinggal2 @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)

2/1/12
*Meeting Date*

Topic Drug Free Work Place
Bill Number 1358 *(if applicable)*

Name Lisa Dahl
Amendment Barcode *(if applicable)*

Job Title Teacher

Address 25449 Geddy Dr *Street*
Phone 813-751-9400

Land O Lakes, FL 34639 *City State Zip*
E-mail lisad_65@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Hatfield 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)

2/1/12
*Meeting Date*

Topic Drug-Free Workplace Act
Bill Number SB 1358 *(if applicable)*

Name Wayne D'Andrews
Amendment Barcode *(if applicable)*

Job Title Teacher

Address 16083 Harbor St. *Street*
Phone

Masaryktown, FL 34609 *City State Zip*
E-mail engishteacherwayne@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Representing United School Employees of Pasco

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

~~1358~~ 2/1/12 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

*Meeting Date*

Topic Drug free Workplace Bill Number 1358 *(if applicable)*

Name Doug Martin Amendment Barcode *(if applicable)*

Job Title Legislative Dir.

Address 3064 Highland Oaks Terr Phone 850-212-7447

*Street*

Tallahassee, FL 32301 E-mail dmartin@afscmefl.org

*City* *State* *Zip*

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)

2/1/2012

*Meeting Date*

Topic Bill Number 1358 *(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**

# 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: | SM 1482 |
| INTRODUCER: | Senator Braynon |
| SUBJECT: | War on Terror |
| DATE: | January 27, 2012 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Jenkins | Roberts | GO | **Favorable** |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

This is a memorial to the Congress of the United States recognizing the death of Osama bin Laden as a positive step forward in the war on terrorism and declaring a continuing unity of commitment against terrorism, its crimes against humanity, and al-Qaeda.

## II. Present Situation:

According to the Federal Bureau of Investigation (FBI), Osama bin Laden had openly declared war on the U.S. and was committed to killing innocents well before 2001. The al-Qaeda organization, under his leadership, was responsible for the 1998 bombings of the U.S. Embassies in Dar es Salaam, Tanzania, and Nairobi, which killed over 200 people. On June 7, 1999, bin Laden was added to the FBI's Top Ten fugitives list, and the U.S. offered a $25 million reward for information that would lead to his apprehension or conviction.

On September 11, 2001, a small group of al-Qaeda members hijacked four commercial passenger aircraft in the U.S., two of which were flown into the World Trade Center towers. Another aircraft was flown into the Pentagon in Arlington, Virginia. A fourth plane was successfully retaken by passengers before crashing in Pennsylvania. The intended target of the fourth aircraft was believed to be the United States Capitol. The attack killed nearly 3,000 civilians. Intelligence agencies quickly learned that the attacks were carried out by al-Qaeda. In October 2001, bin Laden's name was added to the U.S. Department of State's Most Wanted Terrorists List. In 2004, bin Laden released a videotaped message claiming responsibility for the September 11 attacks.

On May 1, 2011, bin Laden was killed by U.S. Navy Seals in Abbottabad, Pakistan.

## III. Effect of Proposed Changes:

This memorial recognizes the death of Osama bin Laden as a positive step forward in the war on terrorism and declares a continuing unity of commitment with other states and nations against terrorism, its crimes against humanity, and al-Qaeda.

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

## 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 Braynon

33-01449-12 20121482__

Senate Memorial

A memorial to the Congress of the United States recognizing the death of Osama bin Laden as a positive step forward in the war on terrorism and declaring a continuing unity of commitment against terrorism, its crimes against humanity, and al-Qaeda.

WHEREAS, the actions taken by Osama bin Laden and al-Qaeda and its networks targeting innocent civilians, including women and children, are repugnant, and

WHEREAS, Osama bin Laden was the mastermind of the September 11, 2001, attacks on the United States of America, which murdered 2,977 citizens, and

WHEREAS, Osama bin Laden and al-Qaeda were responsible for other terrorist attacks against the United States of America, including bombing American embassies in Tanzania and Kenya and attacking the U.S.S. Cole, and

WHEREAS, a collective effort between President George W. Bush and President Barack Obama, along with the hard work of intelligence organizations and the men and women of the Armed Forces, resulted in locating Osama bin Laden, and

WHEREAS, President Barack Obama took immediate action upon learning of the location of Osama bin Laden, and

WHEREAS, while resisting capture, Osama bin Laden was killed on May 1, 2011, by operatives of the Central Intelligence Agency and Navy Seals, and

WHEREAS, Osama bin Laden's death provides some degree of closure as it relates to September 11, 2001, NOW, THEREFORE,



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

**Florida Senate - 2012** **SM 1482**

33-01449-12 20121482__

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

That we recognize the death of Osama bin Laden as a positive step forward in the war on terrorism and declare a continuing unity of commitment with other states and nations against terrorism, its crimes against humanity, and al-Qaeda.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.



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

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | CS/SM 1486 |
| INTRODUCER: | Governmental Oversight and Accountability Committee and Senator Braynon |
| SUBJECT: | Taiwan Policy Act of 2011 |
| DATE: | January 27, 2012 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Jenkins | Roberts | GO | **Fav/CS** |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

**Please see Section VIII. for Additional Information:**

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

This memorial urges Congress to pass H.R. 2918, the Taiwan Policy Act of 2011.

On September 14, 2011, United States Representative Ileana Ros-Lehtinen (R-FL), Chairman of the House Foreign Affairs Committee, introduced H.R. 2918, the Taiwan Policy Act of 2011 (Act). The Act is intended to complement the Taiwan Relations Act of 1979 by strengthening and clarifying commercial, cultural, and other relations between the people of the United States and the people of Taiwan. The resolution is co-sponsored by 29 members of Congress, including Florida Representatives Bilirakis, Diaz-Balart, and Ross. Seven Democrats are among the co-sponsors.

## II. Present Situation:

### Background

Taiwan is an island located in the western Pacific Ocean and is separated from the southeastern coast of China by the 99 mile wide Taiwan Strait. For all practical purposes, Taiwan is a multi-

party democracy that has been independent since 1950; however, China regards Taiwan as a rebel region that must be reunited with the mainland.

Taiwan's rapid economic growth in the decades after World War II has transformed it into an industrialized developed country. It is categorized as an advanced economy by the International Monetary Fund and as a high-income economy by the World Bank. Its advanced technology industry plays a key role in the global economy. Taiwanese companies manufacture a large portion of the world's consumer electronics, although most of them are now made in their factories on mainland China.

In 1979, the United States Congress passed the Taiwan Relations Act (TRA) to (1) help maintain peace, security, and stability in the Western Pacific and (2) promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.[1] In addition, the TRA states that "the United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability." The TRA also asserts that the U.S. would "consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States."

The security relationship between Taiwan and the United States has a long history reaching back as early as World War II, and the United States has long been a guarantor of Taiwan's security.[2] In the past, the military threat from the mainland has been partly offset by the pivotal relationship between Taiwan and the United States, which is the main weapons supplier to the island - one of the world's biggest buyers of arms. However, in 2010, when President Obama announced an agreement to sell $6.4 billion in arms to Taiwan, including missiles, Black Hawk helicopters, and mine-clearing ships, China broke off military contact with Washington for months. China later called the proposed sale of new F-16s a "red line that must not be crossed".[3] The Obama Administration subsequently made an offer to sell Taiwan supplies to upgrade aging Taiwanese warplanes rather than 66 F-16 fighter jets as requested. In September 2011, Rep. Ileana Ros-Lehtinen (R-FL), Chairman of the House Foreign Affairs Committee, said, "Taiwan needs our help. China is on the march in Asia, and its primary target remains democratic Taiwan."[4]

**The Taiwan Policy Act of 2011**

On September 14, 2011, United States Representative Ileana Ros-Lehtinen (R-FL), Chairman of the House Foreign Affairs Committee, introduced H.R. 2918, the Taiwan Policy Act of 2011 (Act). The Act is intended to complement the Taiwan Relations Act of 1979 (TRA) by strengthening and clarifying commercial, cultural, and other relations between the people of the United States and the people of Taiwan. The resolution is co-sponsored by 29 members of

[1] Taiwan Relations Act, Public Law 96-8, 96th Congress, Jan. 1, 1979.
[2]The Brookings Institution Taiwan-U.S. Quarterly Analysis, *The United States and Taiwan's Defense Transformation*, Feb. 2010, http://www.brookings.edu/opinions/2010/02_taiwan_defense_huang.aspx
[3] Information in this paragraph obtained from *Obama administration defends decision not to sell new F-16s to Taiwan*, William Wan and Keith B. Richburg, The Washington Post, Sept. 19, 2011.
[4]Ros-Lehtinen Opening Statement at Hearing on Taiwan, Committee on Foreign Affairs, Oct. 04, 2011, found at Policyhttp://foreignaffairs.house.gov/press_display.asp?id=2006.

Congress, including Florida Representatives Bilirakis, Diaz-Balart, and Ross. Seven Democrats are among the co-sponsors. As of January 27, 2012, a companion measure to H.R. 2918 had not been introduced in the U.S. Senate.

On November, 17, 2011, the House Committee on Foreign Relations adopted H.R. 2918. The resolution has been referred to the House Judiciary Committee, the Subcommittee on Immigration Policy and Enforcement, and the House Ways and Means Committee, but has not been heard in those committees.

The Act specifies that it shall be the policy of the United States to:

- Support Taiwan and the human rights of its people;
- Permit senior leaders of Taiwan to enter the United States under conditions of appropriate respect and permit meetings between high level Taiwanese and U.S. officials in all U.S. executive departments;
- Sign a comprehensive extradition agreement;
- Accept a letter of request from Taiwan for price and availability data or for a formal sales offer regarding the F-16C/D Fighting Falcon aircraft; and
- Include Taiwan in the visa waiver program.[5]

The Act also states that, in conducting relations with Taiwan and China, the United States continues to assent to the six assurances provided to Taiwan in 1982. The Six Assurances are that the United States: has not agreed to set a date for ending arms sales to Taiwan; has not agreed to hold prior consultations with China regarding arms sales to Taiwan; will not play a mediation role between China and Taiwan; will not revise the Taiwan Relations Act; has not altered its position regarding sovereignty over Taiwan; and will not exert pressure on Taiwan to enter into negotiations with China.

The Act also authorizes the President to make available to Taiwan defense items or defense services, including air, maritime, and ground capabilities.

According to the Congressional Budget Office (CBO), the Act will affect various aspects of U.S. policy with respect to Taiwan by:

- Requiring the Department of State to ensure Taiwan's meaningful participation in certain international organizations and provide annual reports and briefings to the Congress on its progress;
- Authorizing the President to transfer defense articles and services to Taiwan and require detailed briefings and annual reports to the Congress on such transfers; and

[5] The Visa Waiver Program (VWP) enables nationals of 36 participating countries to travel to the United States for tourism or business (visitor [B] visa purposes only) for stays of 90 days or less without obtaining a visa. The program was established to eliminate unnecessary barriers to travel, stimulating the tourism industry, and permitting the Department of State to focus consular resources in other areas. VWP eligible travelers may apply for a visa, if they prefer to do so. Nationals of VWP countries must meet eligibility requirements to travel without a visa on VWP, and therefore, some travelers from VWP countries are not eligible to use the program. VWP travelers are required to have a valid authorization through the Electronic System for Travel Authorization (ESTA) prior to travel, are screened at the port of entry into the United States, and are enrolled in the Department of Homeland Security's US-VISIT program. *See* U.S. State Department, found at
http://travel.state.gov/visa/temp/without/without_1990.html#vwp.

- Requiring reports to the Congress regarding an extradition agreement between the two countries, current security policy toward Taiwan, and the potential for Taiwan's inclusion in the Visa Waiver Program.

According to the Department of State, the Administration is already engaged in implementing most of the bill's provisions. Thus, the CBO estimates that implementing the bill will have a discretionary cost of less than $500,000 a year, totaling $1 million over the 2012-2016 period, assuming the availability of appropriated funds.[6]

The CBO also asserts that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.[7]

## III. Effect of Proposed Changes:

This memorial urges the Congress of the United States to pass H.R. 2917, the "Taiwan Policy Act of 2011," in recognition that the passage of the act is a necessary step toward nurturing and maintaining the diverse interests that bind the people of the United States and the people of Taiwan.

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

## 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.

[6] Congressional Budget Office Cost Estimate, H.R. 2918 Taiwan Policy Act of 2011, November 30th, 2011. Available at: http://www.cbo.gov/ftpdocs/125xx/doc12579/hr2918.pdf.
[7] *See* footnote 1.

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 February 1, 2012:**
The committee substitute replaced the phrase "House Resolution" in lines 3, 6, 9 and 34 with the accurate "H.R." designation.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 02/01/2012 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with title amendment)**

Delete everything after the resolving clause and insert:

That the Congress of the United States is urged to pass HR 2918, the "Taiwan Policy Act of 2011," in recognition that the passage of the act is a necessary step toward nurturing and maintaining the diverse interests that bind the people of the United States and the people of Taiwan.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the

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United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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

And the title is amended as follows:

Delete everything before the resolving clause and insert:

A bill to be entitled

A memorial to the Congress of the United States, urging Congress to pass HR 2918, the Taiwan Policy Act of 2011.

WHEREAS, HR 2918, the Taiwan Policy Act of 2011, was introduced on September 14, 2011, and is currently pending before the 112th Congress, and

WHEREAS, HR 2918 seeks to encourage and strengthen the commercial, cultural, and other interests between the people of the United States and Taiwan, as set forth in the Taiwan Relations Act which was enacted in 1979 (Public Law 96-8; 22 U.S.C. ss. 3301 et seq.) and which has served for 33 years as the foundation of United States-Taiwan relations, and

WHEREAS, we are reminded that the Taiwan Relations Act has functioned to ensure peace and stability in the Western Pacific and that it continues to be a priority of the United States to maintain that international stability, and

WHEREAS, this nation must be vigilant to encourage the secure future of Taiwan and must do all that is within our ability to encourage the military self-defense capabilities of

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Taiwan, and

WHEREAS, economically, Taiwan is the ninth largest trading partner with the United States and that trade translated into approximately $57 billion in 2010, and

WHEREAS, both nations realize that it is in the best economic interests of the United States and in the national security interests of Taiwan that these two nations continue to cultivate the intricate ties between them, NOW, THEREFORE,

**By** Senator Braynon

33-01267-12 20121486__

Senate Memorial

A memorial to the Congress of the United States, urging Congress to pass House Resolution 2918, the Taiwan Policy Act of 2011.

WHEREAS, House Resolution 2918, the Taiwan Policy Act of 2011, was introduced on September 14, 2011, and is currently pending before the 112th Congress, and

WHEREAS, House Resolution 2918 seeks to encourage and strengthen the commercial, cultural, and other interests between the people of the United States and Taiwan, as set forth in the Taiwan Relations Act which was enacted in 1979 (Public Law 96-8; 22 U.S.C. ss. 3301 et seq.) and which has served for 33 years as the foundation of United States-Taiwan relations, and

WHEREAS, we are reminded that the Taiwan Relations Act has functioned to ensure peace and stability in the Western Pacific and that it continues to be a priority of the United States to maintain that international stability, and

WHEREAS, this nation must be vigilant to encourage the secure future of Taiwan and must do all that is within our ability to encourage the military self-defense capabilities of Taiwan, and

WHEREAS, economically, Taiwan is the ninth largest trading partner with the United States and that trade translated into approximately $57 billion in 2010, and

WHEREAS, both nations realize that it is in the best economic interests of the United States and in the national security interests of Taiwan that these two nations continue to cultivate the intricate ties between them, NOW, THEREFORE,



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

**Florida Senate - 2012** **SM 1486**

33-01267-12 20121486__

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

That the Congress of the United States is urged to pass House Resolution 2918, the "Taiwan Policy Act of 2011," in recognition that the passage of the act is a necessary step toward nurturing and maintaining the diverse interests that bind the people of the United States and the people of Taiwan.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.



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

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | CS/SB 1498 |
| INTRODUCER: | Governmental Oversight and Accountability Committee and Senator Ring |
| SUBJECT: | State Technology |
| DATE: | January 24, 2012 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | McKay | Roberts | GO | **Fav/CS** |
| 2. | | | BI | |
| 3. | | | BC | |
| 4. | | | RC | |
| 5. | | | | |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## 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[2], 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.[3] As a consequence, there were missed or delayed

[1] *Enterprise Information Technology: Senate Review and Study*, Report No. 2007-140. Tallahassee, FL: January 2007.
[2] *Id.*
[3] The proprietary state legacy system was **COPES** (**CO**perative **P**ersonnel and **E**mployment **S**ystem).

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 report[4] described the history of the 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.[5]

The agency has the following duties and responsibilities:[6]

- 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;[7]

[4] Florida Department of Financial Services, *Outsourcing Human Resource Management*, undated.
[5] Section 14.204(1), (2), and (3), F.S.
[6] Section 14.204(4), F.S.
[7] The requirements for business cases to outsource are specified in s. 287.0571, F.S.

  - 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.
- 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.[8]

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.

[8] Section 14.204(5),(6), and (7), F.S.

**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 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, or agency).

**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., in the Executive Office of the Governor for administrative purposes only. The head of the agency is the Governor and Cabinet. The agency must have an executive director who is the state's Chief Information Officer, appointed by the Governor, subject to confirmation by the Cabinet and the Senate, and 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 Governor must appoint a search committee to recruit an executive director. The bill does not specify how many members the search committee will have, or what kind of credentials the search committee members must possess. The Attorney General, Chief Financial Officer, and Commissioner of Agriculture must each have one appointment to the search committee, which will determine the knowledge, skills, and abilities that qualified candidates must possess, and recommend top candidates to the Governor and Cabinet.

The bill establishes the divisions and units 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 Resources 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 yearly recommendations for the schedule for consolidating state data centers, requires agencies to execute memorandums of understanding when consolidating into a primary data center, suspends data center consolidations for the 2012-13 fiscal year, and requires all data centers and computing facilities to be consolidated into the agency by June 30, 2018.

**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 comprised of the chief information officers of the member agencies.

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 agency must reevaluate the current contract for enterprise –email services. DACS, DLA, the Department of Financial Services (DFS), and the State Board of Administration are excluded from the requirement that all state agencies receive their email through AST. Those entities 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. 364.0135, F.S., to give the duties of DMS with regards to the promotion of broadband adoption to the AST, and require the agency to use its expertise and associations in

the telecommunications industry to "foster" the goals of broadband adoption, and to assist entities with broadband projects. The agency must direct its assistance to "the entities with the most suitable expertise, resources, and capabilities" to contribute to the goals of broadband adoption.

**Section 17** amends s. 20.22, to delete the technology program from DMS' list of established programs.

**Section 18** 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 19** amends s. 215.22, F.S., to move the Communications Working Capital Trust Fund from DMS to AST.

**Sections 20 through 31** amend statutory provisions to reflect the transfer of technology duties from DMS and AEIT to the AST.

**Section 32** amends s. 287.012, F.S., to change the definition of "information technology" to equipment, hardware, software, mainframe maintenance, 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.

**Sections 33 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.

D. Other Constitutional Issues:

Article II, section 3 of the Florida Constitution creates the three branches of Florida's government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its

constitutionally assigned powers to another branch.[9] Therefore, statutes granting power to the executive branch "must clearly announce adequate standards to guide in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion."[10] The Legislature may delegate some discretion in the operation and enforcement of the law, but it cannot delegate the power to say what the law is.[11]

The bill provides that a search committee appointed by the Governor, to include one appointment by each of the three other Cabinet officers, is responsible for the following, in regards to recruiting the executive director of the new agency:

- Determining the position description;
- Establishing the knowledge, skills, and abilities that qualified candidates must possess;
- Defining and conducting the search process;
- Recommending top candidates for approval; and
- Recommending salary ranges.

The bill contains no legislatively-set standards or guidelines for the qualifications of the executive director. The qualifications are to be set entirely by the search committee, which may be a delegation issue, as the search committee's decisions may supplant the Legislature's duty to determine the law.

## 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 Full Time employees (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 4 FTEs for new resources, and $600,900 - $825,900 in additional budget to fund the new FTEs and an increase in the Executive Director's salary to an amount between $175,000 and $400,000, depending on legislative direction.

[9] *Chiles v. Children A, B, C, D, E & F,* 589 So.2d 260, 264 (Fla.1991).
[10] *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County,* 346 So.2d 53, 55-56 (Fla.1976).
[11] *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones,* 474 So.2d 359, 363 (Fla. 1st DCA 1985).

The AST will also need administrative services support. Creating and funding a Division of Administration would require an estimated 15 FTEs at an estimated cost of $992,250, but these additional costs can be offset by the over $1.3 million that DMS' Technology Program and the shared resource centers currently pay to DMS for administrative services support. There are multiple options for providing AST with administrative support, depending on legislative direction.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The bill requires the agency to "foster" the goals of broadband adoption. If it is not clear what is meant by the term "foster," it will be difficult to evaluate whether the agency is effectively doing so.

## 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 February 1, 2012:**
The CS:

- Specifies that the State Board of Administration is an optional user of the statewide email system.
- Provides that the qualifications for the executive director will be established by a search committee.
- Specifies that state data center consolidations must be completed by June 30, 2018.
- Requires the agency to reevaluate the current enterprise email contract to ensure it is meeting goals.

### B. Amendments:

None.

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

799624

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 02/01/2012 | . | |
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The Committee on Governmental Oversight and Accountability (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. (1) The Agency for Enterprise Information Technology is abolished.

(2) All of the powers, duties, functions, records, personnel, and property; funds, trust funds, and unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Agency for Enterprise Information Technology are transferred by a type one transfer, pursuant to

s. 20.06(1), Florida Statutes, to the Agency for State Technology.

Section 2. Transfers from the Department of Management Services.—

(1) The Technology Program established under section 20.22(2), Florida Statutes, 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 in the Executive Officer of the Governor.

(2) All of the powers, duties, functions, records, personnel, and property; funds, trust funds, and unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts relating to the following responsibilities 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 in the Executive Office of the Governor:

(a) Administrative and regulatory responsibilities under part II of chapter 282, Florida Statutes, consisting of ss. 282.601-282.606, Florida Statutes, relating to accessibility of electronic information and information technology for state employees and members of the public with disabilities, including the responsibility for rules for the development, procurement, maintenance, and use of accessible electronic information technology by governmental units pursuant to s. 282.604, Florida Statutes.

(b) Administrative and regulatory responsibilities under part III of chapter 282, Florida Statutes, consisting of ss.

799624

282.701-282.711, relating to the state telecommunications network, state communications, telecommunications services with state agencies and political subdivisions of the state, the SUNCOM network, the law enforcement radio system and interoperability network, regional law enforcement communications, and remote electronic access.

(c) Administrative and regulatory responsibilities under s. 364.0135, Florida Statutes, relating to broadband Internet service.

(d) Administrative and regulatory responsibilities under ss. 365.171, 365.172, 365.173, 365.174, and 365.175, Florida Statutes, relating to emergency communications number E911.

(e) Administrative and regulatory responsibilities under part I of chapter 401, Florida Statutes, consisting of ss. 401.013-401.027, relating to a statewide system of regional emergency medical telecommunications.

(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 in the Executive Office of the Governor:

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

799624

by a type one transfer, as defined in s. 20.06(1), Florida Statutes, to the Agency for State Technology in the Executive Office of the Governor.

(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, remain in effect and are 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 continue as a binding contract or agreement for the remainder of the term of such contract or agreement on the Agency for State Technology.

(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, become rules of the Agency for State Technology and 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 does 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

799624

State Technology shall be substituted as a party in interest in 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 in the Executive Office of the Governor.

(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 continues 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 which were in effect at 11:59 p.m. on June 30, 2012, become rules of the Agency for State Technology and remain in effect until amended or repealed in the manner provided by law.

(9) The Southwood 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 in the Executive Office of the Governor.

(a) Any binding contract or interagency agreement entered into between the Southwood Shared Resource Center or an entity or agent of the center and any other agency, entity, or person continues 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 Southwood Shared Resource Center which

799624

were in effect at 11:59 p.m. on June 30, 2012, become rules of the Agency for State Technology and remain in effect until amended or repealed in the manner provided by law.

Section 3. Section 14.204, Florida Statutes, is repealed.

Section 4. Section 14.206, Florida Statutes, is created to read:

14.206 Agency for State Technology.—The Agency for State Technology is created in the executive Office of the Governor.

(1) The head of the agency shall be the Governor and Cabinet.

(2) The agency is a separate budget entity and is not subject to control, supervision, or direction by the Executive Office of the Governor, including, but not limited to, purchasing, transactions involving real or personal property, personnel, or budgetary matters.

(3) The agency shall have an executive director who is the state's Chief Information Officer and who must be qualified by education and experience for the office. The executive director shall be appointed by the Governor, subject to confirmation by the Cabinet and the Senate, and shall serve at the pleasure of the Governor and Cabinet.

(a) The executive director:

1. 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.

2. Shall appoint a Chief Technology Officer to lead the divisions of the agency dedicated to the operation and delivery of enterprise information technology services.

799624

3. Shall appoint a Chief Operations Officer to lead the divisions of the agency dedicated to enterprise information technology policy, planning, standards and procurement.

4. Shall designate a state Chief Information Security Officer.

5. May appoint all employees necessary to carry out the duties and responsibilities of the agency.

(b) The Governor shall appoint a search committee to recruit an executive director for the agency. At a minimum, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture shall each have one appointment to the search committee. The committee shall determine the position description; identify the knowledge, skills, and abilities that qualified candidates must possess; define and conduct the search process; and recommend top candidates to the Governor and Cabinet for their approval. The recommendation of top candidates shall also include recommended salary ranges.

(4) The following officers, divisions, and units of the agency are established:

(a) Under the Chief Technology Officer:

1. The Division of Telecommunications which includes.

a. SUNCOM.

b. State Agency Law Enforcement Radio System.

c. State E911 Program.

2. The Division of Data Center Operations which includes.

a. Northwood Shared Resource Center.

b. Southwood Shared Resource Center.

3. The Division of Enterprise Service Delivery which includes.

799624

a. Enterprise e-mail.

(b) Under the Chief Enterprise Applications Officer:

1. Enterprise Software Design and Projects.

2. Enterprise Software Operations.

3. Enterprise Data Standards.

4. Enterprise Data Management.

(c) Under the Chief Operations Officer:

1. Strategic Planning.

2. Enterprise Information Technology Standards.

a. Enterprise Information Technology Procurement.

b. Information Technology Security and Compliance.

3. Enterprise Services Planning and Consolidation.

4. Enterprise Project Management.

(d) Under the Director of Administration:

1. Accounting and Budgeting.

2. Personnel.

3. Procurement and Contracts.

(e) Under the Office of the Executive Director:

1. Inspector General.

2. Legal.

3. Governmental Affairs.

(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) Initiate, 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

799624

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 Executive Office of the Governor, the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. At a minimum, the report must 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 which 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 pricing, and usage must 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 must 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 costs for the purposes of this section.

799624

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.

(i) Exercise technical and fiscal prudence 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 agency's duties and responsibilities.

(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 agency head and the executive director of the agency have been designed, installed, and tested and are fully operational. This

paragraph does not prescribe what actions necessary to satisfy a state agency's objectives are to be undertaken or to remove from the control and administration of the state agency 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 state agency.

(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 not use or direct the spending of operational information technology trust funds to study and develop enterprise information strategies, plans, rules, reports, policies, proposals, budgets, or enterprise information technology initiatives that are not directly related to developing information technology services for which usage fees reimburse the costs of the initiative. As used in this subsection, "operational information technology trust funds" means funds into which deposits are made on a fee-for-service basis or a trust fund dedicated to a specific information technology project or system.

(7) The agency shall operate in a manner that ensures the participation and representation of state agencies.

(8) The agency may adopt rules to carry out its duties and responsibilities.

