The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, February 7, 2012
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (SB 830) is available:		
1	**SB 830** Health Regulation (Similar H 7035)	OGSR/Physician Workforce Surveys/Department of Health; Amending provisions relating to exemptions from public records requirements provided for personal identifying information contained in physician workforce surveys submitted to the Department of Health by physicians and osteopathic physicians; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of each exemption, etc. HR 01/12/2012 Favorable GO 02/07/2012 Fav/CS	Fav/CS Yeas 11 Nays 0
	A proposed committee substitute for the following bill (SB 832) is available:		
2	**SB 832** Higher Education (Similar H 7017)	OGSR/Donor Information Direct-support Organization/University of Florida/Historic Preservation of the City of St. Augustine; Deleting the repeal of an exemption from public records requirements for information identifying a donor or prospective donor to the direct-support organization established to assist the University of Florida in the historic preservation of the City of St. Augustine; saving the exemption from repeal under the Open Government Sunset Review Act, etc. HE 01/12/2012 Favorable GO 02/07/2012 Fav/CS	Fav/CS Yeas 10 Nays 0
	A proposed committee substitute for the following bill (SB 844) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 844** Communications, Energy, and Public Utilities (Similar H 7037)	OGSR/Sunshine State One-Call of Florida, Inc.; Amending provisions relating to an exemption from public records requirements for proprietary confidential business information held by Sunshine State One-Call of Florida, Inc.; saving the exemption from repeal under the Open Government Sunset Review Act; deleting the scheduled repeal of the exemption, etc. CU 01/12/2012 Favorable GO 02/07/2012 Fav/CS	Fav/CS Yeas 10 Nays 0
4	**SB 868** Hays (Compare CS/H 591)	Archaeological Sites and Specimens; Providing that specified activities relating to archaeological sites and specimens located upon land owned or controlled by a political subdivision or a special district created by the Legislature are prohibited and subject to penalties; authorizing the Division of Historical Resources of the Department of State to impose an administrative fine on and seek injunctive relief against certain entities, etc. GO 02/07/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0
5	**SB 1134** Hays (Identical H 741)	State-owned or Leased Space; Revising provisions requiring development, maintenance, and reporting relating to an automated inventory of state-owned or state-occupied facilities and providing procedures, requirements, and departmental responsibilities with respect thereto; authorizing the Department of Management Services to direct state agencies to occupy space in a state-owned building; authorizing the department to implement renovations of projects in order to efficiently use state-owned buildings; reducing the amount of square feet that an agency may lease without department approval; requiring the lessor of certain state-leased space to provide documentation relating to compliance with uniform firesafety standards under certain circumstances, etc. GO 02/07/2012 Temporarily Postponed BC	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**SB 1208** Banking and Insurance	OGSR/Unclaimed Property/Department of Financial Services; Revising the public records exemption for information held by the Department of Financial Services relating to unclaimed property to permanently exempt social security numbers from the public records law; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. BI 01/19/2012 Not Considered BI 01/26/2012 Favorable GO 02/07/2012 Temporarily Postponed	Temporarily Postponed
7	**SB 1322** Norman (Similar H 997)	Local Requirements for Dangerous Dogs; Removing the provision that exempts local ordinances adopted before a specified date from the prohibition on ordinances that are specific to breed or that lessen state restrictions governing dangerous dogs, etc. CA 01/30/2012 Favorable GO 02/07/2012 Favorable BC	Favorable Yeas 9 Nays 2
8	**CS/SB 1406** Banking and Insurance / Altman (Similar CS/CS/H 645, Compare CS/H 643, Link CS/S 1404)	Public Records/Title Insurance Data/Office of Insurance Regulation; Providing an exemption from public records requirements for proprietary business information provided by title insurance agencies and insurers to the Office of Insurance Regulation; providing a definition; authorizing disclosure of aggregated information; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. BI 01/26/2012 Fav/CS GO 02/07/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**CS/SB 1626** Banking and Insurance / Gaetz (Similar H 1409, Compare CS/H 5203)	State Contracting; Requiring agreements funded with state or federal financial assistance to include a performance measure for each deliverable, to be reviewed and approved in accordance with rules adopted by the Department of Financial Services, and to have the contracting entity assign a grants manager who is responsible for enforcing performance of the agreement; revising provisions relating to the Chief Financial Officer's intergovernmental contract tracking system under the Transparency Florida Act; dividing the responsibilities of the Department of Management Services under ch. 287, F.S., with the Department of Financial Services, etc. BI 02/02/2012 Fav/CS GO 02/07/2012 Fav/CS BC	Fav/CS Yeas 11 Nays 0
10	**SB 1650** Hays (Identical H 1239, Compare CS/CS/H 1237, Link CS/S 1648)	Public Records/Nonpublished Reports or Data/Department of Citrus; Providing an exemption from public records requirements for nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof that is conducted, caused to be conducted, or funded by the Department of Citrus; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. AG 01/30/2012 Favorable GO 02/07/2012 Fav/CS	Fav/CS Yeas 10 Nays 0
11	**CS/SB 1856** Health Regulation / Flores (Similar CS/H 657, Compare H 655, Link CS/S 616)	Public Records and Public Meetings/Peer Review Panels; Providing an exemption from public meeting requirements for certain meetings of a peer review panel under the James and Esther King Biomedical Research Program and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program; providing an exemption from public records requirements for certain records related to biomedical research grant applications; providing an exemption from public records requirements for research grant applications provided to, and reviewed by, the peer review panel, etc. HR 01/25/2012 Not Considered HR 01/31/2012 Fav/CS GO 02/07/2012 Favorable	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**SB 2048** Children, Families, and Elder Affairs (Similar CS/H 1229)	Department of Children and Family Services; Changing the name of the department to the "Department of Children and Families"; requiring that the department be geographically organized into circuits and regions; revising provisions relating to the establishment of the department; revising the services provided by the department and abolishing the program offices; deleting provisions providing an exemption from competitive bids for certain health services; amending provisions relating to the service areas of the Department of Health; amending provisions relating to the State Office on Homelessness within the Department of Children and Families, etc. CF 01/25/2012 Favorable GO 02/07/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0
13	**SB 2080** Governmental Oversight and Accountability	OGSR/Lifeline Assistance Plan Participants; Amending provisions relating to an exemption from public records requirements for personal identifying information of Lifeline Assistance Plan participants; providing a penalty for intentional disclosure of confidential and exempt information by an officer or employee of the Public Service Commission; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption, etc. GO 02/07/2012 Favorable CU	Favorable Yeas 10 Nays 0
14	**SB 2082** Governmental Oversight and Accountability	OGSR/Florida Workers' Compensation Joint Underwriting Association, Inc.; Amending provisions which provide an exemption from public records requirements for records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., and an exemption from public meetings requirements for meetings of the association's board of governors, or a subcommittee of the association's board, at which confidential and exempt records are discussed; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions, etc. GO 02/07/2012 Favorable BI	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**SB 2084** Governmental Oversight and Accountability (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. GO 02/01/2012 Temporarily Postponed GO 02/07/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0

Other Related Meeting Documents

CourtSmart Tag Report

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

Started: 2/7/2012 4:02:26 PM
Ends: 2/7/2012 5:39:33 PM Length: 01:37:08

4:02:29 PM	Call to Order
4:02:33 PM	Call Roll
4:02:38 PM	Quorum present
4:02:52 PM	Tab 9 SB1626 presented by Senator Gaetz
4:04:11 PM	Amendment barcode 678806 by Senator Dean
4:05:06 PM	Amendment adopted
4:05:16 PM	Amendment Barcode 787168 by Senator Dean
4:05:35 PM	Amendment adopted
4:05:55 PM	Senator Siplin courtesy sponsor
4:06:07 PM	Chairman Ring asks a question
4:06:39 PM	Senator Gaetz responds
4:08:04 PM	Senator Ring asks a question
4:08:14 PM	Senator Gaetz responds
4:10:07 PM	Senator Wise asks a question
4:10:14 PM	Senator Gaetz responds
4:11:45 PM	Senator Wise asks a question
4:11:53 PM	Senator Gaetz responds
4:13:13 PM	Senator Margolis asks a question
4:14:27 PM	Senator Gaetz responds
4:15:27 PM	Senator Margolis comments
4:15:53 PM	Logan McFaddin CFO waives in support
4:16:36 PM	Kraig Conn, Florida League of Cities
4:18:30 PM	Senator Margolis comments
4:19:19 PM	Senator Latvala asks a question
4:20:08 PM	Senator Gaetz responds
4:22:39 PM	Senator Latvala asks a question
4:22:50 PM	Senator Gaetz respond
4:23:29 PM	Senator Latvala comments
4:25:17 PM	Senator Gaetz responds
4:25:55 PM	Brian Pitts, Justice-2-Jesus
4:28:25 PM	Debate?
4:28:30 PM	Senator Siplin comments
4:28:40 PM	Senator Latvala asks a question
4:29:25 PM	Chairman Ring comments
4:30:15 PM	Senator Gaetz closes
4:31:08 PM	Senator Siplin moves for CS
4:31:16 PM	Call Role
4:31:25 PM	CS/SB 1626 reports favorably
4:31:43 PM	Tab 7 SB 1322 presented by Senator Norman
4:32:38 PM	John Mixon
4:32:49 PM	Earnest Simms, Miami Coalition Against BSL, waives in support
4:32:59 PM	Kate Macfall, ASPCA, waives in support
4:33:13 PM	Denise Lasher, Best Friends Animal Society, waives in support
4:33:23 PM	Fred Dickinson, Miami-Dade County, opposes
4:34:32 PM	Senator Margolis comments
4:34:41 PM	Senator Flores comments
4:37:16 PM	Senator Garcia comments
4:38:55 PM	Senator Latvala comments
4:39:33 PM	Senator Dean comments
4:41:17 PM	Senator Bogdanoff comments
4:42:37 PM	Chairman Ring comments
4:43:08 PM	Senator Norman closes

4:45:29 PM Call Roll
4:45:34 PM SB 1322 reports favorably
4:46:20 PM Tab 1 SB 830
4:47:36 PM Senator Siplin moves we hear PCS
4:47:47 PM Presented by John Seay
4:47:59 PM PCS adopted
4:48:07 PM Holly Miller waives support
4:48:17 PM Senator Siplin moves CS
4:48:22 PM Roll Call
4:48:33 PM CS/SB 830 reported favorably
4:48:49 PM Tab 2 SB 832
4:49:20 PM Senator Siplin moves we hear PCS 352328
4:49:41 PM Amendment adopted
4:49:47 PM Waive close
4:49:50 PM Senator Siplin moves CS
4:49:56 PM Roll Call
4:50:02 PM CS/SB 832 reports favorably
4:50:15 PM Tab3 SB 844 presented by Scott While
4:50:51 PM Senator Siplin moves to hear PCS 114708
4:51:07 PM Motion adopted
4:51:12 PM Waive close
4:51:16 PM Senator Siplin moves CS
4:51:24 PM Roll Call
4:51:26 PM CS/SB 844 reports favorably
4:51:45 PM Tab 4 SB 868 presented by Nancy
4:52:41 PM Amendment barcode 884248 adopted
4:52:58 PM Waives close
4:53:02 PM Senator Siplin moves CS
4:53:10 PM adopted
4:53:12 PM Roll Call
4:53:25 PM CS/SB 868 reported favorably
4:53:32 PM TP SB1134
4:53:53 PM Tab 10 SB 1650
4:54:10 PM Amendment barcode 883338 adopted
4:54:43 PM Brian Pitts Justice-2-Jesus
4:55:34 PM Waive close
4:55:37 PM Senator Siplin moves CS
4:55:42 PM Roll Call
4:55:47 PM CS/SB 1650 reports favorably
4:56:17 PM Tab CS/SB 1406 presented by Tara
4:56:51 PM Amendment barcode 206742 adopted
4:57:30 PM Brian Pitts waives in support
4:57:37 PM Waives close
4:57:41 PM Senator Siplin moves CS
4:57:51 PM CS/CS/SB 1406
4:58:18 PM Tab 11 CS/SB 1856 presented by Senator Flores
4:59:05 PM Brian Pitts, Justice-2-Jesus
5:00:38 PM Mike Fischer, American Cancer Society, waives in support
5:00:45 PM Waives close
5:00:48 PM Roll Call
5:00:50 PM CS/SB 1856 reports favorably
5:01:08 PM Tab 12 SB 2048 presented by Tim Parson
5:01:40 PM Amendment barcode 602770 adopted
5:02:00 PM Amendment barcode 465554 adopted
5:02:22 PM Brian Pitts, Justice-2-Jesus waives in support
5:02:30 PM Dan Hendrickson, FL Public Defenders Association, waives in support
5:02:42 PM CS moved by Senator Siplin
5:02:52 PM Roll call
5:02:55 PM CS/SB 2048 reports favorably
5:03:14 PM Tab 13 SB 2080 presented by John Seay
5:03:44 PM Waive close
5:03:50 PM Call role

5:03:52 PM SB 2080 reports favorably
5:04:06 PM Tab 14 SB 2082 presented by John Seay
5:04:39 PM Waives close
5:04:42 PM Call roll
5:04:45 PM SB 2082 reports favorably
5:05:04 PM Turned over to Senator Siplin
5:05:21 PM Tab 15 SB 2084 presented by Senator Ring
5:05:40 PM Amendment barcode 463212 adopted
5:06:09 PM Amendment barcode 101204 adopted
5:06:50 PM Amendment barcode 639338 adopted
5:07:35 PM Doug Martin, AFSCME
5:08:17 PM Senator Ring closes
5:08:58 PM Senator Wise moves CS
5:09:31 PM Call Roll
5:09:35 PM CS/SB 2084
5:09:56 PM Tab 6 SB 1208 presented by Scott
5:10:42 PM Senator Latvala comment
5:12:54 PM Senator Siplin comments
5:13:19 PM Senator Margolis asks a question
5:14:23 PM Senator Latvala asks a question
5:14:57 PM Ashley Mayer responds
5:15:59 PM Senator Latvala asks questions=
5:16:10 PM Ms. Mayer responds
5:17:32 PM Senator Latvala asks a question
5:18:03 PM Ms. Mayer responds
5:18:18 PM Senator Latvala asks a question
5:18:29 PM Ms. Mayer responds
5:20:18 PM Senator Latvala asks a question
5:20:56 PM Senator Montford question
5:21:51 PM Ms. Mayer responds
5:22:50 PM Senator Montford question
5:23:12 PM Ms. Mayer responds
5:23:58 PM Senator Montford question
5:25:16 PM Ms. Mayer responds
5:25:30 PM Senator Siplin asks a question
5:25:46 PM Ms. Mayer responds
5:26:10 PM Senator Siplin asks a question
5:26:25 PM Ms. Mayer responds
5:26:59 PM Senator Siplin asks a question
5:27:12 PM Ms. Mayer responds
5:27:29 PM Senator Margolis asks a question
5:28:46 PM Senator Ring comments
5:29:16 PM Senator Latvala asks a question
5:29:31 PM Ms. Mayer responds
5:30:03 PM Senator Latvala asks a question
5:30:12 PM Ms. Mayer responds
5:30:33 PM Senator Latvala asks a question
5:30:59 PM Ms. Mayer responds
5:32:18 PM Senator Latvala asks a question
5:33:23 PM Ms. Mayer responds
5:33:36 PM Senator Montford asks a question
5:34:35 PM Ms. Mayer responds
5:35:41 PM Senator Latvala recommends tp
5:36:05 PM Ms. Mayer responds
5:37:06 PM Senator Siplin comments
5:37:20 PM Chairman Ring adopts tp
5:39:15 PM Senator Siplin moves we rise
5:39:21 PM Meeting adjourned

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:	PCS/SB 830 (623372)
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	OGSR/Physician Workforce Surveys/Department of Health
DATE:	February 2, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	**Favorable**
2.	Seay	Roberts	GO	**Pre-meeting**
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 is the result of the Health Regulation Committee's Open Government Sunset Review of the public records exemptions for all personal identifying information contained in records provided by allopathic and osteopathic physicians in response to the Department of Health's physician workforce survey. The exemptions will expire on October 2, 2012, unless saved from repeal through reenactment by the Legislature. This bill reenacts the public records exemptions. This bill also removes redundant language and changes the effective date.

This bill substantially amends sections 458.3193 and 459.0083 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

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

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

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

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

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

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

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

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public

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[2] Article I, s. 24, Fla. Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.
[5] Section 119.011(11), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c), Fla. Constitution.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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

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

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[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(5)(a), F.S.
[16] Section 119.15(4)(b), F.S.

The Act also requires consideration of the following:

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

Physician Licensure

Prior to engaging in the practice of medicine in Florida, an allopathic physician must be licensed under Chapter 458, F.S. Osteopathic physicians must be licensed under Chapter 459, F.S., before practicing in Florida. A license issued under either act must be renewed biennially.[17]

The 2007 Legislature enacted the requirements for physician workforce surveys for allopathic physicians and osteopathic physicians in sections 458.3191 and 459.0081, F.S., respectively. Both sections of statute require each Florida-licensed allopathic or osteopathic physician, in conjunction with the renewal of his or her license, to furnish specified information to the Department of Health (DOH) in a physician workforce survey.

Completed surveys submitted to DOH under sections 458.3191 and 459.0081, F.S. include:

- Licensee information, including but not limited to:
  - Frequency and geographic location of practice within the state;
  - Practice setting;
  - Percentage of time spent in direct patient care;
  - Anticipated changes to license or practice status; and
  - Areas of specialty or certification.
- Availability and trends relating to critically needed services, including but not limited to:
  - Obstetric care and services, including incidents of deliveries;
  - Radiological services, particularly performance of mammograms and breast-imaging services;
  - Physician services for hospital emergency departments and trauma centers, including on-call hours; and
  - Other critically needed specialty areas as determined by DOH.

Each physician survey must include a statement that the information provided is true and accurate to the best of the licensee's knowledge and that the submission does not contain any knowingly false information.[18] DOH issues a non-disciplinary citation to a licensee who fails to complete the survey within 90 days after the renewal of his or her license to practice as a physician. The citation notifies the physician that his or her medical license will not be renewed for any subsequent licensing period unless he or she completes the survey.[19]

[17] Section 458.319, F.S.; section 459.008, F.S.
[18] Section 458.3191(2), F.S.; section 459.0081(2), F.S.
[19] Section 458.3191, F.S.; section 459.0081(3), F.S.

Annually, DOH is required to analyze the results of the physician workforce survey[20] to determine by geographic area and specialty the number of physicians who:

- Perform deliveries of children in Florida.
- Read mammograms and perform breast-imaging-guided procedures in Florida.
- Perform emergency care on an on-call basis for a hospital emergency department.
- Plan to reduce or increase emergency on-call hours in a hospital emergency department.
- Plan to relocate outside the state.
- Practice medicine in Florida.
- Plan to reduce or modify the scope of their practices.

DOH is required to report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each year. Additionally, the annual report must include findings, recommendations, and strategic planning activities as provided in s. 381.4018, F.S., relating to physician workforce assessment and development. DOH may also include other information requested by the Physician Workforce Advisory Council.[21]

Public Records Exemptions Under Review

Sections 458.3193 and 459.0083, F.S., provide that all personal identifying information contained in records provided by physicians in response to the physician workforce surveys required as a condition of license renewal are exempt from the public records requirements in s. 119.07(1), F.S. and Article I, section 24(a) of the State Constitution, with certain exceptions.

Information made confidential and exempt shall be disclosed:

- With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative.
- By a court order upon a showing of good cause.
- To a research entity, if the entity:
  - Seeks the records or data pursuant to a research protocol approved by DOH;
  - Maintains the records or data in accordance with the approved protocol; or
  - Enters into a purchase and data-use agreement with the department.

DOH may deny a request for records or data if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement between DOH and the research entity must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data.

[20] ss. 458.3192 and 459.0082, F.S.

[21] *Id*. The Physician Workforce Advisory Council is created in s. 29, ch. 2010-161, L.O.F., to advise and assist the State Surgeon General and the DOH on matters concerning current and future physician workforce needs in this state.

Committee on Health Regulation's Open Government Sunset Review

Based on an Open Government Sunset Review of these exemptions, Senate professional staff of the Health Regulation Committee recommended that the Legislature retain the public records exemptions established in sections 458.3193 and 459.0083, F.S., which makes personal identifying information obtained by DOH through physician workforce surveys confidential and exempt from public disclosure.

This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist in maintaining the confidential nature of personal identifying information gathered by DOH through completed physician workforce surveys. The exemptions continue to serve an identifiable public purpose by allowing the state to effectively and efficiently administer and plan for an adequate and appropriate supply of well-trained physicians as the general and elderly population of the state increase. Meaningful and reliable analysis can only occur if physicians respond honestly and fully disclose relevant information concerning their current and planned future activities related to their medical practice. Maintaining the confidentiality of the responses will help ensure the state receives honest and complete responses.

III. Effect of Proposed Changes:

Section 1 reenacts and saves from repeal the public records exemption allowing personal identifying information contained in physician workforce surveys from allopathic physicians to remain confidential and exempt from public disclosure. This section also removes superfluous language currently in the exemption.

Section 2 reenacts and saves from repeal the public records exemption allowing personal identifying information contained in physician workforce surveys from osteopathic physicians to remain confidential and exempt from public disclosure. This section also removes superfluous language currently in the exemption.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

PCS (623372) by Governmental Oversight and Accountability on February 7, 2012:
The proposed committee substitute removes redundant language currently found in the exemptions and changes the effective date to October 1, 2012.

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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585-02042-12

Proposed Committee Substitute by the Committee on Governmental Oversight and Accountability

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 458.3193 and 459.0083, F.S., relating to exemptions from public records requirements for personal identifying information contained in physician workforce surveys submitted to the Department of Health by physicians and osteopathic physicians; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of each exemption; making conforming changes; providing an effective date.

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

Section 1. Section 458.3193, Florida Statutes, is amended to read:

458.3193 Confidentiality of certain information contained in physician workforce surveys.—

~~(1)~~ All personal identifying information contained in records provided by physicians licensed under this chapter or chapter 459 in response to physician workforce surveys required as a condition of license renewal and held by the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~, except as otherwise provided in this subsection~~. Information made confidential and exempt by this section ~~subsection~~ shall be disclosed:

(1) ~~(a)~~ With the express written consent of the individual

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to whom the information pertains or the individual's legally authorized representative.

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

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

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

Section 2. Section 459.0083, Florida Statutes, is amended to read:

459.0083 Confidentiality of certain information contained in physician workforce surveys.—

~~(1)~~ All personal identifying information contained in records provided by physicians licensed under chapter 458 or

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this chapter in response to physician workforce surveys required as a condition of license renewal and held by the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~, except as otherwise provided in this subsection~~. Information made confidential and exempt by this section ~~subsection~~ shall be disclosed:

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

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

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

~~(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal~~

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~~through reenactment by the Legislature.~~

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 830
INTRODUCER:	Governmental Oversight and Accountability Committee and Health Regulation Committee
SUBJECT:	OGSR/Physician Workforce Surveys/Department of Health
DATE:	February 7, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	**Favorable**
2.	Seay	Roberts	GO	**Fav/CS**
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 is the result of the Health Regulation Committee's Open Government Sunset Review of the public records exemptions for all personal identifying information contained in records provided by allopathic and osteopathic physicians in response to the Department of Health's physician workforce survey. The exemptions will expire on October 2, 2012, unless saved from repeal through reenactment by the Legislature. This bill reenacts the public records exemptions.

This bill substantially amends sections 458.3193 and 459.0083 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

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

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

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

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

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

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

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

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public

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[2] Article I, s. 24, Fla. Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.
[5] Section 119.011(11), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c), Fla. Constitution.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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

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

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[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(5)(a), F.S.
[16] Section 119.15(4)(b), F.S.

The Act also requires consideration of the following:

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

Physician Licensure

Prior to engaging in the practice of medicine in Florida, an allopathic physician must be licensed under Chapter 458, F.S. Osteopathic physicians must be licensed under Chapter 459, F.S. before practicing in Florida. A license issued under either act must be renewed biennially.[17]

The 2007 Legislature enacted the requirements for physician workforce surveys for allopathic physicians and osteopathic physicians in sections 458.3191 and 459.0081, F.S., respectively. Both sections of statute require each Florida-licensed allopathic or osteopathic physician, in conjunction with the renewal of his or her license, to furnish specified information to the Department of Health (DOH) in a physician workforce survey.

Completed surveys submitted to DOH under sections 458.3191 and 459.0081, F.S., include:

- Licensee information, including but not limited to:
  - Frequency and geographic location of practice within the state;
  - Practice setting;
  - Percentage of time spent in direct patient care;
  - Anticipated changes to license or practice status; and
  - Areas of specialty or certification.
- Availability and trends relating to critically needed services, including but not limited to:
  - Obstetric care and services, including incidents of deliveries;
  - Radiological services, particularly performance of mammograms and breast-imaging services;
  - Physician services for hospital emergency departments and trauma centers, including on-call hours; and
  - Other critically needed specialty areas as determined by DOH.

Each physician survey must include a statement that the information provided is true and accurate to the best of the licensee's knowledge and that the submission does not contain any knowingly false information.[18] DOH issues a non-disciplinary citation to a licensee who fails to complete the survey within 90 days after the renewal of his or her license to practice as a physician. The citation notifies the physician that his or her medical license will not be renewed for any subsequent licensing period unless he or she completes the survey.[19]

[17] Section 458.319, F.S.; section 459.008, F.S.
[18] Section 458.3191(2), F.S.; section 459.0081(2), F.S.
[19] Section 458.3191, F.S.; section 459.0081(3), F.S.

Annually, DOH is required to analyze the results of the physician workforce survey[20] to determine by geographic area and specialty the number of physicians who:

- Perform deliveries of children in Florida.
- Read mammograms and perform breast-imaging-guided procedures in Florida.
- Perform emergency care on an on-call basis for a hospital emergency department.
- Plan to reduce or increase emergency on-call hours in a hospital emergency department.
- Plan to relocate outside the state.
- Practice medicine in Florida.
- Plan to reduce or modify the scope of their practices.

DOH is required to report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each year. Additionally, the annual report must include findings, recommendations, and strategic planning activities as provided in s. 381.4018, F.S., relating to physician workforce assessment and development. DOH may also include other information requested by the Physician Workforce Advisory Council.[21]

Public Records Exemptions Under Review

Sections 458.3193 and 459.0083, F.S., provide that all personal identifying information contained in records provided by physicians in response to the physician workforce surveys required as a condition of license renewal are exempt from the public records requirements in s. 119.07(1), F.S. and Article I, section 24(a) of the State Constitution, with certain exceptions.

Information made confidential and exempt shall be disclosed:

- With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative.
- By a court order upon a showing of good cause.
- To a research entity, if the entity:
  - Seeks the records or data pursuant to a research protocol approved by DOH;
  - Maintains the records or data in accordance with the approved protocol; or
  - Enters into a purchase and data-use agreement with the department.

DOH may deny a request for records or data if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement between DOH and the research entity must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data.

[20] ss. 458.3192 and 459.0082, F.S.

[21] *Id*. The Physician Workforce Advisory Council is created in s. 29, ch. 2010-161, L.O.F., to advise and assist the State Surgeon General and the DOH on matters concerning current and future physician workforce needs in this state.

Committee on Health Regulation's Open Government Sunset Review

Based on an Open Government Sunset Review of these exemptions, Senate professional staff of the Health Regulation Committee recommended that the Legislature retain the public records exemptions established in sections 458.3193 and 459.0083, F.S., which makes personal identifying information obtained by DOH through physician workforce surveys confidential and exempt from public disclosure.

This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist in maintaining the confidential nature of personal identifying information gathered by DOH through completed physician workforce surveys. The exemptions continue to serve an identifiable public purpose by allowing the state to effectively and efficiently administer and plan for an adequate and appropriate supply of well-trained physicians as the general and elderly population of the state increase. Meaningful and reliable analysis can only occur if physicians respond honestly and fully disclose relevant information concerning their current and planned future activities related to their medical practice. Maintaining the confidentiality of the responses will help ensure the state receives honest and complete responses.

III. Effect of Proposed Changes:

Section 1 reenacts and saves from repeal the public records exemption allowing personal identifying information contained in physician workforce surveys from allopathic physicians to remain confidential and exempt from public disclosure, removing redundant language.

Section 2 reenacts and saves from repeal the public records exemption allowing personal identifying information contained in physician workforce surveys from osteopathic physicians to remain confidential and exempt from public disclosure, removing redundant language.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability – February 7, 2012:
The CS amended the bill to remove redundant language found in the exemptions and changed the effective date to October 1, 2012.

B. Amendments:

None.

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

By the Committee on Health Regulation

588-00844-12 2012830__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 458.3193 and 459.0083, F.S., relating to exemptions from public records requirements provided for personal identifying information contained in physician workforce surveys submitted to the Department of Health by physicians and osteopathic physicians; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of each exemption; providing an effective date.

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

Section 1. Section 458.3193, Florida Statutes, is amended to read:

458.3193 Confidentiality of certain information contained in physician workforce surveys.—

~~(1)~~ All personal identifying information contained in records provided by physicians licensed under this chapter or chapter 459 in response to physician workforce surveys required as a condition of license renewal and held by the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in this section ~~subsection~~. Information made confidential and exempt by this section ~~subsection~~ shall be disclosed:

(1) ~~(a)~~ With the express written consent of the individual to whom the information pertains or the individual's legally

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

588-00844-12 2012830__

authorized representative.

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

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

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

Section 2. Section 459.0083, Florida Statutes, is amended to read:

459.0083 Confidentiality of certain information contained in physician workforce surveys.—

~~(1)~~ All personal identifying information contained in records provided by physicians licensed under chapter 458 or this chapter in response to physician workforce surveys required

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

as a condition of license renewal and held by the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in this section ~~subsection~~. Information made confidential and exempt by this section ~~subsection~~ shall be disclosed:

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

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

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

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

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)

2/7/12
Meeting Date

Topic Physician Workforce Survey

Bill Number SB 830 *(if applicable)*

Name Holly Miller

Amendment Barcode *(if applicable)*

Job Title Assistant General Counsel

Address 1430 Piedmont Drive East
Street

Phone 850 224 6496

Tallahassee FL 32308
City *State* *Zip*

E-mail hmiller@flmedical.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/SB 832 (353328)
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	OGSR/Direct Support Organization/St. Augustine Historic Preservation
DATE:	February 2, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	deMarsh-Mathues	HE	**Favorable**
2.	Seay	Roberts	GO	**Pre-meeting**
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 is the result of the Higher Education Committee's Open Government Sunset Review of the public records exemption for information identifying a donor or a prospective donor to the direct-support organization established by the University of Florida to aid historic preservation efforts in St. Augustine. The exemption will expire October 2, 2012, unless saved from repeal through reenactment by the Legislature. This bill reenacts and saves from repeal the public records exemption. The bill also makes editorial changes.

This bill substantially amends section 267.1736 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

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

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

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

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

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

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

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

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public

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[2] Article I, s. 24, Fla. Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.
[5] Section 119.011(11), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c), Fla. Constitution.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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

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

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[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(5)(a), F.S.
[16] Section 119.15(4)(b), F.S.

The Act also requires consideration of the following:

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

UF Historic St. Augustine, Inc. (UFHSA)

The 2007 Legislature authorized a direct-support organization to assist the University of Florida in carrying out its responsibilities for historic preservation and historic preservation education for the City of St. Augustine and the state. In carrying out its purposes related to historic preservation of state owned historic properties in St. Augustine, the direct-support organization is authorized to raise money; apply for, and receive grants from federal, state, and local governments and private sources; receive, hold, invest, and administer property; and make expenditures to or on behalf of the university. Following the development of a strategic plan for the historic area, the direct support organization was incorporated on June 28, 2010, as UF Historic St. Augustine, Inc. The UFHSA held its first board meeting on February 11, 2011.

According to the university, UFHSA has the following duties for historic preservation and historic preservation education:

- Responding to the state's needs for professionals in historic preservation, archaeology, cultural resources management, cultural tourism, and museum administration;
- Preserving, maintaining, and exhibiting ancient or historical landmarks within the City of St. Augustine, or surrounding areas;
- Assisting, establishing, or operating museums or other places for exhibits of documents and artifacts of historical interest;
- Promoting research, education, and publishing in science, history, literature, music and art relating to historic sites and persons in Florida history;
- To the extent permitted by law, soliciting, and receiving grants, gifts, and bequests of money or property from the federal government, state government, foundations, business entities, and individuals and holding or disposing of, and investing and reinvesting the same; and
- Acquiring, holding, managing, administering, selling, or in any manner, disposing of, dealing, or trading in property of any kind.

Public Records Exemption Under Review

Under section 267.1736(9), F.S., the following information held by UFHSA is exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- The identity of a donor or prospective donor to UFHSA who wishes to remain anonymous; and
- All information identifying such a donor or prospective donor.

Based on the Open Government Sunset Review of this exemption, Senate professional staff of the Higher Education Committee recommended that the Legislature retain the public records exemption established in s. 267.1736(9), F.S. This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist in maintaining the exemption. While UFHSA has not used the public records exemption thus far, if a donor or potential donor to the organization requested anonymity, the exemption would be necessary to protect the information from public disclosure. Given the extensive duties of the organization for historic preservation efforts, it is likely that UFHSA will have the occasion to use the exemption in the future.

III. Effect of Proposed Changes:

Section 1 amends s. 267.1736, F.S., reenacting and saving from repeal the public records exemption for information identifying a donor or a prospective donor held by the University of Florida's direct-support organization that supports the university's historic preservation efforts for the City of St. Augustine.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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.)

PCS (353328) by Governmental Oversight and Accountability on February 7, 2012:
The proposed committee substitute removes superfluous language. It does not make any substantive change to the exemption.

B. Amendments:

None.

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

353328

585-02044-12

Proposed Committee Substitute by the Committee on Governmental Oversight and Accountability

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 267.1736, F.S., which provides an exemption from public records requirements for information identifying a donor or prospective donor to the direct-support organization established by the University of Florida in the historic preservation of the City of St. Augustine; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (9) of section 267.1736, Florida Statutes, is amended to read:

267.1736 Direct-support organization.—

(9) ~~(a)~~ Any information identifying ~~The identity of~~ a donor or prospective donor to the direct-support organization who desires to remain anonymous~~, and all information identifying such donor or prospective donor,~~ is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution; and that anonymity must be maintained in the auditor's report. The university and the Auditor General shall have access to all records of the direct-support organization upon request.

~~(b) This subsection is subject to the Open Government~~

353328

585-02044-12

~~Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 832
INTRODUCER:	Governmental Oversight and Accountability Committee and Higher Education Committee
SUBJECT:	OGSR/Direct Support Organization/St. Augustine Historic Preservation
DATE:	February 7, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	deMarsh-Mathues	HE	**Favorable**
2.	Seay	Roberts	GO	**Fav/CS**
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 is the result of the Higher Education Committee's Open Government Sunset Review of the public records exemption for information identifying a donor or a prospective donor to the direct-support organization established by the University of Florida to aid historic preservation efforts in St. Augustine. The exemption will expire October 2, 2012, unless saved from repeal through reenactment by the Legislature. This bill reenacts and saves from repeal the public records exemption.

This bill substantially amends section 267.1736 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later,

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

Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

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

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

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

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

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

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

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[2] Article I, s. 24, Fla. Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.
[5] Section 119.011(11), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;
- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is

[8] Article I, s. 24(c), Fla. Constitution.
[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(5)(a), F.S.

used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[16]

The Act also requires consideration of the following:

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

UF Historic St. Augustine, Inc. (UFHSA)

The 2007 Legislature authorized a direct-support organization to assist the University of Florida in carrying out its responsibilities for historic preservation and historic preservation education for the City of St. Augustine and the state. In carrying out its purposes related to historic preservation of state owned historic properties in St. Augustine, the direct-support organization is authorized to raise money; apply for and receive grants from federal, state and local governments and private sources; receive, hold, invest, and administer property; and make expenditures to or on behalf of the university. Following the development of a strategic plan for the historic area, the direct-support organization was incorporated on June 28, 2010, as UF Historic St. Augustine, Inc. The UFHSA held its first board meeting on February 11, 2011.

According to the university, UFHSA has the following duties for historic preservation and historic preservation education:

- Responding to the state's needs for professionals in historic preservation, archaeology, cultural resources management, cultural tourism, and museum administration;
- Preserving, maintaining, and exhibiting ancient or historical landmarks within the City of St. Augustine, or surrounding areas;
- Assisting, establishing, or operating museums or other places for exhibits of documents and artifacts of historical interest;
- Promoting research, education, and publishing in science, history, literature, music and art relating to historic sites and persons in Florida history;
- To the extent permitted by law, soliciting, and receiving grants, gifts, and bequests of money or property from the federal government, state government, foundations, business entities, and individuals and holding or disposing of, and investing and reinvesting the same; and
- Acquiring, holding, managing, administering, selling, or in any manner, disposing of, dealing, or trading in property of any kind.

Public Records Exemption Under Review

Under section 267.1736(9), F.S., the following information held by UFHSA is exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

[16] Section 119.15(4)(b), F.S.

- The identity of a donor or prospective donor to UFHSA who wishes to remain anonymous; and
- All information identifying such a donor or prospective donor.

Based on the Open Government Sunset Review of this exemption, Senate professional staff of the Higher Education Committee recommended that the Legislature retain the public records exemption established in s. 267.1736(9), F.S. This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist in maintaining the exemption. While UFHSA has not used the public records exemption thus far, if a donor or potential donor to the organization requested anonymity, the exemption would be necessary to protect the information from public disclosure. Given the extensive duties of the organization for historic preservation efforts, it is likely that UFHSA will have the occasion to use the exemption in the future.

III. Effect of Proposed Changes:

Section 1 amends s. 267.1736, F.S., reenacting and saving from repeal the public records exemption for information identifying a donor or a prospective donor held by the University of Florida's direct-support organization that supports the university's historic preservation efforts for the City of St. Augustine, removing redundant language.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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 – February 7, 2012:

- The CS amended the bill to remove redundant language currently found in the exemption.

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 Higher Education

589-00846-12 2012832__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 267.1736, F.S.; deleting the repeal of an exemption from public records requirements for information identifying a donor or prospective donor to the direct-support organization established to assist the University of Florida in the historic preservation of the City of St. Augustine; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Subsection (9) of section 267.1736, Florida Statutes, is amended to read:

267.1736 Direct-support organization.—

(9) ~~(a)~~ The identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; and that anonymity must be maintained in the auditor's report. The university and the Auditor General shall have access to all records of the direct-support organization upon request.

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

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

Florida Senate - 2012 **SB 832**

589-00846-12 2012832__

Section 2. This act shall take effect October 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:	PCS/SB 844 (114708)
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	OGSR/Sunshine State One-Call of Florida, Inc.
DATE:	February 3, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Favorable**
2.	Seay	Roberts	GO	**Pre-meeting**
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 is the result of the Communications, Energy, and Public Utilities Committee's Open Government Sunset Review of the public records exemption for proprietary confidential business information held by Sunshine State One-Call of Florida, Inc. The exemption expires on October 2, 2012, unless reenacted and saved from repeal by the Legislature. This bill reenacts the public records exemption. This PCS also changes the effective date to October 1, 2012.

This bill substantially amends section 556.113 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

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

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

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

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

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

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

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

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public

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[2] Article I, s. 24, Fla. Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.
[5] Section 119.011(11), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c), Fla. Constitution.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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

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

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[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(5)(a), F.S.
[16] Section 119.15(4)(b), F.S.

The Act also requires consideration of the following:

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

Sunshine State One-Call of Florida, Inc.

Chapter 556, F.S., is the Underground Facility Damage Prevention and Safety Act (Act).[17] The intent of the Act is to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition.[18]

The Act provides for creation of the Sunshine State One-Call Of Florida, Inc. (One-Call), as a not-for-profit corporation.[19] Each operator of an underground facility[20] is a member.[21] The membership elects a board of directors to administer the system,[22] which is a free-access notification system established by One-Call. The board of directors is subject to public records and public meetings laws.[23]

The notification system must provide a single toll-free telephone number within Florida that excavators can use to notify member operators of planned excavation or demolition activities.[24] When notice of intent to engage in excavation or demolition is filed, the systems managed by One-Call provide notice to the member operators of proposed excavation and give the opportunity for member operators to locate and identify their underground facilities.[25]

One-Call is not required or permitted to locate or mark underground facilities.[26] However, those member operators who are provided notice of an excavation must locate and mark underground

[17] Section 556.101(1), F.S.
[18] Section 556.101(2), F.S.
[19] Section 556.103(1), F.S.
[20] Section 556.102(13), F.S., defines "underground facility" as any public or private personal property which is buried, placed below ground, or submerged on any member operators right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage, electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to pipelines, pipes, sewers, conduits, cables, valves, and lines.
[21] Section 556.103(1), F.S.
[22] Section 556.103(2), F.S.
[23] Attorney General Opinion 94-35 provides in sum, "[m]eetings of the Board of Directors of Sunshine State One-Call of Florida, Inc., are subject to the requirements of the Government in the Sunshine Law and records of the corporation and its board of directors come within the scope of the Public Records Law." (April 21, 1994)
[24] Section 556.104, F.S.
[25] *See* s. 556.105, F.S.
[26] Section 556.101(2), F.S.

facilities not less than two business days after notification,[27] or not less than 10 business days after notification for facilities located beneath the waters of the state.[28]

To initiate an excavation or demolition, an excavator must contact One-Call by phone or electronically to file a "ticket" that provides specific information about the proposed excavation, such as the name of the company or person, intended depth of the excavation, and the location of the intended excavation.[29]

In 2002, One-Call invested in a member ticket management software system that allows all excavators the opportunity to file tickets electronically and eliminates the cost of purchasing these systems for individual companies. Prior to this investment, electronic ticket filing was accessible only to member operators who bought ticket management systems.[30]

Public Records Exemption Under Review

Current law provides a public record exemption for Sunshine State One-Call of Florida, Inc. (One Call). Proprietary confidential business information held by One-Call, for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system, is exempt[31] from public records requirements.[32]

"Proprietary confidential business information" is defined as information provided by:

- A member operator that is a map, plan, facility location diagram, internal damage investigation report or analysis, dispatch methodology, trade secret, or that describes the exact location of a utility underground facility or the protection, repair, or restoration thereof.[33]
- An excavator that is an internal damage investigation report or analysis relating to underground utility facilities damages.[34]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted and saved from repeal by the Legislature.