Section 5. Section 282.0041, Florida Statutes, is reordered and amended to read:

799624

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) "Collocation" means the method by which a state agency's data center occupies physical space within a shared resource center where physical floor space, bandwidth, power, cooling, and physical security are available for an equitable usage rate and minimal complexity, and allow for the sustained management and oversight of the collocating agency's information technology resources as well as physical and logical database administration by the collocating agency's staff.

(6)~~(7)~~ "Computing facility" means a state agency site ~~space~~

799624

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~~.

(7) "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 e-mail, service hosting, telecommunications, and disaster recovery.

~~(8) "Customer entity" means an entity that obtains services from a primary data center.~~

(8)~~(9)~~ "Data center" means a state agency site ~~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.~~

(10)~~(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.

(9) ~~(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 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.~~

(11) ~~(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.

(13) ~~(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, 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.

(14) "Local area network" means any telecommunications network through which messages and data are exchanged strictly within a single building or contiguous campus.

(12) ~~(15)~~ "Information technology policy" means statements

799624

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.

(15) "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.

(16) "Memorandum of understanding" means a written agreement between a shared resource center or the Division of Telecommunications in the agency 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.

(17) "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

799624

offered by the Agency for State Technology, including information technology procurement, in accordance with general law, policies, and administrative rules.

(18) ~~(16)~~ "Performance metrics" means the measures of an organization's activities and performance.

(19) "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.

(20) ~~(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~~.

(21) ~~(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.

(22) ~~(19)~~ "Risk analysis" means the process of identifying security risks, determining their magnitude, and identifying areas needing safeguards.

(23) ~~(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~~

799624

~~scope of services provided, service level, the duration of the agreement, the responsible parties, and service costs. A service-level agreement is not a rule pursuant to chapter 120.~~

(24) "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.

(25)~~(22)~~ "Standards" means required practices, controls, components, or configurations established by an authority.

(26) "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.

(27) "State agency site" means a single, contiguous local area network segment that does not traverse a metropolitan area network or wide area network.

(28)~~(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.

(29)~~(24)~~ "Telecommunications" means the science and technology of communication at a distance, including electronic systems used in the transmission or reception of information.

(30)~~(25)~~ "Threat" means any circumstance or event that may cause harm to the integrity, availability, or confidentiality of information technology resources.

(31)~~(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 of a loan or gift of information technology resources to a state ~~an~~ agency includes the fair market value of the resources.

(32) ~~(27)~~ "Usage" means the billing amount charged by the primary data center, less any pass-through charges, to the state agency ~~customer entity~~.

(33) ~~(28)~~ "Usage rate" means a state agency's ~~customer entity's~~ usage or billing amount as a percentage of total usage.

(34) "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) The establishment of a systematic process for the planning, design, implementation, procurement, delivery, and maintenance of enterprise information technology services shall be the responsibility of the Agency for State Technology for executive branch agencies that are created or authorized in statute to perform legislatively delegated functions. The agency's 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

799624

Technology shall, in collaboration with the state agencies and 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 for 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 which 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 in 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 other state agencies submitting state 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.

(d) An estimate of the cost to provide enterprise information technology services for each state agency scheduled for consolidation.

(e) An analysis of the cost effects resulting from the planned consolidations on existing state agencies.

(f) The fiscal year adjustments to budget categories in order to absorb the transfer of state agency information technology resources pursuant to the legislative budget request instructions provided in s. 216.023.

(g) A description of any issues that must be resolved in order to accomplish as efficiently and effectively as possible all consolidations required during the fiscal year.

(4) State agencies have the following duties:

(a) For the purpose of completing its work activities, each state agency shall provide to the Agency for State Technology all requested information and any other information relevant to the state agency's ability to effectively transition its information technology resources into the agency.

(b) For the purpose of completing its work activities, each state agency shall temporarily assign staff to assist the agency with designated tasks as negotiated between the agency and the state agency.

(c) Each state agency identified for consolidation into an enterprise information technology service offering must submit a transition plan to the Agency for State Technology by September 1 of the fiscal year before the fiscal year in which the scheduled consolidation will occur. Transition plans shall be

799624

developed in consultation with the agency and must include:

1. An inventory of the state agency data center's resources being consolidated, including all hardware, software, staff, and contracted services, and the facility resources performing data center management and operations, security, backup and recovery, disaster recovery, system administration, database administration, system programming, mainframe maintenance, job control, production control, print, storage, technical support, help desk, and managed services, but excluding application development.

2. A description of the level of services needed to meet the technical and operational requirements of the platforms being consolidated and an estimate of the primary data center's cost for the provision of such services.

3. A description of expected changes to its information technology needs and the timeframe when such changes will occur.

4. A description of the information technology resources proposed to remain in the state agency.

5. A baseline project schedule for the completion of the consolidation.

6. The specific recurring and nonrecurring budget adjustments of budget resources by appropriation category into the appropriate data processing category pursuant to the legislative budget instructions in s. 216.023 necessary to support state agency costs for the transfer.

(5)(a) Unless authorized by the Legislature or as provided in paragraphs (b) and (c), a state agency may not:

1. Create a new computing service or expand an existing computing service if that service has been designated as an

799624

enterprise information technology service.

2. Spend funds before the state agency's scheduled consolidation to an enterprise information technology service to purchase or modify hardware or operations software that does not comply with hardware and software standards established by the Agency for State Technology.

3. Unless for the purpose of offsite disaster recovery services, transfer existing computing services to any service provider other than the Agency for State Technology.

4. Terminate services with the Agency for State Technology without giving written notice of intent to terminate or transfer services 180 days before such termination or transfer.

5. Initiate a new computing service with any service provider other than the Agency for State Technology if that service has been designated as an enterprise information technology service.

(b) Exceptions to the limitations in subparagraphs (a)1., 2., 3., and 5. may be granted by the Agency for State Technology if there is insufficient capacity in the primary data centers to absorb the workload associated with agency computing services, expenditures are compatible with the scheduled consolidation and established standards, or the equipment or resources are needed to meet a critical state agency business need that cannot be satisfied from surplus equipment or resources of the primary data center until the state agency data center is consolidated.

1. A request for an exception must be submitted in writing to the Agency for State Technology. The agency must accept, accept with conditions, or deny the request within 60 days after receipt of the written request. The agency's decision is not

799624

subject to chapter 120.

2. The Agency for State Technology may not approve a request unless it includes, at a minimum:

a. A detailed description of the capacity requirements of the state agency requesting the exception.

b. Documentation from the state agency head demonstrating why it is critical to the state agency's mission that the expansion or transfer must be completed within the fiscal year rather than when capacity is established at a primary data center.

3. Exceptions to subparagraph (a)4. may be granted by the Agency for State Technology if the termination or transfer of services can be absorbed within the current cost-allocation plan.

Section 7. Section 282.0056, Florida Statutes, is amended to read:

282.0056 Strategic plan, ~~development of~~ work plan, and~~;~~ ~~development of~~ implementation plans; ~~and~~ policy recommendations.—

(1) In order to provide a systematic process for meeting the state's technology needs, the executive director of the Agency for State Technology shall develop a biennial state Information Technology Resources Strategic Plan. The Governor and Cabinet shall approve the plan before transmitting it to the Legislature, biennially, starting October 1, 2013. The plan must include the following elements:

(a) The vision, goals, initiatives, and targets for state information technology for the short term of 2 years, midterm of 3 to 5 years, and long term of more than 5 years.

799624

(b) An inventory of the information technology resources in state agencies and major projects currently in progress and planned. This does not imply that the agency has approval authority over major projects. As used in this section, the term "major project" means projects that cost more than $1 million to implement.

(c) An analysis of opportunities for statewide initiatives that would yield efficiencies, cost savings, or avoidance or improve effectiveness in state programs. The analysis must 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 must 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, provide to the agency the inventory required under paragraph (1)(b). The agency shall consult with and assist state agencies in the preparation of these inventories. 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 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 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.~~

799624

~~(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 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

799624

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 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.

(2) AGENCY FOR STATE TECHNOLOGY DUTIES.—The agency shall:

(a) By October 1, 2013, provide to the Governor and Cabinet, recommendations for approving, confirming, and removing primary data center designation. Upon the approval of the Governor and Cabinet of primary data center designations, existing primary data center designations are repealed.

(b) By October 1 of each year, beginning in 2013, provide recommendations to the Governor, Cabinet, and Legislature relating to changes to the schedule for the consolidations of state agency data centers. Changes to the consolidation schedule 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

799624

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 describes its plan and schedule for resolving those issues.

(b) On the date of each consolidation specified in general law or the General Appropriations Act, each state agency shall retain the least-privileged administrative access rights necessary to perform the duties not assigned to the primary data centers.

(4) SCHEDULE FOR CONSOLIDATIONS OF STATE AGENCY DATA CENTERS.—Consolidations of state agency data centers are suspended for the 2012-2013 fiscal year. Consolidations shall resume during the 2013-2014 fiscal year based upon a revised schedule developed by the agency. State agency data centers and computing facilities shall be consolidated into the agency by June 30, 2018.

Section 9. Section 282.203, Florida Statutes, is amended to read:

(Substantial rewording of section. See
s. 282.203, Florida Statutes, for current text.)

282.203 Primary data centers; duties.—

(1) Each primary data center shall:

(a) Serve participating state agencies as an information-system utility.

(b) Cooperate with participating state agencies to offer,

develop, and support the services and applications.

(c) Comply with rules adopted by the Agency for State Technology, pursuant to this section, and coordinate with the agency in the consolidation of data centers.

(d) Provide transparent financial statements to participating state agencies.

(e) Assume the least-privileged administrative access rights necessary to perform the services provided by the data center for the software and equipment that is consolidated into a primary data center.

(2) Each primary data center shall enter into a memorandum of understanding with each participating state agency to provide services. A memorandum of understanding may not have a term exceeding 3 years but may include an option to renew for up to 3 years. Failure to execute a memorandum within 60 days after service commencement shall, in the case of a participating state agency, result in the continuation of the terms of the memorandum of understanding from the previous fiscal year, including any amendments that were formally proposed to the state agency by the primary data center within the 3 months before service commencement, and a revised cost-of-service estimate. If a participating state agency fails to execute a memorandum of understanding within 60 days after service commencement, the data center may cease providing services.

Section 10. Effective December 31, 2013, section 282.204, Florida Statutes, is repealed.

Section 11. Effective December 31, 2013, section 282.205, Florida Statutes, is repealed.

Section 12. Section 282.33, Florida Statutes, is repealed.

Section 13. Section 282.206, Florida Statutes, is created to read:

282.206 Fletcher Shared Resource Center.—The Fletcher Shared Resource Center is established as a state agency within the Department of Financial Services.

(1) The center shall collaborate with the Agency for State Technology to develop policies, procedures, standards, and rules for the delivery of enterprise information technology services.

(2) The center may comply with the policies and rules of the Agency for State Technology related to the design and delivery of enterprise information technology services.

(3) The center shall provide collocation services to the Department of Legal Affairs and the Department of Agriculture and Consumer Services.

(4) The Department of Financial Services shall continue to use the Fletcher Shared Resource Center, provide full service to the Office of Financial Regulation and the Office of Insurance Regulation, and host the Legislative Appropriations System/Planning and Budgeting Subsystem (LAS/PBS).

(5) The center shall be governed through a master memorandum of understanding and complemented by a steering committee comprised of the chief information officers of the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. The steering committee shall meet quarterly to ensure that customers are receiving expected services in accordance with the memorandum of understanding and to discuss services and structure. The committee may create ad hoc workgroups to account for, mitigate, and manage any unforeseen issues.

799624

(6) The Department of Legal Affairs shall move its data center equipment to the center by June 30, 2014.

(7) The Department of Agriculture and Consumer Services shall move its Mayo Building data center equipment to the center by June 30, 2014.

Section 14. Section 282.33, Florida Statutes, is repealed.

Section 15. Section 282.34, Florida Statutes, is amended to read:

282.34 Statewide e-mail service.—A statewide e-mail service that includes the delivery and support of e-mail, messaging, and calendaring capabilities is established as an enterprise information technology service as defined in s. 282.0041. The service shall be provisioned ~~designed~~ to meet the needs of all executive branch agencies and may also be used by other public sector ~~nonstate agency~~ entities. The primary goals of the service are to leverage the state's existing investment in e-mail; provide a reliable collaborative communication service to state agencies; minimize the state investment required to establish, operate, and support the statewide service; reduce the cost of current e-mail operations and the number of duplicative e-mail systems; and eliminate the need for each state agency to maintain its own e-mail staff.

(1) The Agency for State Technology shall reevaluate the current contract for enterprise e-mail services to ensure it meets the primary goals of the service.

(2) Except as specified in subsection (3), all state agencies shall receive their primary e-mail services exclusively through the Agency for State Technology.

(3) The Department of Agriculture and Consumer Services,

799624

the Department of Financial Services, the Office of Financial Regulation, and the Office of Insurance Regulation may receive e-mail services from the Fletcher Shared Resource Center or the Agency for State Technology.

~~(1) The Southwood Shared Resource Center, a primary data center, shall be the provider of the statewide e-mail service for all state agencies. The center shall centrally host, manage, operate, and support the service, or outsource the hosting, management, operational, or support components of the service in order to achieve the primary goals identified in this section.~~

~~(2) The Agency for Enterprise Information Technology, in cooperation and consultation with all state agencies, shall prepare and submit for approval by the 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 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-~~

799624

~~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.~~

~~(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 16. 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 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.

799624

(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.

(9) To adopt rules pursuant to ss. 120.536(1) and 120.54 relating to telecommunications and to administer the provisions of this part.

(10) To apply for and accept federal funds for the purposes of this part as well as gifts and donations from individuals, foundations, and private organizations.

(11) To monitor issues relating to telecommunications facilities and services before the Florida Public Service Commission and the Federal Communications Commission and, if necessary, prepare position papers, prepare testimony, appear as a witness, and retain witnesses on behalf of state agencies in proceedings before the commissions.

(12) Unless delegated to the state agencies by the agency ~~department~~, to manage and control, but not intercept or interpret, telecommunications within the SUNCOM Network by:

(a) Establishing technical standards to physically interface with the SUNCOM Network.

(b) Specifying how telecommunications are transmitted within the SUNCOM Network.

(c) Controlling the routing of telecommunications within the SUNCOM Network.

(d) Establishing standards, policies, and procedures for access to and the security of the SUNCOM Network.

(e) Ensuring orderly and reliable telecommunications services in accordance with the service level agreements executed with state agencies.

(13) To plan, design, and conduct experiments for telecommunications services, equipment, and technologies, and to implement enhancements in the state telecommunications network if in the public interest and cost-effective. Funding for such experiments must be derived from SUNCOM Network service revenues and may not exceed 2 percent of the annual budget for the SUNCOM Network for any fiscal year or as provided in the General Appropriations Act. New services offered as a result of this subsection may not affect existing rates for facilities or services.

(14) To enter into contracts or agreements, with or without competitive bidding or procurement, to make available, on a fair, reasonable, and nondiscriminatory basis, property and other structures under agency ~~departmental~~ control for the placement of new facilities by any wireless provider of mobile service as defined in 47 U.S.C. s. 153(27) or s. 332(d) and any telecommunications company as defined in s. 364.02 if it is practical and feasible to make such property or other structures available. The agency ~~department~~ may, without adopting a rule, charge a just, reasonable, and nondiscriminatory fee for the

799624

placement of the facilities, payable annually, based on the fair market value of space used by comparable telecommunications facilities in the state. The agency ~~department~~ and a wireless provider or telecommunications company may negotiate the reduction or elimination of a fee in consideration of services provided to the agency ~~department~~ by the wireless provider or telecommunications company. All such fees collected by the agency ~~department~~ shall be deposited directly into the Law Enforcement Radio Operating Trust Fund, and may be used by the agency ~~department~~ to construct, maintain, or support the system.

(15) Establish policies that ensure that the agency's ~~department's~~ cost-recovery methodologies, billings, receivables, 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 17. Section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption.—

(1) The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations. The term "sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(2) As the provider of the state and local government networks in accordance with part III of chapter 282, the Agency for State Technology shall use its expertise in broadband technologies, and associations with the telecommunications industry to foster the goals described in subsection (1).

(3) ~~(2)~~ The Agency for State Technology may ~~Department of Management Services is authorized to~~ work collaboratively with, and to receive staffing support and other resources from, Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations to:

(a) Monitor the adoption of broadband Internet service in collaboration with communications service providers, including, but not limited to, wireless and wireline Internet service providers, to develop geographical information system maps at the census tract level that ~~will~~:

1. Identify geographic gaps in broadband services, including areas unserved by any broadband provider and areas served by a single broadband provider;

2. Identify the download and upload transmission speeds

made available to businesses and individuals in the state, at the census tract level of detail, using data rate benchmarks for broadband service used by the Federal Communications Commission to reflect different speed tiers; and

3. Provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability.

(b) Assist other public and private entities with planning, obtaining resources, and initiating projects to achieve the goals described in subsection (1). This assistance shall be directed to the entities with the most suitable expertise, resources, and capabilities to contribute to these goals and cultivate collaboration among such entities to achieve a more comprehensive strategic approach.

(c) ~~(b)~~ Create a strategic plan that has goals and strategies for increasing the use of broadband Internet service in the state.

(d) ~~(c)~~ Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.

(e) ~~(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

799624

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.

(4) ~~(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.

(5) ~~(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.

(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 must ~~department shall~~ ensure that all entities are in compliance with any applicable

799624

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 18. 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 are established 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.

Section 19. 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 20. 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 21. 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 used as the collection medium, the Agency for State ~~Enterprise Information~~ Technology shall review and recommend to the Chief Financial Officer whether to approve the request with regard to the process or procedure to be used.

(9) For payment programs in which credit cards, charge cards, or debit cards are accepted by state agencies, the judicial branch, or units of local government, the Chief Financial Officer, in consultation with the Agency for State ~~Enterprise Information~~ Technology, may adopt rules to establish uniform security safeguards for cardholder data and to ensure

compliance with the Payment Card Industry Data Security Standards.

Section 22. Paragraph (c) of subsection (6) of section 216.292, Florida Statutes, is amended to read:

216.292 Appropriations nontransferable; exceptions.—

(6) The Chief Financial Officer shall transfer from any available funds of an agency or the judicial branch the following amounts and shall report all such transfers and the reasons therefor to the legislative appropriations committees and the Executive Office of the Governor:

(c) The amount due to the Communications Working Capital Trust Fund from moneys appropriated in the General Appropriations Act for the purpose of paying for services provided by the state communications system in the Agency for State Technology ~~Department of Management Services~~ which is unpaid 45 days after the billing date. The amount transferred shall be that billed by the department.

Section 23. Subsections (3), (4), (5), and (6) of section 282.318, Florida Statutes, are amended to read:

282.318 Enterprise security of data and information technology.—

(3) The Agency for State ~~Enterprise Information~~ Technology is responsible for establishing rules and publishing guidelines for ensuring an appropriate level of security for all data and information technology resources for executive branch agencies. The agency shall also perform the following duties and responsibilities:

(a) Develop, and annually update by February 1, an enterprise information security strategic plan that includes

security goals and objectives for the strategic issues of information security policy, risk management, training, incident management, and survivability planning.

(b) Develop enterprise security rules and published guidelines for:

1. Comprehensive risk analyses and information security audits conducted by state agencies.

2. Responding to suspected or confirmed information security incidents, including suspected or confirmed breaches of personal information or exempt data.

3. Agency security plans, including strategic security plans and security program plans.

4. The recovery of information technology and data following a disaster.

5. The managerial, operational, and technical safeguards for protecting state government data and information technology resources.

(c) Assist agencies in complying with the provisions of this section.

(d) Pursue appropriate funding for the purpose of enhancing domestic security.

(e) Provide training for agency information security managers.

(f) Annually review the strategic and operational information security plans of executive branch agencies.

(4) To assist the Agency for State ~~Enterprise Information~~ Technology in carrying out its responsibilities, each state agency head shall, at a minimum:

(a) Designate an information security manager to administer

the security program of the state agency for its data and information technology resources. This designation must be provided annually in writing to the Agency for State ~~Enterprise Information~~ Technology by January 1.

(b) Annually submit to the Agency for State ~~Enterprise Information~~ Technology ~~annually~~ by July 31, the state agency's comprehensive ~~strategic~~ and operational information security plans developed pursuant to the rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology.

1. The state agency comprehensive ~~strategic~~ information security plan must cover a 3-year period and define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and survivability. The plan must be based on the enterprise strategic information security plan created by the Agency for State ~~Enterprise Information~~ Technology. Additional issues may be included.

2. The state agency operational information security plan must include a progress report for the prior operational information security plan and a project plan that includes activities, timelines, and deliverables for security objectives that, subject to current resources, the state agency will implement during the current fiscal year. The cost of implementing the portions of the plan which cannot be funded from current resources must be identified in the plan.

(c) Conduct, and update every 3 years, a comprehensive risk analysis to determine the security threats to the data, information, and information technology resources of the state

agency. The risk analysis information is confidential and exempt from ~~the provisions of~~ s. 119.07(1), except that such information shall be available to the Auditor General and the Agency for State ~~Enterprise Information~~ Technology for performing postauditing duties.

(d) Develop, and periodically update, written internal policies and procedures that~~, which~~ include procedures for notifying the Agency for State ~~Enterprise Information~~ Technology when a suspected or confirmed breach, or an information security incident, occurs. Such policies and procedures must be consistent with the rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology to ensure the security of the data, information, and information technology resources of the state agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General and the Agency for State ~~Enterprise Information~~ Technology for performing postauditing duties.

(e) Implement appropriate cost-effective safeguards to address identified risks to the data, information, and information technology resources of the state agency.

(f) Ensure that periodic internal audits and evaluations of the state agency's security program for the data, information, and information technology resources of the state agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except

that such information shall be available to the Auditor General and the Agency for State ~~Enterprise Information~~ Technology for performing postauditing duties.

(g) Include appropriate security requirements in the written specifications for the solicitation of information technology and information technology resources and services~~,~~ which are consistent with the rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology.

(h) Provide security awareness training to employees and users of the state agency's communication and information resources concerning information security risks and the responsibility of employees and users to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks.

(i) Develop a process for detecting, reporting, and responding to suspected or confirmed security incidents, including suspected or confirmed breaches consistent with the security rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology.

1. Suspected or confirmed information security incidents and breaches must be immediately reported to the Agency for State ~~Enterprise Information~~ Technology.

2. For incidents involving breaches, agencies shall provide notice in accordance with s. 817.5681 and to the Agency for State ~~Enterprise Information~~ Technology in accordance with this subsection.

(5) Each state agency shall include appropriate security requirements in the specifications for the solicitation of contracts for procuring information technology or information

technology resources or services which are consistent with the rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology.

(6) The Agency for State ~~Enterprise Information~~ Technology may adopt rules relating to information security and to administer the provisions of this section.

Section 24. Section 282.604, Florida Statutes, is amended to read:

282.604 Adoption of rules.—The Agency for State Technology ~~Department of Management Services~~ shall, with input from stakeholders, adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ for the development, procurement, maintenance, and use of accessible electronic information technology by governmental units.

Section 25. Section 282.703, Florida Statutes, is amended to read:

282.703 SUNCOM Network; exemptions from the required use.—

(1) The SUNCOM Network is established within the Agency for State Technology ~~department~~ as the state enterprise telecommunications system for providing local and long-distance communications services to state agencies, political subdivisions of the state, municipalities, and nonprofit corporations pursuant to this part. The SUNCOM Network shall be developed to transmit all types of telecommunications signals, including, but not limited to, voice, data, video, image, and radio. State agencies shall cooperate and assist in the development and joint use of telecommunications systems and services.

(2) The Agency for State Technology ~~department~~ shall

799624

design, engineer, implement, manage, and operate through state ownership, commercial leasing, contracted services, or some combination thereof, the facilities, equipment, and contracts providing SUNCOM Network services, and shall develop a system of equitable billings and charges for telecommunications services.

(3) The Agency for State Technology ~~department~~ shall own, manage, and establish standards for the telecommunications addressing and numbering plans for the SUNCOM Network. This includes distributing or revoking numbers and addresses to authorized users of the network and delegating or revoking the delegation of management of subsidiary groups of numbers and addresses to authorized users of the network.

(4) The Agency for State Technology ~~department~~ shall maintain a directory of information and services which provides the names, phone numbers, and e-mail addresses for employees, state agencies, and network devices that are served, in whole or in part, by the SUNCOM Network. State agencies and political subdivisions of the state shall cooperate with the Agency for State Technology ~~department~~ by providing timely and accurate directory information in the manner established by the Agency for State Technology ~~department~~.

(5) All state agencies shall use the SUNCOM Network for state agency telecommunications services as the services become available; however, a state ~~an~~ agency is not relieved of responsibility for maintaining telecommunications services necessary for effective management of its programs and functions. The Agency for State Technology ~~department~~ may provide such communications services to a state university if requested by the university.

(a) If a SUNCOM Network service does not meet the telecommunications requirements of a state ~~an~~ agency, the state agency must notify the Agency for State Technology ~~department~~ in writing and detail the requirements for that service. If the agency ~~department~~ is unable to meet a state ~~an~~ agency's requirements by enhancing SUNCOM Network service, the Agency for State Technology ~~department~~ may grant the state agency an exemption from the required use of specified SUNCOM Network services.

(b) Unless an exemption has been granted by the agency ~~department, effective October 1, 2010~~, all customers of a state primary data center, excluding state universities, must use the shared SUNCOM Network telecommunications services connecting the state primary data center to SUNCOM services for all telecommunications needs in accordance with agency ~~department~~ rules.

1. Upon discovering ~~discovery of~~ customer noncompliance with this paragraph, the agency ~~department~~ shall provide the affected customer with a schedule for transferring to the shared 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 does ~~may not be construed to~~ require a state university to use SUNCOM Network communication services.

Section 26. Section 282.704, Florida Statutes, is amended to read:

799624

282.704 Use of state SUNCOM Network by municipalities.—A ~~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 27. 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 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, upon request, provide to the

799624

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 28. 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 to any library in the state, including libraries in public schools, community colleges, state universities, and nonprofit private postsecondary educational institutions, and libraries owned and operated by municipalities and political subdivisions. This section does ~~may~~ not ~~be construed to~~ require a state university library to use SUNCOM Network services.

Section 29. Section 282.707, Florida Statutes, is amended to read:

282.707 SUNCOM Network; criteria for usage.—

799624

(1) The Agency for State Technology ~~department~~ and customers served by the agency ~~department~~ shall periodically review the qualifications of subscribers using the state SUNCOM Network and terminate services provided to a facility not qualified under this part or rules adopted hereunder. In the event of nonpayment of invoices by subscribers whose SUNCOM Network invoices are paid from sources other than legislative appropriations, such nonpayment represents good and sufficient reason to terminate service.

(2) The Agency for State Technology ~~department~~ shall adopt rules for implementing and operating the state SUNCOM Network, which include procedures for withdrawing and restoring authorization to use the state SUNCOM Network. Such rules must ~~shall~~ provide a minimum of 30 days' notice to affected parties before terminating voice communications service.

(3) This section does not limit or restrict the ability of the Florida Public Service Commission to set jurisdictional tariffs of telecommunications companies.

Section 30. Section 282.709, Florida Statutes, is amended to read:

282.709 State agency law enforcement radio system and interoperability network.—

(1) The Agency for State Technology ~~department~~ may acquire and administer a statewide radio communications system to serve law enforcement units of state agencies, and to serve local law enforcement agencies through mutual aid channels.

(a) The agency ~~department shall~~, in conjunction with the Department of Law Enforcement and the Division of Emergency Management, shall establish policies, procedures, and standards

to be incorporated into a comprehensive management plan for the use and operation of the statewide radio communications system.

(b) The agency ~~department~~ shall bear the overall responsibility for the design, engineering, acquisition, and implementation of the statewide radio communications system and for ensuring the proper operation and maintenance of all common system equipment.

(c)1. The agency ~~department~~ may rent or lease space on any tower under its control and refuse to lease space on any tower at any site.

2. The agency ~~department~~ may rent, lease, or sublease ground space as necessary to locate equipment to support antennae on the towers. The costs for the use of such space shall be established by the agency ~~department~~ for each site if it is determined to be practicable and feasible to make space available.

3. The agency ~~department~~ may rent, lease, or sublease ground space on lands acquired by the agency ~~department~~ for the construction of privately owned or publicly owned towers. The agency ~~department~~ may, as a part of such rental, lease, or 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~~.

(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.

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 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, shall 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 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

799624

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 31. 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 shall ~~department is hereby authorized and directed to~~ develop and maintain a statewide 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.

799624

(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 for State Technology ~~department~~ in the development of the statewide system of regional law enforcement communications proposed by this section.

Section 32. 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

799624

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 33. 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, but is not limited to, equipment, hardware, software, mainframe maintenance, 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 34. Subsection (22) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.—

(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 basis or as a fixed percentage of the cost savings generated. At a minimum, the fees must be set in an amount sufficient to cover the projected costs of the services, including administrative and project service costs in accordance with the policies of the department.

2. If the department contracts with a provider for online procurement, the department, pursuant to appropriation, shall compensate the provider from the fees after the department has satisfied all ongoing costs. The provider shall report

transaction data to the department each month so that the department may determine the amount due and payable to the department from each vendor.

3. All fees that are due and payable to the state on a transactional basis or as a fixed percentage of the cost savings generated are subject to s. 215.31 and must be remitted within 40 days after receipt of payment for which the fees are due. For fees that are not remitted within 40 days, the vendor shall pay interest at the rate established under s. 55.03(1) on the unpaid balance from the expiration of the 40-day period until the fees are remitted.

4. All fees and surcharges collected under this paragraph shall be deposited in the Operating Trust Fund as provided by law.

Section 35. Subsection (17) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(17) In addition to any penalties imposed, a surcharge of $3 must be paid for all criminal offenses listed in s. 318.17 and for all noncriminal moving traffic violations under chapter 316. Revenue from the surcharge shall be remitted to the Department of Revenue and deposited quarterly into the State Agency Law Enforcement Radio System Trust Fund of the Agency for State Technology ~~Department of Management Services~~ for the state agency law enforcement radio system, as described in s. 282.709, and to provide technical assistance to state agencies and local law enforcement agencies with their statewide systems of

799624

regional law enforcement communications, as described in s. 282.7101. This subsection expires July 1, 2012. The Agency for State Technology ~~Department of Management Services~~ may retain funds sufficient to recover the costs and expenses incurred for managing, administering, and overseeing the Statewide Law Enforcement Radio System, and providing technical assistance to state agencies and local law enforcement agencies with their statewide systems of regional law enforcement communications. The Agency for State Technology ~~Department of Management Services~~ working in conjunction with the Joint Task Force on State Agency Law Enforcement Communications shall determine and direct the purposes for which these funds are used to enhance and improve the radio system.

Section 36. Section 320.0802, Florida Statutes, is amended to read:

320.0802 Surcharge on license tax.—A surcharge ~~There~~ is hereby levied and imposed on each license tax imposed under s. 320.08, except those set forth in s. 320.08(11), ~~a surcharge~~ in the amount of $1, which shall be collected in the same manner as the license tax and deposited into the State Agency Law Enforcement Radio System Trust Fund of the Agency for State Technology ~~Department of Management Services~~.

Section 37. Subsection (9) of section 328.72, Florida Statutes, is amended to read:

328.72 Classification; registration; fees and charges; surcharge; disposition of fees; fines; marine turtle stickers.—

(9) SURCHARGE.—In addition, a surcharge ~~there~~ is hereby levied and imposed on each vessel registration fee imposed under subsection (1) ~~a surcharge~~ in the amount of $1 for each 12-month

799624

period of registration, which shall be collected in the same manner as the fee and deposited into the State Agency Law Enforcement Radio System Trust Fund of the Agency for State Technology ~~Department of Management Services~~.

Section 38. 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 municipality ~~any city~~, county, or political subdivision of the state and its agencies.

(c) "Public agency" means the state and any municipality ~~city~~, county, municipality ~~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 must ~~shall~~ provide for:

(a) The public agency emergency communications requirements for each entity of local government in the state.

(b) A system to meet specific local government

799624

requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.

(c) Identification of the mutual aid agreements necessary to obtain an effective E911 system.

(d) A funding provision that identifies the cost necessary to implement the E911 system.

The agency is ~~office shall be~~ responsible for the implementation and coordination of such plan. The agency ~~office~~ shall adopt any necessary rules and schedules related to public agencies for implementing and coordinating the plan~~, pursuant to chapter 120~~.

(5) SYSTEM DIRECTOR.—The executive director of the agency ~~secretary of the department~~ or his or her designee is designated as the director of the statewide emergency communications number E911 system and, for the purpose of carrying out the provisions of this section, may ~~is authorized to~~ coordinate the activities of the system with state, county, local, and private agencies. The director, in implementing the system, shall consult, cooperate, and coordinate with local law enforcement agencies.

(7) TELECOMMUNICATIONS INDUSTRY COORDINATION.—The agency ~~office~~ shall coordinate with the Florida Public Service Commission to ~~which shall~~ encourage the Florida telecommunications industry to activate facility modification plans for timely E911 implementation.

(9) SYSTEM APPROVAL.—An ~~No~~ emergency communications number E911 system may not ~~shall~~ be established and a ~~and no~~ present system may not ~~shall~~ be expanded without prior approval of the

agency ~~office~~.

(10) COMPLIANCE.—All public agencies shall assist the agency ~~office~~ in their efforts to carry out the intent of this section, and such agencies shall comply with the developed plan.

(11) FEDERAL ASSISTANCE.—The executive director of the agency ~~secretary of the department~~ or his or her designee may apply for and accept federal funding assistance in the development and implementation of a statewide emergency communications number E911 system.

Section 39. Paragraphs (a) through (s) of subsection (3) of section 365.172, Florida Statutes, are redesignated as paragraphs (b) through (t), respectively, a new paragraph (a) is added to that subsection, and paragraph (d) of subsection (2), present paragraph (t) of subsection (3), subsection (4), paragraph (a) of subsection (5), paragraph (c) of subsection (6), and paragraph (f) of subsection (12) of that section are amended to read:

365.172 Emergency communications number "E911."—

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(d) Provide for an E911 board to administer the fee, with oversight by the Agency for State Technology ~~office~~, in a manner that is competitively and technologically neutral as to all voice communications services providers.

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.

799624

(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).

(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 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) Notwithstanding 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 Transportation may ~~are authorized to~~ adopt rules for the terms and conditions and granting of any such leases.

Section 40. 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 counties and for the provision of grants by the agency ~~office~~ to rural counties for upgrading and replacing E911 systems.

The Legislature recognizes that the fee authorized under s. 365.172 may not necessarily provide the total funding required for establishing or providing the E911 service. It is the intent of the Legislature that all revenue from the fee be used as specified in this subsection.

Section 41. Subsection (1) of section 365.174, Florida Statutes, is amended to read:

365.174 Proprietary confidential business information.—

(1) All proprietary confidential business information submitted by a provider to the board or to the Agency for State Technology ~~office~~, including the name and billing or service addresses of service subscribers, and trade secrets as defined by s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Statistical abstracts of information collected by the board or the agency ~~office~~ may be released or published, but only in a manner that does not identify or allow identification of subscribers or their service numbers or of revenues attributable to any provider.

Section 42. Section 401.013, Florida Statutes, is amended to read:

401.013 Legislative intent.—It is the intention and purpose of the Legislature that a statewide system of regional emergency medical telecommunications be developed whereby maximum use of existing radio channels is achieved in order to more effectively and rapidly provide emergency medical service to the general population. To this end, all emergency medical service entities within the state are directed to provide the Agency for State Technology ~~Department of Management Services~~ with any

information the agency ~~department~~ requests for the purpose of implementing ~~the provisions of~~ s. 401.015, and such entities shall comply with the resultant provisions established pursuant to this part.

Section 43. Section 401.015, Florida Statutes, is amended to read:

401.015 Statewide regional emergency medical telecommunication system.—The Agency for State Technology shall ~~Department of Management Services is authorized and directed to~~ develop a statewide system of regional emergency medical telecommunications. For the purpose of this part, the term "telecommunications" means ~~those~~ voice, data, and signaling transmissions and receptions between emergency medical service components, including, but not limited to: ambulances; rescue vehicles; hospitals or other related emergency receiving facilities; emergency communications centers; physicians and emergency medical personnel; paging facilities; law enforcement and fire protection agencies; and poison control, suicide, and emergency management agencies. In formulating such ~~a~~ system, the agency ~~department~~ shall divide the state into appropriate regions and ~~shall~~ develop a program that ~~which~~ includes, but is not limited to, the following ~~provisions~~:

(1) A requirements provision that states~~, which shall state~~ the telecommunications requirements for each emergency medical entity comprising the region.

(2) An interfacility communications provision that depicts~~, which shall depict~~ the telecommunications interfaces between the various medical service entities that ~~which~~ operate within the region and state.

799624

(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 44. 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 is ~~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 administering ~~implementing~~ and coordinating the ~~such~~ a system.

(2) The Agency for State Technology ~~Department of Management Services~~ shall be designated as the state frequency coordinator for the special emergency radio service.

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Section 45. 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 46. 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 47. 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 48. Paragraph (a) of subsection (2) of section 401.465, Florida Statutes, is amended to read:

401.465 911 public safety telecommunicator certification.—

(2) PERSONNEL; STANDARDS AND CERTIFICATION.—

(a) Effective October 1, 2012, any person employed as a 911

public safety telecommunicator at a public safety answering point, as defined in s. 365.172(3)(b) ~~s. 365.172(3)(a)~~, must be certified by the department.

Section 49. Subsection (4) of section 445.011, Florida Statutes, is amended to read:

445.011 Workforce information systems.—

(4) Workforce Florida, Inc., shall coordinate development and implementation of workforce information systems with the executive director of the Agency for State ~~Enterprise Information~~ Technology to ensure compatibility with the state's information system strategy and enterprise architecture.

Section 50. Subsection (2) and paragraphs (a) and (b) of subsection (4) of section 445.045, Florida Statutes, are amended to read:

445.045 Development of an Internet-based system for information technology industry promotion and workforce recruitment.—

(2) Workforce Florida, Inc., shall coordinate with the Agency for State ~~Enterprise Information~~ Technology and the Department of Economic Opportunity to ensure links, where feasible and appropriate, to existing job information websites maintained by the state and state agencies and to ensure that information technology positions offered by the state and state agencies are posted on the information technology website.

(4)(a) Workforce Florida, Inc., shall coordinate development and maintenance of the website under this section with the executive director of the Agency for State ~~Enterprise Information~~ Technology to ensure compatibility with the state's information system strategy and enterprise architecture.

(b) Workforce Florida, Inc., may enter into an agreement with the Agency for State ~~Enterprise Information~~ Technology, the Department of Economic Opportunity, or any other public agency with the requisite information technology expertise for the provision of design, operating, or other technological services necessary to develop and maintain the website.

Section 51. Paragraph (b) of subsection (18) of section 668.50, Florida Statutes, is amended to read:

668.50 Uniform Electronic Transaction Act.—

(18) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES.—

(b) To the extent that a governmental agency uses electronic records and electronic signatures under paragraph (a), the Agency for State ~~Enterprise Information~~ Technology, in consultation with the governmental agency, giving due consideration to security, may specify:

1. The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes.

2. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process.

3. Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

4. Any other required attributes for electronic records

799624

which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

Section 52. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to state technology; abolishing the Agency for Enterprise Information Technology; transferring the personnel, functions, and funds of the Agency for Enterprise Information Technology to the Agency for State Technology; transferring specified personnel, functions, and funds relating to technology programs from the Department of Management Services to the Agency for State Technology; transferring the Northwood Shared Resource Center and the Southwood Shared Resource Center to the agency; repealing s. 14.204, F.S., relating to the Agency for Enterprise Information Technology; creating s. 14.206, F.S.; creating the Agency for State Technology; providing for an executive director who shall be the state's Chief Information Officer; requiring the Governor to appoint a search committee to recommend candidates for executive director; providing for organization of the agency; providing duties and responsibilities of the agency and of the executive

director; prohibiting the agency from using certain trust funds for certain purposes; authorizing the agency to adopt rules; reordering and amending s. 282.0041, F.S.; revising and providing definitions of terms as used in the Enterprise Information Technology Services Management Act; amending s. 282.0055, F.S.; revising provisions for assignment of information technology services; directing the agency to create a road map for enterprise information technology service consolidation and a comprehensive transition plan; requiring the transition plan to be submitted to the Governor and Cabinet and the Legislature by a certain date; providing duties for state agencies relating to the transition plan; prohibiting state agencies from certain technology-related activities; providing for exceptions; amending s. 282.0056, F.S.; providing for development by the agency executive director of a biennial State Information Technology Strategic Resources Plan for approval by the Governor and the Cabinet; directing state agencies to submit their own information technology plans and any requested information to the agency; revising provisions for development of work plans and implementation plans; revising provisions for reporting on achievements; amending s. 282.201, F.S.; revising provisions for a state data center system; providing legislative intent; directing the agency to provide recommendations to the Governor, Cabinet, and Legislature relating to primary data center

designations and changes to the schedule for the consolidations of state agency data centers; providing duties of a state agency consolidating a data center into a primary data center; revising the scheduled consolidation dates for state agency data centers; amending s. 282.203, F.S.; revising duties of primary data centers; removing provisions for boards of trustees to head primary data centers; requiring a memorandum of understanding between the primary data center and the participating state agency; limiting the term of the memorandum; providing for failure to enter into a memorandum; repealing s. 282.204, F.S., relating to Northwood Shared Resource Center; repealing s. 282.205, F.S., relating to Southwood Shared Resource Center; creating s. 282.206, F.S.; establishing the Fletcher Shared Resource Center within the Department of Financial Services to provide enterprise information technology services; directing the center to collaborate with the agency; directing the center to provide collocation services to the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services; directing the Department of Financial Services to continue to use the center and provide service to the Office of Financial Regulation and the Office of Insurance Regulation and host the Legislative Appropriations System/Planning and Budgeting Subsystem; providing for governance of the center; providing for a steering committee to ensure

adequacy and appropriateness of services; directing the Department of Legal Affairs and the Department of Agriculture and Consumer Services to move data center equipment to the center by certain dates; repealing s. 282.33, F.S., relating to objective standards for data center energy efficiency; amending s. 282.34, F.S.; revising provisions for a statewide e-mail service to meet the needs of executive branch agencies; requiring the agency to reevaluate the current contract for e-mail services; requiring state agencies to receive e-mail services through the agency; authorizing the Department of Agriculture and Consumer Services, the Department of Financial Services, the Office of Financial Regulation, and the Office of Insurance Regulation to receive e-mail services from the Fletcher Shared Resource Center or the agency; amending s. 282.702, F.S.; directing the agency to develop a plan for statewide voice-over-Internet protocol services; requiring certain content in the plan; requiring the plan to be submitted to the Governor, the Cabinet, and the Legislature by a certain date; amending s. 364.0135, F.S.; providing for the agency's role in the promotion of broadband Internet service; providing an additional duty; amending ss. 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, 287.057, 318.18, 320.0802, 328.72, 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, F.S., relating to a financial and cash management system task force, career service exemptions, trust funds, payment cards and electronic funds transfers, the Communications Working Capital Trust Fund, the Enterprise Information Technology Services Management Act, adoption of rules, the Communication Information Technology Services Act, procurement of commodities and contractual services, the Florida Uniform Disposition of Traffic Infractions Act, surcharge on vehicle license tax, vessel registration, broadband Internet service, the emergency communications number E911, regional emergency medical telecommunications, the Workforce Innovation Act of 2000, and the Uniform Electronic Transaction Act; conforming provisions and cross-references to changes made by the act; revising and deleting obsolete provisions; providing effective dates.

777268

LEGISLATIVE ACTION

| Senate | . | House |
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| Comm: RCS | . | |
| 02/01/2012 | . | |
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The Committee on Governmental Oversight and Accountability (Ring) recommended the following:

**Senate Amendment to Amendment (799624)**

Delete line 444
and insert:
the legislative and judicial branches, the State Board of Administration, the State University

Delete line 488
and insert:
include the State Board of Administration, university boards of trustees, or state universities.

777268

Delete lines 912 - 913

and insert:

the Department of Legal Affairs, the Department of Financial Services, the Office of Financial Regulation, the Office of Insurance Regulation, and the State Board of Administration may receive

243162

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: WD | . | |
| 02/01/2012 | . | |
| | . | |
| | . | |
| | . | |

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

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__

A bill to be entitled

An act relating to state technology; abolishing the Agency for Enterprise Information Technology; transferring the personnel, functions, and funds of the Agency for Enterprise Information Technology to the Agency for State Technology; transferring specified personnel, functions, and funds relating to technology programs from the Department of Management Services to the Agency for State Technology; transferring the Northwood Shared Resource Center and the Southwood Shared Resource Center to the agency; repealing s. 14.204, F.S., relating to the Agency for Enterprise Information Technology; creating s. 14.206, F.S.; creating the Agency for State Technology; providing for organization of the agency; providing for an executive director who shall be the state's Chief Information Officer; providing duties and responsibilities of the agency and of the executive director; requiring certain status reports to the Governor, the Cabinet, and the Legislature; authorizing the agency to adopt rules; amending s. 282.0041, F.S.; revising and providing definitions of terms as used in the Enterprise Information Technology Services Management Act; amending s. 282.0055, F.S.; revising provisions for assignment of information technology services; directing the agency to create a road map for enterprise information technology service consolidation and a comprehensive transition plan; requiring the transition plan to be submitted to the



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



32-00639B-12 20121498__

Governor and Cabinet and the Legislature by a certain date; providing duties for state agencies relating to the transition plan; prohibiting state agencies from certain technology-related activities; providing for exceptions; amending s. 282.0056, F.S.; providing for development by the agency executive director of a biennial State Information Technology Strategic Plan for approval by the Governor and the Cabinet; directing state agencies to submit their own information technology plans and any requested information to the agency; revising provisions for development of work plans and implementation plans; revising provisions for reporting on achievements; amending s. 282.201, F.S.; revising provisions for a state data center system; providing legislative intent; directing the agency to provide recommendations to the Governor and Legislature relating to changes to the schedule for the consolidations of state agency data centers; providing duties of a state agency consolidating a data center into a primary data center; suspending the consolidations scheduled for state agency data centers for a specified period; amending s. 282.203, F.S.; revising duties of primary data centers; removing provisions for boards of trustees to head primary data centers; requiring a memorandum of understanding between the primary data center and the participating state agency; limiting the term of the memorandum; providing for failure to enter into a memorandum;



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

repealing s. 282.204, F.S., relating to Northwood Shared Resource Center; repealing s. 282.205, F.S., relating to Southwood Shared Resource Center; creating s. 282.206, F.S.; establishing the Fletcher Shared Resource Center within the Department of Financial Services to provide enterprise information technology services; directing the center to collaborate with the agency; directing the center to provide colocation services to the Office of the Attorney General and the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services; directing the Department of Financial Services to continue to use the center and provide service to the Office of Financial Regulation and the Office of Insurance Regulation and host the Legislative Appropriations System/Planning and Budgeting Subsystem; providing for governance of the center; providing for a steering committee to ensure adequacy and appropriateness of services; directing the Department of Legal Affairs and the Department of Agriculture and Consumer Services to move data center equipment to the center by certain dates; repealing s. 282.33, F.S., relating to objective standards for data center energy efficiency; amending s. 282.34, F.S.; revising provisions for a statewide e-mail service to meet the needs of executive branch agencies; requiring state agencies to receive e-mail services through the agency; authorizing the Department of Agriculture and Consumer Services, the Department of Financial





Services, the Office of Financial Regulation, and the Office of Insurance Regulation to receive e-mail services from the Fletcher Shared Resource Center or the agency; amending s. 282.702, F.S.; directing the agency to develop a plan for statewide voice-over-Internet protocol services; requiring certain content in the plan; requiring the plan to be submitted to the Governor, the Cabinet, and the Legislature by a certain date; amending ss. 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, 287.057, 318.18, 320.0802, 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, F.S., relating to a financial and cash management system task force, career service exemptions, trust funds, payment cards and electronic funds transfers, the Communications Working Capital Trust Fund, the Enterprise Information Technology Services Management Act, adoption of rules, the Communication Information Technology Services Act, procurement of commodities and contractual services, the Florida Uniform Disposition of Traffic Infractions Act, surcharge on vehicle license tax, vessel registration, broadband Internet service, the emergency communications number E911, regional emergency medical telecommunications, the Workforce Innovation Act of 2000, and the Uniform Electronic Transaction Act; conforming provisions and cross-

references to changes made by the act; revising and deleting obsolete provisions; providing an effective date.

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

Section 1. (1) The Agency for Enterprise Information Technology is abolished.

(2) All of the powers, duties, functions, records, personnel, and property; funds, trust funds, and unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Agency for Enterprise Information Technology are transferred by a type two transfer, pursuant to s. 20.06(2), Florida Statutes, to the Agency for State Technology.

Section 2. Transfers from the Department of Management Services.—

(1) The Technology Program established under section 20.22(2), Florida Statutes, is transferred intact 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.

(2) All of the powers, duties, functions, records, personnel, and property; funds, trust funds, and unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts relating to the following responsibilities of the Department of Management Services are





transferred by a type one transfer, as defined in s. 20.06(2), Florida Statutes, to the Agency for State Technology:

(a) Administrative and regulatory responsibilities under part II of chapter 282, Florida Statutes, consisting of ss. 282.601-282.606, Florida Statutes, relating to accessibility of electronic information and information technology for state employees and members of the public with disabilities, including the responsibility for rules for the development, procurement, maintenance, and use of accessible electronic information technology by governmental units pursuant to section 282.604, Florida Statutes.

(b) Administrative and regulatory responsibilities under part III of chapter 282, Florida Statutes, consisting of ss. 282.701-282.711, relating to the state telecommunications network, state communications, telecommunications services with state agencies and political subdivisions of the state, the SUNCOM network, the law enforcement radio system and interoperability network, regional law enforcement communications, and remote electronic access.

(c) Administrative and regulatory responsibilities under s. 364.0135, Florida Statutes, relating to broadband Internet service.

(d) Administrative and regulatory responsibilities under ss. 365.171, 365.172, 365.173, 365.174, and 365.175, Florida Statutes, relating to emergency communications number E911.

(e) Administrative and regulatory responsibilities under part I of chapter 401, Florida Statutes, consisting of ss. 401.013-401.027, relating to a statewide system of regional emergency medical telecommunications.

(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.





(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

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 Southwood 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 Southwood 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.

Section 3. Section 14.204, Florida Statutes, is repealed.

Section 4. Section 14.206, Florida Statutes, is created to read:

14.206 Agency for State Technology; creation; powers and duties.—

(1) There is created the Agency for State Technology. The head of the agency shall be the Governor and Cabinet.

(2) The following officers, divisions, and units of the agency are established:

(a) Under the Chief Technology Officer:

1. The Division of Telecommunications.

a. SUNCOM.

b. State Agency Law Enforcement Radio System.

c. State E911 Program.

2. The Division of Data Center Operations.

a. Northwood Shared Resource Center.





b. Southwood Shared Resource Center.

3. The Division of Enterprise Service Delivery.

a. Enterprise e-mail.

(b) Under the Chief Enterprise Applications Officer:

1. Enterprise Software Design and Projects.

2. Enterprise Software Operations.

3. Enterprise Data Standards.

4. Enterprise Data Management.

(c) Under the Deputy Director of Enterprise Information Technology Standards, Procurement, and Service Design:

1. Strategic Planning.

2. Enterprise Information Technology Standards.

a. Enterprise Information Technology Procurement.

b. Information Technology Security and Compliance.

3. Enterprise Services Planning and Consolidation.

(d) Under the Director of Administration:

1. Accounting and Budgeting.

2. Personnel.

3. Procurement and Contracts.

(e) Under the Office of the Executive Director:

1. Inspector General.

2. Legal.

3. Project Management Office.

4. Governmental Affairs.

(3) The agency shall have an executive director who is the state's Chief Information Officer and who must be qualified by education and experience for the office. The executive director shall be appointed by the Governor, subject to confirmation by the Cabinet and the Senate, and serve at the pleasure of the

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





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

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.





(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.

(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~~



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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~~



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~~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,





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

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~~





~~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

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



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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.



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(d) An estimate of the cost to provide enterprise information technology services for each state agency scheduled for consolidation.

(e) An analysis of the cost effects resulting from the planned consolidations on existing state agencies.

(f) The fiscal year adjustments to budget categories in order to absorb the transfer of agency information technology resources pursuant to the legislative budget request instructions provided in s. 216.023.

(g) A description of any issues that must be resolved in order to accomplish as efficiently and effectively as possible all consolidations required during the fiscal year.

(4) State agencies have the following duties:

(a) For the purpose of completing its work activities, each state agency shall provide to the Agency for State Technology all requested information and any other information relevant to the state agency's ability to effectively transition its information technology resources into the agency.

(b) For the purpose of completing its work activities, each state agency shall temporarily assign staff to assist the agency as negotiated between the agency and the state agency.

(c) Each state agency identified for consolidation into an enterprise information technology service offering shall submit a transition plan to the Agency for State Technology by September 1 of the fiscal year before the fiscal year in which the scheduled consolidation will occur. Transition plans shall be developed in consultation with the Agency for State Technology and must include:

1. An inventory of the state agency data center's resources





being consolidated, including all hardware, software, staff, and contracted services, and the facility resources performing data center management and operations, security, backup and recovery, disaster recovery, system administration, database administration, system programming, job control, production control, print, storage, technical support, help desk, and managed services, but excluding application development.

2. A description of the level of services needed to meet the technical and operational requirements of the platforms being consolidated and an estimate of the primary data center's cost for the provision of such services.

3. A description of expected changes to its information technology needs and the timeframe when such changes will occur.

4. A description of the information technology resources proposed to remain in the state agency.

5. A baseline project schedule for the completion of the consolidation.

6. The specific recurring and nonrecurring budget adjustments of budget resources by appropriation category into the appropriate data processing category pursuant to the legislative budget instructions in s. 216.023 necessary to support state agency costs for the transfer.

(5)(a) Unless authorized by the Legislature or as provided in paragraphs (b) and (c), a state agency may not:

1. Create a new computing service or expand an existing computing service if that service has been designated as an enterprise information technology service.

2. Spend funds before the state agency's scheduled consolidation to an enterprise information technology service to

purchase or modify hardware or operations software that does not comply with hardware and software standards established by the Agency for State Technology.

3. Unless for the purpose of offsite disaster recovery services, transfer existing computing services to any service provider other than the Agency for State Technology.

4. Terminate services with the Agency for State Technology without giving written notice of intent to terminate or transfer services 180 days before such termination or transfer.

5. Initiate a new computing service with any service provider other than the Agency for State Technology if that service has been designated as an enterprise information technology service.

(b) Exceptions to the limitations in subparagraphs (a)1., 2., 3., and 5. may be granted by the Agency for State Technology if there is insufficient capacity in the primary data centers to absorb the workload associated with agency computing services, expenditures are compatible with the scheduled consolidation and established standards, or the equipment or resources are needed to meet a critical state agency business need that cannot be satisfied from surplus equipment or resources of the primary data center until the state agency data center is consolidated.

1. A request for an exception must be submitted in writing to the Agency for State Technology. The agency must accept, accept with conditions, or deny the request within 60 days after receipt of the written request. The agency's decision is not subject to chapter 120.

2. The Agency for State Technology may not approve a request unless it includes, at a minimum:





a. A detailed description of the capacity requirements of the state agency requesting the exception.

b. Documentation from the state agency head demonstrating why it is critical to the state agency's mission that the expansion or transfer must be completed within the fiscal year rather than when capacity is established at a primary data center.