Communications, Energy and Public Utilities Committee's Open Government Sunset Review

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Communications, Energy and Public Utilities Committee recommended that the Legislature retain the public records exemption for proprietary confidential business information held by

[27] Section 556.105(5)(a), F.S.
[28] Section 556.105(5)(b), F.S.
[29] *See* s. 556.105(1)(a), F.S.
[30] Professional Staff Analysis and Economic Impact Statement for SB 1510, Senate Communications and Public Utilities Committee, March 19, 2007 (at pg. 2), *available at* http://archive.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s1510.cu.pdf.
[31] *See supra* note 13.
[32] Section 556.113(2), F.S.
[33] *See* section 556.113(1)(a), F.S.
[34] *See* section 556.113(1)(b), F.S.

One-Call for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.

This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist to exempt proprietary confidential business information held by One-Call. Reenactment of the exemption helps allow the state to effectively and efficiently administer a governmental program which would be significantly impaired without the exemption. Reenacting the exemption would also serve the purpose of protecting information of a confidential nature concerning One-Call's members that can be used to protect or further a business advantage over those who do not know or use it and the disclosure of which would injure them in the marketplace.

III. Effect of Proposed Changes:

Section 1 amends s. 556.113, F.S., reenacting and saving from repeal the public records exemption for proprietary confidential business information held by One-Call for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this bill does not create or expand a public records exemption, it is not subject to the constitutional requirement of passage by a two-thirds vote of both houses of the Legislature.

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.)

PCS (114708) by Governmental Oversight and Accountability on February 7, 2012:
The PCS changes the effective date from July 1, 2012 to October 1, 2012 to coincide with the sunset date. The PCS makes no substantive changes to the exemption.

B. Amendments:

None.

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

114708

585-02043-12

Proposed Committee Substitute by the Committee on Governmental Oversight and Accountability

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 556.113, F.S., relating to an exemption from public records requirements for proprietary confidential business information held by Sunshine State One-Call of Florida, Inc.; saving the exemption from repeal under the Open Government Sunset Review Act; deleting the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 556.113, Florida Statutes, is amended to read:

556.113 Sunshine State One-Call of Florida, Inc.; public records exemption.—

(1) As used in this section, the term "proprietary confidential business information" means information provided by:

(a) A member operator which is a map, plan, facility location diagram, internal damage investigation report or analysis, dispatch methodology, or trade secret as defined in s. 688.002, or which describes the exact location of a utility underground facility or the protection, repair, or restoration thereof, and:

1. Is intended to be and is treated by the member operator as confidential;

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2. The disclosure of which would likely be used by a competitor to harm the business interests of the member operator or could be used for the purpose of inflicting damage on underground facilities; and

3. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to Sunshine State One-Call of Florida, Inc.

(b) An excavator in an internal damage investigation report or analysis relating to damage to underground utility facilities, and:

1. Is intended to be and is treated by the excavator as confidential;

2. The disclosure of which would be reasonably likely to be used by a competitor to harm the business interests of the excavator or could be used for the purpose of inflicting damage on underground facilities; and

3. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to Sunshine State One-Call of Florida, Inc.

(2) Proprietary confidential business information held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed~~

114708

585-02043-12

~~on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 844

INTRODUCER: Governmental Oversight and Accountability Committee, Communications, Energy, and Public Utilities Committee, and Senator Lynn

SUBJECT: OGSR/Sunshine State One-Call

DATE: February 7, 2012 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Favorable**
2.	Seay	Roberts	GO	**Fav/CS**
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 is the result of the Communications, Energy, and Public Utilities Committee's Open Government Sunset Review of the public records exemption for proprietary confidential business information held by Sunshine State One-Call of Florida, Inc. The exemption expires on October 2, 2012, unless reenacted and saved from repeal by the Legislature. This bill reenacts the public records exemption.

This bill substantially amends section 556.113 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

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

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

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

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

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

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

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

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public

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[2] Article I, s. 24, Fla. Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.
[5] Section 119.011(11), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c), Fla. Constitution.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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

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

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[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(5)(a), F.S.
[16] Section 119.15(4)(b), F.S.

The Act also requires consideration of the following:

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

Sunshine State One-Call of Florida, Inc.

Chapter 556, F.S., is the Underground Facility Damage Prevention and Safety Act (Act).[17] The intent of the Act is to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition.[18]

The Act provides for creation of the Sunshine State One-Call Of Florida, Inc. (One-Call), as a not-for-profit corporation.[19] Each operator of an underground facility[20] is a member.[21] The membership elects a board of directors to administer the system,[22] which is a free-access notification system established by One-Call. The board of directors is subject to public records and public meetings laws.[23]

The notification system must provide a single toll-free telephone number within Florida that excavators can use to notify member operators of planned excavation or demolition activities.[24] When notice of intent to engage in excavation or demolition is filed, the systems managed by One-Call provide notice to the member operators of proposed excavation and give the opportunity for member operators to locate and identify their underground facilities.[25]

One-Call is not required or permitted to locate or mark underground facilities.[26] However, those member operators who are provided notice of an excavation must locate and mark underground

[17] Section 556.101(1), F.S.
[18] Section 556.101(2), F.S.
[19] Section 556.103(1), F.S.
[20] Section 556.102(13), F.S., defines "underground facility" as any public or private personal property which is buried, placed below ground, or submerged on any member operators right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage, electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to pipelines, pipes, sewers, conduits, cables, valves, and lines.
[21] Section 556.103(1), F.S.
[22] Section 556.103(2), F.S.
[23] Attorney General Opinion 94-35 provides in sum, "[m]eetings of the Board of Directors of Sunshine State One-Call of Florida, Inc., are subject to the requirements of the Government in the Sunshine Law and records of the corporation and its board of directors come within the scope of the Public Records Law." (April 21, 1994)
[24] Section 556.104, F.S.
[25] *See* s. 556.105, F.S.
[26] Section 556.101(2), F.S.

facilities not less than two business days after notification,[27] or not less than 10 business days after notification for facilities located beneath the waters of the state.[28]

To initiate an excavation or demolition, an excavator must contact One-Call by phone or electronically to file a "ticket" that provides specific information about the proposed excavation, such as the name of the company or person, intended depth of the excavation, and the location of the intended excavation.[29]

In 2002, One-Call invested in a member ticket management software system that allows all excavators the opportunity to file tickets electronically and eliminates the cost of purchasing these systems for individual companies. Prior to this investment, electronic ticket filing was accessible only to member operators who bought ticket management systems.[30]

Public Records Exemption Under Review

Current law provides a public record exemption for Sunshine State One-Call of Florida, Inc. (One Call). Proprietary confidential business information held by One-Call, for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system, is exempt[31] from public records requirements.[32]

"Proprietary confidential business information" is defined as information provided by:

- A member operator that is a map, plan, facility location diagram, internal damage investigation report or analysis, dispatch methodology, trade secret, or that describes the exact location of a utility underground facility or the protection, repair, or restoration thereof.[33]
- An excavator that is an internal damage investigation report or analysis relating to underground utility facilities damages.[34]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted and saved from repeal by the Legislature.

Communications, Energy and Public Utilities Committee's Open Government Sunset Review

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Communications, Energy and Public Utilities Committee recommended that the Legislature retain the public records exemption for proprietary confidential business information held by

[27] Section 556.105(5)(a), F.S.
[28] Section 556.105(5)(b), F.S.
[29] *See* s. 556.105(1)(a), F.S.
[30] Professional Staff Analysis and Economic Impact Statement for SB 1510, Senate Communications and Public Utilities Committee, March 19, 2007 (at pg. 2), *available at* http://archive.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s1510.cu.pdf.
[31] *See supra* note 13.
[32] Section 556.113(2), F.S.
[33] *See* section 556.113(1)(a), F.S.
[34] *See* section 556.113(1)(b), F.S.

One-Call for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.

This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist to exempt proprietary confidential business information held by One-Call. Reenactment of the exemption helps allow the state to effectively and efficiently administer a governmental program which would be significantly impaired without the exemption. Reenacting the exemption would also serve the purpose of protecting information of a confidential nature concerning One-Call's members that can be used to protect or further a business advantage over those who do not know or use it and the disclosure of which would injure them in the marketplace.

III. Effect of Proposed Changes:

Section 1 amends s. 556.113, F.S., reenacting and saving from repeal the public records exemption for proprietary confidential business information held by One-Call for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this bill does not create or expand a public records exemption, it is not subject to the constitutional requirement of passage by a two-thirds vote of both houses of the Legislature.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability – February 7, 2012:

- The CS changed the effective date to October 1, 2012.

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 Communications, Energy, and Public Utilities

579-00839-12 2012844__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 556.113, F.S., relating to an exemption from public records requirements for proprietary confidential business information held by Sunshine State One-Call of Florida, Inc.; saving the exemption from repeal under the Open Government Sunset Review Act; deleting the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 556.113, Florida Statutes, is amended to read:

556.113 Sunshine State One-Call of Florida, Inc.; public records exemption.—

(1) As used in this section, the term "proprietary confidential business information" means information provided by:

(a) A member operator which is a map, plan, facility location diagram, internal damage investigation report or analysis, dispatch methodology, or trade secret as defined in s. 688.002, or which describes the exact location of a utility underground facility or the protection, repair, or restoration thereof, and:

1. Is intended to be and is treated by the member operator as confidential;

2. The disclosure of which would likely be used by a competitor to harm the business interests of the member operator

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or could be used for the purpose of inflicting damage on underground facilities; and

3. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to Sunshine State One-Call of Florida, Inc.

(b) An excavator in an internal damage investigation report or analysis relating to damage to underground utility facilities, and:

1. Is intended to be and is treated by the excavator as confidential;

2. The disclosure of which would be reasonably likely to be used by a competitor to harm the business interests of the excavator or could be used for the purpose of inflicting damage on underground facilities; and

3. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to Sunshine State One-Call of Florida, Inc.

(2) Proprietary confidential business information held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect 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 868

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Archaeological Sites and Specimens

DATE: February 2, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jenkins	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:

Currently, Florida law prohibits persons from conducting archaeological field investigations on, or removing or attempting to remove, or deface, destroy, or otherwise alter any archaeological site or specimen located upon any land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except under the authority of a permit granted by the division. Persons engaging in these activities can face criminal penalties, administrative fines, and the forfeiture of any collected materials.

CS/SB 868 expands the area where unauthorized archaeological activity is prohibited to include state sovereignty submerged land and land owned by political subdivisions, and authorizes the Division to issue permits for archaeological research at these locations.

This bill substantially amends ss. 267.12(1), 267.12(2), 267.13(1), and 267.13(2) of the Florida Statutes.

II. Present Situation:

State Policy Relative to Historic Properties

Section 267.061, F.S., provides the "State Policy Relative to Historic Properties." This policy acknowledges that the rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations, and that the destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment. It is the policy of the state to:

- Provide leadership in the preservation of the state's historic resources;
- Administer state-owned or state-controlled historic resources in a spirit of stewardship and trusteeship;
- Contribute to the preservation of non-state-owned historic resources and to give encouragement to organizations and individuals undertaking preservation by private means;
- Foster conditions, using measures that include financial and technical assistance, for a harmonious coexistence of society and state historic resources;
- Encourage the public and private preservation and utilization of elements of the state's historically built environment; and
- Assist local governments to expand and accelerate their historic preservation programs and activities.[1]

This policy also provides that all treasure trove, artifacts, and objects having intrinsic or historical and archaeological value, which have been abandoned on state-owned lands or state-owned sovereignty submerged lands, belong to the state with the title thereto vested in the Division of Historical Resources of the Department of State for the purposes of administration and protection.[2]

State Archaeological Landmarks and Landmark Zones

The Division of Historical Resources (Division) may designate an archaeological site of significance to the scientific study or public representation of the state's historical, prehistoric, or aboriginal past as a "state archaeological landmark."[3] In addition, the Division may designate an interrelated grouping of significant archaeological sites as a "state archaeological landmark zone."[4] No site or grouping of sites can be designated without the express written consent of a private owner.[5] Upon designation of an archaeological site, the owners and occupants are given written notification by the Division.[6] Once so designated, no person may conduct field investigation activities on the site without first securing a permit from the Division.[7]

[1] Section 267.061(1)(a), F.S.
[2] Section 267.061(1)(b), F.S.
[3] Section 267.11, F.S.
[4] *Id*.
[5] *Id*.
[6] *Id*.
[7] *Id*.

Archaeological Research Permits

The Division may issue permits for excavation and surface reconnaissance on state lands or lands within the boundaries of designated state archaeological landmarks or landmark zones to institutions which the Division deems to be properly qualified to conduct such activity, subject to Division rules and regulations, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs.[8]

Those state institutions considered by the Division to permanently possess the required archaeological expertise to conduct the archaeological activities permissible under the provisions of a permit may be designated as accredited institutions.[9] These institutions are allowed to conduct archaeological field activities on state-owned or controlled lands or within the boundaries of any designated state archaeological landmark or any landmark zone without obtaining an individual permit for each project.[10] The institutions are required to give prior written notice of all anticipated archaeological field activities, together with such information as may reasonably be required by the Division to ensure the proper preservation, protection, and excavation of archaeological resources.[11] However, no archaeological activity can be commenced by the accredited institution until the Division determines that the planned project is in conformity with guidelines, regulations, and criteria.[12] Such determination is made by the Division within 15 days from the date of notification.[13]

Prohibited Archaeological Practices and Penalties

Any person who by means other than excavation conducts archaeological field investigations on, or removes or attempts to remove, or defaces, destroys, or otherwise alters any archaeological site or specimen located upon land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit granted by the Division or under procedures relating to accredited institutions, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., and, in addition, forfeits to the state all specimens, objects and materials collected, together with all photographs and records relating to such material.[14]

A person who engages in the same conduct by means of excavation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., and any vehicle or equipment used in connection with the violation is subject to forfeiture to the state. Such person may be ordered by the court to make restitution to the state for the archaeological or commercial

[8] Section 267.12., F.S.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Section 267.13(1)(a), F.S.

value and cost of restoration and repair.[15] Individuals also are prohibited, and subject to criminal penalties, for selling or procuring archaeological objects which have been collected in violation of state law.[16]

The Division additionally has authority to institute administrative proceedings to impose an administrative fines of not more than $500 a day on, and apply to a court of competent jurisdiction for injunctive relief against, any person or business organization that, without written permission of the Division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located on state-owned or state-controlled lands, including state sovereignty submerged lands.[17]

III. Effect of Proposed Changes:

CS/SB 868 expands the provisions contained in s. 267.13, F.S., related to prohibited archaeological practices and penalties to include state sovereignty submerged land and land owned by political subdivisions as defined by s. 1.01(8), F.S.[18] Any specimens, objects, and materials collected in violation of the law are forfeited to the state. The bill also amends s. 267.12, F.S., to provide the Division of Historical Resources with the authority to issue permits for archaeological research permits at these locations.

Currently, the statutes only apply to land owned or controlled by the state, or within the boundaries of a designated state archaeological landmark or landmark zone. Thus, the bill affords other public landowners, who are not covered by current laws and limited to other remedies such as trespass after warning,[19] greater ability to deter persons from searching for archeological finds on their property, while allowing permitting for legitimate archaeological research.

The bill has an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[15] Section 267.13(1)(b), F.S.
[16] Section 267.13(1)(c), F.S.
[17] Section 267.13(2), F.S.
[18] See, s. 1.01(8), F.S., which defines "political subdivisions" to include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

[19] See, s. 810.09, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Revenues: Expanding the prohibition of specified activities relating to archaeological sites and resources could result in the collection of additional fines. Between 2004 and 2006, a total of $6,493.13 was collected pursuant to s. 267.13, F.S. No fines have been collected since 2006.[20]

Expenditures: Expanding the prohibition of specified activities relating to archaeological sites and resources could result in the need for additional staff time and resources.

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 7, 2012:

- Deletes the reference to "special districts created by the Legislature" as those entities are included in the definition of the term "political subdivision."
- Adds language that authorizes the Division to issue permits for archaeological research on state sovereignty land and land owned by political subdivisions.
- Makes technical changes to the bill.

B. Amendments:

None.

[20] Department of State analysis of SB 868, dated December 8, 2011.

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	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 267.12, Florida Statutes, are amended to read:

267.12 Research permits; procedure.—

(1) The division may issue permits for excavation and surface reconnaissance on land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), ~~lands~~ or land ~~lands~~ within the boundaries of a designated state archaeological

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landmark ~~landmarks~~ or landmark zone ~~zones~~ to institutions which the division deems ~~shall deem~~ to be properly qualified to conduct such activity, subject to such rules and regulations as the division may prescribe, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs, such reports to be submitted to the division.

(2) Those state institutions considered by the division permanently to possess the required archaeological expertise to conduct the archaeological activities allowed under ~~the provisions of~~ the permit may be designated as accredited institutions which will be allowed to conduct archaeological field activities on land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), ~~state-owned or controlled lands~~ or land within the boundaries of a ~~any~~ designated state archaeological landmark or ~~any~~ landmark zone without obtaining an individual permit for each project, except that those accredited institutions will be required to give prior written notice of all anticipated archaeological field activities on land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), ~~state-owned or controlled lands~~ or land within the boundaries of a ~~any~~ designated state archaeological landmark or landmark zone to the division,

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together with such information as may reasonably be required by the division to ensure the proper preservation, protection, and excavation of the archaeological resources. However, ~~no~~ archaeological activity may not be commenced by the accredited institution until the division has determined that the planned project will be in conformity with the guidelines, regulations, and criteria adopted pursuant to ss. 267.11-267.14. Such determination will be made by the division and notification to the institution given within ~~a period of~~ 15 days after ~~from the time of~~ receipt of the prior notification by the division.

Section 2. Subsections (1) and (2) of section 267.13, Florida Statutes, are amended to read:

267.13 Prohibited practices; penalties.—

(1)(a) Any person who by means other than excavation ~~either~~ conducts archaeological field investigations on, or removes or attempts to remove~~,~~ or defaces, destroys, or otherwise alters any archaeological site or specimen located upon, ~~any~~ land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), or land within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit or under procedures relating to accredited institutions granted by the division, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, in addition, shall forfeit to the state all specimens, objects, and materials collected, together with all photographs and records relating to such material.

(b) Any person who by means of excavation ~~either~~ conducts

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archaeological field investigations on, or removes or attempts to remove~~,~~ or defaces, destroys, or otherwise alters any archaeological site or specimen located upon, ~~any~~ land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), or land within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit or under procedures relating to accredited institutions granted by the division, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and any vehicle or equipment of any person used in connection with the violation is subject to forfeiture to the state if it is determined by any court of law that the vehicle or equipment was involved in the violation. Such person shall forfeit to the state all specimens, objects, and materials collected or excavated, together with all photographs and records relating to such material. The court may also order the defendant to make restitution to the state for the archaeological or commercial value and cost of restoration and repair as defined in subsection (4).

(c) Any person who offers for sale or exchange any object with knowledge that it has previously been collected or excavated in violation of any of the terms of ss. 267.11-267.14, or who procures, counsels, solicits, or employs any other person to violate any prohibition contained in ss. 267.11-267.14 or to sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource excavated or removed from ~~any~~ land owned or controlled by the state,

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including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), or land within the boundaries of a designated state archaeological landmark or landmark zone, except with the express consent of the division, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and any vehicle or equipment of any person used in connection with the violation is subject to forfeiture to the state if it is determined by any court of law that such vehicle or equipment was involved in the violation. All specimens, objects, and material collected or excavated, together with all photographs and records relating to such material, shall be forfeited to the state. The court may also order the defendant to make restitution to the state for the archaeological or commercial value and cost of restoration and repair as defined in subsection (4).

(2)(a) The division may institute an administrative proceeding to impose an administrative fine of not more than $500 a day on any person or business organization that, without written permission of the division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located upon land owned or controlled by the state ~~on state-owned or state-controlled lands~~, including state sovereignty submerged land, or land owned by a political subdivision as defined by s. 1.01(8) ~~lands~~.

(b) The division shall institute an administrative proceeding by serving written notice of a violation by certified mail upon the alleged violator. The notice shall specify the law or rule allegedly violated and the facts upon which the

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allegation is based. The notice shall also specify the amount of the administrative fine sought by the division. The fine is ~~shall~~ not ~~become~~ due until after service of notice and an administrative hearing. However, the alleged violator has ~~shall have~~ 20 days after ~~from~~ service of notice to request an administrative hearing. Failure to respond within that time constitutes ~~shall constitute~~ a waiver, and the fine becomes ~~shall become~~ due without a hearing.

(c) The division may enter its judgment for the amount of the administrative penalty imposed in a court of competent jurisdiction, pursuant to s. 120.69. The judgment may be enforced as any other judgment.

(d) The division may apply to a court of competent jurisdiction for injunctive relief against any person or business organization that explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located upon ~~on state-owned or state-controlled~~ land owned or controlled by the state, including state sovereignty submerged land, or land owned by a political subdivision as defined by s. 1.01(8) without the written permission of the division.