3. Exceptions to subparagraph (a)4. may be granted by the Agency for State Technology if the termination or transfer of services can be absorbed within the current cost-allocation plan.

Section 7. Section 282.0056, Florida Statutes, is amended to read:

282.0056 Development of strategic plan; development and administration of work plan; development of implementation plans; ~~and~~ policy recommendations.—

(1) In order to provide a systematic process for meeting the state's technology needs, the executive director shall develop a biennial state Information Technology Strategic Plan. The Governor and Cabinet shall approve the plan before transmitting it to the Legislature, biennially, starting October 1, 2013. The plan shall include the following elements:

(a) The vision, goals, initiatives, and targets for state information technology for the short term of 2 years, midterm of 3 to 5 years, and long term of more than 5 years.

(b) An inventory of the information technology resources in state agencies and major projects currently in progress. As used in this section, the term "major project" means projects that cost more than $500,000 to implement.

(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



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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~~



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~~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





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

describes its plan and schedule for resolving those issues.

(b) On the date of each consolidation specified in general law or the General Appropriations Act, each state agency shall retain the least-privileged administrative access rights necessary to perform the duties not assigned to the primary data centers.

(4) SCHEDULE FOR CONSOLIDATIONS OF STATE AGENCY DATA CENTERS.—Consolidations of agency data centers shall be suspended for the 2012-2013 fiscal year. Consolidations shall resume during the 2013-2014 fiscal year based upon a revised schedule developed by the agency.

Section 9. Section 282.203, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 282.203, Florida Statutes, for current text.)

282.203 Primary data centers; duties.—

(1) Each primary data center shall:

(a) Serve participating state agencies as an information-system utility.

(b) Cooperate with participating state agencies to offer, develop, and support the services and applications.

(c) Comply with rules adopted by the Agency for State Technology, pursuant to this section, and coordinate with the agency in the consolidation of data centers.

(d) Provide transparent financial statements to participating state agencies.

(e) Assume the least-privileged administrative access rights necessary to perform the services provided by the data center for the software and equipment that is consolidated into



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a primary data center.

(2)(a) Each primary data center shall enter into a memorandum of understanding with each participating state agency to provide services. A memorandum of understanding may not have a term exceeding 3 years but may include an option to renew for up to 3 years.

(b) The failure to execute a memorandum of understanding within 60 days after service commencement shall, in the case of a participating state agency, result in a continuation of the terms of the memorandum of understanding from the previous fiscal year, including any amendments that were formally proposed to the state agency by the primary data center within the 3 months before service commencement, and a revised cost-of-service estimate. If a participating state agency fails to execute a memorandum of understanding within 60 days after service commencement, the data center may cease services.

Section 10. Section 282.204, Florida Statutes, is repealed.

Section 11. Section 282.205, Florida Statutes, is repealed.

Section 12. Section 282.206, Florida Statutes, is created to read:

282.206 Fletcher Shared Resource Center.—The Fletcher Shared Resource Center is established as a state agency within the Department of Financial Services.

(1) The center shall collaborate with the Agency for State Technology to develop policies, procedures, standards, and rules for the delivery of enterprise information technology services.

(2) The center may comply with the policies and rules of the Agency for State Technology related to the design and delivery of enterprise information technology services.



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(3) The center shall provide colocation services to the Department of Legal Affairs and the Department of Agriculture and Consumer Services.

(4) The Department of Financial Services shall continue to use the Fletcher Shared Resource Center, provide full service to the Office of Financial Regulation and the Office of Insurance Regulation, and host the Legislative Appropriations System/Planning and Budgeting Subsystem (LAS/PBS).

(5) The center shall be governed through a master memorandum of understanding and complemented by a steering committee comprised of the chief information officers of the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. The steering committee shall meet quarterly to ensure that customers are receiving expected services in accordance with the memorandum of understanding and to discuss services and structure. The committee may create ad hoc workgroups to account for, mitigate, and manage any unforeseen issues.

(6) The Department of Legal Affairs shall move its data center equipment to the center by June 30, 2014.

(7) The Department of Agriculture and Consumer Services shall move its Mayo Building data center equipment to the center by June 30, 2014.

Section 13. Section 282.33, Florida Statutes, is repealed.

Section 14. Section 282.34, Florida Statutes, is amended to read:

282.34 Statewide e-mail service.—A statewide e-mail service that includes the delivery and support of e-mail, messaging, and calendaring capabilities is established as an enterprise





information technology service as defined in s. 282.0041. The service shall be provisioned ~~designed~~ to meet the needs of all executive branch agencies and may also be used by other public sector ~~nonstate agency~~ entities. The primary goals of the service are to leverage the state's existing investment in e-mail; provide a reliable collaborative communication service to state agencies; minimize the state investment required to establish, operate, and support the statewide service; reduce the cost of current e-mail operations and the number of duplicative e-mail systems; and eliminate the need for each state agency to maintain its own e-mail staff.

(1) With the exception of the Department of Agriculture and Consumer Services, the Department of Legal Affairs, and the Department of Financial Services, all state agencies shall receive their primary e-mail services exclusively through the Agency for State Technology. ~~The Southwood Shared Resource Center, a primary data center, shall be the provider of the statewide e-mail service for all state agencies. The center shall centrally host, manage, operate, and support the service, or outsource the hosting, management, operational, or support components of the service in order to achieve the primary goals identified in this section.~~

(2) The Department of Agriculture and Consumer Services, the Department of Financial Services, the Office of Financial Regulation, and the Office of Insurance Regulation may receive e-mail services from the Fletcher Shared Resource Center or the Agency for State Technology. ~~The Agency for Enterprise Information Technology, in cooperation and consultation with all state agencies, shall prepare and submit for approval by the~~

~~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~~



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~~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.~~



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~~(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



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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.



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(9) To adopt rules pursuant to ss. 120.536(1) and 120.54 relating to telecommunications and to administer the provisions of this part.

(10) To apply for and accept federal funds for the purposes of this part as well as gifts and donations from individuals, foundations, and private organizations.

(11) To monitor issues relating to telecommunications facilities and services before the Florida Public Service Commission and the Federal Communications Commission and, if necessary, prepare position papers, prepare testimony, appear as a witness, and retain witnesses on behalf of state agencies in proceedings before the commissions.

(12) Unless delegated to the state agencies by the agency ~~department~~, to manage and control, but not intercept or interpret, telecommunications within the SUNCOM Network by:

(a) Establishing technical standards to physically interface with the SUNCOM Network.

(b) Specifying how telecommunications are transmitted within the SUNCOM Network.

(c) Controlling the routing of telecommunications within the SUNCOM Network.

(d) Establishing standards, policies, and procedures for access to and the security of the SUNCOM Network.

(e) Ensuring orderly and reliable telecommunications services in accordance with the service level agreements executed with state agencies.

(13) To plan, design, and conduct experiments for telecommunications services, equipment, and technologies, and to implement enhancements in the state telecommunications network





if in the public interest and cost-effective. Funding for such experiments must be derived from SUNCOM Network service revenues and may not exceed 2 percent of the annual budget for the SUNCOM Network for any fiscal year or as provided in the General Appropriations Act. New services offered as a result of this subsection may not affect existing rates for facilities or services.

(14) To enter into contracts or agreements, with or without competitive bidding or procurement, to make available, on a fair, reasonable, and nondiscriminatory basis, property and other structures under agency ~~departmental~~ control for the placement of new facilities by any wireless provider of mobile service as defined in 47 U.S.C. s. 153(27) or s. 332(d) and any telecommunications company as defined in s. 364.02 if it is practical and feasible to make such property or other structures available. The agency ~~department~~ may, without adopting a rule, charge a just, reasonable, and nondiscriminatory fee for the placement of the facilities, payable annually, based on the fair market value of space used by comparable telecommunications facilities in the state. The agency ~~department~~ and a wireless provider or telecommunications company may negotiate the reduction or elimination of a fee in consideration of services provided to the agency ~~department~~ by the wireless provider or telecommunications company. All such fees collected by the agency ~~department~~ shall be deposited directly into the Law Enforcement Radio Operating Trust Fund, and may be used by the agency ~~department~~ to construct, maintain, or support the system.

(15) Establish policies that ensure that the agency's ~~department's~~ cost-recovery methodologies, billings, receivables,

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.



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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



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used as the collection medium, the Agency for State ~~Enterprise Information~~ Technology shall review and recommend to the Chief Financial Officer whether to approve the request with regard to the process or procedure to be used.

(9) For payment programs in which credit cards, charge cards, or debit cards are accepted by state agencies, the judicial branch, or units of local government, the Chief Financial Officer, in consultation with the Agency for State ~~Enterprise Information~~ Technology, may adopt rules to establish uniform security safeguards for cardholder data and to ensure compliance with the Payment Card Industry Data Security Standards.

Section 20. Paragraph (c) of subsection (6) of section 216.292, Florida Statutes, is amended to read:

216.292 Appropriations nontransferable; exceptions.—

(6) The Chief Financial Officer shall transfer from any available funds of an agency or the judicial branch the following amounts and shall report all such transfers and the reasons therefor to the legislative appropriations committees and the Executive Office of the Governor:

(c) The amount due to the Communications Working Capital Trust Fund from moneys appropriated in the General Appropriations Act for the purpose of paying for services provided by the state communications system in the Agency for State Technology ~~Department of Management Services~~ which is unpaid 45 days after the billing date. The amount transferred shall be that billed by the department.

Section 21. Subsections (3), (4), (5), and (6) of section 282.318, Florida Statutes, are amended to read:



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282.318 Enterprise security of data and information technology.—

(3) The Agency for State ~~Enterprise Information~~ Technology is responsible for establishing rules and publishing guidelines for ensuring an appropriate level of security for all data and information technology resources for executive branch agencies. The agency shall also perform the following duties and responsibilities:

(a) Develop, and annually update by February 1, an enterprise information security strategic plan that includes security goals and objectives for the strategic issues of information security policy, risk management, training, incident management, and survivability planning.

(b) Develop enterprise security rules and published guidelines for:

1. Comprehensive risk analyses and information security audits conducted by state agencies.

2. Responding to suspected or confirmed information security incidents, including suspected or confirmed breaches of personal information or exempt data.

3. Agency security plans, including strategic security plans and security program plans.

4. The recovery of information technology and data following a disaster.

5. The managerial, operational, and technical safeguards for protecting state government data and information technology resources.

(c) Assist agencies in complying with the provisions of this section.



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(d) Pursue appropriate funding for the purpose of enhancing domestic security.

(e) Provide training for agency information security managers.

(f) Annually review the strategic and operational information security plans of executive branch agencies.

(4) To assist the Agency for State ~~Enterprise Information~~ Technology in carrying out its responsibilities, each state agency head shall, at a minimum:

(a) Designate an information security manager to administer the security program of the state agency for its data and information technology resources. This designation must be provided annually in writing to the Agency for State ~~Enterprise Information~~ Technology by January 1.

(b) Submit to the Agency for State ~~Enterprise Information~~ Technology annually by July 31, the state agency's comprehensive ~~strategic~~ and operational information security plans developed pursuant to the rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology.

1. The state agency comprehensive ~~strategic~~ information security plan must cover a 3-year period and define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and survivability. The plan must be based on the enterprise strategic information security plan created by the Agency for State ~~Enterprise Information~~ Technology. Additional issues may be included.

2. The state agency operational information security plan



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must include a progress report for the prior operational information security plan and a project plan that includes activities, timelines, and deliverables for security objectives that, subject to current resources, the state agency will implement during the current fiscal year. The cost of implementing the portions of the plan which cannot be funded from current resources must be identified in the plan.

(c) Conduct, and update every 3 years, a comprehensive risk analysis to determine the security threats to the data, information, and information technology resources of the state agency. The risk analysis information is confidential and exempt from the provisions of s. 119.07(1), except that such information shall be available to the Auditor General and the Agency for State ~~Enterprise Information~~ Technology for performing postauditing duties.

(d) Develop, and periodically update, written internal policies and procedures that~~, which~~ include procedures for notifying the Agency for State ~~Enterprise Information~~ Technology when a suspected or confirmed breach, or an information security incident, occurs. Such policies and procedures must be consistent with the rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology to ensure the security of the data, information, and information technology resources of the state agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General and the Agency for State



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~~Enterprise Information~~ Technology for performing postauditing duties.

(e) Implement appropriate cost-effective safeguards to address identified risks to the data, information, and information technology resources of the state agency.

(f) Ensure that periodic internal audits and evaluations of the state agency's security program for the data, information, and information technology resources of the state agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General and the Agency for State ~~Enterprise Information~~ Technology for performing postauditing duties.

(g) Include appropriate security requirements in the written specifications for the solicitation of information technology and information technology resources and services~~,~~ which are consistent with the rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology.

(h) Provide security awareness training to employees and users of the state agency's communication and information resources concerning information security risks and the responsibility of employees and users to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks.

(i) Develop a process for detecting, reporting, and responding to suspected or confirmed security incidents, including suspected or confirmed breaches consistent with the security rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology.



1. Suspected or confirmed information security incidents and breaches must be immediately reported to the Agency for State ~~Enterprise Information~~ Technology.

2. For incidents involving breaches, agencies shall provide notice in accordance with s. 817.5681 and to the Agency for State ~~Enterprise Information~~ Technology in accordance with this subsection.

(5) Each state agency shall include appropriate security requirements in the specifications for the solicitation of contracts for procuring information technology or information technology resources or services which are consistent with the rules and guidelines established by the Agency for State ~~Enterprise Information~~ Technology.

(6) The Agency for State ~~Enterprise Information~~ Technology may adopt rules relating to information security and to administer the provisions of this section.

Section 22. Section 282.604, Florida Statutes, is amended to read:

282.604 Adoption of rules.—The Agency for State Technology ~~Department of Management Services~~ shall, with input from stakeholders, adopt rules pursuant to ss. 120.536(1) and 120.54 for the development, procurement, maintenance, and use of accessible electronic information technology by governmental units.

Section 23. Section 282.703, Florida Statutes, is amended to read:

282.703 SUNCOM Network; exemptions from the required use.—

(1) The SUNCOM Network is established within the Agency for State Technology ~~department~~ as the state enterprise

telecommunications system for providing local and long-distance communications services to state agencies, political subdivisions of the state, municipalities, and nonprofit corporations pursuant to this part. The SUNCOM Network shall be developed to transmit all types of telecommunications signals, including, but not limited to, voice, data, video, image, and radio. State agencies shall cooperate and assist in the development and joint use of telecommunications systems and services.

(2) The Agency for State Technology ~~department~~ shall design, engineer, implement, manage, and operate through state ownership, commercial leasing, contracted services, or some combination thereof, the facilities, equipment, and contracts providing SUNCOM Network services, and shall develop a system of equitable billings and charges for telecommunications services.

(3) The Agency for State Technology ~~department~~ shall own, manage, and establish standards for the telecommunications addressing and numbering plans for the SUNCOM Network. This includes distributing or revoking numbers and addresses to authorized users of the network and delegating or revoking the delegation of management of subsidiary groups of numbers and addresses to authorized users of the network.

(4) The Agency for State Technology ~~department~~ shall maintain a directory of information and services which provides the names, phone numbers, and e-mail addresses for employees, state agencies, and network devices that are served, in whole or in part, by the SUNCOM Network. State agencies and political subdivisions of the state shall cooperate with the Agency for State Technology ~~department~~ by providing timely and accurate



directory information in the manner established by the Agency for State Technology ~~department~~.

(5) All state agencies shall use the SUNCOM Network for state agency telecommunications services as the services become available; however, a state ~~an~~ agency is not relieved of responsibility for maintaining telecommunications services necessary for effective management of its programs and functions. The Agency for State Technology ~~department~~ may provide such communications services to a state university if requested by the university.

(a) If a SUNCOM Network service does not meet the telecommunications requirements of a state ~~an~~ agency, the state agency must notify the Agency for State Technology ~~department~~ in writing and detail the requirements for that service. If the agency ~~department~~ is unable to meet a state ~~an~~ agency's requirements by enhancing SUNCOM Network service, the Agency for State Technology ~~department~~ may grant the state agency an exemption from the required use of specified SUNCOM Network services.

(b) Unless an exemption has been granted by the agency ~~department~~, effective October 1, 2010, all customers of a state primary data center, excluding state universities, must use the shared SUNCOM Network telecommunications services connecting the state primary data center to SUNCOM services for all telecommunications needs in accordance with rules of the Agency for State Technology ~~department rules~~.

1. Upon discovery of customer noncompliance with this paragraph, the agency ~~department~~ shall provide the affected customer with a schedule for transferring to the shared

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





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

to any library in the state, including libraries in public schools, community colleges, state universities, and nonprofit private postsecondary educational institutions, and libraries owned and operated by municipalities and political subdivisions. This section may not be construed to require a state university library to use SUNCOM Network services.

Section 27. Section 282.707, Florida Statutes, is amended to read:

282.707 SUNCOM Network; criteria for usage.—

(1) The Agency for State Technology ~~department~~ and customers served by the agency ~~department~~ shall periodically review the qualifications of subscribers using the state SUNCOM Network and terminate services provided to a facility not qualified under this part or rules adopted hereunder. In the event of nonpayment of invoices by subscribers whose SUNCOM Network invoices are paid from sources other than legislative appropriations, such nonpayment represents good and sufficient reason to terminate service.

(2) The Agency for State Technology ~~department~~ shall adopt rules for implementing and operating the state SUNCOM Network, which include procedures for withdrawing and restoring authorization to use the state SUNCOM Network. Such rules shall provide a minimum of 30 days' notice to affected parties before terminating voice communications service.

(3) This section does not limit or restrict the ability of the Florida Public Service Commission to set jurisdictional tariffs of telecommunications companies.

Section 28. Section 282.709, Florida Statutes, is amended to read:



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282.709 State agency law enforcement radio system and interoperability network.—

(1) The Agency for State Technology ~~department~~ may acquire and administer a statewide radio communications system to serve law enforcement units of state agencies, and to serve local law enforcement agencies through mutual aid channels.

(a) The agency ~~department~~ shall, in conjunction with the Department of Law Enforcement and the Division of Emergency Management, establish policies, procedures, and standards to be incorporated into a comprehensive management plan for the use and operation of the statewide radio communications system.

(b) The agency ~~department~~ shall bear the overall responsibility for the design, engineering, acquisition, and implementation of the statewide radio communications system and for ensuring the proper operation and maintenance of all common system equipment.

(c)1. The agency ~~department~~ may rent or lease space on any tower under its control and refuse to lease space on any tower at any site.

2. The agency ~~department~~ may rent, lease, or sublease ground space as necessary to locate equipment to support antennae on the towers. The costs for the use of such space shall be established by the agency ~~department~~ for each site if it is determined to be practicable and feasible to make space available.

3. The agency ~~department~~ may rent, lease, or sublease ground space on lands acquired by the agency ~~department~~ for the construction of privately owned or publicly owned towers. The agency ~~department~~ may, as a part of such rental, lease, or



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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~~.





(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.

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



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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



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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



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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



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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.—





(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

basis or as a fixed percentage of the cost savings generated. At a minimum, the fees must be set in an amount sufficient to cover the projected costs of the services, including administrative and project service costs in accordance with the policies of the department.

2. If the department contracts with a provider for online procurement, the department, pursuant to appropriation, shall compensate the provider from the fees after the department has satisfied all ongoing costs. The provider shall report transaction data to the department each month so that the department may determine the amount due and payable to the department from each vendor.

3. All fees that are due and payable to the state on a transactional basis or as a fixed percentage of the cost savings generated are subject to s. 215.31 and must be remitted within 40 days after receipt of payment for which the fees are due. For fees that are not remitted within 40 days, the vendor shall pay interest at the rate established under s. 55.03(1) on the unpaid balance from the expiration of the 40-day period until the fees are remitted.

4. All fees and surcharges collected under this paragraph shall be deposited in the Operating Trust Fund as provided by law.

Section 33. Subsection (17) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(17) In addition to any penalties imposed, a surcharge of



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$3 must be paid for all criminal offenses listed in s. 318.17 and for all noncriminal moving traffic violations under chapter 316. Revenue from the surcharge shall be remitted to the Department of Revenue and deposited quarterly into the State Agency Law Enforcement Radio System Trust Fund of the Agency for State Technology ~~Department of Management Services~~ for the state agency law enforcement radio system, as described in s. 282.709, and to provide technical assistance to state agencies and local law enforcement agencies with their statewide systems of regional law enforcement communications, as described in s. 282.7101. This subsection expires July 1, 2012. The Agency for State Technology ~~Department of Management Services~~ may retain funds sufficient to recover the costs and expenses incurred for managing, administering, and overseeing the Statewide Law Enforcement Radio System, and providing technical assistance to state agencies and local law enforcement agencies with their statewide systems of regional law enforcement communications. The Agency for State Technology ~~Department of Management Services~~ working in conjunction with the Joint Task Force on State Agency Law Enforcement Communications shall determine and direct the purposes for which these funds are used to enhance and improve the radio system.

Section 34. Section 320.0802, Florida Statutes, is amended to read:

320.0802 Surcharge on license tax.—There is hereby levied and imposed on each license tax imposed under s. 320.08, except those set forth in s. 320.08(11), a surcharge in the amount of $1, which shall be collected in the same manner as the license tax and deposited into the State Agency Law Enforcement Radio



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System Trust Fund of the Agency for State Technology ~~Department of Management Services~~.

Section 35. Subsection (9) of section 328.72, Florida Statutes, is amended to read:

328.72 Classification; registration; fees and charges; surcharge; disposition of fees; fines; marine turtle stickers.—

(9) SURCHARGE.—In addition, there is hereby levied and imposed on each vessel registration fee imposed under subsection (1) a surcharge in the amount of $1 for each 12-month period of registration, which shall be collected in the same manner as the fee and deposited into the State Agency Law Enforcement Radio System Trust Fund of the Agency for State Technology ~~Department of Management Services~~.

Section 36. Section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption.—

(1) The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations. The term "sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(2) The Agency for State Technology may ~~Department of Management Services is authorized to~~ work collaboratively with, and to receive staffing support and other resources from,



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Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations to:

(a) Monitor the adoption of broadband Internet service in collaboration with communications service providers, including, but not limited to, wireless and wireline Internet service providers, to develop geographical information system maps at the census tract level that will:

1. Identify geographic gaps in broadband services, including areas unserved by any broadband provider and areas served by a single broadband provider;

2. Identify the download and upload transmission speeds made available to businesses and individuals in the state, at the census tract level of detail, using data rate benchmarks for broadband service used by the Federal Communications Commission to reflect different speed tiers; and

3. Provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability.

(b) Create a strategic plan that has goals and strategies for increasing the use of broadband Internet service in the state.

(c) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.



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(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.





(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

provide for:

(a) The public agency emergency communications requirements for each entity of local government in the state.

(b) A system to meet specific local government requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.

(c) Identification of the mutual aid agreements necessary to obtain an effective E911 system.

(d) A funding provision that identifies the cost necessary to implement the E911 system.

The agency ~~office~~ shall be responsible for the implementation and coordination of such plan. The agency ~~office~~ shall adopt any necessary rules and schedules related to public agencies for implementing and coordinating the plan, pursuant to chapter 120.

(5) SYSTEM DIRECTOR.—The executive director of the agency ~~secretary of the department~~ or his or her designee is designated as the director of the statewide emergency communications number E911 system and, for the purpose of carrying out the provisions of this section, may ~~is authorized to~~ coordinate the activities of the system with state, county, local, and private agencies. The director, in implementing the system, shall consult, cooperate, and coordinate with local law enforcement agencies.

(7) TELECOMMUNICATIONS INDUSTRY COORDINATION.—The agency ~~office~~ shall coordinate with the Florida Public Service Commission which shall encourage the Florida telecommunications industry to activate facility modification plans for timely E911



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implementation.

(9) SYSTEM APPROVAL.—An ~~No~~ emergency communications number E911 system may not ~~shall~~ be established and a ~~and no~~ present system may not ~~shall~~ be expanded without prior approval of the agency ~~office~~.

(10) COMPLIANCE.—All public agencies shall assist the agency ~~office~~ in their efforts to carry out the intent of this section, and such agencies shall comply with the developed plan.

(11) FEDERAL ASSISTANCE.—The executive director of the agency ~~secretary of the department~~ or his or her designee may apply for and accept federal funding assistance in the development and implementation of a statewide emergency communications number E911 system.

Section 38. Paragraphs (a) through (s) of subsection (3) of section 365.172, Florida Statutes, are redesignated as paragraphs (b) through (t), respectively, a new paragraph (a) is added to that subsection, and paragraph (d) of subsection (2), present paragraph (t) of subsection (3), subsection (4), paragraph (a) of subsection (5), paragraph (c) of subsection (6), and paragraph (f) of subsection (12) of that section are amended to read:

365.172 Emergency communications number "E911."—

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(d) Provide for an E911 board to administer the fee, with oversight by the Agency for State Technology ~~office~~, in a manner that is competitively and technologically neutral as to all voice communications services providers.



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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).





(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

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



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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



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counties and for the provision of grants by the agency ~~office~~ to rural counties for upgrading and replacing E911 systems.

The Legislature recognizes that the fee authorized under s. 365.172 may not necessarily provide the total funding required for establishing or providing the E911 service. It is the intent of the Legislature that all revenue from the fee be used as specified in this subsection.

Section 40. Subsection (1) of section 365.174, Florida Statutes, is amended to read:

365.174 Proprietary confidential business information.—

(1) All proprietary confidential business information submitted by a provider to the board or the Agency for State Technology ~~office~~, including the name and billing or service addresses of service subscribers, and trade secrets as defined by s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Statistical abstracts of information collected by the board or the agency ~~office~~ may be released or published, but only in a manner that does not identify or allow identification of subscribers or their service numbers or of revenues attributable to any provider.

Section 41. Section 401.013, Florida Statutes, is amended to read:

401.013 Legislative intent.—It is the intention and purpose of the Legislature that a statewide system of regional emergency medical telecommunications be developed whereby maximum use of existing radio channels is achieved in order to more effectively and rapidly provide emergency medical service to the general





population. To this end, all emergency medical service entities within the state are directed to provide the Agency for State Technology ~~Department of Management Services~~ with any information the agency ~~department~~ requests for the purpose of implementing the provisions of s. 401.015, and such entities shall comply with the resultant provisions established pursuant to this part.

Section 42. Section 401.015, Florida Statutes, is amended to read:

401.015 Statewide regional emergency medical telecommunication system.—The Agency for State Technology shall ~~Department of Management Services is authorized and directed to~~ develop a statewide system of regional emergency medical telecommunications. For the purpose of this part, the term "telecommunications" means ~~those~~ voice, data, and signaling transmissions and receptions between emergency medical service components, including, but not limited to: ambulances; rescue vehicles; hospitals or other related emergency receiving facilities; emergency communications centers; physicians and emergency medical personnel; paging facilities; law enforcement and fire protection agencies; and poison control, suicide, and emergency management agencies. In formulating such a system, the agency ~~department~~ shall divide the state into appropriate regions and ~~shall~~ develop a program that ~~which~~ includes, but is not limited to, the following provisions:

(1) A requirements provision that states~~, which shall state~~ the telecommunications requirements for each emergency medical entity comprising the region.

(2) An interfacility communications provision that depicts~~,~~

~~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~~



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~~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.—



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(2) PERSONNEL; STANDARDS AND CERTIFICATION.—

(a) Effective October 1, 2012, any person employed as a 911 public safety telecommunicator at a public safety answering point, as defined in s. 365.172(3)(b) ~~s. 365.172(3)(a)~~, must be certified by the department.

Section 48. Subsection (4) of section 445.011, Florida Statutes, is amended to read:

445.011 Workforce information systems.—

(4) Workforce Florida, Inc., shall coordinate development and implementation of workforce information systems with the executive director of the Agency for State ~~Enterprise Information~~ Technology to ensure compatibility with the state's information system strategy and enterprise architecture.