(e) The division shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer ~~implement the provisions of~~ this section.

Section 3. 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:

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A bill to be entitled

An act relating to archeological sites and specimens; amending s. 267.12, F.S.; authorizing the Division of Historical Resources of the Department of State to issue permits for excavation, surface reconnaissance, and archaeological activities on land owned by a political subdivision; amending s. 267.13, F.S.; providing that specified activities relating to archaeological sites and specimens located upon land owned by a political subdivision are prohibited and subject to penalties; authorizing the division to impose an administrative fine on and seek injunctive relief against certain entities; providing an effective date.

By Senator Hays

20-00420E-12 2012868__

A bill to be entitled

An act relating to archaeological sites and specimens; amending s. 267.13, F.S.; providing that specified activities relating to archaeological sites and specimens located upon land owned or controlled by a political subdivision or a special district created by the Legislature are prohibited and subject to penalties; authorizing the Division of Historical Resources of the Department of State to impose an administrative fine on and seek injunctive relief against certain entities; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 267.13, Florida Statutes, are amended to read:

267.13 Prohibited practices; penalties.—

(1)(a) Any person who by means other than excavation ~~either~~ conducts archaeological field investigations on, or removes or attempts to remove~~,~~ or defaces, destroys, or otherwise alters any archaeological site or specimen located upon, any land, including state sovereignty submerged land, owned or controlled by the state, a political subdivision, or a special district created by the Legislature, or within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit or under procedures relating to accredited institutions granted by the division, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s.

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

20-00420E-12 2012868__

775.083, and, in addition, shall forfeit to the state all specimens, objects, and materials collected, together with all photographs and records relating to such material.

(b) Any person who by means of excavation ~~either~~ conducts archaeological field investigations on, or removes or attempts to remove~~,~~ or defaces, destroys, or otherwise alters any archaeological site or specimen located upon, any land, including state sovereignty submerged land, owned or controlled by the state, a political subdivision, or a special district created by the Legislature, or within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit or under procedures relating to accredited institutions granted by the division, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and any vehicle or equipment of any person used in connection with the violation is subject to forfeiture to the state if it is determined by any court of law that the vehicle or equipment was involved in the violation. Such person shall forfeit to the state all specimens, objects, and materials collected or excavated, together with all photographs and records relating to such material. The court may also order the defendant to make restitution to the state for the archaeological or commercial value and cost of restoration and repair as defined in subsection (4).

(c) Any person who offers for sale or exchange any object with knowledge that it has previously been collected or excavated in violation of any of the terms of ss. 267.11-267.14, or who procures, counsels, solicits, or employs any other person

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

to violate any prohibition contained in ss. 267.11-267.14 or to sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource excavated or removed from any land, including state sovereignty submerged land, owned or controlled by the state, a political subdivision, or a special district created by the Legislature, or within the boundaries of a designated state archaeological landmark or landmark zone, except with the express consent of the division, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and any vehicle or equipment of any person used in connection with the violation is subject to forfeiture to the state if it is determined by any court of law that such vehicle or equipment was involved in the violation. All specimens, objects, and material collected or excavated, together with all photographs and records relating to such material, shall be forfeited to the state. The court may also order the defendant to make restitution to the state for the archaeological or commercial value and cost of restoration and repair as defined in subsection (4).

(2)(a) The division may institute an administrative proceeding to impose an administrative fine of not more than $500 a day on any person or business organization that, without written permission of the division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located upon any land ~~on state-owned or state-controlled lands~~, including state sovereignty submerged land, owned or controlled by the state, a political subdivision, or a special district created by the Legislature ~~lands~~.

(b) The division shall institute an administrative proceeding by serving written notice of a violation by certified mail upon the alleged violator. The notice shall specify the law or rule allegedly violated and the facts upon which the allegation is based. The notice shall also specify the amount of the administrative fine sought by the division. The fine is ~~shall~~ not ~~become~~ due until after service of notice and an administrative hearing. However, the alleged violator has ~~shall have~~ 20 days after ~~from~~ service of notice to request an administrative hearing. Failure to respond within that time constitutes ~~shall constitute~~ a waiver, and the fine becomes ~~shall become~~ due without a hearing.

(c) The division may enter its judgment for the amount of the administrative penalty imposed in a court of competent jurisdiction, pursuant to s. 120.69. The judgment may be enforced as any other judgment.

(d) The division may apply to a court of competent jurisdiction for injunctive relief against any person or business organization that explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located upon any ~~on state-owned or state-controlled~~ land, including state sovereignty submerged land, owned or controlled by the state, a political subdivision, or a special district created by the Legislature without the written permission of the division.

(e) The division shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer ~~implement the provisions of~~ this section.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1134
INTRODUCER:	Senator Hays
SUBJECT:	State-owned or Leased Space
DATE:	February 2, 2012
REVISED:	

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

I. Summary:

This bill gives the Department of Management Services (DMS) more authority to coordinate state agency use of state-owned and privately-leased office space. The bill also permits DMS to implement renovations or construction of fixed capital outlay projects, if expressly authorized in the General Appropriations Act.

The bill amends sections 216.0152, 255.248, 255.249, 255.25, 110.171, and 985.682 of the Florida Statutes.

II. Present Situation:

The Department of Management Services' (DMS) Facilities Program, also called the Division of Real Estate Development and Management, is responsible for the overall management of the Florida Facilities Pool, and other facilities and structures. One of the divisions in the program, the Bureau of Leasing, administers public and private leasing.

According to the DMS 2011 Master Leasing Report, the state leases a total of 13.9 million square feet with an annual rent of $252 million, of which 7.7 million square feet is in private sector leases, with an annual rent of $151 million.

Leasing Provisions in Chapter 255, F.S.

The DMS has the authority to approve leases of greater than 5,000 square feet that cover more than one fiscal year by operation of s. 255.25(2)(a), F.S. Except as provided for emergency space

needs,[1] no state agency may enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations, if such lease is, in the judgment of the department, in the best interests of the state.[2]

The approval of the DMS, except for technical sufficiency, need not be obtained for the lease of less than 5,000 square feet of space within a privately owned building, provided the agency head or the agency head's designated representative has certified that all criteria for leasing have been fully complied with,[3] and has determined such lease to be in the best interest of the state.[4] Such a lease, which is for a term extending beyond the end of a fiscal year, is subject to the provisions of ss. 216.311, 255.2502, and 255.2503, F.S.[5]

Section 255.249(4)(b), F.S., requires the DMS to promulgate rules providing procedures for: soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings; evaluating the proposals received; exemption from competitive bidding requirements of any lease the purpose of which is the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), F.S.; and the securing of at least three documented quotes for a lease that is not required to be competitively bid.

In sum, while the DMS is responsible for prior approval of lease terms for leases over 5,000 square feet, the lease is executed between the landlord and the agency. For leases less than 5,000 square feet, approval by the DMS is not necessary, except for technical sufficiency, so long as the agency head or their designee has certified compliance with applicable leasing criteria and has determined the lease is in the best interest of the state. Leases under 5,000 square feet need not be competitively bid. The terms "bids" and "proposals" are used throughout the leasing provisions of ch. 255, F.S.; the term "invitation to negotiate" does not appear in the chapter.

The 2007 Legislature amended s. 255.249, F.S., to give DMS the authority to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities, and required DMS to submit an annual master leasing report to the Legislature; the report must contain analyses and other information on the status of state-owned facilities and private sector leased space. To assist the department with preparing the report, state agencies are required to provide their projected requirements for leased space based on planned and full-time employee data, lease-expiration schedules for each geographic region of the state, and opportunities for consolidating operations, as well as costs relating to occupancy and relocation. In September 2008, DMS released the first required Master Leasing Report and Leasing Plan, in which DMS advocated strongly for the centralization of leasing functions.

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[1] Section 255.25(10), F.S., provides that the DMS may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case shall the lease for such space exceed 11 months.

[2] The size at which a leased space must be competitively bid was raised in 1990 from 2,000 square feet to 3,000 square feet by s. 3, ch. 90-224, L.O.F., and raised in 1999 to 5,000 square feet by s. 22, ch. 99-399, L.O.F.

[3] Pursuant to s. 255.249(4)(k), F.S.

[4] Section 255.25(2)(b), F.S.

[5] Relating, respectively, to statutory provisions concerning unauthorized contracts in excess of appropriations, contingency statements in contracts which require annual appropriations, and certain prohibited provisions in contracts for the leasing of buildings.

Recent Legislative Direction on Leased Space

During the 2009 Special Session A, the Legislature directed DMS to compile a list of all state-owned surplus real property that has a value greater than $1,000 in order to determine potential cost savings and revenue opportunities from the sale or lease of assets, identify current contracts for leased office space in which the leased space is not fully used or occupied, and include a plan for contract renegotiation or subletting unoccupied space.[6] DMS subsequently reported[7] the following in regards to space leased by state agencies:

- 566 private leases with 1.3 million square feet in potential excess space.
- More than 500,000 square feet of potential excess space is in Leon County.
- 276 leases with potential excess space with terms of 24 months or less.
- 80 percent of the leases have less than 2,500 square feet of potential excess space.

DMS planned to work with state agencies and a contracted tenant broker to renegotiate leases with over 1,500 square feet of excess space, and at least 18 months of remaining term, to recognize potential cost savings.

DMS was directed in 2011 to use the services of a tenant broker to renegotiate all leases over 150,000 square feet,[8] and report to the Legislative Budget Commission the projected savings, implementation costs, and recommendations for leases to terminate.

III. Effect of Proposed Changes:

Section 1 amends s. 216.0152, F.S., to add the Department of Environmental Protection, along with DMS, currently, as a responsible agency for the creation and maintenance of a state-owned and leased facilities inventory. The bill requires the two agencies to annually publish the inventory of all state-owned facilities, including inventories of the Board of Governors of the State University System, the Department of Education, and the Department of Transportation. The annual state-owned real property disposition report must be included in the report.

Section 2 amends s. 255.248, F.S., to add definitions of "managing agency" and "tenant broker."

Section 3 amends s. 255.249, F.S., which delineates the responsibilities of DMS with regards to leased and owned space. Specifically, it provides that:

- A state agency may not lease space in a private building to be constructed for state use unless DMS gives prior approval of the architectural design and preliminary construction plan;
- DMS may direct state agencies to occupy space in any state-owned building;
- If expressly authorized by the General Appropriations Act and in the best interest of the state, DMS may implement renovations or construction of fixed capital outlay projects to effectively use state-owned buildings;

[6] Chapter 2009-15, L.O.F.
[7] DMS' Interim Report to the Legislature, *State of Florida Surplus Real Estate and Private Lease Renegotiation Plan*, March 3, 2009.
[8] Section 76, Chapter 2011-47, L.O.F.

- The annual master report published by DMS must include the strategic leasing plan, and must include recommendations for capital improvement funds to implement agency consolidation into state-owned office buildings;
- State agencies may use the services of a tenant broker in providing the annual office space needs information to DMS, and title entities or managing agencies must report to DMS any vacant or underutilized space; and
- DMS must adopt by rule the procedures for procuring leased office space of 2,000 square feet or more (a change from 5,000 square feet or more), and procedures for administering all its duties.

Section 4 amends s. 255.25, F.S., to require a state agency to notify DMS at least 30 days before execution of a lease of less than 2,000 square feet (a change from 5,000 square feet), for DMS to determine whether suitable space is available in state-owned or leased space in the same geographic region. If DMS determines execution of the lease is not in the best interests of the state, DMS must notify the agency, the Governor, the Senate, and the House. Leases for 2,000 square feet or more (changed from 5,000 square feet) must be competitively solicited. DMS has the authority to approve leases of 2,000 square feet or more, and extensions of such leases.

The bill also requires state agencies to use tenant brokers with a "lease action," which is not defined, but presumably includes extensions and renewals. This is a change from the current provision, which allows the state agency head to determine whether or not to use the services of a tenant broker. The bill deletes a requirement that agencies must use tenant brokers that are on contract with DMS, but the new definition of "tenant broker" created in s. 255.248, F.S., specifies that the tenant brokers to be used by agencies must be under contract with DMS.

Sections 5 and 6 amend sections 110.171 and 985.682, F.S., to correct cross-references.

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:

Tenant brokers may obtain increased business from state agencies.

C. Government Sector Impact:

Indeterminate. Greater coordination and efficiency of state agency leasing activities should result in cost savings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term "lease action" is used in the bill, but not defined. The Legislature may wish to define the term to avoid agency actions inconsistent with the intent of the bill.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Hays

20-00446B-12 20121134__

A bill to be entitled

An act relating to state-owned or leased space; amending s. 216.0152, F.S.; revising provisions requiring development, maintenance, and reporting relating to an automated inventory of state-owned or state-occupied facilities and providing procedures, requirements, and departmental responsibilities with respect thereto; amending s. 255.248, F.S.; adding definitions for the terms "managing entity" and "tenant broker"; amending s. 255.249, F.S.; authorizing the Department of Management Services to direct state agencies to occupy space in a state-owned building; authorizing the department to implement renovations of projects in order to efficiently use state-owned buildings; revising the contents of the master leasing report; authorizing state agencies to use the services of a tenant broker to provide certain information to the department; requiring the title entity or managing agency to report any vacant or underutilized space to the department; requiring the department to adopt procedural rules; amending s. 255.25, F.S.; reducing the amount of square feet that an agency may lease without department approval; requiring a state agency to use a tenant broker to assist with lease actions; requiring the lessor of certain state-leased space to provide documentation relating to compliance with uniform firesafety standards under certain circumstances; conforming cross-references; amending ss. 110.171 and 985.682,

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

20-00446B-12 20121134__

F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 216.0152, Florida Statutes, is amended to read:

216.0152 Inventory of state-owned facilities or state-occupied facilities.—

(1) The Department of Management Services and the Department of Environmental Protection shall develop and maintain an automated inventory of all facilities owned, leased, rented, or otherwise occupied or maintained by any agency of the state, the judicial branch, or the water management districts. The inventory data shall be provided by the owning or operating agency and shall include the location, occupying agency, ownership, size, condition assessment, valuations, operating costs, maintenance record, age, parking and employee facilities, building uses, full-time equivalent occupancy, known restrictions or historic designations, leases or subleases, associated revenues, and other information as required in a rule adopted by the Department of Management Services. The Department of Management Services shall use this data for determining maintenance needs, conducting strategic analyses, including, but not limited to, analyzing and identifying candidates for surplus, valuation, and disposition, and life-cycle cost evaluations of the facility. Inventory data shall be provided to the Department of Environmental Protection on or before July 1 of each year by the owning or operating agency in a format

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prescribed by the Department of Environmental Protection and the Department of Management Services. The inventory need not include a condition assessment or maintenance record of facilities not owned by a state agency, the judicial branch, or a water management district. The term "facility," as used in this section, means buildings, structures, and building systems, but does not include transportation facilities of the state transportation system. For reporting purposes, the Department of Transportation shall develop and maintain an inventory of transportation facilities of the state transportation system and provide this inventory to the Department of Environmental Protection and the Department of Management Services by July 1 of each year. The Department of Transportation shall also identify and dispose of surplus property pursuant to ss. 337.25 and 339.04. The Board of Governors of the State University System and the Department of Education, respectively, shall develop and maintain an inventory, in the manner prescribed by the Department of Management Services, of all state university and community college facilities and shall provide ~~make~~ the data ~~available~~ in a format acceptable to the Department of Management Services by July 1 of each year. By March 15, 2011, the Department of Management Services shall adopt rules ~~pursuant to ss. 120.536 and 120.54~~ to administer this section.

~~(2) For the purpose of assessing needed repairs and renovations of facilities, the Department of Management Services shall update its inventory with condition information for facilities of 3,000 square feet or more and cause to be updated the other inventories required by subsection (1) at least once every 5 years, but the inventories shall record acquisitions of~~

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~~new facilities and significant changes in existing facilities as they occur. The Department of Management Services shall provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch. Each agency and the judicial branch shall, in the manner prescribed by the Department of Management Services, report significant changes in the inventory as they occur. Items relating to the condition and life-cycle cost of a facility shall be updated at least every 5 years.~~

(2) ~~(3)~~ By October 1 of each year, the Department of Management Services and the Department of Environmental Protection shall~~, every 3 years,~~ publish a complete report detailing the inventory of all state-owned facilities, including inventories of the Board of Governors of the State University System, the Department of Education, and the Department of Transportation. The annual state-owned real property disposition report required under s. 216.0153 shall be included in the report required under this subsection ~~this inventory and shall publish an annual update of the report~~. ~~The department shall furnish the updated report to the Executive Office of the Governor and the Legislature no later than September 15 of each year.~~

Section 2. Section 255.248, Florida Statutes, is amended to read:

255.248 Definitions~~; ss. 255.249 and 255.25~~.—As used in ss. 255.248-255.25 ~~255.249 and 255.25~~, the term:

(1) "Best leasing value" means the highest overall value to the state based on objective factors that include, but are not limited to, rental rate, renewal rate, operational and

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maintenance costs, tenant-improvement allowance, location, lease term, condition of facility, landlord responsibility, amenities, and parking.

(2) "Competitive solicitation" means an invitation to bid, a request for proposals, or an invitation to negotiate.

(3) "Department" means the Department of Management Services.

(4) "Managing agency" means an agency that serves as the title entity or leases property from the Board of Trustees of the Internal Improvement Trust Fund for the operation and maintenance of a state-owned office building.

(5) ~~(4)~~ "Privately owned building" means any building not owned by a governmental agency.

(6) ~~(5)~~ "Responsible lessor" means a lessor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

(7) ~~(6)~~ "Responsive bid," "responsive proposal," or "responsive reply" means a bid or proposal, or reply submitted by a responsive and responsible lessor, which conforms in all material respects to the solicitation.

(8) ~~(7)~~ "Responsive lessor" means a lessor who ~~that~~ has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

(9) ~~(8)~~ "State-owned office building" means any building title to which is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions. The ~~This~~ term excludes:

(a) District or area offices established for field

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operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed.

(b) All educational facilities and institutions under the supervision of the Department of Education.

(c) All custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state.

(d) Buildings or spaces used for legislative activities.

(e) Buildings purchased or constructed from agricultural or citrus trust funds.

(10) "Tenant broker" means a private real estate broker or brokerage firm licensed to do business in this state and under contract with the department to provide real estate transaction, portfolio management, and strategic planning services for state agencies.

Section 3. Section 255.249, Florida Statutes, is amended to read:

255.249 Department of Management Services; responsibility; department rules.—

(1) The department shall have responsibility and authority for the custodial and preventive maintenance, repair, and allocation of space of all buildings in the Florida Facilities Pool and adjacent ~~the~~ grounds ~~located adjacent thereto~~.

(2) A state agency may not lease space in a private building that is to be constructed for state use unless prior approval of the architectural design and preliminary construction plan is obtained from the department.

(3) ~~(2)~~ The department shall require a ~~any~~ state agency planning to terminate a lease in a privately owned building for

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the purpose of occupying space in a new state-owned office building~~, the funds for which are appropriated after June 30, 2000,~~ to state why the proposed relocation is in the best interest of the state.

(4)~~(3)(a)~~ The department shall~~, to the extent feasible,~~ coordinate the vacation of privately owned leased space with the expiration of the lease on that space and, if ~~when~~ a lease is terminated before expiration of its base term, ~~will~~ make a reasonable effort to place another state agency in the space vacated. A ~~Any~~ state agency may lease the space in any building that was subject to a lease terminated by a state agency for a period of time equal to the remainder of the base term without ~~the requirement of~~ competitive solicitation.

(5) The department may direct state agencies to occupy space in any state-owned office building, including all state-owned space identified within the Florida State-Owned Land Records Information System at the Department of Environmental Protection.

(6) If expressly authorized by the General Appropriations Act and in the best interest of the state, the department may implement renovations or construction of fixed capital outlay projects to efficiently utilize state-owned office buildings. Such use of fixed capital outlay funds apply only to state-owned office buildings, and all expenditures must be reported by the department in the master leasing report identified in subsection (8).

(7)~~(b)~~ The department shall develop and implement a strategic leasing plan. The strategic leasing plan must ~~shall~~ forecast space needs for all state agencies and identify

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opportunities for reducing costs through consolidation, relocation, reconfiguration, capital investment, and the building or acquisition of state-owned space.

(8)~~(c)~~ The department shall annually publish a master leasing report that includes the strategic leasing plan created under subsection (7). The department shall annually submit ~~furnish~~ the ~~master~~ leasing report and plan to the Executive Office of the Governor and the Legislature by October 1. The report must provide ~~September 15 of each year which provides~~ the following information:

(a)~~1.~~ A list, by agency and by geographic market, of all leases that are due to expire within 24 months.

(b)~~2.~~ Details of each lease, including location, size, cost per leased square foot, lease-expiration date, and a determination of whether sufficient state-owned office space will be available at the expiration of the lease to accommodate affected employees.

(c)~~3.~~ A list of amendments and supplements to and waivers of terms and conditions in lease agreements that have been approved pursuant to s. 255.25(2)(a) during the previous 12 months and an associated comprehensive analysis, including financial implications, showing that any amendment, supplement, or waiver is in the state's long-term best interest.

(d)~~4.~~ Financial impacts to the pool rental rate due to the sale, removal, acquisition, or construction of pool facilities.

(e)~~5.~~ Changes in occupancy rate, maintenance costs, and efficiency costs of leases in the state portfolio. Changes to occupancy costs in leased space by market and changes to space consumption by agency and by market.

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(f) ~~6.~~ An analysis of portfolio supply and demand.

(g) ~~7.~~ Cost-benefit analyses of acquisition, build, and consolidation opportunities, recommendations for strategic consolidation, and strategic recommendations for disposition, acquisition, and building.

(h) Recommendations for capital improvement funds to implement state agency consolidation into state-owned office buildings.

(i) ~~8.~~ The updated plan required by s. 255.25(4)(c).

(9) ~~(d)~~ Annually by June 30: ~~of each year,~~

(a) Each state agency shall ~~annually~~ provide to the department all information regarding agency programs affecting the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned full-time equivalent data, business case analyses related to consolidation plans by an agency, a telecommuting program, and current occupancy and relocation costs, inclusive of furnishings, fixtures and equipment, data, and communications. State agencies may use the services of a tenant broker in preparing this information.

(b) The title entity or managing agency shall report to the department any vacant or underutilized space for all state-owned office buildings and any restrictions that would apply to any other agency occupying the vacant space. It shall also notify the department of any significant changes to its occupancy in the coming fiscal year.

(10) ~~(4)~~ The department shall adopt rules ~~pursuant to chapter 120~~ providing:

(a) Methods for accomplishing the duties outlined in

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subsection (1).

(b) Procedures for soliciting and accepting competitive solicitations for leased space of 2,000 ~~5,000~~ square feet or more in privately owned buildings, for evaluating the proposals received, for exemption from competitive solicitations requirements of any lease the purpose of which is the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), and for the securing of at least three documented quotes for a lease that is not required to be competitively solicited.

(c) A standard method for determining square footage or any other measurement used as the basis for lease payments or other charges.

(d) Methods of allocating space in both state-owned office buildings and privately owned buildings leased by the state based on use, personnel, and office equipment.

(e) ~~1.~~ Acceptable terms and conditions for inclusion in lease agreements.

~~2.~~ At a minimum, such terms and conditions must ~~shall~~ include~~, at a minimum,~~ the following clauses, which may not be amended, supplemented, or waived:

1.~~a.~~ As provided in s. 255.2502, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

2.~~b.~~ "The Lessee has ~~shall have~~ the right to terminate, without penalty, this lease if ~~in the event~~ a State-owned building becomes available to the Lessee for occupancy upon giving 6 months' advance written notice to the Lessor by Certified Mail, Return Receipt Requested."

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(f) Maximum rental rates, by geographic areas or by county, for leasing privately owned space.

(g) A standard method for the assessment of rent to state agencies and other authorized occupants of state-owned office space, notwithstanding the source of funds.

(h) For full disclosure of the names and the extent of interest of the owners holding a 4 percent ~~4-percent~~ or more interest in ~~any~~ privately owned property leased to the state or in the entity holding title to the property, for exemption from such disclosure of any beneficial interest that ~~which~~ is represented by stock in a ~~any~~ corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517~~,~~ which ~~stock~~ is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(i) For full disclosure of the names of all public officials, agents, or employees holding any interest in any privately owned property leased to the state or in the entity holding title to the property, and the nature and extent of their interest, for exemption from such disclosure of any beneficial interest that ~~which~~ is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517~~,~~ which ~~stock~~ is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(j) A method for reporting leases for nominal or no consideration.

(k) For a lease of less than 2,000 ~~5,000~~ square feet, a method for certification by the agency head or the agency head's designated representative that all criteria for leasing have been fully complied with and for ~~the~~ filing ~~of~~ a copy of such lease and all supporting documents with the department for its review and approval as to technical sufficiency and whether it is in the best interests of the state.

(l) A standardized format for state agency reporting of the information required by paragraph (9)(a) ~~(3)(d)~~.

(m) Procedures for administering this section.

(11)~~(5)~~ The department shall prepare a form listing all conditions and requirements adopted pursuant to this chapter which must be met by any state agency leasing any building or part thereof. Before executing any lease, this form must ~~shall~~ be certified by the agency head or the agency head's designated representative and submitted to the department.

(12)~~(6)~~ The department may contract for real estate consulting or tenant brokerage services in order to carry out its duties relating to the strategic leasing plan under subsection (7). The contract must ~~shall~~ be procured pursuant to s. 287.057. The vendor that is awarded the contract shall be compensated by the department, subject to the provisions of the contract, and such compensation is subject to appropriation by the Legislature. The real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered pursuant to the contract. Moneys paid by a lessor to the department under a facility-leasing arrangement are not subject to the charges imposed under s. 215.20.

Section 4. Section 255.25, Florida Statutes, is amended to

read:

255.25 Approval required before ~~prior to~~ construction or lease of buildings.—

(1)(a) ~~A state agency may not lease space in a private building that is to be constructed for state use unless prior approval of the architectural design and preliminary construction plans is first obtained from the department.~~

~~(b)~~ During the term of existing leases, each agency shall consult with the department regarding opportunities for consolidation, use of state-owned space, build-to-suit space, and potential acquisitions; shall monitor market conditions; and shall initiate a competitive solicitation or, if appropriate, lease-renewal negotiations for each lease held in the private sector to effect the best overall lease terms reasonably available to that agency.

(b) Amendments to leases may be permitted to modify any lease provisions or ~~any~~ other terms or conditions~~,~~ except to the extent specifically prohibited by this chapter. The department shall serve as a mediator in lease-renewal negotiations if the agency and the lessor are unable to reach a compromise within 6 months after renegotiation and if ~~either~~ the agency or lessor requests intervention by the department.

(c) If expressly ~~When specifically~~ authorized by the General Appropriations Act, and in accordance with s. 255.2501~~,~~ if applicable, the department may approve a lease-purchase, sale-leaseback, or tax-exempt leveraged lease contract or other financing technique for the acquisition, renovation, or construction of a state fixed capital outlay project if ~~when~~ it is in the best interest of the state.

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(2)(a) Except as provided in s. 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and of the need for the lease ~~therefor~~ is first obtained from the department. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to final approval by the head of the department ~~of Management Services~~ and s. 255.2502.

(b) For the lease of less than 2,000 ~~5,000~~ square feet of space, a state agency must notify the department at least 30 days before the execution of the lease. The department shall review the lease and determine whether suitable space is available in a state-owned or state-leased building located in the same geographic region. If the department determines that space is not available, the department shall determine whether the state agency lease is in the best interests of the state. If the department determines that the execution of the lease is not in the best interests of the state, the department shall notify the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives ~~and the presiding officers of each house of the Legislature~~ of such finding in writing. A lease that is for a term extending beyond the end of a fiscal year is subject to ~~the provisions of~~ ss. 216.311, 255.2502, and 255.2503.

(c) The department shall adopt ~~as a rule~~ uniform leasing procedures by rule for use by each state agency ~~other than the Department of Transportation~~. Each state agency shall ensure that the leasing practices of that agency are in substantial compliance with the uniform leasing rules adopted under this

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section and ss. 255.249, 255.2502, and 255.2503.

(d) Notwithstanding paragraph (a) and except as provided in ss. 255.249 and 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease terms and conditions and of the need for the lease ~~therefor~~ is first obtained from the department. The department may not approve any term or condition in a lease agreement which has been amended, supplemented, or waived unless a comprehensive analysis, including financial implications, demonstrates that such amendment, supplement, or waiver is in the state's long-term best interest. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department subject to final approval by the head of the department ~~of Management Services~~ and the provisions of s. 255.2502.

(3)(a) Except as provided in subsection (10), a state agency may not enter into a lease as lessee for the use of 2,000 ~~5,000~~ square feet or more of space in a privately or government-owned ~~owned~~ building except upon advertisement for and receipt of competitive solicitations.

1.a. An invitation to bid must ~~shall~~ be made available simultaneously to all lessors and ~~must~~ include a detailed description of the space sought; the time and date for the receipt of bids and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining acceptability of the bid. If the agency contemplates renewal of the contract, that fact must be stated in the invitation to bid. The bid must include the price for each year for which the contract may be renewed.

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Evaluation of bids shall include consideration of the total cost for each year as submitted by the lessor. Criteria that were not set forth in the invitation to bid may not be used in determining acceptability of the bid.

b. The contract shall be awarded with reasonable promptness by written notice to the responsible and responsive lessor who ~~that~~ submits the lowest responsive bid. This bid must be determined in writing to meet the requirements and criteria set forth in the invitation to bid.

2.a. If an agency determines in writing that the use of an invitation to bid is not practicable, leased space shall be procured by competitive sealed proposals. A request for proposals shall be made available simultaneously to all lessors and must include a statement of the space sought; the time and date for the receipt of proposals and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria, which must include, but need not be limited to, price, to be used in determining acceptability of the proposal. The relative importance of price and other evaluation criteria must ~~shall~~ be indicated. If the agency contemplates renewal of the contract, that fact must be stated in the request for proposals. The proposal must include the price for each year for which the contract may be renewed. Evaluation of proposals must ~~shall~~ include consideration of the total cost for each year as submitted by the lessor.

b. The contract shall be awarded to the responsible and responsive lessor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the other criteria set forth in the request for

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proposals. The contract file must contain documentation supporting the basis on which the award is made.

3.a. If the agency determines in writing that the use of an invitation to bid or a request for proposals will not result in the best leasing value to the state, the agency may procure leased space by competitive sealed replies. The agency's written determination must specify reasons that explain why negotiation may be necessary in order for the state to achieve the best leasing value and must be approved in writing by the agency head or his or her designee before ~~prior to the~~ advertisement of an invitation to negotiate. Cost savings related to the agency procurement process are not sufficient justification for using an invitation to negotiate. An invitation to negotiate shall be made available to all lessors simultaneously and must include a statement of the space sought; the time and date for the receipt of replies and of the public opening; and all terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the reply. If the agency contemplates renewal of the contract, that fact must be stated in the invitation to negotiate. The reply must include the price for each year for which the contract may be renewed.

b. The agency shall evaluate and rank responsive replies against all evaluation criteria set forth in the invitation to negotiate and ~~shall~~ select, based on the ranking, one or more lessors with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive lessor who ~~that~~ the agency determines will provide the best leasing value to the state. The contract file must contain a short, plain statement that explains the

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basis for lessor selection and sets forth the lessor's deliverables and price pursuant to the contract, and an explanation of how these deliverables and price provide the best leasing value to the state.

(b) The department ~~of Management Services~~ shall have the authority to approve a lease for 2,000 ~~5,000~~ square feet or more of space which ~~that~~ covers more than 1 fiscal year, subject to ~~the provisions of~~ ss. 216.311, 255.2501, 255.2502, and 255.2503~~,~~ if such lease is, in the judgment of the department, in the best interests of the state. In determining best interest, the department shall consider availability of state-owned space and analyses of build-to-suit and acquisition opportunities. This paragraph does not apply to buildings or facilities of any size leased for the purpose of providing care and living space for persons.

(c) The department may approve extensions of an existing lease of 2,000 ~~5,000~~ square feet or more of space if such extensions are determined to be in the best interests of the state; however, ~~but in no case shall~~ the total of such extensions may not exceed 11 months. If at the end of the 11th month an agency still needs that space, it shall be procured by competitive bid in accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. However, an agency that determines that it is in its best interest to remain in the space it currently occupies may negotiate a replacement lease with the lessor if an independent comparative market analysis demonstrates that the rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. A present-value analysis and the

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consumer price index shall be used in the calculation of lease costs. The term of the replacement lease may not exceed the base term of the expiring lease.

(d) Any person who files an action protesting a decision or intended decision pertaining to a competitive solicitation for space to be leased by the agency pursuant to s. 120.57(3)(b) shall post with the state agency at the time of filing the formal written protest a bond payable to the agency in an amount equal to 1 percent of the estimated total rental of the basic lease period or $5,000, whichever is greater, which bond is ~~shall be~~ conditioned on ~~upon~~ the payment of all costs that may be adjudged against him or her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the agency prevails after completion of the administrative hearing process and any appellate court proceedings, it shall recover all costs and charges, which shall be included in the final order or judgment, excluding attorney ~~attorney's~~ fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him or her. If the person protesting the award prevails, the bond shall be returned to that person and he or she shall recover from the agency all costs and charges, which must ~~shall~~ be included in the final order of judgment, excluding attorney ~~attorney's~~ fees.

(e) The agency and the lessor, when entering into a lease for 2,000 ~~5,000~~ or more square feet of a privately owned building, shall, before the effective date of the lease, agree upon and separately state the cost of tenant improvements which may qualify for reimbursement if the lease is terminated before

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the expiration of its base term. The department shall serve as mediator if the agency and the lessor are unable to agree. The amount agreed upon and stated shall, if appropriated, be amortized over the original base term of the lease on a straight-line basis.

(f) The unamortized portion of tenant improvements, if appropriated, shall be paid in equal monthly installments over the remaining term of the lease. If any portion of the original leased premises is occupied after termination but during the original term by a tenant who ~~that~~ does not require material changes to the premises, the repayment of the cost of tenant improvements applicable to the occupied but unchanged portion shall be abated during occupancy. The portion of the repayment to be abated must ~~shall~~ be based on the ratio of leased space to unleased space.

(g) Notwithstanding s. 287.056(1), a state agency shall ~~may, at the sole discretion of the agency head or his or her designee,~~ use the services of a tenant broker to assist with a lease action ~~a competitive solicitation~~ undertaken by the agency. If using ~~In making its determination whether to use a tenant broker, a state agency shall consult with the department. A state agency may not use the services of a tenant broker unless the tenant broker is under a term contract with the state which complies with paragraph (h). If a state agency uses~~ the services of a tenant broker with respect to a transaction, the agency may not enter into a lease with a ~~any~~ landlord for whom ~~to which~~ the tenant broker is providing brokerage services for that transaction.

(h) ~~The Department of Management Services may,~~ Pursuant to

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s. 287.042(2)(a), the department shall procure ~~a~~ term contracts ~~contract~~ for tenant broker ~~real estate consulting and brokerage~~ services. A state agency may not purchase services from the contract unless the contract has been procured under s. 287.057(1) ~~after March 1, 2007,~~ and contains the following provisions or requirements:

1. Awarded tenant brokers must maintain an office or presence in the market served. In awarding the contract, preference must be given to brokers who ~~that~~ are licensed in this state under chapter 475 and who ~~that~~ have 3 or more years of experience in the market served. The contract may be made with up to three tenant brokers in order to serve the marketplace in the north, central, and south areas of the state.

2. Each contracted tenant broker shall work under the direction, supervision, and authority of the state agency, subject to the rules governing lease procurements.

3. The department shall provide training for the awarded tenant brokers concerning the rules governing the procurement of leases.

4. Tenant brokers must comply with all applicable provisions of s. 475.278.

5. Real estate consultants and tenant brokers shall be compensated by the state agency, subject to the provisions of the term contract, and such compensation is subject to appropriation by the Legislature. A real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered under the term contract. Moneys paid by a lessor to the state agency under a facility leasing arrangement are not subject to the charges imposed under

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s. 215.20. All terms relating to the compensation of the real estate consultant or tenant broker must ~~shall~~ be specified in the term contract and may not be supplemented or modified by the state agency using the contract.

6. The department shall conduct periodic customer-satisfaction surveys.

7. Each state agency shall report the following information to the department:

a. The number of leases that adhere to the goal of the workspace-management initiative of 180 square feet per full-time employee ~~FTE~~.

b. The quality of space leased and the adequacy of tenant-improvement funds.

c. The timeliness of lease procurement, measured from the date of the agency's request to the finalization of the lease.

d. Whether cost-benefit analyses were performed before execution of the lease in order to ensure that the lease is in the best interest of the state.

e. The lease costs compared to market rates for similar types and classifications of space according to the official classifications of the Building Owners and Managers Association.

(4)(a) The department may ~~shall~~ not authorize any state agency to enter into a lease agreement for space in a privately owned building if ~~when~~ suitable space is available in a state-owned building located in the same geographic region, except upon presentation to the department of sufficient written justification, acceptable to the department, that a separate space is required in order to fulfill the statutory duties of the agency making the ~~such~~ request. The term "state-owned

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building" as used in this subsection means any state-owned facility regardless of use or control.

(b) State agencies shall cooperate with local governmental units by using suitable, existing publicly owned facilities, subject to ~~the provisions of~~ ss. 255.2501, 255.2502, and 255.2503. Agencies may use ~~utilize~~ unexpended funds appropriated for lease payments to:

1. Pay their proportion of operating costs.

2. Renovate applicable spaces.

(c) Because the state has a substantial financial investment in state-owned buildings, it is legislative policy and intent that if ~~when~~ state-owned buildings meet the needs of state agencies, agencies must fully use such buildings before leasing privately owned buildings. By September 15, 2006, the department ~~of Management Services~~ shall create a 5-year plan for implementing this policy. The department shall update this plan annually, detailing proposed departmental actions to meet the plan's goals, and include ~~shall furnish~~ this plan annually as part of the master leasing report.

(5) Before construction or renovation of any state-owned building or state-leased space is commenced, the department ~~of Management Services~~ shall ascertain, through the ~~by~~ submission of proposed plans to the Division of State Fire Marshal for review, that the proposed construction or renovation plan complies with the uniform firesafety standards required by the division ~~of State Fire Marshal~~. The review of construction or renovation plans for state-leased space must ~~shall~~ be completed within 10 calendar days after ~~of~~ receipt of the plans by the division ~~of State Fire Marshal~~. The review of construction or

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renovation plans for a state-owned building must ~~shall~~ be completed within 30 calendar days after ~~of~~ receipt of the plans by the division ~~of State Fire Marshal~~. The responsibility for submission and retrieval of the plans may ~~called for in this subsection shall~~ not be imposed on the design architect or engineer, but is ~~shall be~~ the responsibility of the two agencies. If ~~Whenever~~ the Division of State Fire Marshal determines that a construction or renovation plan is not in compliance with ~~such~~ uniform firesafety standards, the division ~~of State Fire Marshal~~ may issue an order to cease all construction or renovation activities until compliance is obtained, except those activities required to achieve ~~such~~ compliance. The lessor shall provide the department with documentation that the facility meets all requirements of ~~department of Management Services shall withhold approval of any proposed lease until the construction or renovation plan complies with~~ the uniform firesafety standards ~~of the Division of State Fire Marshal~~. The cost of all modifications or renovations made for the purpose of bringing leased property into compliance with the uniform firesafety standards shall be borne by the lessor.

(6) Before construction or substantial improvement of any state-owned building is commenced, the department ~~of Management Services~~ must ascertain that the proposed construction or substantial improvement complies with the flood plain management criteria for mitigation of flood hazards, as prescribed in the October 1, 1986, rules and regulations of the Federal Emergency Management Agency, and the department shall monitor the project to assure compliance with the criteria. ~~In accordance with~~

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

~~chapter 120,~~ The department ~~of Management Services~~ shall adopt any rules necessary for ensuring ~~rules to ensure~~ that all ~~such~~ proposed state construction and substantial improvement of state buildings in designated flood-prone areas complies with the flood plain management criteria. If ~~Whenever~~ the department determines that a construction or substantial improvement project is not in compliance with the established flood plain management criteria, the department may issue an order to cease all construction or improvement activities until compliance is obtained, except those activities required to achieve such compliance.

(7) This section does not apply to any lease having a term of less than 120 consecutive days for the purpose of securing the one-time special use of the leased property, or for~~. This section does not apply to~~ any lease for nominal or no consideration.

(8) An agency may not enter into more than one lease for space in the same privately owned facility or complex within any 12-month period except upon competitive solicitation.

(9) Specialized educational facilities, excluding classrooms, are ~~shall be~~ exempt from the competitive bid requirements for leasing pursuant to this section if the executive head of a ~~any~~ state agency certifies in writing that the ~~said~~ facility is available from a single source and that the competitive bid requirements would be detrimental to the state. Such certification must ~~shall~~ include documentation of evidence of steps taken to determine sole-source status.

(10) The department ~~of Management Services~~ may approve emergency acquisition of space without competitive bids if

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existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, if the chief administrator of the state agency or the chief administrator's designated representative certifies in writing that no other agency-controlled space is available to meet this emergency need; however, ~~but in no case shall~~ the lease for such space may not exceed 11 months. If the lessor elects not to replace or renovate the destroyed or uninhabitable facility, the agency shall procure the needed space by competitive bid in accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. If the lessor elects to replace or renovate the destroyed or uninhabitable facility and the construction or renovations will not be complete at the end of the 11-month lease, the agency may modify the lease to extend it on a month-to-month basis for up to an additional 6 months to allow completion of such construction or renovations.

(11) In any leasing of space which ~~that~~ is accomplished without competition, the individuals taking part in the development or selection of criteria for evaluation, in the evaluation, and in the award processes must ~~shall~~ attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

Section 5. Paragraph (m) of subsection (3) of section 110.171, Florida Statutes, is amended to read:

110.171 State employee telecommuting program.—

(3) By September 30, 2009, each state agency shall identify and maintain a current listing of the job classifications and positions that the agency considers appropriate for

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

telecommuting. Agencies that adopt a state employee telecommuting program must:

(m) Provide measurable financial benefits associated with reduced office space requirements, reductions in energy consumption, and reductions in associated emissions of greenhouse gases resulting from telecommuting. State agencies operating in office space owned or managed by the department shall consult the facilities program to ensure its consistency with the strategic leasing plan required under s. 255.249(7) ~~255.249(3)(b)~~.