Section 49. Subsection (2) and paragraphs (a) and (b) of subsection (4) of section 445.045, Florida Statutes, are amended to read:

445.045 Development of an Internet-based system for information technology industry promotion and workforce recruitment.—

(2) Workforce Florida, Inc., shall coordinate with the Agency for State ~~Enterprise Information~~ Technology and the Department of Economic Opportunity to ensure links, where feasible and appropriate, to existing job information websites maintained by the state and state agencies and to ensure that information technology positions offered by the state and state agencies are posted on the information technology website.

(4)(a) Workforce Florida, Inc., shall coordinate development and maintenance of the website under this section with the executive director of the Agency for State ~~Enterprise~~



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~~Information~~ Technology to ensure compatibility with the state's information system strategy and enterprise architecture.

(b) Workforce Florida, Inc., may enter into an agreement with the Agency for State ~~Enterprise Information~~ Technology, the Department of Economic Opportunity, or any other public agency with the requisite information technology expertise for the provision of design, operating, or other technological services necessary to develop and maintain the website.

Section 50. Paragraph (b) of subsection (18) of section 668.50, Florida Statutes, is amended to read:

668.50 Uniform Electronic Transaction Act.—

(18) ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES.—

(b) To the extent that a governmental agency uses electronic records and electronic signatures under paragraph (a), the Agency for State ~~Enterprise Information~~ Technology, in consultation with the governmental agency, giving due consideration to security, may specify:

1. The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes.

2. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process.

3. Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security,



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confidentiality, and auditability of electronic records.

4. Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

Section 51. This act shall take effect July 1, 2012.



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**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

2/1/12
*Meeting Date*

Topic _____ Bill Number 1498 *(if applicable)*

Name Frank Meiners Amendment Barcode 799624 *(if applicable)*

Job Title _____

Address PO Box 1633 *Street* Phone (850) 591-0177

_____ *City* _____ *State* _____ *Zip* E-mail frank@chqmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Assoc. Ind. of FL (AIF)

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

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

***This form is part of the public record for this meeting.*** S-001 (10/20/11)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

2.1.12
*Meeting Date*

Topic IT Bill Number SB 1498 ~~1215~~ Barcode 799624 *(if applicable)*

Name Ashley Mayer / Terry Kester Amendment Barcode strike all *(if applicable)*

Job Title DFS

Address PL-11, Capitol *Street* Phone 413-2863

Tallahassee *City* _____ *State* _____ *Zip* E-mail ashley.mayer@myfloridacfo.com

Speaking: ☑ For ☐ Against ☐ Information

Representing CFO / DFS

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

Call us if you have Q's -

*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 1872 |
| INTRODUCER: | Governmental Oversight and Accountability Committee and Senator Gibson |
| SUBJECT: | State Contracting/Small Business |
| DATE: | February 2, 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..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

This bill requires state executive branch agencies to accept as responsive a bid by a small business for a portion of a bundled contract. The bill also provides definitions.

This bill creates section 287.0577 of the Florida Statutes.

## II. Present Situation:

### Existing Small Business Efforts

Part IV of Chapter 288, F.S., specifies a number of efforts directed towards helping the success of small businesses. The Small Business Regulatory Advisory Council is created in s. 288.7001, F.S., largely to review administrative rules of state agencies in order to reduce the impact of rules on small businesses. The council is established and administratively housed within the Florida Small Business Development Center Network, which is established in s. 288.001, F.S., as the "principal business assistance organization for small businesses in the state." The Florida Small Business Development Center Network also houses the Office of Small Business Advocate,

which is physically located at the University of West Florida. A September 2010 report[1] by the office recommended, among other things, a 20 percent Set-aside for state contracts for FL-based small and medium enterprises (SME) located in the state for at least 3 years, and a 10 percent "FL-based SME" subcontracting clause in state contracts awarded to large vendors and suppliers.

Some of the duties of the Office of Supplier Diversity of the Department of Management Services, established in s. 287.09451, F.S., include communicating on a monthly basis with the Small and Minority Business Advisory Council to keep the council informed on issues relating to minority enterprise procurement, serving as an advocate for minority business enterprises, and coordinating with the small and minority business ombudsman, as defined in s. 288.703, F.S.

**Public Procurement**

Procurement laws govern the manner in which a government receives goods and services. In Florida, Chapter 287, F.S., broadly governs the public procurement of personal property and services, and s. 287.012, F.S., provides definitions used in the chapter.[2] The following definitions are specified:

- "Agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government, but does not include the university and college boards of trustees or the state universities and colleges.
- "Responsive bid," "responsive proposal," or "responsive reply" means a bid, or proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation.
- "Responsive vendor" means a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.
- "Responsible vendor" means a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

When using requests for proposals or invitations to negotiate, agencies are to award contracts to "the responsible and responsive vendor" vendor that provides the proposal most advantageous to the state, or provides the best value to the state.[3]

## III. Effect of Proposed Changes:

The bill creates section 287.0577, F.S., which provides definitions, and requires that "an agency must accept as responsive a bid by a small business for a portion of a bundled contract."

The bill defines a "bundled contract" as the "consolidation of contracts for the procurement of commodities or contractual services, at least part of which may be provided or performed by one

[1] Last visited on January 27 at http://www.floridaosba.org/docs/100110%20Small%20Business%20Issues%20and%20Recommendations.pdf
[2] These definitions do not apply in s. 287.055, F.S., the Consultants' Competitive Negotiation Act, which specifies the procedures to be used in procuring the services of certain professionals involved in construction contracting.
[3] Section 287.057(1)(b) and (c), F.S.

or more small businesses, into a single contract that is not appropriate for award to a small business as a the prime contractor."

A "small business," is a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity's industry, and that:

- Currently is, and for at least the previous 3 years has been, domiciled in the state.
- Has a workforce of 25 or fewer permanent full-time positions, whether employees, independent contractors, or other contractual personnel.
- Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:
  - For a contractor licensed under chapter 489, $3 million per year.
  - For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, $500,000 per year.
  - For any other business entity, $1 million per year.
- Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed $5 million. For a sole proprietorship, the net worth limit of $5 million includes both personal and business investments but does not include the proprietor's primary residence.

The term includes any such business entity organized as any legal entity.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could have the effect of shifting some contracting dollars towards smaller businesses.

C. Government Sector Impact:

Indeterminate.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The provision requiring an agency to "accept as responsive" a bid by a small business potentially conflicts with agency duties to evaluate whether vendors are responsible and responsive. By definition, a responsive bid supposes a responsible and responsive vendor. The bill would appear to deem a bid by a small business responsive, regardless of whether the small business submits a bid that conformed to the solicitation, or whether the small business has the capability to perform the contract requirements.

The phrase "not appropriate for award to a small business" is used in lines 19-20, but is not defined, which could lead to uncertainty in applying the definition of "bundled contract."

## 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 February 1, 2012:**
The CS removed all the bill provisions except the definitions, and added a requirement that an agency must accept as responsive a bid by a small business for a portion of a bundled contract.

B. Amendments:

None.

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

396014

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 02/01/2012 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 287.0577, Florida Statutes, is created to read:

287.0577 Small business participation in state contracting; bundled contracts.—

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

(a) "Bundled contract" means the consolidation of contracts for the procurement of commodities or contractual services, at least part of which may be provided or performed by one or more

396014

small businesses, into a single contract that is not appropriate for award to a small business as the prime contractor.

(b) "Small business" means a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity's industry, and that:

1. Currently is, and for at least the previous 3 years has been, domiciled in the state.

2. Has a workforce of 25 or fewer employees, including independent contractors or other contractual personnel.

3. Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:

a. For a contractor licensed under chapter 489, $3 million per year.

b. For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, $500,000 per year.

c. For any other business entity, $1 million per year.

4. Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed $5 million. For a sole proprietorship, the net worth limit of $5 million includes both personal and business investments but does not include the proprietor's primary residence.

The term includes any such business entity organized as any form of corporation, partnership, limited liability company, sole proprietorship, joint venture, association, trust, cooperative, or other legal entity.

(2) An agency must accept as responsive a bid by a small

396014

business for a portion of a bundled contract.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to small business participation in state contracting; creating s. 287.0577, F.S.; defining the terms "bundled contract" and "small business"; requiring state agencies to accept as responsive a bid by a small business for a portion of a bundled contract; providing an effective date.

**By** Senator Gibson

1-01299-12 20121872__

A bill to be entitled

An act relating to small business participation in state contracting; creating s. 287.0577, F.S.; defining the terms "contract bundling" and "small business"; directing that agencies avoid contract bundling under certain circumstances; requiring agencies to conduct market research and include written summaries and analyses of such research in solicitations for bundled contracts; requiring agencies to award a specified percentage of contracts to small businesses; requiring contract vendors to use small businesses in the state as subcontractors or subvendors; requiring the timely payment of subcontractors; prohibiting agencies from requiring certain bonds or other sureties for certain contracts; requiring the Florida Small Business Advocate to establish a system for reporting small business participation in state contracting; requiring agencies to cooperate with such reporting; requiring specified annual reports; providing an effective date.

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

Section 1. Section 287.0577, Florida Statutes, is created to read:

287.0577 Small business participation in state contracting; contract bundling; set-asides for small businesses; bonding and reporting requirements.—

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



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



1-01299-12 20121872__

(a) "Contract bundling" means the consolidation of contracts for the procurement of commodities or contractual services, at least part of which may be provided or performed by one or more small businesses, into a single contract that is not appropriate for award to a small business as the prime contractor.

(b) "Small business" means a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity's industry, and that:

1. Currently is, and for at least the previous 3 years has been, domiciled in the state.

2. Has a workforce of 25 or fewer permanent full-time positions, whether employees, independent contractors, or other contractual personnel.

3. Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:

a. For a contractor licensed under chapter 489, $3 million per year.

b. For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, $500,000 per year.

c. For any other business entity, $1 million per year.

4. Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed $5 million. For a sole proprietorship, the net worth limit of $5 million includes both personal and business investments but does not include the proprietor's primary residence.



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

The term includes any such business entity organized as any form of corporation, partnership, limited liability company, sole proprietorship, joint venture, association, trust, cooperative, or other legal entity.

(2) CONTRACT BUNDLING; SOLICITATION.—

(a) An agency, to the maximum extent practicable, shall structure agency contracts to facilitate competition by and among small businesses in the state, taking all reasonable steps to eliminate obstacles to their participation and avoiding the unnecessary and unjustified contract bundling that may preclude small businesses' participation as prime contractors.

(b) Before issuing a solicitation for a bundled contract, an agency must conduct market research to determine whether contract bundling is necessary and justified. If the agency determines that contract bundling is necessary and justified, the agency must include in the solicitation a written summary of the agency's market research and a written analysis of the research that explains why contract bundling is necessary and justified.

(3) SET-ASIDES FOR SMALL BUSINESSES.—

(a) An agency shall annually award to small businesses, either directly or indirectly as subcontractors, at least 25 percent of the total dollar amount of contracts awarded.

(b) Each contract awarded under s. 287.057 must require the vendor to use small businesses in the state as subcontractors or subvendors. The percentage of funds, in terms of gross contract amount and revenues, that must be expended for subcontracting with small businesses in the state shall be determined by the agency before the solicitation for the contract is issued;





however, the contract may not allow a vendor to expend less than 10 percent of the gross contract amount for subcontracting with small businesses in the state.

(c) Each contract must include specific requirements for the timely payment of subcontractors by the prime contractor and specific terms and conditions applicable if a prime contractor does not pay a subcontractor within the time limits specified in the contract.

(4) BONDING REQUIREMENTS.—Notwithstanding any provision of law, an agency may not require a vendor to post a bid bond, performance bond, or other surety for a contract that does not exceed $500,000. This subsection does not apply to any requirement for posting a bond pending the protest of a solicitation; the protest of a rejected bid, proposal, or reply; or the protest of a contract award.

(5) REPORTING REQUIREMENTS.—The Florida Small Business Advocate selected under s. 288.7002 shall:

(a) Establish a system to measure and report the use of small businesses in state contracting. This system shall maintain information and statistics on small business participation, awards, dollar volume of expenditures, and other appropriate types of information to analyze progress in small businesses' access to state contracts and to monitor agency compliance with this section. Such reporting must include, but is not limited to, the identification of all subcontracts in state contracting by dollar amount and by number of subcontracts and identification of the use of small businesses as prime contractors and subcontractors by dollar amounts of contracts and subcontracts, number of contracts and subcontracts,

industry, and any conditions or circumstances that significantly affected the performance of subcontractors. An agency shall report its compliance with the reporting system at least annually and at the request of the Florida Small Business Advocate. All agencies shall cooperate with the Florida Small Business Advocate in establishing this reporting system.

(b) Report agency compliance with paragraph (a) for the preceding fiscal year to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Small Business Regulatory Advisory Council created under s. 288.7001 on or before February 1 of each year. The report must contain, at a minimum, the following:

1. Total expenditures of each agency by industry.

2. The dollar amount and percentage of contracts awarded to small businesses by each state agency.

3. The dollar amount and percentage of contracts awarded indirectly to small businesses as subcontractors by each state agency.

4. The total dollar amount and percentage of contracts awarded to small businesses, whether directly or indirectly as subcontractors.

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



**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)

2 / 1 /2012
*Meeting Date*

Topic _____ Bill Number 1872 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

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

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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 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 2084 |
| INTRODUCER: | Governmental Oversight and Accountability Committee |
| SUBJECT: | State Employment |
| DATE: | January 27, 2012 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Seay | Roberts | GO | **Pre-meeting** |
| 2. | | | BC | |
| 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;
- 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.

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.

[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).

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 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

[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.*

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.

**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;

[9] Section 110.1245(3)-(5), F.S.
[10] Section 110.131(2), F.S.
[11] Section 110.131(7), F.S.

and critical market play.[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] An employee who is dismissed during his or her probationary period is not entitled to hearing rights before the Public Employee Relations Commission (PERC).[21] However, the First District Court of Appeal has ruled that the effect of the 2008 provision is that in some circumstances, an employee who is fired during the probationary period subsequent to a promotion is entitled to hearing rights before PERC.[22]

[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] *See* section 110.27(1), F.S. The PERC processes charges of unfair labor practices and charges relating to a public employee or employee organization. It handles public sector cases (unfair labor practice charges, representation petitions, amendments to certification, petitions to revoke certifications, and labor organizations' registration), career service appeals, Drug-Free Workplace appeals, whistleblower appeals, veterans' preference appeals, attorneys' fees appeals, back pay appeals, mediations, and district court appeals. *See also* s. 447.207, F.S.
[22] *Pesta v. Dept. of Corrections,* -- So.3d -- , Case No. 1D09-6489 (Fla. 1st DCA 2011).

**Rulemaking**

The Administration Commission is comprised of the Governor and the three members of the Cabinet.[23] 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 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.

[23] Section 14.202, F.S.

**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, by mutual agreement between DMS and the entity, 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., providing that the Legislature may fund temporary special duty pay additives through the General Appropriations Act; 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. This section contains language providing that a Career Service employee serving a probationary period in a promotional position must be returned to their former or comparable position if removed is transferred to this section from s. 110.227, F.S.

**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; granting rulemaking authority to DMS to administer this section. The language providing that a Career Service employee serving a probationary period in a promotional position must be returned to their former or comparable position if removed is transferred to s. 110.217, F.S. (section 31 of this bill) as a result of the reorganization of the state employment statutes.

**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.

**By** the Committee on Governmental Oversight and Accountability

585-02464-12 20122084__

A bill to be entitled

An act relating to state employment; providing directives to the Division of Statutory Revision; amending s. 110.105, F.S.; revising provisions relating to the establishment of the State Personnel System; transferring, renumbering, reordering, and amending s. 110.107, F.S.; revising definitions relating to ch. 110, F.S.; amending s. 110.1055, F.S.; revising the rulemaking authority of the Department of Management Services; creating s. 110.1056, F.S.; providing for agency audits to determine compliance with laws and rules; transferring, renumbering, and amending s. 110.405, F.S.; revising provisions relating to the appointment of ad hoc advisory committees; creating s. 110.1065, F.S.; providing the employment policies of the State Personnel System; authorizing the department to adopt rules; transferring, renumbering, and amending s. 110.233, F.S.; conforming provisions to changes made by the act; authorizing the department to adopt rules; amending s. 110.1099, F.S.; revising provisions relating to educational opportunities for employees; transferring, renumbering, and amending s. 110.235, F.S.; revising provisions relating to training employees; authorizing the department to adopt rules; amending s. 110.112, F.S.; revising provisions relating to equal employment opportunities; authorizing the department to adopt rules; creating s. 110.1135, F.S.; requiring state agencies to keep



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585-02464-12 20122084__

accurate records of work performed and leave; amending s. 110.116, F.S.; revising provisions relating to maintaining human resource information; authorizing the department to adopt rules; amending s. 110.1245, F.S.; revising provisions relating to bonuses and other awards; authorizing the department to adopt rules; amending s. 110.125, F.S.; revising provisions relating to payment for the administrative costs of operating the personnel program; authorizing the department to adopt rules; amending s. 110.126, F.S.; revising provisions relating to the department's authority to administer oaths; authorizing the department to adopt rules; amending s. 110.127, F.S.; revising provisions relating to penalties; authorizing the department to adopt rules; transferring, renumbering, and amending s. 110.2037, F.S.; revising provisions relating to tax-sheltered and special compensation benefits; authorizing the department to adopt rules; creating s. 110.183, F.S., consisting of provisions relating to collective bargaining discussions and providing a public records and public meetings exemption for those discussions which is currently contained in and transferred from s. 110.201(4), F.S.; creating s. 110.184, F.S.; revising provisions relating to the department's annual workforce report; providing a directive to the Division of Statutory Revision; creating s. 110.202, F.S.; providing a declaration of policy with respect to the establishment of the Civil Service; amending s.



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110.205, F.S.; revising provisions relating to the list of positions that are exempted from the Civil Service; authorizing the department to adopt rules; creating s. 110.208, F.S.; providing for a uniform classification system for civil service positions; creating s. 110.2085, F.S.; providing a pay plan for civil service positions; authorizing the department to adopt rules; amending s. 110.211, F.S.; revising provisions relating to recruitment; authorizing the department to adopt rules; amending s. 110.213, F.S.; revising provisions relating to selecting a candidate for employment; authorizing the department to adopt rules; amending s. 110.2135, F.S.; revising provisions relating to veterans' preference; authorizing the department to adopt rules; amending s. 110.215, F.S.; revising provisions relating to employing persons with disabilities; authorizing the department to adopt rules; amending s. 110.217, F.S.; revising provisions relating to a change in an employee's position status; amending s. 110.219, F.S.; revising provisions relating to attendance and leave policies; amending s. 110.221, F.S.; conforming provisions to changes made by the act; authorizing the department to adopt rules; amending s. 110.224, F.S.; revising provisions relating to employee evaluation; amending s. 110.227, F.S.; revising provisions relating to employee grievances; authorizing the department to adopt rules; providing a directive to the Division of Statutory Revision; transferring, renumbering, and amending s.





110.601, F.S.; revising provisions relating to selected exempt service policy; transferring, renumbering, and amending s. 110.602, F.S.; revising provisions relating to the creation of the Selected Exempt Service; transferring, renumbering, and amending s. 110.605, F.S.; revising provisions relating to the powers and duties of the department; creating s. 110.3023, F.S.; providing for the recruitment of selected exempt service staff; providing a directive to the Division of Statutory Revision; amending s. 110.401, F.S.; revising provisions relating to policies for senior management employees; amending s. 110.402, F.S.; revising provisions relating to the establishment of the Senior Management Service; amending s. 110.403, F.S.; revising provisions relating to the duties of the department with respect to the Senior Management Service; creating s. 110.4035, F.S.; providing recruitment requirements for senior management service employees; providing a directive to the Division of Statutory Revision; creating s. 112.906, F.S.; providing definitions for part IX of ch. 112, F.S., relating to state employment; transferring, renumbering, and amending s. 110.131, F.S.; revising the duties of state agencies with respect to the employment of personal services employees; authorizing state agencies having rulemaking authority with respect to the conditions of employment to adopt rules; transferring, renumbering and amending s.

110.1315, F.S.; revising a provision relating to other personal service employment; authorizing the Department of Financial Services to adopt rules; transferring and renumbering s. 110.1128, F.S., relating to selective service registration; creating s. 112.910, F.S.; providing for equal employment opportunity; creating s. 112.911, F.S.; providing for nondiscrimination in employment; transferring, renumbering, and amending s. 110.1221, F.S.; revising provisions relating to the state sexual harassment policy; transferring, renumbering, and amending s. 110.122, F.S.; revising provisions relating to payment for sick leave; transferring, renumbering, and amending s. 110.121, F.S.; revising provisions relating to the sick leave pool; transferring, renumbering, and amending s. 110.119, F.S.; revising provisions relating to administrative leave for a service-connected disability; transferring, renumbering, and amending ss. 110.120 and 110.1091, F.S.; conforming provisions to changes made by the act; transferring, renumbering, and amending s. 110.151, F.S.; revising provisions relating to child care services provided by a state agency; transferring and renumbering s. 110.181, F.S., relating to the Florida State Employees' Charitable Campaign; transferring, renumbering, and amending s. 110.1225, F.S.; revising provisions relating to agency furloughs; transferring and renumbering s. 110.1155, F.S., relating to travel to certain countries lacking





diplomatic relations with the United States; transferring, renumbering, and amending s. 110.191, F.S.; revising provisions relating to state employee leasing; transferring, renumbering, and amending s. 110.1082, F.S.; revising provisions related to telephone use; transferring, renumbering, and amending s. 110.1165, F.S.; revising provisions relating to executive branch personnel errors; transferring, renumbering, and amending s. 110.113, F.S.; revising provisions relating to pay periods; requiring state employees to participate in the direct deposit program; transferring and renumbering s. 110.114, F.S., relating to employee wage deductions; creating s. 112.927, F.S.; authorizing the department to use its human resource information system for resource functionality; transferring, renumbering, and amending s. 110.1127, F.S.; revising provisions relating to background screening; transferring, renumbering, and amending s. 110.117, F.S.; revising provisions relating to an employee's personal holiday; creating s. 112.930, F.S.; providing a telework program; creating s. 112.931, F.S.; providing requirements for the savings sharing program; transferring and, renumbering s. 110.1156, F.S., relating to the export of goods to countries that support terrorism; creating s. 112.933, F.S.; providing penalties for violations relating to state employment; providing a directive to the Division of Statutory Revision; transferring, renumbering, and amending s. 110.1227, F.S.;

conforming a cross-reference; transferring, renumbering, and amending s. 110.1228, F.S.; conforming a cross-reference; transferring, renumbering, and amending s. 110.123, F.S., relating to the state group insurance program; conforming terminology and making editorial changes; transferring, renumbering, and amending s. 110.12301, F.S.; conforming a cross-reference; transferring and renumbering s. 110.12302, F.S., relating to costing options for state group insurance plans; transferring, renumbering, and amending s. 110.12312, F.S.; conforming cross-references; transferring and renumbering s. 110.12315, F.S., relating to the state employees' prescription drug program; transferring, renumbering, and amending s. 110.1232, F.S.; conforming cross-references; transferring and renumbering s. 110.1234, F.S., relating to health insurance for retirees under the Florida Retirement System; transferring and renumbering s. 110.1238, F.S., relating to state group health insurance plans; transferring and renumbering s. 110.1239, F.S., relating to funding for the state group health insurance program; transferring, renumbering, and amending s. 110.161, F.S.; conforming a cross-reference; creating s. 112.952, F.S.; providing for penalties; providing a directive to the Division of Statutory Revision; transferring, renumbering, and amending s. 110.501, F.S.; revising definitions relating to state volunteer services; transferring,



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renumbering, and amending s. 110.502, F.S.; revising provisions relating to volunteer status; transferring, renumbering, and amending s. 110.503, F.S.; revising provisions relating to state agency responsibilities; transferring, renumbering, and amending s. 110.504, F.S.; revising provisions relating to volunteer benefits; creating s. 112.965, F.S.; providing for penalties; repealing s. 110.115, F.S., relating to employees of historical commissions; repealing s. 110.118, F.S., relating to administrative leave for athletic competitions; repealing s. 110.124, F.S., relating to the termination or transfer of employees 65 years of age or older; repealing s. 110.129, F.S., relating to technical personnel assistance to political subdivisions; repealing s. 110.1521, F.S., relating to a short title; repealing s. 110.1522, F.S., relating to a model rule establishing family support personnel policies; repealing s. 110.1523, F.S., relating to the adoption of the model rule; repealing s. 110.171, F.S., relating to telecommuting; repealing s. 110.201, F.S., relating to personnel rules, records, and reports; repealing s. 110.2035, F.S., relating to the classification and compensation program for employment positions; repealing s. 110.21, F.S., relating to shared employment; repealing s. 110.406, F.S., relating to senior management service data collection; repealing s. 110.603, F.S., relating to a classification plan and pay bands for selected exempt service positions; repealing s. 110.604, F.S.,



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relating to certain personnel actions for selected exempt service employees; repealing s. 110.606, F.S., relating to selected exempt service data collection; amending ss. 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, 447.207, 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 F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. The Division of Statutory Revision is requested to rename chapter 110, Florida Statutes, as "State Personnel System."

Section 2. The Division of Statutory Revision is requested to rename part I of chapter 110, Florida Statutes, as "General Provisions."

Section 3. Section 110.105, Florida Statutes, is amended to read:





110.105 Establishment of the State Personnel System ~~Employment policy of the state~~.—

(1) ~~It is~~ The purpose of this chapter is to establish the State Personnel ~~a~~ System ~~of personnel management~~. The ~~This~~ system shall provide a means for maintaining ~~to recruit, select, train, develop, and maintain~~ an effective and responsible workforce and include ~~shall include~~ policies, ~~and~~ procedures, and guidelines for employee hiring and advancement, training and career development, position classification, salary administration, benefits, attendance and leave, discipline, dismissal ~~discharge~~, employee performance evaluations, affirmative action, and other related activities.

~~(2) All appointments, terminations, assignments and maintenance of status, compensation, privileges, and other terms and conditions of employment in state government shall be made without regard to age, sex, race, religion, national origin, political affiliation, marital status, or handicap, except when a specific sex, age, or physical requirement constitutes a bona fide occupational qualification necessary to proper and efficient administration.~~

~~(3) Except as expressly provided by law, there shall be no Florida residence requirement for any person as a condition precedent to employment by the state; however, preference may be given to Florida residents in hiring.~~

(2)~~(4)~~ This chapter contains the requirements ~~and guides~~ for establishing and maintaining a system of personnel administration on a merit basis. The system ~~of personnel administration~~ shall be implemented so as to ensure that the ~~permit~~ state agencies participating in the State Personnel

System are ~~to be~~ eligible for ~~to receive~~ federal funds.

~~(5) Nothing in this chapter shall be construed either to infringe upon or to supersede the rights guaranteed public employees under chapter 447.~~

Section 4. Section 110.107, Florida Statutes, is transferred, renumbered as section 110.1054, Florida Statutes, reordered, and amended to read:

110.1054 ~~110.107~~ Definitions.—As used in this chapter, the term:

(5)~~(1)~~ "Department" means the Department of Management Services.

(30)~~(2)~~ "Secretary" means the Secretary of Management Services.

~~(3) "Furlough" means 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, necessitated by a projected deficit in any fund that supports salary and benefit appropriations. The deficit must be projected by the Revenue Estimating Conference pursuant to s. 216.136(3).~~

(31)~~(4)~~ "State agency" or "agency" means any entity within the State Personnel System ~~official, officer, commission, board, authority, council, committee, or department of the executive branch or the judicial branch of state government as defined in chapter 216~~.

(32) "State employee" or "employee" means an employee of a state agency.

(33) "State Personnel System" means the system of personnel administration for authorized civil service, selected exempt





service, and senior management service positions and other personal services employment within the following state agencies and organizational units of such agencies as specified by law:

(a) Agency for Enterprise Information Technology.

(b) Agency for Health Care Administration.

(c) Agency for Persons with Disabilities.

(d) Department of Agriculture and Consumer Services.

(e) Department of Business and Professional Regulation.

(f) Department of Children and Family Services.

(g) Department of Citrus.

(h) Department of Corrections.

(i) Department of Economic Opportunity.

(j) Department of Education.

(k) Department of Elderly Affairs.

(l) Department of Environmental Protection.

(m) Department of Financial Services.

(n) Department of Health.

(o) Department of Highway Safety and Motor Vehicles.

(p) Department of Juvenile Justice.

(q) Department of Law Enforcement.

(r) Department of Legal Affairs.

(s) Department of Management Services.

(t) Department of Military Affairs.

(u) Department of Revenue.

(v) Department of State.

(w) Department of Transportation.

(x) Department of Veterans' Affairs.

(y) Executive Office of the Governor.

(z) Fish and Wildlife Conservation Commission.

(aa) Florida Public Service Commission.

(bb) Florida School for the Deaf and the Blind.

(cc) Parole Commission.

(22) ~~(5)~~ "Position" means the work, consisting of duties and responsibilities, ~~assigned to be~~ performed by an officer or employee.

(23) "Position description" means the document that accurately describes the assigned duties, responsibilities, and other pertinent information, including licensure, certification, or registration requirements, of a position and that serves as the official record of the work and other requirements of the position.

(10) ~~(6)~~ "Full-time position" means a position authorized for the entire normally established work period, whether daily, weekly, monthly, or annually.

(19) ~~(7)~~ "Part-time position" means a position authorized for less than the entire normally established work period, whether daily, weekly, monthly, or annually.

(16) ~~(8)~~ "Occupation" means all positions that ~~which~~ are sufficiently similar in knowledge, skills, and abilities, and sufficiently similar as to kind or subject matter of work.

(17) ~~(9)~~ "Occupational group" means a group of occupations which are sufficiently similar in the kind of work performed to warrant the use of the same performance factors in determining the level of complexity for all occupations in that occupational group.

(18) "Other personal services" means temporary employment as provided in s. 112.907.

(3) ~~(10)~~ "Classification system ~~plan~~" means a formal





description of the concepts, rules, job family definitions, occupational group characteristics, ~~and~~ occupational profiles, and broadband levels used to classify ~~in the classification of~~ positions.

(21) ~~(11)~~ "Pay plan" means a formal description of the philosophy, methods, procedures, and salary schedules for competitively compensating employees at market-based rates for work performed.

(29) ~~(12)~~ "Salary schedule" means an official document that ~~which~~ contains a complete list of occupation titles, broadband level codes, ~~and~~ pay bands, and other related information.

(1) ~~(13)~~ "Authorized position" means a position included in an approved budget. In counting the number of authorized positions, part-time positions may be converted to full-time equivalents.

(8) ~~(14)~~ "Established position" means an authorized position that ~~which~~ has been classified in accordance with a classification system and pay plan as provided by law.

(24) ~~(15)~~ "Position number" means the identification number assigned to an established position or other personal services employment position.

(28) ~~(16)~~ "Reclassification" means changing an established position ~~in one broadband level in an occupational group~~ to a higher or lower broadband level within ~~in~~ the same occupation or changing an established position to a different occupation, either of which is the result of a change in the duties and responsibilities of the position ~~occupational group or to a broadband level in a different occupational group~~.

(26) ~~(17)~~ "Promotion" means moving a civil service employee

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





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.~~

(9) ~~(26)~~ "Firefighter" means a firefighter certified under chapter 633.

(13) ~~(27)~~ "Law enforcement or correctional officer" means a law enforcement officer, special agent, correctional officer, correctional probation officer, or institutional security specialist ~~required to be~~ certified under chapter 943.

(25) ~~(28)~~ "Professional health care provider" means registered nurses, physician's assistants, dentists, psychologists, nutritionists or dietitians, pharmacists, psychological specialists, physical therapists, and speech and hearing therapists.

(11) ~~(29)~~ "Job family" means a defined grouping of one or more similar occupational groups.

(12) "Lateral" means moving a civil service employee within an agency to a different position that is in the same occupation, that is at the same broadband level with the same maximum salary, and that has substantially the same duties and responsibilities.

(20) ~~(30)~~ "Pay band" means the minimum salary, the maximum salary, and intermediate rates that ~~which~~ are payable for work in a specific broadband level.

(2) ~~(31)~~ "Broadband level" means all positions that ~~which~~ are sufficiently similar in knowledge, skills, and abilities; the~~, and sufficiently similar as to~~ kind or subject matter of work; the~~,~~ level of difficulty or responsibility; ~~responsibilities,~~ and qualification requirements ~~of the work~~ so as to warrant the same treatment with respect ~~as~~ to title, pay band, and other personnel transactions.

Section 5. Section 110.1055, Florida Statutes, is amended





to read:

110.1055 Rules; records ~~and rulemaking authority~~.—

(1) The department ~~of Management Services~~ shall adopt rules as necessary to carry out its statutory duties ~~effectuate the provisions of this chapter, as amended by this act, and in accordance with the authority granted to the department in this chapter~~. ~~All existing rules relating to this chapter are statutorily repealed January 1, 2002, unless otherwise readopted.~~

(2) In consultation with the state agencies, the department shall develop uniform personnel rules, guidelines, records, and reports relating to employees in the State Personnel System. The department may adopt rules that provide alternative requirements.

(3) Upon adoption, the uniform personnel rules constitute the personnel rules for each state agency.

(a) Each agency must comply with the uniform rules unless:

1. The Administration Commission has granted an exception to a specific rule. An agency may request an exception to the uniform personnel rules by filing a petition with the commission. The commission shall approve an exception if 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 if required for the most efficient operation of the agency as determined by the commission. The reasons for the exception must be published in the Florida Administrative Weekly. Agency rules that provide exceptions to the uniform rules may not be adopted unless approved by the commission.

2. The agency must comply with a statutory provision that conflicts with the uniform rules. In such case, the agency shall notify the department, the Administration Commission, the Administrative Procedures Committee, and the appropriate standing committees of the Legislature and advise the standing committees if the agency recommends revision of the statute to conform it to the uniform rules. Agencies are encouraged to propose methods for conforming statutory provisions to the uniform rules.

(b) An agency that adopts rules that provide an exception to the uniform rules or that comply with statutory requirements that conflict with the uniform rules must have a separate chapter published in the Florida Administrative Code. The chapter must clearly delineate the provisions of the agency's rules which provide an exception or which are based on 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.

(c) Any rule adopted by an agency which is an exception to the uniform rules or which is based upon a conflicting statutory provision may not prescribe personnel policies inconsistent with the provisions of this chapter. Such rules may not include any benefits for State Personnel System employees which are in addition to, or exceed, those authorized by this chapter, and must comply with all federal regulations necessary to allow the agency to receive federal funds.

(4) The department may develop uniform forms and instructions relating to personnel transactions as the





department determines necessary.

(5) The agency is responsible for maintaining up-to-date personnel records and reports in accordance with applicable rules and laws.

Section 6. Section 110.1056, Florida Statutes, is created to read:

110.1056 Agency audits.—The department may periodically audit agency records to determine compliance with this chapter and department rules.

Section 7. Section 110.405, Florida Statutes, is transferred, renumbered as section 110.106, Florida Statutes, and amended to read:

110.106 ~~110.405~~ Advisory committees.—The secretary ~~of Management Services~~ may at any time appoint an ad hoc or continuing advisory committee consisting of members of the Senior Management Service or other persons knowledgeable in the field of personnel management. Advisory committees ~~Any Such committee shall consist of not more than nine members, who~~ shall serve at the pleasure of and meet at the call of the secretary and, at the request of the secretary, provide consultation and advice~~, to advise and consult with the secretary~~ on ~~such~~ matters affecting the State Personnel System ~~Senior Management Service as the secretary requests~~. Members shall serve without compensation, but are ~~shall be~~ entitled to ~~receive~~ reimbursement for travel expenses as provided in s. 112.061. The secretary may periodically hire a consultant who has ~~with~~ expertise in personnel administration ~~management~~ to advise him or her with respect to the administration of the State Personnel System ~~Senior Management Service~~.

Section 8. Section 110.1065, Florida Statutes, is created to read:

110.1065 General employment policies and requirements.—

(1) It is the policy of the State Personnel System:

(a) That all appointments, terminations, assignments, and maintenance of status, compensation, privileges, and other terms and conditions of employment in the State Personnel System be made without regard to age, sex, race, color, religion, national origin, political affiliation, marital status, disability, or genetic information, unless a specific requirement constitutes a bona fide occupational qualification.

(b) That sexual harassment is a form of discrimination and, therefore, is prohibited and shall be defined in a manner consistent with federal law.

(c) To support employees in balancing their personal needs and work responsibilities. This policy is designed to enhance the employee's ability to blend the competing demands of work and personal life and produce a more skilled, accountable, and committed workforce for the State Personnel System. Provisions may include, but need not be limited to, flexible work schedules, telework, part-time employment, and leaves of absence with or without pay.

(d) To adopt and comply with the federal Family and Medical Leave Act, except for those provisions that do not specifically apply to state government employers. With regard to those provisions, the sovereign immunity of the state is not waived and the rules of the department relating to leave control.

(2) Except as expressly provided by law, Florida residency may not be required for any person as a condition precedent to





employment; however, preference in hiring may be given to state residents.

(3) State agencies that use other personal services employment must comply with s. 112.907.

(4) Employees of the State Personnel System may be furloughed pursuant to s. 112.920.

(5) This chapter may not be construed to infringe upon or supersede the rights guaranteed public employees under chapter 447.

(6) The department may adopt rules necessary to administer this section.

(7) The provisions of parts IX and XI of chapter 112 are applicable to the State Personnel System. The department may adopt rules necessary to administer those sections.

Section 9. Section 110.233, Florida Statutes, is transferred, renumbered as section 110.1075, Florida Statutes, and amended to read:

110.1075 ~~110.233~~ Political activities and unlawful acts prohibited.—

(1) No person shall be appointed to, demoted, or dismissed from any position in the Civil ~~career~~ Service, or in any way favored or discriminated against with respect to employment in the Civil ~~career~~ Service, because of ~~race, color, national origin, sex, handicap, religious creed, or~~ political opinion or affiliation.

(2) No person may ~~shall~~ use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position

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 ~~do~~ 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 ~~no~~ employee in the Civil ~~career~~ Service may not ~~shall~~:





(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 ~~no~~ 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

section.

Section 10. Section 110.1099, Florida Statutes, is amended to read:

110.1099 Elective education and professional development ~~and training~~ opportunities for ~~state~~ employees.—

(1) The education and professional development of employees ~~training~~ are ~~an~~ integral components ~~component~~ in improving the delivery of services to the public. Recognizing that the application of productivity-enhancing technology and practice demands continuous educational and professional development ~~training~~ opportunities, an ~~a state~~ employee may ~~be authorized to~~ receive a voucher, ~~or~~ grant, or tuition reimbursement for matriculation fees~~,~~ to attend work-related courses at public community colleges, public career centers, ~~or~~ public universities, or other accredited postsecondary educational institutions. ~~The department may implement the provisions of this section from funds appropriated to the department for this purpose. In the event insufficient funds are appropriated to the department,~~ Each state agency may ~~supplement these funds to~~ support the educational and professional development ~~training and education~~ needs of its employees from funds appropriated to the agency.

~~(2) The department, in conjunction with the agencies, shall request that public universities provide evening and weekend programs for state employees. When evening and weekend training and educational programs are not available, an employee may be authorized to take paid time off during his or her regular working hours for training and career development, as provided in s. 110.105(1), if such training benefits the employer as~~



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~~determined by that employee's agency head.~~

(2)~~(3)~~ An employee who exhibits superior aptitude and performance may be authorized by his or her ~~that employee's~~ agency head to take a paid educational leave of absence for up to 1 academic year at a time, for specific approved work-related education and professional development ~~training~~. The ~~That~~ employee must enter into a contract to return to the agency granting the leave ~~state employment~~ for a period of time equal to the length of the leave of absence or refund the salary and benefits paid during the ~~his or her educational~~ leave of absence.

(3)~~(4)~~ As a precondition to approving an employee's ~~training~~ request for an educational, professional development, or training program, an agency ~~or the judicial branch~~ may require the ~~an~~ employee to enter into an agreement which provides that, if the employee voluntarily terminates employment or is dismissed from the agency within a specified period of time, not to exceed 2 years after the conclusion of the program, ~~requires~~ the employee must ~~to~~ reimburse the agency ~~or judicial branch~~ for up to the total cost of fees and associated expenses for the program if ~~the registration fee or similar expense for any training or training series when~~ the total cost of the fee or similar expense exceeds $1,000 ~~if the employee voluntarily terminates employment or is discharged for cause from the agency or judicial branch within a specified period of time not to exceed 4 years after the conclusion of the training~~. This subsection does not apply to any ~~training~~ program or course that an agency ~~or the judicial branch~~ requires an employee to attend. An agency ~~or the judicial branch~~ may pay the outstanding balance



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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



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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.



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(6) The department may adopt rules necessary to administer this section.

Section 12. Section 110.112, Florida Statutes, is amended to read:

110.112 ~~Affirmative action;~~ Equal employment opportunity.—

(1) It is ~~shall be~~ the policy of the State Personnel System to assist in ensuring ~~providing the assurance of~~ equal employment opportunity through programs of affirmative and positive action that ~~will~~ allow full utilization of women and minorities.

(2) ~~(a)~~ The head of each state ~~executive~~ agency shall develop and implement an affirmative action plan in accordance with this section and applicable state and federal laws ~~rules adopted by the department and approved by a majority vote of the Administration Commission before their adoption~~.

(a) ~~(b)~~ Each ~~executive~~ agency shall establish annual goals for ensuring the full utilization of groups underrepresented in its workforce as compared to the relevant labor market, as defined by the agency. Each ~~executive~~ agency shall design its affirmative action plan to meet its established goals.

(b) ~~(c)~~ An equal ~~affirmative action-equal~~ employment opportunity officer shall be appointed by the head of each ~~executive~~ agency. ~~The affirmative action-equal employment opportunity officer's responsibilities must include determining annual goals, monitoring agency compliance, and providing consultation to managers regarding progress, deficiencies, and appropriate corrective action.~~

(c) ~~(d)~~ The department shall report information in its annual workforce report relating to the demographic composition



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of the workforce of the State Personnel System as compared to the relevant state labor market ~~the implementation, continuance, updating, and results of each executive agency's affirmative action plan~~ for the previous fiscal year. The agencies shall provide the department with the information necessary to comply with this provision.

~~(c) The department shall provide to all supervisory personnel of the executive agencies training in the principles of equal employment opportunity and affirmative action, the development and implementation of affirmative action plans, and the establishment of annual affirmative action goals. The department may contract for training services, and each participating agency shall reimburse the department for costs incurred through such contract. After the department approves the contents of the training program for the agencies, the department may delegate this training to the executive agencies.~~

~~(3) Each state attorney and public defender shall:~~

~~(a) Develop and implement an affirmative action plan.~~

~~(b) Establish annual goals for ensuring full utilization of groups underrepresented in its workforce as compared to the relevant labor market in this state. The state attorneys' and public defenders' affirmative action plans must be designed to meet the established goals.~~

~~(c) Appoint an affirmative action-equal employment opportunity officer.~~

~~(d) Report annually to the Justice Administrative Commission on the implementation, continuance, updating, and results of his or her affirmative action program for the previous fiscal year.~~



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(3) ~~(4)~~ Each ~~The~~ state agency~~, its agencies and officers~~ shall ensure freedom from discrimination in employment in accordance with applicable state and federal laws ~~as provided by the Florida Civil Rights Act of 1992, by s. 112.044, and by this chapter~~.

(4) All recruitment literature that references State Personnel System position vacancies must contain the phrase "An Equal Opportunity Employer."

(5) An ~~Any~~ individual claiming to be aggrieved by an unlawful employment practice may file a complaint with the Florida Commission on Human Relations as provided by s. 760.11.

(6) The department may adopt rules necessary to administer ~~shall review and monitor executive agency actions in carrying out the rules adopted by the department pursuant to~~ this section.

Section 13. Section 110.1135, Florida Statutes, is created to read:

110.1135 Attendance and leave records.—Each state 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. The ultimate responsibility for the accuracy and proper maintenance of all attendance and leave records is with the agency head.

Section 14. Section 110.116, Florida Statutes, is amended to read:

110.116 Human resource information ~~Personnel information~~ system; payroll procedures.—

(1) The department ~~of Management Services~~ shall establish and maintain, in coordination with the payroll system of the



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Department of Financial Services, a complete human resource ~~personnel~~ information system for all authorized and established positions in the State Personnel System ~~service, with the exception of employees of the Legislature, unless the Legislature chooses to participate~~. The department may contract with a vendor to provide the human resource ~~personnel~~ information system. The specifications shall be developed in conjunction with the payroll system of the Department of Financial Services and in coordination with the Auditor General. The Department of Financial Services shall determine that the position occupied by each employee has been authorized and established in accordance with ~~the provisions of~~ s. 216.251. The human resource information system must include ~~Department of Management Services shall develop and maintain~~ a position numbering system that identifies ~~will identify~~ each established position, and such information shall be a part of the payroll system of the Department of Financial Services. The ~~With the exception of employees of the Legislature, unless the Legislature chooses to participate, this~~ system must ~~shall~~ include all civil ~~career~~ service positions and those positions exempted from the Civil ~~career~~ Service ~~provisions~~, notwithstanding the funding source of the salary payments, and information regarding persons receiving salary payments from other sources. Necessary revisions shall be made in the personnel and payroll procedures of the state to avoid duplication insofar as is feasible to do so. The information in the system must ~~A list shall~~ be organized by budget entity to show the employees or vacant positions within each budget entity. The information ~~This list~~ shall be made available to the



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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~~



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~~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~~



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~~written reprimands, suspensions, dismissals, and involuntary or voluntary demotions that were associated with a disciplinary action.~~

~~4. The employee must have demonstrated a commitment to the agency mission by reducing the burden on those served, continually improving the way business is conducted, producing results in the form of increased outputs, and working to improve processes.~~

~~5. The employee must have demonstrated initiative in work and have exceeded normal job expectations.~~

~~6. The employee must have modeled the way for others by displaying agency values of fairness, cooperation, respect, commitment, honesty, excellence, and teamwork.~~

~~(c) A periodic evaluation process of the employee's performance.~~

~~(d) A process for peer input that is fair, respectful of employees, and affects the outcome of the bonus distribution.~~

~~(c) A division of the agency by work unit for purposes of peer input and bonus distribution.~~

~~(f) A limitation on bonus distributions equal to 35 percent of the agency's total authorized positions. This requirement may be waived by the Office of Policy and Budget in the Executive Office of the Governor upon a showing of exceptional circumstances.~~

(2) ~~(3)~~ Consistent with the requirements of s. 215.425(3), and limited to the funds provided in the agency's approved operating budget for salaries and benefits, each agency head may provide bonus awards to ~~department head is authorized to incur expenditures to award suitable framed certificates, pins, and~~



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~~other tokens of recognition to retiring state~~ employees based on exemplary performance or ~~whose service with the state has been satisfactory,~~ in appreciation of their role in the achievement of the agency's mission, values, or goals ~~and recognition of such service~~.

(a) Each award ~~Such awards~~ may not exceed more than $1,000 ~~cost in excess of $100 each~~ plus applicable taxes. No employee may receive awards totaling more than $1,000 plus applicable taxes per fiscal year.

(b) By September 1, agencies shall 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.

(3) ~~(4)~~ Each agency ~~department~~ head may ~~is authorized to~~ incur expenditures to award suitable framed certificates, pins, and ~~or~~ other noncash tokens of recognition. Each token ~~to state employees who demonstrate satisfactory service in the agency or to the state, in appreciation and recognition of such service. Such awards~~ may not cost more than $150 ~~in excess of $100 each~~ plus applicable taxes. Such tokens may be awarded to:

(a) Current employees, in appreciation and recognition of their service to the state.

(b) Retiring employees, in appreciation and recognition of their service to the state.

(c) An appointed member of a state board or commission, in appreciation and recognition of his or her service to the state upon the expiration of the member's final term in such position.

(4) The department may adopt rules necessary to administer this section.



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~~(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~~



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~~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



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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.



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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



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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





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

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



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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.~~



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~~(h) Patients or inmates in state institutions.~~

(f) ~~(i)~~ *Time-limited positions.*—All positions that are established for a limited period of time for the purpose of conducting a special study, project, or investigation and any person paid from an other-personal-services appropriation. Unless otherwise fixed by law, the salaries for such positions and persons shall be set in accordance with rules established by the employing agency for other-personal-services payments pursuant to s. 112.907 ~~110.131~~.

(g) ~~(j)~~ *Executive-level positions.*—The appointed secretaries and the State Surgeon General, assistant secretaries, deputy secretaries, and deputy assistant secretaries of all agencies ~~departments~~; the executive directors, assistant executive directors, deputy executive directors, and deputy assistant executive directors of all agencies ~~departments~~; the directors of all divisions and those positions determined by the Department of Management Services to have managerial responsibilities comparable to such positions, including ~~which positions include~~, but ~~are~~ not limited to, program directors, assistant program directors, district administrators, deputy district administrators, general counsels, chief cabinet aides, public information administrators or comparable position for a cabinet officer, inspectors general, or legislative affairs directors ~~the Director of Central Operations Services of the Department of Children and Family Services~~, the State Transportation Development Administrator, State Public Transportation and Modal Administrator, district secretaries, district directors of transportation development, transportation operations, transportation support, ~~and~~ the managers of the





Department of Transportation offices specified in s. 20.23(4)(b), the county health department directors and county health department administrators of the Department of Health, and the one additional position that may be designated by each agency and that reports directly to the agency head or to a position in the Senior Management Service and whose additional costs are absorbed from the existing budget of that agency ~~of the Department of Transportation~~. 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 Senior Management Service~~; and the county health department directors and county health department administrators of the Department of Health~~.

~~(k) The personal secretary to the incumbent of each position exempted in paragraphs (a), (c), and (j). Unless otherwise fixed by law, the department shall set the salary and benefits of these positions in accordance with the rules of the Selected Exempt Service.~~

(h) ~~(l)~~ *Executive Office of the Governor.*—All officers and employees in the office of the Governor, including all employees at the Governor's mansion, and employees within each separate budget entity, as defined in chapter 216, assigned to the Governor. Unless otherwise fixed by law, the salary and benefits of these positions shall be set by the Department of Management Services as follows:

1. The chief of staff, the assistant or deputy chief of staff, general counsel, Director of Legislative Affairs, chief inspector general, Director of Cabinet Affairs, Director of Press Relations, Director of Planning and Budgeting, Director of

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



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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~~



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~~Service.~~

(j)~~(n)~~ *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.~~



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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



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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.

(l) ~~(o)~~ *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





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~~

~~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; ~~,~~ licensure as an osteopathic physician pursuant to chapter 459; ~~,~~ 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



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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~~



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~~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) ~~(x)~~ *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



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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



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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.





(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.

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.





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

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:





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

shall ~~be required to~~ document the qualifications of the selected candidate to ensure that the candidate meets the position ~~minimum~~ requirements ~~as~~ specified by the ~~employing~~ agency~~;~~ meets the licensure, certification, or registration requirements, if any, as specified by statute~~;~~ and possesses the requisite knowledge, skills, and abilities for the position. No other documentation or justification is ~~shall be~~ required before ~~prior to~~ selecting a candidate for a position.

(3) The department may adopt rules necessary to administer this section.

Section 29. Section 110.2135, Florida Statutes, is amended to read:

110.2135 Veterans' preference ~~in employment, reemployment, promotion, and retention~~.—

(1) Preference in employment, reemployment, promotion, and retention shall be given to an eligible veteran pursuant to ss. 295.07, 295.08, 295.085, and 295.09 if ~~as long as~~ the veteran meets the minimum eligibility requirements and has the knowledge, skills, and abilities required for the particular position.

(2) A disabled veteran employed as the result of being placed at the top of the appropriate employment list under ~~the provisions of~~ s. 295.08 or s. 295.085 shall be appointed for a probationary period of 1 year. At the end of such period, if the work of the veteran has been satisfactorily performed, the veteran will acquire merit ~~permanent employment~~ status in his or her position and ~~will~~ be subject to the employment rules of the department ~~of Management Services~~ and the agency employing the veteran ~~veteran's employing agency~~.



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(3) The department may adopt rules necessary to administer this section.

Section 30. Section 110.215, Florida Statutes, is amended to read:

110.215 Examinations and other employment qualification assessments administered to persons having disabilities.—

(1) The purpose of this section is to further the policy of the State Personnel System to encourage and assist persons having disabilities to achieve maximum personal and vocational independence through useful and productive gainful employment by eliminating unwarranted barriers to their qualifying competitively for civil ~~state career~~ service jobs.

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

~~(a) "Agency" includes each department and agency of the state.~~

(a) ~~(b)~~ "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, or a record of having such an impairment, or being regarded as having such an impairment.

(b) ~~(c)~~ "Examination" includes employment tests and other structured, systematic instruments used to assess the essential knowledge, skills, abilities, minimum qualifications, and other job-related requirements possessed by an applicant as a basis for any employment decision by an agency.

(3) An applicant for employment within the Civil ~~State Career~~ Service ~~System~~ who has a disability that impairs sensory, speaking, or manual skills may require an agency to administer an ~~any~~ examination to him or her in a format and manner that



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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~~



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~~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~~



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~~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~~





~~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~~.

(d) Overtime provisions.

(e) Annual leave provisions.

(f) Sick leave provisions.

(g) Parental leave provisions.

(h) Family medical leave provisions.

(i) Disability leave provisions.

(j) Compulsory disability leave provisions.

(k) Administrative leave provisions.

(l) Military leave provisions.

(m) Educational leave with pay provisions.

(n) Leave of absence without pay provisions.

~~(6) The leave benefits provided to Senior Management Service employees shall not exceed those provided to employees in the Selected Exempt Service.~~

(5)~~(7)~~ Subject to available funds, each December, a civil ~~permanent career~~ service employee who has merit status or who currently has probationary status due to a promotion that was preceded by the attainment of merit status is entitled ~~shall be entitled, subject to available funds,~~ to a payout of up to 24 hours of unused annual leave if the ~~as follows:~~

~~(a) A permanent career service~~ employee has ~~must have~~ an annual leave balance of at least ~~no less than~~ 24 hours, after the payout~~, in order to qualify for this benefit~~.

(6)~~(b)~~ A civil ~~No permanent career~~ service employee may not ~~shall~~ receive a payout of greater than 240 hours over the course of the employee's career within ~~with~~ the Civil Service ~~state~~, including any leave received at the time of separation.

Section 33. Section 110.221, Florida Statutes, is amended to read:



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110.221 Parental or family medical leave.—

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

(a) "Family" means a child, parent, or spouse.~~, and the term~~

(b) "Family medical leave" means leave requested by an employee for a serious family illness including an accident, disease, or condition that poses imminent danger of death, requires hospitalization involving an organ transplant, limb amputation, or other procedure of similar severity, or any mental or physical condition that requires constant in-home care. ~~The term~~

(c) "Parental leave" means leave for the father or mother of a child who is born to or adopted by that parent.

(2) The state may ~~shall~~ not:

(a) Terminate the employment of a civil service ~~any~~ employee ~~in the career service~~ because of the pregnancy of the employee or the employee's spouse or the adoption of a child by that employee.

(b) Refuse to grant to a civil ~~career~~ service employee parental or family medical leave without pay for a period not to exceed 6 months. Such leave commences ~~shall commence~~ on a date ~~that is~~ determined by the employee in consultation with the attending physician following notification to the employer in writing, and that is approved by the employer.

(c) Deny a civil ~~career~~ service employee the use of and payment for annual leave credits for parental or family medical leave. Such leave commences ~~shall commence~~ on a date determined by the employee in consultation with the attending physician following notification to the employer in writing.



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(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



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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



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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~~.



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(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



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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





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.