Section 6. Paragraph (b) of subsection (15) of section 985.682, Florida Statutes, is amended to read:

985.682 Siting of facilities; study; criteria.—

(15)

(b) Notwithstanding ss. 255.25(1)(a) ~~255.25(1)(b)~~ and 255.25001(2), the department may enter into lease-purchase agreements to provide juvenile justice facilities for the housing of committed youths contingent upon available funds. The facilities provided through such agreements must ~~shall~~ meet the program plan and specifications of the department. The department may enter into such lease agreements with private corporations and other governmental entities. However, notwithstanding ~~the provisions of~~ s. 255.25(3)(a), a ~~no such~~ lease agreement may not be entered into except upon advertisement for the receipt of competitive bids and award to the lowest and best bidder except when contracting with other governmental entities.

Section 7. This act shall take effect July 1, 2012.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1208
INTRODUCER:	Banking and Insurance Committee
SUBJECT:	OGSR/Unclaimed Property/Department of Financial Services
DATE:	February 2, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Favorable**
2.	Seay	Roberts	GO	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

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

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

This bill substantially amends section 717.117 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

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

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

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

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

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

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

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[1] Section 1390, 1391 F.S. (Rev. 1892).
[2] Article I, s. 24, Fla. Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.
[5] Section 119.011(11), F.S.

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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

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

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c), Fla. Constitution.
[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(5)(a), F.S.

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

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

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

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

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

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

[16] Section 119.15(4)(b), F.S.
[17] Section 717.123, F.S.

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

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

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

Banking and Insurance Committee's Open Government Sunset Review

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

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

[18] Section 717.117(8)(a), F.S.

III. Effect of Proposed Changes:

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

814418

LEGISLATIVE ACTION

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

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

Senate Amendment (with title amendment)

Delete lines 24 - 36
and insert:
(a) ~~(c)~~ The first five digits of social security numbers shall be released, for the limited purpose of locating owners of abandoned or unclaimed property, to a person registered with the department under this chapter who is an attorney, a Florida-certified public accountant, a private investigator who is duly licensed in this state, or a private investigative agency licensed under chapter 493.
(b) ~~(d)~~ This exemption applies to social security numbers

814418

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

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

(d) ~~(c)~~ This subsection is subject to the Open Government

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

And the title is amended as follows:

Delete line 7

and insert:

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

By the Committee on Banking and Insurance

597-01561A-12 20121208__

A bill to be entitled

An act relating to public records; amending s. 717.117, F.S.; revising the public records exemption for information held by the Department of Financial Services relating to unclaimed property to permanently exempt social security numbers from the public records law; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

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

717.117 Report of unclaimed property.—

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

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

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

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

Florida Senate - 2012 **(Corrected Copy)** **SB 1208**

597-01561A-12 20121208__

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

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

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

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

Section 3. This act shall take effect October 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)

2.7.12
Meeting Date

Topic Unclaimed property - amendment
Bill Number 1208 *(if applicable)*

Name Ashley Mayer
Amendment Barcode 814418 *(if applicable)*

Job Title Dir. Policy & Leg Affairs

Address Capitol - PL-H
Street
Tallahassee FL
City *State* *Zip*

Phone 413-2863

E-mail ashley.mayer@myfloridacfo.com

Speaking: ☐ For ☒ Against – amendment ☐ Information

Representing Dep't Financial Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-7-12
Meeting Date

Topic SB 1208

Bill Number 1208 – Bill and amendment *(if applicable)*

Name TOM WEISKOTTEN

Amendment Barcode *(if applicable)*

Job Title BUSINESS OWNER

Address 3375-C CAPITAL CIRCLE
Street
TALL FL 32308
City *State* *Zip*

Phone 850-297-0700

E-mail

Speaking: ☐ For ☐ Against ☐ Information

Representing G. R. ROBBINS + ASSOCIATES, P.A.

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)

02-07-12
Meeting Date

Topic UNCLAIMED PROPERTY
Bill Number 1208

Name HARRY B. CARSON
Amendment Barcode 814418 *(if applicable)*

Job Title VICE PRESIDENT

Address 1815 MICCOSUKEE COMMONS DR. STE 106
Street
TALLAHASSEE FL 32308
City *State* *Zip*
Phone
E-mail

Speaking: ☒ For ☐ Against ☐ Information LATVALVA AMENDMENT

Representing CARSON, CARSON & ASSOCIATES, P.A
PRIVATE INVESTIGATION AGENCY

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)

2/7/12
Meeting Date

Topic unclaimed property
Bill Number SB1208

Name Sharon Merchant
Amendment Barcode 814418 *(if applicable)*

Job Title lobbyist

Address P.O. Box 6115
Street
W.P.B. FL 33405
City *State* *Zip*
Phone (561) 301-8930
E-mail sharon@themerchantstrategy.com

Speaking: ☑ For* ☐ Against ☐ Information * Latvala amendment

Representing Professional Locators 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)

2.7.12
Meeting Date

Topic Unclaimed property - bill
Bill Number 1208 *(if applicable)*

Name Ashley Mayer
Amendment Barcode *(if applicable)*

Job Title Dir. Policy & Leg Affairs

Address Capitol PL-11 *Street*
Phone 413-2863

Tallahassee FL *City* *State* *Zip*
E-mail ashley.mayer@myfloridacfo.com

Speaking: ☒ For bill ☐ Against ☐ Information

Representing Dep't Financial Services

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

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

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

S-001 (10/20/11)

RESPONSE TO SB 1208

By Professional Locators Association, Inc.

Brief History:

It is understood that the Department of Financial Services (Department), Bureau of Unclaimed Property (Bureau) is the custodian of the unclaimed funds filtered in through the various financial institutions, insurance companies, private companies, etc. Since the inception of the Bureau, and in view of the open records laws, all citizens were permitted to view the reports including identifying information. Subsequently, thanks to a private investigative agency who saw the need for oversight with these records, these reports were only made available to private investigators licensed by the State of Florida. Ultimately, through legislation, the Bureau saw the need to add attorneys and CPA's to the persons allowed the viewing of the records. A registration process was instituted for each registered claimant representative.

The compilation of the registered claimant's representatives (CRs) consisting of private investigators, attorneys and CPA's, have been permitted to purchase a disk from the Bureau at any time. This disk contains all of the accounts placed on the system up to the date of the download. The disk was then sent either by regular mail or express courier to the individual CRs.

CONCERN:

We understand the concern of the Bureau that these disks contain private information about living individuals which could be used for identity theft, among other nefarious activities. All disks are encrypted and opening procedures are sent under separate cover. Unless these two items come together, it is not possible to open the disk and obtain the information.

The Bureau alleges that some CRs may be mishandling the disks and the information contained thereon. According to the Bureau, there are 164 registered CRs, but only 58 are actively filing claims. There are a number of valid reasons a CR might order and pay for disks but not file claims. Some valid examples are: (1) The Department requiring registration for a one time filing of a claim – thus not filing more claims. This could be a trust attorney for example, (2) a CR changes their mind about getting into the locator business, (3) a technical problem opening the CD thus requiring additional software programs, or (4) a CPA filing a one time claim for a client in the normal course of their CPA business. These are all valid reasons why there are many inactive CR's who have purchased disks, but are not actively filing claims.

We understand the need for oversight in the handling of the disks and it is the desire of the CRs that there be an amicable agreement between the Bureau and the CRs as to the handling of the disk and the security risk involved. The Bureau needs to understand that each and every person receiving a disk has been fully vetted in order to receive his or her individual licenses, whether it is as an attorney, CPA or private investigator. All licenses are renewable and each time they are renewed, the licensed individual is again vetted for infractions in his/her industry.

In the Senate Banking and Insurance Bill Analysis and Fiscal Impact Statement for SPB 7030, it is noted under the Fiscal Impact Statement that the exemption "will protect individuals from potential identity theft, prevent fraudulent claims of unclaimed property, and other misuses of Social Security numbers and property identifiers related to personal finances and other private information." The Bill Analysis failed to credit the CRs for their work in locating owners of unclaimed property who after being notified by a CR, went on to claim the money themselves. The loss of Social Security numbers will greatly slow down the investigation performed by each

CR, increase the number of erroneous claims, and assure that money will not be returned to the original owner or their heirs – citizens of the State of Florida.

Professional Locators Association, Inc. offers the following solutions to **solve the purported problem of the I.D. theft** and in an effort to continue providing the citizens of Florida with this much-needed service. We encourage the Bureau to review and give each item consideration:

POSSIBLE SOLUTIONS:

REGISTERED CLAIMANT REPRESENTATIVE FEE

The Bureau could seek legislative approval to implement a licensing fee of between $250-$500 per year for those registered CRs actively working to locate owners of unclaimed assets. This may act as a deterrent for the CRs who are not serious about providing services. The Bureau could use this fee for monitoring each active registered CR.

ISSUANCE OF DISKS

In an effort to have better control of the disks sent to the CRs, it is suggested that the Bureau issue one disk a month to be sent to each registered CR on the 1st day of each month. This disk could contain only those accounts that have been placed on the system for the prior month and not the entire database of unclaimed property. Accounts that were paid in the prior month would be included in this monthly updated disk and would be noted as "paid". This will limit the exposure of the information sent out on disk each month. The Bureau could increase the registered CRs' fee mentioned above to include the costs of the disks for a one-year period. Those CRs who do not buy disks would not be required to pay this fee.

AUDIT OF CONTROLS

The registered CRs should voluntary provide a CD AUDIT CONTROL SHEET to the Department that details the controls they have in place to protect the CD information.

IMPLEMENT A RULE

The Bureau can seek legislative approval to implement a rule to create an active and inactive status of the registered CRs. If a company does not file a certain number of complete claims each year, that CR's status will go on an inactive status. In other words, a company must file a "reasonable number" a minimum of 5 claims of completed claims a year in order to obtain disks and stay in the active status. (This number will be determined by the Bureau.) If a claimant's representative fails to do this, they will lose their privileges and have to reapply in order to gain access to the database. Many of the CRs are attorneys who have filed claims as the personal representative of an estate which was instituted by a CR on behalf of the heirs/beneficiaries. The Bureau has forced these attorneys to register as a claimant's representative even though they do not actively locate owners of unclaimed funds. The Bureau may want to consider a separate designation for attorneys who fall in this category. The funds collected from the suggested "claimant representative fee" could be used to pay for the management of such a rule.

ENFORCEMENT CLAUSE

In situations where the information on the disk is being abused, we recommend adding an enforcement clause that would tie to F.S. 717.1322, as well as be given the ability to file criminal charges as referenced in the Florida Identity Theft Law, FS 817.568. This would give the Bureau a way to pursue those who do not properly handle the disk, while still protecting the CRs

and allowing them to continue working. Again, the amount collected from the "claimant's representative fee" can be used to cover costs associated with monitoring possible abuse.

REDACT LAST FOUR NUMBERS OF THE SOCIAL SECURITY NUMBER ON THE DATABASE

Redacting the last four digits of the Social Security number would continue to assure that claims filed by the CRs are linked to the apparent owner using an Accurint report (an industry standard for proving a link to an apparent owner which also redacts the last four digits of the Social Security number for ID theft prevention purposes). This is also critical information for a genealogist and CR who are working the accounts that belong to a deceased owner. Many women marry and die with a different name than contained on the database. Without at least the first five of the Social Security numbers, it may be impossible to locate this woman's family. Accordingly, in order to protect against identity theft and allow the CR to help in the return of unclaimed property to the citizens of the State of Florida, we recommend that the last four digits of the Social Security number be redacted from the database.

REDACT LAST FOUR NUMBERS OF THE SOCIAL SECURITY NUMBERS ON DISK

The CRs are aware of the security risk of the SS numbers on the disk, so the last four digits of the SS numbers could be redacted from the disk but remain on the database. This will give the Bureau complete control of any CR's entrance into the database and if any CR is suspected of activity other than for the purposes intended, the Bureau can shut off their ability to access the records. We understand that once the disk is sent to the CR, it is out of the control of the Bureau, and without the complete SS numbers, this disk is not a security risk.

FEIN NUMBERS FOR BUSINESSES

The accounts are categorized as "business" or "primary". The primary accounts list SS numbers; the business accounts list the business' federal identification number. Since these numbers are available many places on the internet, including the Florida Division of Corporations website, these numbers should remain on the disk and the database.

PARTNERSHIP WITH BUREAU

We must work together with the Bureau in a positive public/private partnership.

The legislature instituted a public/private partnership policy for locating unclaimed property owners to ensure that owners have the greatest probability of having their property returned to them. This policy is partially defeated by the proposed legislative actions. The Bureau and CRs share a common goal: return property owners. We may disagree from time to time about how best to achieve this goal, but the undeniable fact is that the current system produces the greatest benefit for those the system was intended to benefit – the property owner. We believe that if the Bureau would recognize the value of our industry, we could improve the working relationship. Working together we could improve the working relationship, mitigate risks and continue to achieve the legislature's intent the public/private partnership was designed to achieve.

The State of Florida is the 2nd best state in the nation in returning unclaimed property to rightful owners according to the Department. The correct conclusion for this success is (1) the efforts of the Department (2) the efforts of the private sector in returning more than 25% of the property back to owners, and (3) the Department providing access owner information to the CR's.

The newly formed Professional Locators Association, Inc. is willing to work with the Bureau to work out any differences we may have and help to alleviate any problems such as those alluded to in this instance. We have spoken to many CRs and found that some CPA's have purchased the disk to use during their slower times. They have ultimately found the system too difficult to proceed. The first problem encountered was even opening the disk. By the time they figured out this, they then ordered a second disk. By the time they located someone and filed a claim, their escrow account had been closed for lack of use. They ultimately ordered a third disk when that problem was cured. During a two-year period, only one claim was filed. This CPA did not sell or share information on the disk provided by the State; he incorporated it in his day-to-day work, but was unsuccessful in signing up claimants.

We would encourage the Bureau to attend a semi-annual meeting with all members of the Association whereby all concerns on either side could be heard and hopefully a solution could be procured at that very meeting. The Association will actively work to have all active CRs join this group in an effort to solve any problems that may arise. CRs and the Bureau are in alignment with the desire to reduce the risk of illegal use of SSN's. We can come together and work out a solution that benefits the citizens of Florida and all account owners, regardless of their location.

Unclaimed Property Disk from December, 2011

All Accounts Over $1,000.00

Total Records	285,733
Total $	$1,385,767,973

	# of Records	% of Total	Total $	% of Total
No Address	77,346	27%	$597,352,877	43%
No SSN	182,970	64%	$938,640,793	68%
No DOB	267,309	94%	$1,292,772,339	93%
No Address/SSN/DOB	72,835	25%	$576,356,661	42%

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 1322
INTRODUCER:	Senator Norman
SUBJECT:	Local Requirements for Dangerous Dogs
DATE:	February 3, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Yeatman	CA	**Favorable**
2.	Jenkins	Roberts	GO	**Favorable**
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill removes a provision that exempts local ordinances adopted before October 1, 1990 from the prohibition on ordinances that are specific to breed.

This bill amends section 767.14 of the Florida Statues.

II. Present Situation:

Chapter 767, F.S., outlines the state's "Damage by Dogs" provisions. In 1990, the State of Florida enacted a dangerous dog law.[1] The Legislature found that "dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks which cause injury to persons and domestic animals; that such attacks are in part attributable to the failure of the owners to confine and properly train and control their dogs; that existing laws inadequately address this growing problem; and that it is appropriate and necessary to impose uniform requirements on the owners of dangerous dogs."[2]

A "dangerous dog" is defined as a dog that:

- Has aggressively bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property;
- Has more than once severely injured or killed a domestic animal while off the owner's property; or

[1] Ch. 90-180, L.O.F.
[2] Section 767.10, F.S.

- Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.[3]

Enforcement of the dangerous dog law relies on a formal complaint to trigger an investigation by an animal control authority. Pending the outcome of the investigation, the dog must be confined by its owner or impounded with an animal control authority and may not be relocated or have its ownership transferred. A dog cannot be declared dangerous if the threat, injury, or damage was sustained by a person who was unlawfully on the property, harassing the dog or its owner, or if the dog was protecting a human from an unjustified attack.[4]

After the investigation, the animal control authority makes an initial determination as to whether there is sufficient cause to classify the dog as dangerous. The owner must have an opportunity for a hearing prior to a final determination. The local governing body establishes the hearing procedures. If the dog is classified as a dangerous dog, the animal control authority must provide written notice to the owner, and the owner may appeal the classification to the county court.[5]

Within 14 days after the classification as a dangerous dog by the animal control authority or the classification is upheld by the county court on appeal, the owner must register the dog with the animal control authority and renew the certificate annually. Vaccination, enclosure, warning sign, and identification requirements must then be followed. The owner must immediately notify the animal control authority if the dog is loose, bites or attacks a person or another animal, or if there is any other change in status. A dangerous dog must remain in its enclosure at all times unless it is muzzled and restrained by a chain or leash. Any violation of these requirements is a noncriminal infraction punishable by a fine, not to exceed $500. Exemptions are provided for: hunting dogs, when engaged in any legal hunt or training procedure; dogs engaged in training or exhibiting in legal sports, such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials; and dogs used for law enforcement work.[6]

In addition to civil penalties, the owner of a dangerous dog can be charged with the following criminal violations:

- 3rd degree felony (punishable under s. 775.082, s. 775.083, or s. 775.084, F.S.), if the dog has previously been declared "dangerous" and it attacks and causes severe injury to or death of any human.[7]
- 1st degree misdemeanor (punishable under s. 775.082 or s. 775.083, F.S.), if the dog has previously been declared "dangerous" and it attacks or bites a person or domestic animal without provocation.

[3] Section 767.11(1), F.S.
[4] Section 767.12(1)(a), F.S.
[5] Section 767.12(1)(c)(d), F.S.
[6] Section 767.12(2-7), F.S.
[7] Section 767.13, F.S.

- 2nd degree misdemeanor (punishable under s. 775.082 or s. 775.083, F.S.), if the dog has not previously been declared "dangerous" but causes severe injury to or death of any human and the owner had prior knowledge of, but recklessly disregarded, the dog's dangerous propensities.

Under these criminal scenarios, the dog must be confiscated, placed in quarantine, if necessary, or impounded for 10 business days after the owner is given written notification of the animal control authority's intent to destroy. During such time, the owner may request a hearing, and the dog may not be destroyed while an appeal is pending. However, the owner must pay for all boarding costs and other fees to maintain the dog during any appeal process. If a dog attacks or bites a person who is engaged in or attempting to engage in a criminal activity at the time of the attack, the owner is not guilty of any crime under this section.[8]

Local governments are authorized to place further restrictions and additional requirements on owners of dangerous dogs. However, no local regulation may be breed-specific, or lessen the provisions of chapter 767 unless the regulation was adopted prior to October 1, 1990.[9] Florida is one of twelve states that prohibit local governments from enacting breed specific ordinances.[10] A handful of communities were grandfathered in with an exception to this provision including Miami-Dade County.

In *State v. Peters*, the 3rd District Court of Appeals upheld the City of North Miami's ordinance that required owners of pit bull-type dogs to post a surety bond (or provide other proof of financial responsibility) and confine the dogs indoors or in a locked pen.[11] The City of North Miami defined "Pit Bull Dog" with reference to the descriptions given by the American Kennel Club (AKC) and the United Kennel Club (UKC). The court held that:

- the ordinance did not deny equal protection to dog owners;
- the ordinance did not deny due process;
- the ordinance was not unconstitutionally vague in its definition of pit bull; and
- the determination of whether a dog was pit bull within the meaning of the ordinance was a matter of evidence not constitutional law.[12]

A similar Dade County ordinance also survived a challenge on vagueness grounds in a federal district court.[13]

The Senate Committee on Community Affairs Interim Report 2009-102[14] reviewed the law on breed specific ordinances and surveyed local governments. The report concluded that while little evidence exists to support claims that one breed is more predisposed to aggressive behavior than others, studies do provide evidence that certain breeds are more likely to cause severe injury than

[8] Section 767.13(5), F.S.
[9] Section 767.14, F.S.
[10] Pit Bull Awareness: Breed Specific Legislation; Nov. 28, 2007.
[11] 534 So. 2d 760 (Fla. 3d DCA 1988).
[12] *Id.*
[13] *American Dog Owners Association, Inc. v. Dade County*, 728 F. Supp. 1533 (S.D. Fla. 1989).
[14] Florida Senate Committee on Community Affairs, Review of the Viability of City or County Pre-emption of Banning Certain Dog Breeds by Ordinance, Interim Report 2009-102, *available at* http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-102ca.pdf.

others. The courts have consistently upheld these breed specific laws due to the rational relationship state and local governments have in preserving public safety and welfare. The issue of dangerous dogs varies greatly in different areas of this state – rural, semi-rural, and suburban. Within these local governments, human and dog populations vary greatly and can create possible unique areas of concern.

III. Effect of Proposed Changes:

Section 1 removes a provision that exempts local ordinances adopted before October 1, 1990 from the prohibition on ordinances that are specific to breed.

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:

Veterinarians in localities that have breed-specific ordinances could potentially see an increase in business since previously prohibited breeds will become legal to own.

C. Government Sector Impact:

Any local government that has a breed specific ordinance or one that lessens state restrictions governing dangerous dogs will be preempted. In localities that require dog licenses and that have breed-specific prohibitions, there could potentially be an increase in dog license purchases resulting in an increase in revenue, although the scale of that increase is 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.

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

By Senator Norman

12-01344A-12 20121322__

A bill to be entitled

An act relating to local requirements for dangerous dogs; amending s. 767.14, F.S.; removing the provision that exempts local ordinances adopted before a specified date from the prohibition on ordinances that are specific to breed or that lessen state restrictions governing dangerous dogs; providing an effective date.

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

Section 1. Section 767.14, Florida Statutes, is amended to read:

767.14 Additional local restrictions authorized. ~~Nothing in~~ This act does not ~~shall~~ limit a ~~any~~ local government from placing further restrictions or additional requirements on owners of dangerous dogs or developing procedures and criteria for the implementation of this act, provided that no such regulation is specific to breed and that the provisions of this act are not lessened by such additional regulations or requirements. ~~This section shall not apply to any local ordinance adopted prior to October 1, 1990.~~

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)

Meeting Date

Topic Dangerous Dogs — Bill Number 1322 (if applicable)

Name Susan Nixon — Amendment Barcode (if applicable)

Job Title Consultant

Address 119 E Park (Street) — Phone 528 4441

Tallahassee (City) FL (State) 32301 (Zip) — E-mail

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

Representing Fla Vet. Med. Assoc.

Appearing at request of Chair: [ ] Yes [X] 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)

Feb 6, 2012
Meeting Date

Topic SB1322 - Pitbull Ban Miami Dade — Bill Number SB 1322 (if applicable)

Name Ernest Sims, Jr — Amendment Barcode (if applicable)

Job Title Board Member, Miami Coalition

Address 1770 Newman Lane (Street) — Phone 850-668-6949

Tallahassee (City) Florida (State) 32312 (Zip) — E-mail theWayofTall@gmail.com

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

Representing Miami Coalition Against BSL

Appearing at request of Chair: [ ] Yes [X] No — Lobbyist registered with Legislature: [ ] Yes [X] 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)

2/7/12
Meeting Date

Topic Dangerous Dog Bill Number 1322 *(if applicable)*

Name Kate MacFall Amendment Barcode *(if applicable)*

Job Title

Address *Street* Phone 850 508-1001

City *State* *Zip* E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing ASPCA

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)

2-7-12
Meeting Date

Topic DOGS Bill Number 1322 *(if applicable)*

Name DENISE LASHER Amendment Barcode *(if applicable)*

Job Title

Address 17513 Meeland Ct Phone 813 240 4567
Street

Lutz FL 33559 E-mail lasherinc@gmail.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing BEST Friends Animal Society

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/07/12
Meeting Date

Topic Home Rule - Dogs

Bill Number 1322 *(if applicable)*

Name FRED DICKINSON

Amendment Barcode *(if applicable)*

Job Title Dutko Poole McKinley

Address 106 E College
Street

Phone 850.681.1980

TLH FL 32301
City *State* *Zip*

E-mail

Speaking: ☐ For ☒ Against ☐ Information

Representing MIAMI-DADE 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.

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/CS/SB 1406

INTRODUCER: Governmental Oversight and Accountability Committee, Banking and Insurance Committee, and Senator Altman

SUBJECT: Public Records/Title Insurance Data/Office of Insurance Regulation

DATE: February 2, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Fav/CS**
2.	Seay	Roberts	GO	**Fav/CS**
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 creates a public records exemption for proprietary business information provided to the Office of Insurance Regulation by title insurers and title insurance agencies. The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

This bill creates section 626.84195 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

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

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

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

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

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

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

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

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public

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[2] Article I, s. 24 of the State Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.
[5] Section 119.011(11), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c), Fla. Constitution.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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

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

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[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(5)(a), F.S.
[16] Section 119.15(4)(b), F.S.

The Act also requires consideration of the following:

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

Title Insurance

Title insurance insures owners of real property, or others having an interest in real property, against loss by encumbrance, defective title, invalidity, or adverse claim to title.[17] Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Under current law, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgating of rates.

III. Effect of Proposed Changes:

Section 1 creates s. 626.84195, F.S., creating a public records exemption for proprietary business information held by the Office of Insurance Regulation by title insurers and title insurance agencies; providing a definition for "proprietary business information"; providing for future repeal as required by the Open Government Sunset Review Act.

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

Section 3 provides that this act shall take effect on the same date that CS for SB 1404 or similar legislation takes effect, if such legislation is adopted in the 2012 legislative session, or an extension thereof, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement
Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public records or public

[17] Section 624.608(2), F.S., provides that "title insurance" is also insurance of owners and secured parties of the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.

meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote of passage.

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Governmental Oversight and Accountability – February 7, 2012:

- The CS amended the public necessity statement to conform with the text of the bill.

CS by Banking and Insurance – January 26, 2012:

- The original bill referred to information provided to the Department of Financial Services, not the Office of Insurance Regulation. The CS changed the reference to the Office of Insurance Regulation.
- The CS added the reference to SB 1404 within the contingent effective date.

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	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 56 - 113
and insert:
Section 2. The Legislature finds that it is a public necessity that proprietary business information provided to the Office of Insurance Regulation by a title insurance agency or insurer, including, but not limited to, trade secrets, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information, such as revenue data, loss expense data, gross receipts, the amount of taxes

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paid, the amount of capital investment, customer identification, and the amount of employee wages paid, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, might refrain from providing accurate and unbiased data, thus impairing the Office of Insurance Regulation's ability to set fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The Office of Insurance Regulation, in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information provided to the Office of Insurance Regulation, such information becomes a public record when received and must be divulged upon request. Divulgence of any proprietary business information under the public records law would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the

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marketplace of the proprietor that owns or controls the proprietary business information. The harm to businesses in the marketplace and to the effective administration of the ratemaking function caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, the confidentiality provided by this act does not preclude the reporting of statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection. Such aggregate reported data is available to the public and is important to an assessment of the setting of title insurance premiums. Thus, the Legislature declares that it is a public necessity that proprietary business information of title insurers and title insurance agencies provided to the Office of Insurance Regulation be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

By the Committee on Banking and Insurance; and Senator Altman

597-02427-12 20121406c1

A bill to be entitled

An act relating to public records; creating s. 626.84195, F.S.; providing an exemption from public records requirements for proprietary business information provided by title insurance agencies and insurers to the Office of Insurance Regulation; providing a definition; authorizing disclosure of aggregated information; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 626.84195, Florida Statutes, is created to read:

626.84195 Confidentiality of information supplied by title insurance agencies and insurers.—

(1) As used in this section, the term "proprietary business information" means information that:

(a) Is owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;

(b) Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;

(c) Has not been publicly disclosed unless disclosed pursuant to a statutory provision, an order of a court or

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

597-02427-12 20121406c1

administrative body, or a private agreement, providing that the information may be released to the public; and

(d) Concerns:

1. Business plans;

2. Internal auditing controls and reports of internal auditors;

3. Reports of external auditors for privately held companies;

4. Trade secrets, as defined in s. 688.002; or

5. Financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

(2) Proprietary business information provided to the office by a title insurance agency or insurer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

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

Section 2. The Legislature finds that it is a public necessity that proprietary business information relating to the title insurance industry, title insurers, and title insurance

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

agents, including, but not limited to, trade secrets, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information, such as revenue, loss expense data, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, customer identification, the amount of employee wages paid, and the detailed documentation substantiating such performance information, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, might refrain from providing accurate and unbiased data, thus impairing the Office of Insurance Regulation's ability to set fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The Office of Insurance Regulation, or any subsidiary or contractor of the office, in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information held by the Office of Insurance Regulation or its designee, such information becomes a public record when received and must be divulged upon

request. Divulgence of any proprietary business information under the public records law would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the marketplace of the proprietor that owns or controls the proprietary business information. The harm to businesses in the marketplace and to the effective administration of the ratemaking function caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, the confidentiality provided by this act does not preclude the reporting of statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection. Such aggregate reported data is available to the public and is important to an assessment of the setting of title insurance premiums. Thus, the Legislature declares that it is a public necessity that proprietary business information of title insurers, title insurance agents, and the title insurance industry held by the Office of Insurance Regulation, or any subsidiary, contractor, or agent of the office, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that CS for SB 1404 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an

extension thereof, and becomes law.

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 / 7 /2012
Meeting Date

Topic _____ Bill Number 1406 *(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:	CS/CS/SB 1626
INTRODUCER:	Governmental Oversight and Accountability Committee, Banking and Insurance Committee, and Senator Gaetz
SUBJECT:	State Contracting
DATE:	February 8, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Fav/CS**
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 transfers the responsibility and authority to develop procurement policy, procedures, and rules from the Department of Management Services (DMS) to the Department of Financial Services (DFS), which must establish and enforce procurement and contracting policies for all agencies. The bill limits the procurement duties of DMS to the actual procurement of commodities and contractual services, and some related functions. The bill subjects more governmental entities to the contract reporting provisions of the intergovernmental contract tracking system in the Transparency Florida Act. The bill allows Chief Financial Officer (CFO) approval of contracts and grants before execution of the agreements, requires DFS to establish a contract manager certification program, and provides an appropriation. The bill requires the CFO to conduct a study of current procurement laws, and submit findings and recommendations to the Legislature and Governor.

The bill also deletes a provision related to the amount of inmate labor required in products offered by Prison Rehabilitative Industries and Diversified Enterprises (PRIDE).

The bill repeals Chapter 287, F.S., effective July 30, 2014.

This bill substantially amends the following sections of the Florida Statutes: 11.45, 215.971, 215.985, 255.25, 287.012, 287.032, 287.042, 287.057, 287.058, 287.133, 402.7305, 427.0135, and 946.515.

This bill repeals the following sections of the Florida Statutes: 216.0111, and 287.095(3).

This bill creates the following sections of the Florida Statutes: 287.044, and 287.1312.

II. Present Situation:

Department of Management Services and Chapter 287, F.S.

Under ch. 287, F.S., the Division of State Purchasing in the Department of Management Services (DMS) is responsible for developing and administering standardized procurement policies, procedures, and practices to be used by state agencies in acquiring commodities, contractual services, and information technology. A variety of procurement methods are available for use by the agencies depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. To guide the procedures for the procurement method to be used, the type of review required, and the method for the award of any contract the following purchasing categories with threshold amounts have been established:

- Category one: $20,000
- Category two: $35,000
- Category three: $65,000
- Category four: $195,000
- Category five: $325,000[1]

The DMS prescribes methods of securing competitive sealed bids, proposals, and replies.[2] The competitive solicitation process must be used for procurement of commodities or contractual services in excess of the category two threshold amount, and include the following solicitation methods: invitations to bid, requests of proposals, and invitations to negotiate.[3] Many services procured by state agencies are exempt from competitive solicitation requirements regardless of whether the purchase exceeds the applicable cost threshold, including artistic services, auditing services, and legal services.[4] Agencies currently must seek approval from the DMS to use an alternate contract source to purchase commodities or services from term contracts or requirements contracts competitively established by other governmental entities. In approving the alternate contract source, the DMS determines that the contract source is cost-effective and in the best interest of the State.[5]

[1] Section 287.017, F.S.
[2] Rule 60A-1.041, F.A.C.
[3] Section 287.057, F.S.
[4] Section 287.057(3)(f), F.S.
[5] Rule 60A-1.047, F.A.C.

All agreements in excess of the category two threshold must be evidenced by a written agreement and include provisions for the required minimum level of service to be performed by the contractor, criteria for evaluating the successful completion of each deliverable, and financial consequences for nonperformance. There must also be a provision dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and criteria for evaluating the successful completion of each deliverable.[6]

Each agency is required to appoint at least one contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who serves as a liaison with the contract managers and the DMS.[7] The DMS designates certain minimum required documentation that must be in the contract file. Additionally, for each contractual services contract the agency must designate an employee to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor, but there is no similar requirement for grants. Each contract manager who is responsible for contracts in excess of the threshold amount for category two ($35,000) must attend training conducted by the CFO for accountability in contracts and grant management.[8] Additional certifications were later required for contracts in excess of category four threshold[9] and $250,000 annual funding was appropriated to accomplish the certification, however no funding has been appropriated for this purpose for the past fiscal year.[10] The DMS currently offers several training and certification programs including an optional Florida Certified Contract Manager designation.

Under s. 287.057(18), F.S., agencies must establish a review and approval process to be completed before contracts exceeding category three threshold ($65,000) are executed. Under s. 216.3475, F.S., each agency shall maintain records to support a cost analysis, which includes a detailed budget submitted by the person or entity awarded funding and the agency's documented review of individual cost elements from the submitted budget for allowability, reasonableness, and necessity.

Using these various procurement methods, the DMS also negotiates state term contracts and purchasing agreements that are intended to leverage the states' buying power. The DMS is also responsible for compiling statistical procurement data concerning the method of procurement, terms, usage, and disposition of commodities and contractual services by agencies.[11] This data is available in the Florida Accounting Information Resource Subsystem (FLAIR) and the State's My Florida Market Place (MFMP) centralized e-procurement system.[12]

The DMS facilitates the production and processing of these competitive solicitations through the MFMP system, which is the state's e-procurement system, and provides a standardized process

[6] Section 287.058(1), F.S.
[7] Section 287.057(15), F.S.
[8] Section 287.057(14), F.S.
[9] Section 287.057(16)(b), F.S.
[10] Department of Management Services SB1626 Bill Analysis, January 23, 2012.
[11] Section 287.042(10), F.S.
[12] Department of Management Services Operational Audit, Report No. 2011-075, January 2011.

for developing and processing solicitations. The MFMP system has four modules: the Buyer Module, Invoicing Module, Vendor Registration Module, and Sourcing Module. However, according to the DMS, the individual state agencies determine whether to use the MFMP e-procurement system.[13] The DMS develops procedures to be used by agencies for advertising and issuing solicitations through the Vendor Bid System. Currently all solicitations and procurement related decisions/intended decisions are required to be posted on the Vendor Bid System.[14] The DMS currently posts lists of firms not permitted to do business with the state online.[15] The DMS also maintains a list of vendors by classes of commodities within the MFMP system.[16]

In August 2011, the DMS with the participation of eight agencies and nine local government representatives initiated the Procurement Process Improvement Project to examine the policy, procedure, practice, and technology for conducting procurements. The intent of the project is to improve the effectiveness and efficiency of state purchasing through establishing standardized processes and procedures, better leveraging the MFMP sourcing module, and developing a continuous improvement protocol to better monitor and actively manage sourcing activities.[17]

Agreements Funded with Federal and State Assistance

Current law requires an agency agreement that provides state financial assistance to a recipient or subrecipient,[18] or that provides federal financial assistance to a subrecipient,[19] to include:

- A provision specifying scope of work that clearly establishes the tasks the recipient or subrecipient is required to perform; and
- A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable must be directly related to the scope of work and must specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.[20]

Chief Financial Officer

The CFO is the chief fiscal officer of the state and is responsible for examining, auditing, settling, and approving payment of all accounts against the state and keeping all state funds and securities.[21] The CFO functions are carried out by the Department of Financial Services (DFS). The DFS's Division of Accounting and Auditing pays all the state's bills, including employees' salaries, payments for goods and services used by state agencies and benefit payments, promote

[13] Department of Management Services SB 1626 Bill Analysis, January 23, 2012.
[14] http://myflorida.com/apps/vbs/vbs_www.main_menu
[15] http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists
[16] Department of Management Services SB1626 Bill Analysis, January 23, 2012.
[17] Department of Management Services Bill Analysis, January 23, 2012.
[18] As defined in s. 215.97, F.S.
[19] As defined by applicable United States Office of Management and Budget circulars.
[20] *See* s. 215.971, F.S.
[21] Section 17.001, F.S.

financial accountability throughout state government by providing information about its fiscal soundness, and investigate allegations of waste, fraud, and abuse of taxpayers' money.[22]

Transparency Florida Act

The Transparency Florida Act[23] in s. 215.985, F.S., requires the Executive Office of the Governor, in consultation with appropriations committees from the Senate and House, to establish a public access website that provides information relating to each appropriation in the General Appropriations Act for each branch of state government and state agency.[24] In 2011, a requirement was added that the CFO must provide access to a state contract management system that provides information and documentation relating to contracts procured by governmental entities. This contract management system is under development, and will become a part of the current DFS transparency website.[25] [26]

Office of the Auditor General

The Office of the Auditor General conducts financial audits of the accounts and records of State agencies, conducts operational and performance audits of public records and information technology systems, adopts rules for financial audits performed by independent certified public accountants of local governmental entities, and reviews all audit reports of local governmental entities.[27] The Auditor General must annually notify the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services of all educational entities and water management districts that have failed to comply with transparency requirements as identified in audit reports.[28]

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[29]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[30] provides that a

[22] Department of Financial Services website, http://www.myfloridacfo.com/sitePages/agency/sections/AccountingAuditing.aspx, (last viewed January 31, 2012).
[23] Enacted in 2009 by s. 2, ch. 2009-74, L.O.F.
[24] This website is available at http://www.transparencyflorida.gov/Home.aspx?FY=12.
[25] The DFS transparency website is located at http://www.myfloridacfo.com/Transparency/.
[26] According to information given to committee staff from DFS staff on 3 February, 2012.
[27] Section 11.45(2), F.S.
[28] Section 11.45(7)(i), F.S.
[29] Article I, s. 24(c) of the Fla. Const.
[30] *See* s. 119.15, F.S.

public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

PRIDE

The Legislature created Prison Rehabilitative Industries and Diversified Enterprises (PRIDE) in 1981, as a private, non-profit corporation to lease and manage the state prison industries program. In calendar year 2010, PRIDE operated 45 inmate work programs (including 4 culinary arts training programs) that manufactured products and services such as office furniture, printing, graphics, data entry, clothing, eyeglasses, and document imaging services. PRIDE employs civilian (non-inmate) employees to manage and supervise inmate workers. PRIDE receives no appropriated funding from the Legislature and depends entirely on the sale of its products and services to financially support the achievement of its statutory missions. PRIDE also has a purchasing preference, requiring state agencies to buy its products when they are of similar quality and price to those offered by outside vendors.[31]

III. Effect of Proposed Changes:

Section 1 amends s. 11.45, F.S., to require the Auditor General to provide notification of certain governmental entities' failure to comply with the reporting requirements of the Transparency Florida Act in s. 215.985, F.S., or annual financial audit reports specified in s. 218.39, F.S. The Auditor General must send, to the Joint Legislative Auditing Committee, an annual report on which entities have not complied with the transparency requirement.

This provision would require the Auditor General to report on the failure of specified entities to supply data, even though the Auditor General does not have any audit authority over some of those entities.

Section 2 amends s. 215.971, F.S., to add DFS additional approval and management requirements to agreements funded with federal or state assistance. Specifically, the bill requires that for such agreements:

- Each deliverable in the agreement must specify a "performance measure," defined as the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.
- Before execution, the agreement must reviewed and approved within 30 days by DFS to ensure the agreement contains a clear statement of work, quantifiable deliverables,

[31] Information taken from OPPAGA program summary of PRIDE located at http://www.oppaga.state.fl.us/profiles/1037/, last visited on 3 February, 2012.

performance measures, and financial consequences for nonperformance. DFS may reject agreements that do not meet these requirements.
- The contracting agency is required to designate a grant manager responsible for enforcing performance of the agreement. Grant managers responsible for agreements in excess of $325,000 must be certified as contract managers pursuant to the authority granted in this bill for the CFO to certify contract managers.
- The CFO must establish uniform procedures for payment requests, to include procedures for monitoring performance and deliverables.

Section 3 amends s. 215.985(16), F.S., to modify the CFO's duties with regards to the state contract management system, which the bill specifies must be an intergovernmental contract tracking system. Within 30 calendar days after executing a contract, the following entities must post on the contract tracking system the specified contract information and documentation:
- state agencies,
- local governmental entities,
- independent special districts,
- district school boards,
- the Board of Governors of the state university system, and
- each Florida College System institution board of trustees.

Each governmental entity must redact exempt or confidential information from the procurement or contract documents before posting. If a party to a contract discovers that a document has not been properly redacted, the party may request that the posting entity redact the information; upon receipt of such a request, the posting entity must redact the confidential or exempt information. The bill provides a disclaimer from liability to the CFO and DFS for the failure of a posting entity to properly redact information. Requests for copies of documents in the system, or subpoenas for documents, must be made to or served on the entity that maintains the original documents, not the CFO or DFS.

The bill allows the CFO to make information posted on the system available for viewing and downloading by the public. The CFO may prohibit the posting of records on the public website that could jeopardize the health, safety, or welfare of the public. The bill provides DFS authority to adopt rules to administer the subsection.

Section 4 repeals s. 216.0111, F.S., which specifies the agency contract information required to be submitted to DFS. That information is now included in s. 215.985, F.S.