(6) The following procedures ~~shall~~ apply to appeals filed pursuant to subsection (5) with the Public Employees Relations Commission~~, hereinafter referred to as the commission~~:

(a) The commission must conduct a hearing within 60 calendar days following the filing of a notice of appeal. An ~~No~~ extension of time for the hearing may not exceed 30 calendar days, absent exceptional circumstances, and ~~no extension of time~~ may not be granted without the consent of all parties. Discovery may be granted only upon the showing of extraordinary circumstances. A party requesting discovery must ~~shall~~ demonstrate a substantial need for the information requested and an inability to obtain relevant information by other means. Except where inconsistent with the requirements of this subsection, the provisions of s. 447.503(4) and (5) and chapter 120 apply to proceedings held pursuant to this subsection.

(b) A person may represent himself or herself in proceedings before the commission or may be represented by legal counsel or by an ~~any~~ individual who qualifies as a representative pursuant to rules adopted by the commission.

(c) If the commission finds that cause did not exist for the agency action, the commission shall reverse the decision of the agency head and the employee shall be reinstated with or without back pay. If the commission finds that cause existed for the agency action, the commission shall affirm the decision of the agency head. The commission may not reduce the penalty imposed by the agency head, except in the case of law enforcement or correctional officers, firefighters, and professional health care providers, if the commission makes specific written findings of mitigation.





(d) A recommended order shall be issued by the hearing officer within 30 days following the hearing. Exceptions to the recommended order must ~~shall~~ be filed within 15 days after the recommended order is issued. The final order shall be filed by the commission within ~~no later than~~ 45 calendar days after the hearing or after the filing of exceptions or oral arguments if granted.

(e) Final orders issued by the commission pursuant to paragraph (d) are ~~shall be~~ reviewable as provided in s. 447.504.

(7) Other than for law enforcement or correctional officers, firefighters, and professional health care providers, each suspension, dismissal, demotion, or reduction in pay must be reviewed without consideration of any other case or set of facts.

(8) Employees of the Department of Law Enforcement are subject to this section, except in matters relating to transfer.

(9) The department may adopt rules necessary to administer this section.

~~(8) A career service employee who is serving a probationary period in a position to which he or she has been promoted may be removed from that promotional position at any time during the probationary period but must be returned to his or her former position, or a comparable position, if such a position is vacant. If such a position is not available, before dismissal, the agency shall make a reasonable effort to retain the employee in another vacant position. This subsection does not apply to terminations for cause as described in subsection (1), nor does it create a right to "bump" an employee from an occupied position as described in paragraph (2)(a).~~

Section 36. The Division of Statutory Revision is requested to renumber part V of chapter 110, Florida Statutes, as part III, consisting of ss. 110.302-110.3035, and to rename that part as "Selected Exempt Service."

Section 37. Section 110.601, Florida Statutes, is transferred, renumbered as section 110.302, Florida Statutes, and amended to read:

110.302 ~~110.601~~ Declaration of policy.—This part creates a system of personnel administration for ~~management~~ the purpose of delivering ~~which is to deliver~~ high-quality performance by selected exempt service ~~those~~ employees in the State Personnel System ~~select exempt classifications~~ by facilitating the ~~state's~~ ability to attract and retain qualified personnel in these positions, while also providing sufficient management flexibility to ensure that the workforce is responsive to agency needs. The Legislature recognizes that the public interest is best served by developing and refining the technical and managerial skills of these ~~its selected exempt service~~ employees~~, and, to this end, technical training and management development programs are regarded as a major administrative function within agencies~~.

Section 38. Section 110.602, Florida Statutes, is transferred, renumbered as section 110.3021, Florida Statues, and amended to read:

110.3021 ~~110.602~~ Selected Exempt Service; creation~~, coverage~~.—

(1) The Selected Exempt Service is created as a separate system of personnel administration for ~~select exempt~~ positions in the State Personnel System which~~. Such positions shall~~



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~~include, and shall be limited to, those positions which~~ are exempt from the Civil ~~Career~~ Service ~~System~~ pursuant to s. 110.205~~(2) and (5)~~ and for which the salaries and benefits are set by the department in accordance with the rules of the Selected Exempt Service. ~~The department shall designate all positions included in the Selected Exempt Service as either managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.~~

(2) Employees in the Selected Exempt 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 39. 110.605, Florida Statutes, is transferred, renumbered as section 110.3022, Florida Statutes, and amended to read:

110.3022 ~~110.605~~ Powers and duties~~; personnel rules, records, reports, and performance appraisal~~.—The department is responsible for the policy administration of the Selected Exempt Service. In carrying out that function the department shall:

(1) Provide broad, market-based pay bands for occupations within the Selected Exempt 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 adopted by the department. The pay bands, and the assignment of bands to positions, do not constitute rules within the meaning of s. 120.52.

(2) Establish a classification system and a salary and benefit plan for the Selected Exempt Service which provides for



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greater pay and benefits overall than are provided for the Civil Service and less pay and benefits overall than are provided for the Senior Management Service.

(3) In consultation with the Executive Office of the Governor and the appropriations committees of the Legislature, conduct compensation surveys as necessary for achieving an equitable, competitive, market-based compensation policy for selected exempt service employees.

(4) Establish a performance evaluation system for selected exempt service employees which takes into consideration individual and organizational efficiency, productivity, and effectiveness.

(5) Establish a system for documenting department actions taken on agency requests for the approval of position exemptions and pay increases for selected exempt service employees.

(6) ~~(1) The department shall~~ Adopt and administer uniform personnel rules, records, and reports relating to employees and positions in the Selected Exempt Service, as well as any other rules and procedures relating to personnel administration which are necessary to carry out the purposes of this part.

(a) The rules adopted by the department must comply with all federal regulations necessary to permit the agencies to receive federal funds.

(b) Each agency shall operate within the uniform personnel rules adopted by the department pursuant to this part.

(c) Each agency shall maintain up-to-date records and reports required by applicable rules.

(d) ~~(a)~~ The department may ~~shall~~ develop uniform forms and instructions to be used for personnel ~~in reporting~~ transactions



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~~which involve changes in an employee's salary, status, performance, leave, fingerprint record, loyalty oath, payroll change, or appointment action or any additional transactions~~ as the department deems ~~may deem~~ appropriate.

~~(b) The department shall develop a uniform performance appraisal system for employees and positions in the Selected Exempt Service covered by a collective bargaining agreement. Each employing agency shall develop a performance appraisal system for all other employees and positions in the Selected Exempt System. Such agency system shall take into consideration individual and organizational efficiency, productivity, and effectiveness.~~

~~(c) The employing agency must maintain, on a current basis, all records and reports required by applicable rules. The department shall periodically audit employing agency records to determine compliance with the provisions of this part and the rules of the department.~~

~~(d) The department shall develop a program of affirmative and positive actions that will ensure full utilization of women and minorities in Selected Exempt Service positions.~~

~~(2) Each employing agency shall operate within the uniform personnel rules adopted by the department pursuant to the provisions of this part. Each employing agency may adopt rules as necessary to implement the provisions of this part, but such rules shall not prescribe any personnel policies inconsistent with the provisions of this part or the rules of the department.~~

~~(3) The rules adopted by the department and each employing agency under this part shall comply with all federal regulations necessary to permit the state agencies to be eligible to receive~~



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~~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.



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(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~~.—



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(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



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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



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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) ~~(c)~~ 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.





(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~~

~~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~~





~~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.

(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 46. The Division of Statutory Revision is requested to create part IX of chapter 112, Florida Statutes, to be entitled "State Employment," and consisting of ss. 112.906-112.933, Florida Statutes.

Section 47. Section 112.906, Florida Statutes, is created to read:

112.906 Definitions.—As used in this part, the term:

(1) "Department" means the Department of Management Services.

(2) "Other personal services" has the same meaning as in s. 216.011(1).

(3) "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.

(4) "State employee" or "employee" means an employee of a state agency.

Section 48. Section 110.131, Florida Statutes, is transferred, renumbered as section 112.907, Florida Statutes, and amended to read:

112.907 ~~110.131~~ Other-personal-services ~~temporary~~ employment.—





~~(1) As used in this section, the term "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government and means any officer, court, commission, or other unit of the judicial branch of state government supported in whole or in part by appropriations made by the Legislature.~~

(1)~~(2)~~ An agency may employ any qualified individual in other-personal-services ~~temporary~~ employment ~~for 1,040 hours within any 12-month period~~. For each other personal services employee, the agency shall:

(a) Maintain employee records identifying, at a minimum, the person employed, hire date, type of other personal services employment, and the number of hours worked.

(b) Determine the appropriate rate of pay and ensure that all payments are in compliance with the federal Fair Labor Standards Act and state law.

(c) Review, determine, and document by June 30 of each year that the continuation of each other personal services employment position is necessary to the mission of the agency. This review process ~~An extension beyond a total of 1,040 hours within an agency for any individual requires a recommendation by the agency head and approval by the Executive Office of the Governor. Approval of extensions shall be made in accordance with criteria established by the department. Each agency shall maintain employee information as specified by the department regarding each extension of other personal services temporary employment. The time limitation established by this subsection~~ does not apply to board members; consultants; seasonal employees; institutional clients employed as part of their

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-~~



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~~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~~



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~~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~~





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

implement an affirmative action plan in accordance with this section and applicable state and federal laws.

(a) Each executive agency shall establish annual goals for ensuring the full utilization of groups underrepresented in its workforce as compared to the relevant labor market as defined by the agency and shall design its affirmative action plan to meet those goals.

(b) The head of each executive agency shall appoint an equal employment opportunity officer.

(c) By October 1 of each year, each executive agency that is not part of the State Personnel System shall report to the Executive Office of the Governor information relating to the implementation, continuance, updating, and results of the agency's affirmative action plan for the previous fiscal year.

(3) Each state attorney and public defender shall:

(a) Develop and implement an affirmative action plan.

(b) Establish annual goals for ensuring the full utilization of groups underrepresented in its workforce as compared to the relevant labor market in this state and design its affirmative action plan to meet those goals.

(c) Appoint an affirmative action equal employment opportunity officer.

(d) Report annually to the Justice Administrative Commission on the implementation, continuance, updating, and results of his or her affirmative action program for the previous fiscal year.

(4) An individual claiming to be aggrieved by an unlawful employment practice may file a complaint with the Florida Commission on Human Relations as provided under s. 760.11.





Section 52. Section 112.911, Florida Statutes, is created to read:

112.911 Nondiscrimination in employment.—

(1) It is the policy of the state that all appointments, terminations, assignments, and maintenance of status, compensation, privileges, and other terms and conditions of employment be made without regard to age, sex, race, color, religion, national origin, political affiliation, marital status, disability, or genetic information unless a specific requirement constitutes a bona fide occupational qualification.

(2) The state, its agencies, and officers shall ensure freedom from discrimination in employment as provided by the Florida Civil Rights Act of 1992, s. 112.044, and this chapter.

Section 53. Section 110.1221, Florida Statutes, is transferred, renumbered as section 112.912, Florida Statutes, and amended to read:

112.912 ~~110.1221~~ Sexual harassment policy~~; executive agency rules~~.—It is the policy of the state that sexual harassment is a form of discrimination. Each agency that has authority to adopt rules governing the terms and conditions of employment ~~The department~~ shall adopt uniform sexual harassment rules ~~applicable to all executive agencies~~. Such ~~the~~ rules must define the term "sexual harassment" in a manner consistent with the federal definition.

Section 54. Section 110.122, Florida Statutes, is transferred, renumbered as section 112.913, Florida Statutes, and amended to read:

112.913 ~~110.122~~ Terminal payment for accumulated sick leave.—

(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





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~~.

(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 all times, be~~ voluntary on the part of the employees.



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(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



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disciplinary 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:





(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 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

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.



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(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



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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 ~~nor~~ 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



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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



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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



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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)(l)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,



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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



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~~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



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may contract with other agencies or state governmental entities outside the State Personnel System to establish and maintain positions and use the human resource information system established under s. 110.116 for its human resource functionality as well as benefits administration. The use and operation of the human resource information system shall be based upon the design rules set forth by the department, and such agencies and state governmental entities may be required to conform their respective human resource business rules and practices to the business rules and practices existing within the human resource information system in order to minimize additional system customization and to maximize system efficiencies. Payment for usage shall be in accordance with s. 110.125(2).

Section 69. Section 110.1127, Florida Statutes, is transferred, renumbered as section 112.928, Florida Statutes, and amended to read:

112.928 ~~110.1127~~ Employee background screening and investigations ~~security checks~~.—

(1) Except as provided in subsection (2), each state agency shall designate those positions that, based on the position duties, require security background screening. All persons and employees in such positions must undergo employment screening in accordance with chapter 435, using level 1 screening standards, as a condition of employment and continued employment.

(2) ~~(1)~~ Each state ~~employing~~ agency shall designate those ~~employee~~ positions that, because of the special trust or responsibility or sensitive location, require security background investigations. All persons and employees in such





positions must undergo employment screening in accordance with chapter 435, using level 2 screening standards ~~of those positions, require that persons occupying those positions be subject to a security background check~~, including fingerprinting, as a condition of employment and continued employment.

~~(2)~~(a) All positions within the Division of Treasury of the Department of Financial Services are deemed to be positions of special trust or responsibility. Persons seeking or holding such positions~~, and a person~~ may be disqualified for employment ~~in any such position~~ by reason of:

1. The conviction or prior conviction of a crime that ~~which~~ is reasonably related to the nature of the position sought or held by the individual; or

2. The entering of a plea of nolo contendere or, when a jury verdict of guilty is rendered but adjudication of guilt is withheld, with respect to a crime that ~~which~~ is reasonably related to the nature of the position sought or held by the individual.

~~(b) All employees of the division shall be required to undergo security background investigations, including fingerprinting, as a condition of employment and continued employment.~~

(b) ~~(3)(a)~~ All positions in programs providing care to children, the developmentally disabled, or vulnerable adults for 15 hours or more per week; all permanent and temporary employee positions of the central abuse hotline; and all persons working under contract who have access to abuse records are deemed to be persons and positions of special trust or responsibility~~, and~~

~~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.

~~(c) 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



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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.



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(e) Labor Day.

(f) Veterans' Day, November 11.

(g) Thanksgiving Day.

(h) Friday after Thanksgiving.

(i) Christmas Day.

(j) If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.

(2) The Governor may declare, if ~~when~~ appropriate, a state day of mourning in observance of the death of a person in recognition of service rendered to the state or nation.

(3) Each full-time employee in an authorized and established position is entitled to one personal day ~~holiday~~ each year. Each part-time employee is entitled to a personal day ~~holiday~~ each year, which shall be calculated based on the full-time equivalency of the position ~~proportionately to the personal holiday allowed to a full-time employee~~. The ~~Such~~ personal day ~~holiday~~ shall be credited to eligible employees on July 1 of each year and must ~~to~~ be taken by ~~prior to~~ June 30 of the following year or forfeited. The personal day must be taken as a whole day and may not be used incrementally. Members of the teaching and research faculty of the State University System and administrative and professional positions exempted under s. 110.205(2)(d) are not eligible for this benefit.

(4) Other personal services employees are not eligible for paid holidays or a personal day.

Section 71. Section 112.930, Florida Statutes, is created to read:



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112.930 Telework program.—

(1) For the purposes of this section, the term "telework" means an alternative work arrangement that allows an employee to conduct all or some of his or her work away from the official work site during all or a portion of the employee's established work hours on a regular basis. The term does not include, and a telework agreement is not required for:

(a) Performance of required work duties away from the official work site and outside of established work hours on an occasional basis and sporadically working away from the official work site during all or some portion of the established work hours. These arrangements may be used by an agency to accommodate extenuating circumstances by allowing an employee to maintain productivity outside of the official work site.

(b) Duties and responsibilities that, by their nature, are performed routinely in the field away from the official work site.

(2) An agency may establish telework as an integral part of the normal business operations of the agency and require that specific work be performed through telework arrangements. Telework may also be used as part of an agency's continuity of operations plan where appropriate. An agency shall provide telework as an optional alternative work arrangement to support employee needs and implement telework arrangements where deemed appropriate.

(3) Each agency shall review all established positions and designate those positions that the agency deems appropriate for telework. The agency shall ensure this information is current and available to its employees and managers. In addition, each



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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





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

agencies operating in office space owned or managed by the department shall consult the Facilities Program to ensure consistency with the strategic leasing plan required under s. 255.249(3)(b).

(b) Energy consumption changes resulting from the telework program.

(c) Greenhouse gas emission changes resulting from the telework program.

(8) Agencies that have a telework program shall post the agency telework plan and any pertinent supporting documents on the agency website to allow access by employees and the public.

(9) Agencies may approve other-personal-services employees to participate in telework programs.

(10) Each agency that is authorized to adopt rules governing the terms and conditions of employment may adopt rules necessary to administer this section.

Section 72. Section 112.931, Florida Statutes, is created to read:

112.931 Savings sharing program.—Each state agency that is authorized to adopt rules governing the terms and conditions of employment may 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.

(1) The agency head shall recommend employees individually or by group for a monetary award that is directly related to the cost savings realized. Each proposed award and the amount of the





award must be approved by the Legislative Budget Commission.

(2) Unless otherwise provided by law, all state agencies may participate in the program. The Chief Justice may establish a savings sharing program for employees of the judicial branch within the parameters established under this section. The program applies to all employees within the Civil Service, the Selected Exempt Service, and comparable employees within the judicial branch.

(3) The department and the judicial branch shall annually submit information to the President of the Senate and the Speaker of the House of Representatives which outlines each agency's level of participation in the program. At a minimum, the information must include:

(a) The number of proposals made.

(b) The number of awards and amount of money awarded to employees or groups for adopted proposals.

(c) The actual cost savings realized as a result of implementing the proposals.

Section 73. Section 110.1156, Florida Statutes, is transferred and renumbered as section 112.932, Florida Statutes.

Section 74. Section 112.933, Florida Statutes, is created to read:

112.933 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. 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



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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



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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,





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.

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.~~



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~~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



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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



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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



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state employees who voluntarily elect coverage in any of the supplemental insurance benefit plans as provided by sub-subparagraph a.

c. This subparagraph does not ~~Nothing herein contained shall be construed to~~ prohibit insurance providers from continuing to provide or offer supplemental benefit coverage to state employees as provided under existing agency plans.

(4) PAYMENT OF PREMIUMS; CONTRIBUTION BY STATE; LIMITATION ON ACTIONS TO PAY AND COLLECT PREMIUMS.—

(c) During each policy or budget year, no state agency shall contribute a greater dollar amount of the premium cost for its officers or employees for any plan option under the state group insurance program than any other agency for similar officers and employees, nor shall any greater dollar amount of premium cost be made for employees in one state collective bargaining unit than for those in any other state collective bargaining unit. Nothing in this section prohibits the use of different levels of state contributions for positions exempt from Civil ~~career~~ Service.

Section 79. Section 110.12301, Florida Statutes is transferred, renumbered as section 112.943, Florida Statutes, and amended to read:

112.943 ~~110.12301~~ Competitive procurement of postpayment claims review services.—The Division of State Group Insurance is directed to competitively procure:

(1) Postpayment claims review services for the state group health insurance plans established pursuant to s. 112.942 ~~110.123~~. Compensation under the contract shall be paid from amounts identified as claim overpayments that are made by or on



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behalf of the health plans and that are recovered by the vendor. The vendor may retain that portion of the amount recovered as provided in the contract. The contract must require the vendor to maintain all necessary documentation supporting the amounts recovered, retained, and remitted to the division; and

(2) A contingency-based contract for dependent eligibility verification services for the state group insurance program; however, compensation under the contract may not exceed historical claim costs for the prior 12 months for the dependent populations disenrolled as a result of the vendor's services. The division may establish a 3-month grace period and hold subscribers harmless for past claims of ineligible dependents. The Department of Management Services shall submit budget amendments pursuant to chapter 216 in order to obtain budget authority necessary to expend funds from the State Employees' Group Health Self-Insurance Trust Fund for payments to the vendor as provided in the contract. The Department of Management Services shall adopt rules providing a process for verifying dependent eligibility.

Section 80. Section 110.12302, Florida Statutes is transferred and renumbered as section 112.944, Florida Statutes.

Section 81. Section 110.12312, Florida Statutes, is transferred, renumbered as section 112.945, Florida Statutes, and amended to read:

112.945 ~~110.12312~~ Open enrollment period for retirees.—On or after July 1, 1997, the Department of Management Services shall provide for an open enrollment period for retired state employees who want to obtain health insurance coverage under ss. 112.942 and 112.946 ~~110.123 and 110.12315~~. The options offered



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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~~.





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 Statues.

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

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.~~



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~~(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



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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



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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.—



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(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



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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~~



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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.





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

~~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



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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



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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 ~~110.131~~, 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



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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.



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(e) By January 15 ~~15th~~ of each year, the commission shall submit to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives a listing of all positions receiving benefits greater than those ~~benefits~~ offered under the Civil ~~Career~~ Service ~~System~~. Any change in the positions that are offered greater benefits or any change in the level of benefits is subject to the notice and objection procedures of s. 216.177.

Section 105. Subsection (4) of section 104.31, Florida Statutes, is amended to read:

104.31 Political activities of state, county, and municipal officers and employees.—

(4) Nothing contained in this section or in any county or municipal charter shall be deemed to prohibit any public employee from expressing his or her opinions on any candidate or issue or from participating in any political campaign during the employee's off-duty hours, so long as such activities are not in conflict with ~~the provisions of~~ subsection (1) or s. 110.1075 ~~110.233~~.

Section 106. Subsection (4) of section 106.24, Florida Statutes, is amended to read:

106.24 Florida Elections Commission; membership; powers; duties.—

(4) The commission shall appoint an executive director, who shall serve under the direction, supervision, and control of the commission. The executive director, with the consent of the commission, shall employ such staff as are necessary to adequately perform the functions of the commission, within budgetary limitations. All employees, except the executive



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director and attorneys, are subject to part II of chapter 110. The executive director shall serve at the pleasure of the commission and is ~~be~~ subject to part IV ~~III~~ of chapter 110, except that the commission shall have complete authority for setting the executive director's salary. Attorneys employed by the commission are ~~shall be~~ subject to part III ~~V~~ of chapter 110.

Section 107. Subsection (4) of section 112.044, Florida Statutes, is amended to read:

112.044 Public employers, employment agencies, labor organizations; discrimination based on age prohibited; exceptions; remedy.—

(4) APPEAL; CIVIL SUIT AUTHORIZED.—Any employee of the state ~~who is~~ within the Civil ~~Career~~ Service ~~System~~ established by chapter 110 ~~and~~ who is aggrieved by a violation of this act may appeal to the Public Employees Relations Commission under the conditions and following the procedures prescribed in part II of chapter 447. Any person other than an employee ~~who is~~ within the Civil ~~Career~~ Service ~~System established by chapter 110~~, or any person employed by the Public Employees Relations Commission, who is aggrieved by a violation of this act may bring a civil action ~~in any court of competent jurisdiction~~ for such legal or equitable relief as will effectuate the purposes of this act.

Section 108. Section 112.0805, Florida Statutes, is amended to read:

112.0805 Employer notice of insurance eligibility to employees who retire.—An ~~Any~~ employer who provides insurance coverage under s. 112.942 ~~110.123~~ or s. 112.0801 shall notify



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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.





(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

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





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

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~~



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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



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position within 12 calendar months of such resignation by an employer under a ~~such~~ state-administered retirement system is ~~shall be~~ deemed not to have ~~not~~ experienced a break in service. Further, with respect to a state-employed law enforcement officer who meets the criteria specified in s. 121.0515(3)(a), if the absence from the employer's payroll is the result of a "layoff" as defined in s. 110.1054 ~~110.107~~ or a resignation to run for an elected office that meets the criteria specified in s. 121.0515(3)(a), no break in continuous service shall be deemed to have occurred if the member is reemployed as a state law enforcement officer or is elected to an office that ~~which~~ meets the criteria specified in s. 121.0515(3)(a) within 12 calendar months after the date of the layoff or resignation, notwithstanding the fact that such period of layoff or resignation is not creditable service under this chapter. A withdrawal of contributions constitutes ~~will constitute~~ a break in service. Continuous service also includes past service purchased under this chapter if~~, provided such~~ service is continuous ~~within this definition~~ and the rules established by the administrator. The administrator may establish administrative rules and procedures for applying this definition to creditable service authorized under this chapter. Any correctional officer, as defined in s. 943.10, whose participation in the state-administered retirement system is terminated due to the transfer of a county detention facility through a contractual agreement with a private entity pursuant to s. 951.062, is ~~shall be~~ deemed an employee with continuous service in the Special Risk Class if~~, provided~~ return to employment with the former employer takes place within 3 years



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due to contract termination or the officer is employed by a covered employer in a special risk position within 1 year after his or her initial termination of employment by such transfer of its detention facilities to the private entity.

Section 113. Paragraph (f) of subsection (2) of section 121.051, Florida Statutes, is amended to read:

121.051 Participation in the system.—

(2) OPTIONAL PARTICIPATION.—

(f)1. If an employer that participates in the Florida Retirement System undertakes the transfer, merger, or consolidation of governmental services or assumes the functions and activities of an employing governmental entity that was not an employer under the system, the employer must notify the department at least 60 days before such action and provide documentation as required by the department. Such ~~The~~ transfer, merger, or consolidation ~~of governmental services or assumption of governmental functions and activities~~ must occur between public employers. The current or former employer may pay the employees' past service cost, unless prohibited under this chapter. This subparagraph does not apply to the transfer, merger, or consolidation of governmental services or assumption of functions and activities of a public entity under a leasing agreement having a coemployer relationship. Employers and employees of a public governmental employer whose service is covered by a leasing agreement under s. 112.922 ~~110.191~~, any other leasing agreement, or a coemployer relationship may not ~~are not eligible to~~ participate in the Florida Retirement System.

2. If the agency to which a member's employing unit is



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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



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~~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



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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



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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



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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





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

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



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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



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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,





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

department shall also contract for the delivery or administration of outplacement services. The department shall establish time-limited exempt positions as provided in s. 110.205(2)(f) ~~110.205(2)(i)~~, in accordance with the authority provided in s. 216.262(1)(c)1. Employees appointed to fill such exempt positions shall have the same salaries and benefits as civil ~~career~~ service employees.

Section 132. Section 409.1757, Florida Statutes, is amended to read:

409.1757 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 this chapter, and teachers 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 133. Subsection (1) of section 409.9205, Florida Statutes, is amended to read:

409.9205 Medicaid Fraud Control Unit.—

(1) Except as provided in s. 110.205, all positions in the Medicaid Fraud Control Unit of the Department of Legal Affairs are ~~hereby~~ transferred to the Civil ~~Career~~ Service ~~System~~.



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Section 134. Section 414.37, Florida Statutes, is amended to read:

414.37 Public assistance overpayment recovery privatization; reemployment of laid-off ~~career service~~ employees.—Should civil ~~career~~ service employees of the Department of Children and Family Services be subject to layoff after July 1, 1995, due to the privatization of public assistance overpayment recovery functions, the privatization contract must ~~shall~~ require the contracting firm to give priority consideration to employment of such employees. In addition, a task force composed of representatives from the Department of Children and Family Services and the Department of Management Services shall be established to provide reemployment assistance to such employees.

Section 135. Subsection (7) of section 427.012, Florida Statutes, is amended to read:

427.012 The Commission for the Transportation Disadvantaged.—There is created the Commission for the Transportation Disadvantaged in the Department of Transportation.

(7) The commission shall appoint an executive director who shall serve under the direction, supervision, and control of the commission. The executive director, with the consent of the commission, shall employ such personnel as ~~may be~~ necessary to perform adequately the functions of the commission within budgetary limitations. Employees of the commission are exempt from the Civil ~~Career~~ Service ~~System~~.

Section 136. Paragraph (o) of subsection (1) of section 440.102, Florida Statutes, is amended to read:



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440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(o) "Safety-sensitive position" means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a position subject to s. 112.928 ~~110.1127~~; or a position in which a momentary lapse in attention could result in injury or death to another person.

Section 137. Subsection (2) of section 447.203, Florida Statutes, is amended to read:

447.203 Definitions.—As used in this part:

(2) "Public employer" or "employer" means the state or any county, municipality, or special district, or any subdivision or agency thereof, which the commission determines has sufficient legal distinctiveness ~~properly~~ to properly carry out the functions of a public employer. With respect to all public employees determined by the commission as properly belonging to a statewide bargaining unit composed of state civil ~~Career~~ service ~~System~~ employees or selected exempt ~~Professional~~ service employees, the Governor is ~~shall be deemed to be~~ the public employer; and the Board of Governors of the State University





System, or the board's designee, is ~~shall be deemed to be~~ the public employer with respect to all public employees of each constituent state university. The board of trustees of a community college is ~~shall be deemed to be~~ the public employer with respect to all employees of the community college. The district school board is ~~shall be deemed to be~~ the public employer with respect to all employees of the school district. The Board of Trustees of the Florida School for the Deaf and the Blind is ~~shall be deemed to be~~ the public employer with respect to the academic and academic administrative personnel of the Florida School for the Deaf and the Blind. The Governor is ~~shall be deemed to be~~ the public employer with respect to all employees in the Correctional Education Program of the Department of Corrections established pursuant to s. 944.801.

Section 138. Subsection (8) and paragraph (a) of subsection (9) of section 447.207, Florida Statutes, are amended to read:

447.207 Commission; powers and duties.—

(8) The commission or its designated agent shall hear appeals arising out of any suspension, reduction in pay, demotion, or dismissal of any permanent employee in the Civil ~~State Career~~ Service ~~System~~ in the manner provided in s. 110.227.

(9) Pursuant to s. 447.208, the commission or its designated agent shall hear appeals, and enter such orders as it deems appropriate, arising out of:

~~(a) Section 110.124, relating to termination or transfer of State Career Service System employees aged 65 or older.~~

(a) ~~(b)~~ Section 112.044(4), relating to age discrimination.

(b) ~~(c)~~ Section 295.11, relating to reasons for not

employing a preferred veteran applicant.

Section 139. Section 447.209, Florida Statutes, is amended to read:

447.209 Public employer's rights.—It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons. However, the exercise of such rights does ~~shall~~ not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or any civil ~~or career~~ service rule ~~regulation~~.

Section 140. Section 447.401, Florida Statutes, is amended to read:

447.401 Grievance procedures.—Each public employer and bargaining agent shall negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or group of employees, involving the interpretation or application of a collective bargaining agreement. Such grievance procedure shall have as its terminal step a final and binding disposition by an impartial neutral, mutually selected by the parties; however, if ~~when~~ the issue under appeal is an allegation of abuse, abandonment, or neglect by an employee under s. 39.201 or s. 415.1034, the grievance may not be decided





until the abuse, abandonment, or neglect of a child has been judicially determined. However, an arbiter or other neutral may ~~shall~~ not ~~have the power to~~ add to, subtract from, modify, or alter the terms of a collective bargaining agreement. If an employee organization is certified as the bargaining agent of a unit, the grievance procedure ~~then~~ in existence may be the subject of collective bargaining, and any agreement that ~~which~~ is reached supersedes ~~shall supersede~~ the previously existing procedure. All public employees shall have the right to a fair and equitable grievance procedure administered without regard to membership or nonmembership in any organization, except that certified employee organizations may ~~shall~~ not be required to process grievances for employees who are not members of the organization. A civil ~~career~~ service employee may use ~~shall have the option of utilizing~~ the civil service appeal procedure, an unfair labor practice procedure, or a grievance procedure established under this section, but such employee may not avail ~~is precluded from availing~~ himself or herself of ~~to~~ more than one of these procedures.

Section 141. Paragraph (a) of subsection (2) of section 456.048, Florida Statutes, is amended to read:

456.048 Financial responsibility requirements for certain health care practitioners.—

(2) The board or department may grant exemptions upon application by practitioners meeting any of the following criteria:

(a) Any person licensed under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or chapter 467 who practices exclusively as an officer, employee,

or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by ~~the provisions of~~ s. 768.28(16) or who is a volunteer as defined in s. 112.961 ~~under s. 110.501(1)~~.

Section 142. Section 551.116, Florida Statutes, is amended to read:

551.116 Days and hours of operation.—Slot machine gaming areas may be open daily throughout the year. The slot machine gaming areas may be open a total ~~cumulative amount~~ of 18 hours per day on Monday through Friday, ~~and~~ 24 hours per day on Saturday and Sunday, and on those holidays specified in s. 112.929 ~~110.117(1)~~.

Section 143. Subsection (29) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(29) To advance funds monthly to civil ~~career~~ service employees to be used for the purchase of official state samples for state examination. Each monthly advance shall be ~~in an amount~~ equal to one-twelfth of the actual expenses paid the position for samples in the previous fiscal year or, in the case of a new position, one-twelfth of the expenses paid for samples of a similar classification in the previous fiscal year; however, in the event of unusual circumstances, such advances may be increased for up to ~~a period not to exceed~~ 60 days.



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Advances shall be granted only to civil ~~career~~ service employees who have executed a proper power of attorney with the department to ensure the collection of such advances if not timely repaid.

Section 144. Paragraph (b) of subsection (3) of section 601.10, Florida Statutes, is amended to read:

601.10 Powers of the Department of Citrus.—The Department of Citrus shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but shall not be confined to, the following:

(3) To employ and, at its pleasure, discharge an executive director as it deems necessary and to outline his or her powers and duties and fix his or her compensation.

(b) The Department of Citrus may pay, or participate in the payment of, premiums for health, accident, and life insurance for its full-time employees, pursuant to such rules ~~or regulations~~ as it may adopt; and such payments are in addition to the regular salaries of such full-time employees. The payment of such or similar benefits to its employees in foreign countries, including, but not limited to, social security, retirement, and other similar fringe benefit costs, may be in accordance with laws in effect in the country of employment, except that ~~no~~ benefits ~~will be payable to employees~~ not authorized for other state employees are not payable to its employees, as provided in the Civil ~~Career~~ Service ~~System~~.

Section 145. Subsection (6) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(6) The department and office may each employ actuaries who



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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~~



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~~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



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pursuant to s. 112.942 ~~110.123~~.

Section 149. Paragraph (a) of subsection (2) and subsection (3) of section 627.6498, Florida Statutes, are amended to read:

627.6498 Minimum benefits coverage; exclusions; premiums; deductibles.—

(2) BENEFITS.—

(a) The plan shall offer major medical expense coverage similar to that provided by the state group health insurance program under s. 112.942, ~~as defined in s. 110.123~~ except as specified in subsection (3), to every eligible person who is not eligible for Medicare. Major medical expense coverage offered under the plan must ~~shall~~ pay an eligible person's covered expenses, subject to limits on the deductible and coinsurance payments authorized under subsection (4), up to a lifetime limit of $500,000 per covered individual. The maximum limit may ~~under this paragraph shall~~ not be altered by the board, and an ~~no~~ actuarially equivalent benefit may not be substituted by the board.

(3) COVERED EXPENSES.—The coverage ~~to be~~ issued by the association must ~~shall~~ be patterned after the state group health insurance program as provided in s. 112.942 ~~defined in s. 110.123~~, including its benefits, exclusions, and other limitations, except as otherwise provided in this act. The plan may cover the cost of experimental drugs that ~~which~~ have been approved for use by the Food and Drug Administration on an experimental basis if the cost is less than the usual and customary treatment. Such coverage applies ~~shall~~ only ~~apply~~ to those insureds who are in the case management system upon the approval of the insured, the case manager, and the board.



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Section 150. Subsection (4) of section 627.6617, Florida Statutes, is amended to read:

627.6617 Coverage for home health care services.—

(4) The provisions of this section do ~~shall~~ not apply to a multiple-employer welfare arrangement as defined in s. 624.437(1) and in the State Health Plan as provided in s. 112.942 ~~110.123~~.

Section 151. Paragraph (d) of subsection (2) of section 627.6686, Florida Statutes, is amended to read:

627.6686 Coverage for individuals with autism spectrum disorder required; exception.—

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

(d) "Health insurance plan" means a group health insurance policy or group health benefit plan offered by an insurer which includes the state group insurance program provided under s. 112.942 ~~110.123~~. The term does not include a ~~any~~ health insurance plan offered in the individual market which~~, any health insurance plan that~~ is individually underwritten~~,~~ or ~~any health insurance plan~~ provided to a small employer.

Section 152. Paragraph (b) of subsection (7) of section 849.086, Florida Statutes, is amended to read:

849.086 Cardrooms authorized.—

(7) CONDITIONS FOR OPERATING A CARDROOM.—

(b) A ~~Any~~ cardroom operator may operate a cardroom at the pari-mutuel facility daily throughout the year, if the permitholder meets the requirements under paragraph (5)(b). The cardroom may be open a total ~~cumulative amount~~ of 18 hours per day on Monday through Friday, ~~and~~ 24 hours per day on Saturday and Sunday, and on the holidays specified in s. 112.929



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~~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





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

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.



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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.



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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





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

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. 415.102(5), s. 415.103, 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;

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or

8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

Section 155. Subsection (2) of section 945.043, Florida Statutes, is amended to read:

945.043 Department-operated day care services.—

(2) The department is exempt from s. 112.918 ~~the requirements of s. 110.151~~.

Section 156. Subsection (1) of section 946.525, Florida Statutes, is amended to read:



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946.525 Participation by the corporation in the state group health insurance and prescription drug programs.—

(1) The board of directors of the corporation established under this part may apply for participation in the state group health insurance program authorized under s. 112.942 ~~in s. 110.123~~ and the prescription drug coverage program authorized under s. 112.946 ~~by s. 110.12315~~ by submitting an application along with a $500 nonrefundable fee to the Department of Management Services.

Section 157. Paragraph (e) of subsection (4) of section 985.045, Florida Statutes, is amended to read:

985.045 Court records.—

(4) A court record of proceedings under this chapter is not admissible in evidence in any other civil or criminal proceeding, except that:

(e) Records of proceedings under this chapter may be used to prove disqualification under ss. 112.928 ~~110.1127~~, 393.0655, 394.457, 397.451, 402.305, 402.313, 409.175, 409.176, and 985.644.

Section 158. Paragraph (k) of subsection (2) of section 1001.705, Florida Statutes, is amended to read:

1001.705 Responsibility for the State University System under s. 7, Art. IX of the State Constitution.—

(2) CONSTITUTIONAL DUTIES OF THE BOARD OF GOVERNORS OF THE STATE UNIVERSITY SYSTEM.—In accordance with s. 7, Art. IX of the State Constitution, the Board of Governors of the State University System has the duty to operate, regulate, control, and be fully responsible for the management of the whole publicly funded State University System and the board, or the



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board's designee, has responsibility for:

(k) Establishing a personnel system for all state university employees; however, the Department of Management Services shall retain authority over state university employees for programs established in ss. 112.942 ~~110.123~~, 112.947 ~~110.1232~~, 112.948 ~~110.1234~~, 112.949 ~~110.1238~~, and 112.951 ~~110.161~~, and in chapters 121, 122, and 238.

Section 159. Paragraph (b) of subsection (6) of section 1001.706, Florida Statutes, is amended to read:

1001.706 Powers and duties of the Board of Governors.—

(6) POWERS AND DUTIES RELATING TO PERSONNEL.—

(b) The Department of Management Services shall retain authority over state university employees for programs established in ss. 112.942 ~~110.123~~, 112.947 ~~110.1232~~, 112.948 ~~110.1234~~, 112.949 ~~110.1238~~, and 112.951 ~~110.161~~ and in chapters 121, 122, and 238. Unless specifically authorized by law, neither the Board of Governors nor a state university may offer group insurance programs for employees as a substitute for or as an alternative to the health insurance programs offered pursuant to chapter 112 ~~110~~.

Section 160. Paragraph (c) of subsection (5) of section 1001.74, Florida Statutes, is amended to read:

1001.74 Powers and duties of university boards of trustees.—

(5) POWERS AND DUTIES RELATING TO PERSONNEL.—

(c) The Department of Management Services shall retain authority over state university employees for programs established in ss. 112.942 ~~110.123~~, 112.947 ~~110.1232~~, 112.948 ~~110.1234~~, 112.949 ~~110.1238~~, and 112.951 ~~110.161~~ and in chapters



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



121, 122, and 238. Unless specifically authorized by law, neither the Board of Governors nor a state university may offer group insurance programs for employees as a substitute for or as an alternative to the health insurance programs offered pursuant to chapter 112 ~~110~~.

Section 161. Paragraph (f) of subsection (4) and paragraph (f) of subsection (8) of section 1002.36, Florida Statutes, are amended to read:

1002.36 Florida School for the Deaf and the Blind.—

(4) BOARD OF TRUSTEES.—

(f) The board of trustees shall:

1. Prepare and submit legislative budget requests for operations and fixed capital outlay, in accordance with chapter 216 and ss. 1011.56 and 1013.60, to the Department of Education for review and approval. The department must analyze the amount requested for fixed capital outlay to determine if the request is consistent with the school's campus master plan, educational plant survey, and facilities master plan. Projections of facility space needs may exceed the norm space and occupant design criteria established in the State Requirements for Educational Facilities.

2. Approve and administer an annual operating budget in accordance with ss. 1011.56 and 1011.57.

3. Require all funds received other than gifts, donations, bequests, funds raised by or belonging to student clubs or student organizations, and funds held for specific students or in accounts for individual students to be deposited in the State Treasury and expended as authorized in the General Appropriations Act.



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

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





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

implementing ~~the provisions of~~ ss. 402.22(1)(d) and 1001.42(4)(m), educational personnel in Department of Children and Family Services residential care facilities who are employed by a district school board may request, and the district school board shall accept, a lump-sum transfer of accumulated sick leave for such personnel to the maximum allowed by policies of the district school board, notwithstanding ~~the provisions of~~ s. 112.913 ~~110.122~~. Educational personnel in Department of Children and Family Services residential care facilities who are employed by a district school board under ~~the provisions of~~ s. 402.22(1)(d) may request, and the district school board shall accept, a lump-sum transfer of accumulated annual leave for each person employed by the district school board in a position in the district eligible to accrue vacation leave under the policies of the district school board.

Section 163. Subsection (5) of section 1012.79, Florida Statutes, is amended to read:

1012.79 Education Practices Commission; organization.—

(5) The commission, by a vote of three-fourths of the membership, shall employ an executive director, who shall be exempt from the Civil ~~career~~ Service. The executive director may be dismissed by a majority vote of the membership.

Section 164. Subsection (6) of section 1012.88, Florida Statutes, is amended to read:

1012.88 Florida College System institution police.—

(6) The Florida College System institution, with the approval of the Department of Law Enforcement, shall adopt rules, including, without limitation, rules for the appointment, employment, and removal of Florida College System institution



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 Florida College System institution shall furnish a copy of the policy manual to each of the police officers it employs.

Section 165. Section 1012.96, Florida Statutes, is amended to read:

1012.96 IFAS extension personnel; federal health insurance ~~programs notwithstanding the provisions of s. 110.123~~.— Notwithstanding s. 112.942, the Institute of Food and Agricultural Sciences at the University of Florida may pay the employer's share of premiums to the Federal Health Benefits Insurance Program from its appropriated budget for any cooperative extension employee of the institute having both state and federal appointments and participating in the Federal Civil Service Retirement System.

Section 166. This act shall take effect July 1, 2012.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 2086 |
| INTRODUCER: | Governmental Oversight and Accountability Committee |
| SUBJECT: | State Agencies |
| DATE: | January 29, 2012 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Seay | Roberts | GO | **Favorable** |
| 2. | | | BC | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

This 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

[1] Section 2, ch. 2004-261, L.O.F.
[2] *Id.*
[3] Section 1004.63(6)(a), F.S.

requires FINDS to submit an annual report on its progress, with recommendations on nuclear 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.

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 Governmental Oversight and Accountability

585-02465-12 20122086__

A bill to be entitled

An act relating to state agencies; repealing s. 110.123(13), F.S., relating to the Florida State Employee Wellness Council; repealing s. 258.155, F.S., relating to the Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council; repealing s. 288.7001, F.S., relating to the Small Business Regulatory Advisory Council; repealing s. 288.7002, F.S., relating to the Office of Small Business Advocate; repealing s. 339.64(5), F.S., relating to the Statewide Intermodal Transportation Advisory Council; repealing s. 381.90, F.S., relating to the Health Information Systems Council; repealing s. 624.916, F.S., relating to the Developmental Disabilities Compact Workgroup; repealing s. 1004.63, F.S., relating to the Florida Institute for Nuclear Detection and Security; amending ss. 120.54 and 120.745, F.S., relating to rule adoption by state agencies; requiring the rules ombudsman in the Executive Office of the Governor to assume certain duties formerly performed by the Small Business Regulatory Advisory Council; deleting provisions that require the Office of Program Policy Analysis and Government Accountability, upon request, to 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; providing an effective date.



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



585-02465-12 20122086__

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

Section 1. Subsection (13) of section 110.123, Florida Statutes, is repealed.

Section 2. Section 258.155, Florida Statutes, is repealed.

Section 3. Section 288.7001, Florida Statutes, is repealed.

Section 4. Section 288.7002, Florida Statutes, is repealed.

Section 5. Subsection (5) of section 339.64, Florida Statutes, is repealed.

Section 6. Section 381.90, Florida Statutes, is repealed.

Section 7. Section 624.916, Florida Statutes, is repealed.

Section 8. Section 1004.63, Florida Statutes, is repealed.

Section 9. Paragraph (b) of subsection (3) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate



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

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





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

Office of the Governor ~~Small Business Regulatory Advisory Council~~. ~~The Small Business Regulatory Advisory Council may make a request of the President of the Senate and the Speaker of the House of Representatives that the presiding officers direct the Office of Program Policy Analysis and Government Accountability to determine whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. Within 60 days after the date of the directive from the presiding officers, the Office of Program Policy Analysis and Government Accountability shall report to the Administrative Procedures Committee its findings as to whether an alternative reduces the impact on small business while meeting the stated objectives of the proposed rule. The Office of Program Policy Analysis and Government Accountability shall consider the proposed rule, the economic impact statement, the written statement of the agency, the proposed alternatives, and any comment submitted during the comment period on the proposed rule. The Office of Program Policy Analysis and Government Accountability shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Administrative Procedures Committee shall report such findings to the agency, and the agency shall respond in writing to the Administrative Procedures Committee if the Office of Program Policy Analysis and Government Accountability found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency will not adopt the alternative, it must also provide a detailed written statement to the committee as to why it will not adopt the alternative.~~



Section 10. Paragraphs (a) and (c) of subsection (5) of section 120.745, Florida Statutes, are amended to read:

120.745 Legislative review of agency rules in effect on or before November 16, 2010.—

(5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED REPORT.—Each agency shall perform a compliance economic review and report for all rules, including separate reviews of subparts, listed under Group 1 "Group 1 rules" or Group 2 "Group 2 rules" pursuant to subparagraph (2)(g)3. Group 1 rules shall be reviewed and reported on in 2012, and Group 2 rules shall be reviewed and reported on in 2013.

(a) No later than May 1, each agency shall:

1. Complete a compliance economic review for each entire rule or subpart in the appropriate group.

2. File the written certification of the agency head with the committee verifying the completion of each compliance economic review required for the respective year. The certification shall be dated and published as an addendum to the report required in subsection (3). The duty to certify completion of the required compliance economic reviews is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

3. Publish a copy of the compliance economic review, directions on how and when interested parties may submit lower cost regulatory alternatives to the agency, and the date the

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.



**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)

2/1/17
*Meeting Date*

Topic SMMA BUSINESS REGULATORY ADVISORY COUNCIL

Bill Number SB 2086 *(if applicable)*

Name KEYNA CORY

Amendment Barcode _____ *(if applicable)*

Job Title VICE CHAIR

Address 110 E. COLLEGE AVE
*Street*
TALLAHASSEE FL 32301
*City* *State* *Zip*

Phone 850 681-1065

E-mail keynacory@gaconsultants.com

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**

# 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 2088 |
| INTRODUCER: | Governmental Oversight and Accountability Committee and Governmental Oversight and Accountability Committee |
| SUBJECT: | Municipal Pension Plans |
| DATE: | February 2, 2012 REVISED: |

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

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

This bill allows municipalities and their firefighter and police plan members to mutually agree to changes in retirement benefits without putting premium tax revenues at risk. The bill also requires a mutual agreement between a municipality and collective bargaining unit or plan members in police pension plans, in order to include less than 300 hours of overtime in the retirement calculation.

This bill amends sections 175.351, 185.02, and 185.35 of the Florida Statutes.

## II. Present Situation:

### Local Retirement Systems and Plans

The Division of Retirement of the Department of Management Services (DMS) reports[1] 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

[1] Division of Management Services, *Florida Local Government Retirement Systems*, 2011 Annual Report.

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 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]

Sections 175.351 and 185.35, F.S., specify that in order to participate in the distribution of the premium tax funds, local law plans must meet the minimum benefits and minimum standards set forth in Chapters 175 and 185, F.S. This determination is made by the DMS Division of Retirement.

**Changes to Local Pensions in 2011**

The 2011 Legislature enacted[7] sweeping changes to local government pension plans, by providing for the following:

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[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.
[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.

- 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 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:

**Sections 1 and 3** respectively amend sections 175.351 and 185.35, F.S., by providing the following provision in both sections:

> Notwithstanding any other provision, with respect to any plan established under this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative or, if none, a majority of the plan members, mutually consent to the retirement benefits provided in the plan or to the use of income from the premium tax provided pursuant to this chapter, the provisions of the agreement shall be deemed to comply with this chapter for retirement purposes. This subsection is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

This provision appears designed to allow municipalities and their plan members to mutually agree to changes in retirement benefits without putting premium tax revenues at risk by a determination by the Division of Retirement that the plan does not meet the minimum benefits and standards requirements of Chapters 175 and 185, F.S.

**Section** 2 amends s. 185.02(4), F.S., by providing that for service prior to July 1, 2011, the amount of overtime to be used in the retirement benefit calculation may not be less than 300 hours per officer per calendar year "unless a smaller number of hours is mutually agreed to by the collective bargaining representative and municipality." For service after July 1, 2011, up to 300 hours per year in overtime compensation may be included "unless a smaller number of hours is mutually agreed to by a majority of the plan members and the municipality."

This language appears to require a mutual agreement between the municipality and collective bargaining unit or plan members, in order to include less than 300 hours of overtime in the retirement calculation.

**Section 4** provides a statement of important state interest.

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.

## 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 February 1, 2012:**
The CS allows municipalities and their firefighter and police plan members to mutually agree to changes in retirement benefits without putting premium tax revenues at risk, and requires a mutual agreement between a municipality and collective bargaining unit or plan members in police pension plans, in order to include less than 300 hours of overtime in the retirement calculation.

B. Amendments:

None.

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

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 02/01/2012 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with title amendment)**

Between lines 8 and 9
insert:

Section 1. Subsection (6) is added to section 175.351, Florida Statutes, to read:

175.351 Municipalities and special fire control districts having their own pension plans for firefighters.—For any municipality, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter, in order for municipalities and special fire control districts with their own pension plans for

324190

firefighters, or for firefighters and police officers if included, to participate in the distribution of the tax fund established pursuant to s. 175.101, local law plans must meet the minimum benefits and minimum standards set forth in this chapter.

(6) Notwithstanding any other provision, with respect to any plan established under this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative or, if none, a majority of the plan members, mutually consent to the retirement benefits provided in the plan or to the use of income from the premium tax provided pursuant to this chapter, the provisions of the agreement shall be deemed to comply with this chapter for retirement purposes. This subsection is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

Between lines 63 and 64

insert:

Section 3. Subsection (6) is added to section 185.35, Florida Statutes, to read:

185.35 Municipalities having their own pension plans for police officers.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, in order for municipalities with their own pension plans for police officers, or for police officers and firefighters if included, to participate in the distribution of the tax fund established pursuant to s. 185.08, local law plans must meet the minimum benefits and minimum standards set forth in this chapter:

(6) Notwithstanding any other provision, with respect to

any plan established under this chapter, if the municipality and the plan members' collective bargaining representative or, if none, a majority of the plan members, mutually consent to the retirement benefits provided in the plan or to the use of income from the premium tax provided pursuant to this chapter, the provisions of the agreement shall be deemed to comply with this chapter for retirement purposes. This subsection is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

Section 4. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

========== 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:

An act relating to public retirement plans; amending s. 175.351, F.S.; revising provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own

324190

pension plan; providing for retroactive application; amending

Delete line 4

and insert:

"compensation" or "salary" for purposes of police officers' pensions; amending s. 185.35, F.S.; revising provisions relating to benefits paid by a municipality that has its own pension plan; providing for retroactive application; providing a declaration of important state interest; providing an effective

862624

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 02/01/2012 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment**

Delete lines 23 - 34
and insert:
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 unless a smaller number of hours is mutually agreed to by the collective bargaining representative and municipality. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after

862624

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 unless a smaller number of hours is mutually agreed to by a majority of the plan members and the municipality as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

**By** the Committee on Governmental Oversight and Accountability

585-02461-12 20122088__

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



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

**Florida Senate - 2012** **SB 2088**

585-02461-12 20122088__

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



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

maximum compensation amount that was allowed to be taken into account under the plan ~~as~~ in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991).

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



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

THE FLORIDA SENATE

# APPEARANCE RECORD

2/1/12
*Meeting Date*

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

Topic Amendment 862624 ✓ Bill Number 2088 *(if applicable)*

Name Kraig Conn Amendment Barcode 862624 *(if applicable)*

Job Title

Address 301 S. Bronough 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

3/1/12
*Meeting Date*

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

Topic Pensions Bill Number 2088 *(if applicable)*

Name Lisa Henning Amendment Barcode 862624 *(if applicable)*

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr. 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)

2/1/12
*Meeting Date*

Topic _____ Bill Number 2088 *(if applicable)*

Name Kraig Conn Amendment Barcode 324190 *(if applicable)*

Job Title _____

Address 301 S. Bronough 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

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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)

3/1/12
*Meeting Date*

Topic Pensions Bill Number ~~2088~~ 88 *(if applicable)*

Name Lisa Henning Amendment Barcode 324190 *(if applicable)*

Job Title 242 Office Plaza Dr

Address _____ 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)

2/1/12
*Meeting Date*

Topic Municipal Police Pensions Bill Number 2088 *(if applicable)*

Name Jim Talley Amendment Barcode 324190 *(if applicable)*

Job Title Governmental Relations Director

Address 345 West Madison St. Phone
*Street*

Tallahassee FL 32301 E-mail
*City* *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Professional Firefighters

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)

2/1/2012
*Meeting Date*

Topic MUNICIPAL PENSION Bill Number 2088 *(if applicable)*

Name ROBERT SUAREZ Amendment Barcode *(if applicable)*

Job Title VICE PRESIDENT, FLORIDA FIREFIGHTERS

Address 345 W. MADISON STREET Phone
*Street*

TALLAHASSEE FL E-mail
*City* *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA PROFESSIONAL FIREFIGHTERS

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)

2-1-12
*Meeting Date*

Topic Municipal Pensions
Bill Number 2088 *(if applicable)*

Name Matt Puckett
Amendment Barcode *(if applicable)*

Job Title Exec Director

Address 300 East Brevard St
*Street*
Tulla FL 32301
*City* *State* *Zip*
Phone 222-3379

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Fla 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)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

2-1-12
*Meeting Date*

Topic Municipal Police & Fire Pensions
Bill Number SB 2088 *(if applicable)*

Name David Mundell
Amendment Barcode *(if applicable)*

Job Title Leg. Director

Address 300 E. Brevard St.
*Street*
Tallahassee, FL 32301
*City* *State* *Zip*
Phone 850-222-3329

E-mail david@flpba.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Police Benevolent 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)