Section 5 amends s. 287.032, F.S., which specifies the purpose of DMS, to remove from DMS the duty of providing uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by agencies and eligible users. That duty is transferred to DFS, which is also required to monitor agency compliance with policies, rules, and procedures.

Section 6 amends s. 287.042, F.S., which currently specifies the powers, duties, and functions of DMS. DMS retains duties related to procurement functions, including:
- Canvass sources of supply, maintain vendor list, lease–purchase contracts;
- Develop list of interested vendors;

- Include PRIDE contracts on list of state term contracts, and issue commodity numbers for its products which meet DMS specifications.

The bill deletes from s. 287.042, F.S., those functions related to establishing procurement policies and procedures, which are given to DFS in section 7 of the bill.

Section 7 creates s. 287.044, F.S., and transfers the powers, duties, and functions associated with establishing a system of coordinated and uniform procurement policies, procedures, and practices to be used by agencies when acquiring commodities and contractual services from the DMS to the DFS. The bill requires the DFS to establish a system of coordinated and uniform procurement policies, procedures, and practices to be used by agencies when acquiring commodities and contractual services, which must include the following:

- procedures to be used by an agency for issuing or advertising solicitations;
- procedures to be used when issuing requests for information and requests for quotes;
- procedures to be used when procuring information technology commodities and contractual services;
- procedures for the receipt and opening of bids, proposals, or replies by an agency;
- procedures to be used by an agency in deciding to contract;
- procedures for recording and maintaining support documentation for a cost or price analysis to be performed before the award of a contract in excess of $195,000;
- procedures to be used by state agencies when entering into contracts which ensure standard formats, quantifiable and measurable deliverables, performance measures, and financial consequences for nonperformance; and
- procedures to be used by an agency in maintaining a contract file.

DFS also has the following duties:

- prescribe the methods of securing competitive sealed bids, proposals, and replies;
- prescribe procedures for procuring information technology and information technology consultant services;
- govern the purchase by an agency of any commodity or contractual service and to establish standards and specifications for a commodity;
- establish definitions and classes of commodities and contractual services which agencies must adhere to in acquiring or purchasing commodities or contractual services;
- provide to agencies, through an electronic medium or other means, rules for purchasing commodities and contractual services;
- establish and maintain programs that disseminate information to governmental entities, industry vendors, educational institutions, and the general public concerning policies, procedures, rules, and forms for the procurement of commodities and contractual services; and
- establish and maintain a list of vendors that are not allowed to do business with the state pursuant to ss. 287.132(4) and 287.133, F.S. DFS may add to the list vendors that are not compliant with federal or state laws, or that the department determines have uncollected accounts that are owed to the state.

Section 8 amends s. 287.057, F.S., by deleting the following from the list of services which are exempt from competitive solicitation requirements, thereby subjecting them to competitive solicitation requirements:

- artistic services;
- academic program reviews;
- lectures by individuals; and
- training and education services provided to injured employees.

The bill requires a contract manager responsible for a contract for more than $325,000 to be certified as a contract manager by DFS. An agency or other eligible user may purchase commodities or services through another agency's existing contract rather than through competitive competition if the use of such contract is in the best interest of the state.

The bill revises the prohibition of an agency dividing a solicitation of commodities or contractual services by adding that state agencies must consider all purchases of the same commodity or service during one year to be part of a single purchase. The bill adds a provision to the section that allows agencies to purchase commodities or services through another agency's existing contract if in the best interest of the state.

Section 9 amends s. 287.058, F.S., by giving the CFO the authority to review and approve contracts before execution. The review must ensure that all contracting laws have been met; that the contract document contains a clear statement of work, quantifiable and measureable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the interests of the state; that documentation is available to support the contract; and that the associated costs of the contract are not unreasonable or inappropriate. A contract that does not comply may be rejected and returned to the submitting agency for revision. The CFO may establish dollar thresholds and other criteria for sampling the agreements that are to be reviewed prior to execution.

DFS must verify that a competitive process was used, if required by law, and that the contract was appropriately awarded on the basis of lowest price or best value to a responsive and reasonable bidder, proposer, or replier. DFS has 30 days to make a final determination regarding approval of a contract. DFS and the agency entering into the contract may agree to a longer review period.

Section 10 repeals s. 287.095(3), F.S., which specifies that:

> [A]ll products offered for purchase to a state agency by PRIDE must be produced in majority part by inmate labor, except for products not made by inmates which products are contractually allied to products made by inmates which are offered by the corporation, provided the value of the products not made by inmates do not exceed 2 percent of the total sales of the corporation in any year.

This deletion appears to have the affect of allowing PRIDE to offer products for sale to state agencies without any restriction on the amount of inmate labor associated with the product.

Section 11 creates s. 287.1312, F.S., requiring DFS to establish a certification program for contract and grant managers. In order to manage an agreement in excess of $325,000, contract and grant managers must hold a valid certification from the DFS, based on delineated requirements. The bill requires the DFS to monitor the program and annually publish results of agency manager audits on its website, and authorizes DFS to revoke certifications.

Sections 12 through 17 correct cross-references and make conforming changes.

Section 18 requires the CFO to review and investigate current procurement laws in order to evaluate whether existing law and management processes constitute the most effective and efficient policies for the procurement of goods, services, and facilities by the state. The CFO is required to submit the report findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012.

Section 19 provides for the repeal of Chapter 287, F.S., effective July 30, 2014.

Section 20 provides an appropriation to implement the provisions of the bill. Unencumbered or unexpended funds from the appropriation for expanded contract auditing responsibilities will revert and be reappropriated for the same purpose for the next fiscal year. See Fiscal Impact Statement.

Section 21 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Pursuant to Article VII, s. 18, of the Florida Constitution:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest…

If the Florida Transparency Act posting requirement for local governmental entities under the bill will result in additional expenditures for the local entities then one of the additional requirements under Article VII, s. 18, Florida Constitution, must be met.

B. Public Records/Open Meetings Issues:

A provision in s. 215.985(16)(c), F.S., provides that each specified governmental entity "must redact, as defined in s. 119.011, any exempt or confidential information, including trade secrets as defined in s. 688.002 or 812.081" from documents to be posted on the contract tracking system. If this provision is interpreted as creating a new public records exemption for trade secrets, it would need to be contained in a bill separate from other legislation, and would require a public necessity statement.[32]

[32] *See* art. I, s. 24(c), Fla. Const.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is indeterminate whether the transfer of duties from DMS to DFS will impact potential vendors with the state.

C. Government Sector Impact:

The bill provides for an appropriation during the 2012-13 fiscal year of $400,000 in nonrecurring funds from the Administrative Trust Fund for the CFO's review of the state's procurement process, and $375,000 to contract for the administration of the certified contract manager and negotiator programs. For the 2012-13 fiscal year, $4,067,000 from the General Revenue fund, and 36 full-time equivalent positions are appropriated to the CFO for the purpose of implementing the CFO's expanded contract auditing responsibilities.

Local governments may incur indeterminate costs associated with the Florida Transparency Act reporting requirements created by the bill.

VI. Technical Deficiencies:

It appears that there should be a new subsection (6) with the line that starts "The Chief Financial Officer" on line 160 of the bill.

VII. Related Issues:

Section 287.057(24), F.S., specifies that eligible users may purchase through another agency's existing contract. An "eligible user" is defined in s. 287.012(11), F.S., as any entity DMS authorized to purchase from state term contracts, which could include local governments, or other entities over which DFS may not have the authority to exempt from that entity's procurement requirements.

The Legislature may wish to consider whether there should be a default action if DFS does not complete the reviews in the required time, to avoid delay to agencies and vendors.

It is unclear whether DFS action to approve or reject an awarded contract might implicate administrative rights. Though the review appears to be largely a documentation review, one of the factors DFS may consider includes "the reasonableness of the price." If an agency made an award, and DFS subsequently rejected the contract, it is unclear whether an aggrieved vendor

could then bring an administrative action, or against which entity the vendor could bring the action.

This bill establishes a contract management certification program in DFS. Currently, s. 287.076, F.S., authorizes DMS to implement a program to train agency employees involved in managing outsourcings as Project Management Professionals (PMP). The Legislature may wish to consider whether the PMP training program should also be administered by DFS.

The change to s. 287.095, F.S., appears to permit PRIDE to market, to state agencies, products without any required amount of inmate labor.

The repeal of Chapter 287, F.S., effective July 30, 2014, could cause some anxiety for agencies and vendors.

According to DMS, the state's procurement system, MyFloridaMarketPlace, will require modifications to assist in the collection of data required for the contract database.[33]

VIII. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on February 7, 2012:
The CS added a requirement that the Auditor General must send, to the Joint Legislative Auditing Committee, an annual report on which entities have not complied with the transparency requirement. The CS also specified the appropriation for the CFO's expanded contract auditing responsibilities as $4,067,000 and 36 full-time equivalent positions.

CS by Banking and Insurance on February 2, 2012:
The bill retains many of the same provisions of the bill as filed and makes the following major changes:
Provides for the establishment, by the CFO, of dollar thresholds and criteria for determining agreements funded with state or federal assistance that are to be reviewed prior to execution.

- Provides that the CFO may review and approve contracts prior to execution in accordance with rules adopted by the DFS.
- Allots 30 days for the DFS to make a final determination regarding approval of the agreement; which may be extended to ensure a thorough review.
- Provides a list of records the DFS may search for when reviewing contracts.
- Requires the DFS to establish a training certification program for negotiators of contracts and grants.
- Inserts and revises effective dates for certain provisions.
- Makes drafting changes to the bill by inserting and revising sections and deleting certain language.

[33] Department of Management Services' Bill Analysis of SB 1626; January 23, 2012.

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	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 100 - 108
and insert:
(i) ~~Beginning in 2012,~~ The Auditor General shall annually transmit by July 15, to the President of the Senate, the Speaker of the House of Representatives, the Legislative Auditing Committee, and the Department of Financial Services, a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, local governmental entities, and water management districts that have failed to comply with the transparency

678806

requirements of s. 215.985 as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

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

And the title is amended as follows:

Delete line 3

and insert:

11.45, F.S.; revising provisions relating to the distribution of the list of entities failing to comply with transparency requirements; conforming provisions to changes made by

787168

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 1199 - 1205
and insert:
recurring funds is appropriated from the Administrative Trust Fund in the Department of Financial Services to contract for the Chief Financial Officer's administration of the certified contract manager and negotiator programs.

(3) For the 2012-2013 fiscal year, the sum of $4,067,000 in recurring funds from the General Revenue Fund and 36 full-time equivalent positions and associated salary rate of 1,902,588 are

By the Committee on Banking and Insurance; and Senator Gaetz

597-02862-12 20121626c1

A bill to be entitled

An act relating to state contracting; amending s. 11.45, F.S.; conforming provisions to changes made by the act; amending s. 215.971, F.S.; requiring agreements funded with state or federal financial assistance to include a performance measure for each deliverable, to be reviewed and approved in accordance with rules adopted by the Department of Financial Services, and to have the contracting entity assign a grants manager who is responsible for enforcing performance of the agreement; amending s. 215.985, F.S.; revising provisions relating to the Chief Financial Officer's intergovernmental contract tracking system under the Transparency Florida Act; specifying the entities that are included in the tracking system; requiring that exempt and confidential information be redacted from contracts and procurement documents posted on the system; authorizing the Chief Financial Officer to make available the information posted on the system to the public through a secure website; authorizing the Department of Financial Services to adopt rules; repealing s. 216.0111, F.S., relating to a requirement that state agencies report certain contract information to the Department of Financial Services and transferring that requirement to s. 215.985, F.S.; amending s. 287.032, F.S.; dividing the responsibilities of the Department of Management Services under ch. 287, F.S., with the Department of

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597-02862-12 20121626c1

Financial Services; amending s. 287.042, F.S.; limiting the duties of the Department of Management Services to the procurement of commodities and contractual services; directing the department to develop a list of interested vendors; deleting provisions requiring that the department perform duties relating to procurement and contracting policies and procedures; creating s. 287.044, F.S.; assigning duties relating to procurement and contracting policies and procedures to the Department of Financial Services; requiring the department to develop a list of vendors not allowed to do business with the state; amending s. 287.057, F.S.; revising the list of contractual services and commodities that are exempt from competitive solicitation to delete certain services from the exemption; revising provisions prohibiting an agency from dividing a solicitation; conforming provisions to changes made by the act; authorizing an agency or other eligible user to purchase commodities or services through another agency's contract; amending s. 287.058, F.S.; requiring contracts to include a performance measure for each deliverable; authorizing the Chief Financial Officer to review and approve contracts; providing requirements for such reviews; authorizing the Chief Financial Officer to establish dollar thresholds and another criteria for sampling agreements that are to be reviewed before execution; providing criteria for the department's review of contract documentation;

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requiring that the department verify that a competitive process was used and that a contract was appropriately awarded; providing for the review of procurement record for contracts not competitively awarded; specifying the number of days that the department must make its final determination regarding the approval of a contract; authorizing the department and the agency to agree to a longer review period; repealing s. 287.095(3), F.S., relating to certain products produced by inmate labor; creating s. 287.1312, F.S.; requiring certification of contract managers by the Department of Financial Services for contracts of more than a certain amount; requiring the training program for the certification to provide training in certain areas; authorizing the department to adopt rules to administer the program; amending s. 287.133, F.S.; revising the definition of "department" to mean the Department of Financial Services rather than the Department of Management Services with respect to provisions governing public entity crimes and placement on the convicted vendor list; amending ss. 255.25, 287.012, 402.7305, 427.0135, and 946.515, F.S.; conforming cross-references; requiring the Chief Financial Officer to conduct a study of current procurement laws pursuant to such policies; requiring that the Chief Financial Officer submit a report to the Legislature and Governor by a certain date on such study; repealing ch. 287, F.S., on a future date; providing appropriations; providing effective dates.

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

Section 1. Paragraphs (a) and (i) of subsection (7) of section 11.45, Florida Statutes, are amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(a) The Auditor General must ~~shall~~ notify the Legislative Auditing Committee of any local governmental entity, district school board, charter school, or charter technical career center that does not comply with the reporting requirements of s. 215.985 or s. 218.39.

(i) Beginning in 2012, the Auditor General shall annually transmit by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts that have failed to comply with the transparency requirements of s. 215.985 as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

Section 2. Section 215.971, Florida Statutes, is amended to read:

215.971 Agreements funded with federal and state assistance.—

(1) For an agency agreement that provides state financial assistance to a recipient or subrecipient, as those terms are defined in s. 215.97, or that provides federal financial assistance to a subrecipient, as defined by applicable United

States Office of Management and Budget circulars, the agreement must ~~shall~~ include a provision:

(a) ~~(1)~~ ~~A provision~~ Specifying a scope of work that clearly establishes the tasks that the recipient or subrecipient is required to perform; and

(b) ~~(2)~~ ~~A provision~~ Dividing the agreement into quantifiable units of deliverables which ~~that~~ must be received and accepted in writing by the agency before payment. Each deliverable must be directly related to the scope of work and ~~must~~ specify a performance measure. As used in this paragraph, the term "performance measure" means the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

(2) Effective October 1, 2012, before execution, agreements to be funded with state or federal financial assistance must be submitted for review and approval in accordance with rules adopted by the Department of Financial Services. The review must ensure that the agreement document contains a clear statement of work, quantifiable and measureable deliverables, performance measures, and financial consequences for nonperformance. An agreement that does not comply with this subsection may be rejected and returned to the submitting agency for revision.

(3) The Chief Financial Officer may establish dollar thresholds and other criteria for sampling the agreements that are to be reviewed prior to execution. The Chief Financial Officer may revise such thresholds and other criteria for an agency or the unit of any agency as he or she deems appropriate.

(4) The department has 30 days to make a final determination regarding approval of an agreement. The department

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and the agency entering into the agreement may agree to a longer review period to ensure the thorough consideration of the procurement process and its results.

(5) For each agreement funded with federal or state assistance, the contracting agency shall designate an employee to function as grant manager who shall be responsible for enforcing performance of the agreement terms and conditions and serve as a liaison with the recipient. A grant manager who is responsible for one or more agreements in excess of the threshold amount provided in s. 287.017 for CATEGORY FIVE must be certified under s. 287.1312. The Chief Financial Officer shall establish and disseminate uniform procedures for payment requests pursuant to s. 17.03(3) to ensure that services are rendered in accordance with the agreement terms before the agency processes an invoice for payment. The procedures must include, but need not be limited to, procedures for monitoring and documenting a recipient's performance, reviewing and documenting all deliverables for which payment is requested by the recipient, and providing written certification by the grant manager of the agency's receipt of goods and services.

Section 3. Subsection (16) of section 215.985, Florida Statutes, is amended to read:

215.985 Transparency in government spending.—

(16) The Chief Financial Officer shall establish and maintain a secure, shared, intergovernmental contract tracking ~~provide public access to a state contract management~~ system.

(a) Within 30 calendar days after executing a contract, each state agency as defined in s. 216.011(1), and, effective November 1, 2013, each local governmental entity and independent

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special district as defined in s. 218.31, each district school board as described in s. 1001.32, the Board of Governors of the State University System as described in s. 1001.70, and each Florida College System institution board of trustees as described in s. 1001.61 must post the following ~~that provides~~ information and documentation relating to that contract on the contract tracking system: ~~contracts procured by governmental entities.~~

1. The name of the contracting entities;

2. The procurement method;

3. The contract beginning and ending dates;

4. The nature or type of the commodities or services purchased;

5. Applicable contract unit prices and deliverables;

6. Total compensation to be paid or received under the contract;

7. All payments made to the contract vendor to date;

8. All commodities or services received from the contract vendor to date;

9. Applicable contract performance measures;

10. Contract extensions or renewals, if any;

11. The justification for not using competitive solicitation to procure the contract, including citation to any statutory exemption or exception from competitive solicitation, if applicable;

12. Electronic copies of the contract and procurement documents, including any provision that may have been redacted to conceal exempt or confidential information; and

13. Any other information regarding the contract or the

procurement which may be required by the Department of Financial Services.

~~(a) The data collected in the system must include, but need not be limited to, the contracting agency; the procurement method; the contract beginning and ending dates; the type of commodity or service; the purpose of the commodity or service; the compensation to be paid; compliance information, such as performance metrics for the service or commodity; contract violations; the number of extensions or renewals; and the statutory authority for providing the service.~~

(b) Within 30 calendar days after a major modification or amendment ~~change~~ to an existing contract, ~~or the execution of a new contract, agency procurement staff of~~ the affected ~~state governmental~~ entity must ~~shall~~ update the ~~necessary~~ information described in paragraph (a) in the ~~state~~ contract tracking ~~management~~ system. A major modification or amendment ~~change~~ to a contract includes, but is not limited to, a renewal, termination, or extension of the contract, or an amendment to the contract as determined by the Chief Financial Officer.

(c) Each entity identified in paragraph (a) must redact, as defined in s. 119.011, any exempt or confidential information, including trade secrets as defined in s. 688.002 or s. 812.081, from the contract or procurement documents before posting an electronic copy of such documents on the contract tracking system.

1. If an entity becomes aware that an electronic copy of a contract or procurement document that it posted has not been properly redacted, the entity must replace the electronic copy of the documents with a redacted copy.

2. If a party to a contract, or an authorized representative thereof, discovers that an electronic copy of a contract or procurement document on the system has not been properly redacted, the party or representative may request the entity that posted the document to redact the exempt or confidential information. Upon receipt of a request in compliance with this subparagraph, the entity that posted the document shall redact the exempt or confidential information.

a. Such request must be in writing and delivered by mail, facsimile, or electronic transmission, or in person to the entity that posted the information. The request must identify the specific document, the page numbers that include the exempt or confidential information, the information that is exempt or confidential, and the relevant statutory exemption. A fee may not be charged for a redaction made pursuant to such request.

b. If necessary, a party to the contract may petition the circuit court for an order directing compliance with this paragraph.

3. The Chief Financial Officer, the Department of Financial Services, or any officer, employee, or contractor thereof, is not responsible for redacting exempt or confidential information from an electronic copy of a contract or procurement document posted by another entity on the system, and is not liable for the failure of the entity to redact the exempt or confidential information. The Department of Financial Services may notify the posting entity if it discovers that a document posted on the tracking system contains exempt or confidential information.

(d) Pursuant to ss. 119.01 and 119.07, the Chief Financial Officer may make information posted on the contract tracking

system available for viewing and downloading by the public through a secure website. Unless otherwise provided by law, information retrieved electronically pursuant to this paragraph is not admissible in court as an authenticated document.

1. The Chief Financial Officer may regulate and prohibit the posting of records that could facilitate identity theft or fraud, such as signatures; compromise or reveal an agency investigation; reveal the identity of undercover personnel; reveal proprietary confidential business information or trade secrets; reveal an individual's medical information; or reveal any other record or information that the Chief Financial Officer believes may jeopardize the health, safety, or welfare of the public. However, such prohibition does not eliminate the duty of an entity to provide a copy of a public record upon request. The Chief Financial Officer shall use appropriate Internet security measures to ensure that no person has the ability to alter or modify records available on the website.

2. Records made available on the website, including electronic copies of contracts or procurement documents, may not reveal information made exempt or confidential by law. Notice of the right of an affected party to request redaction of exempt or confidential information pursuant to paragraph (c) must be conspicuously and clearly displayed on the website. This includes, but is not limited to:

a. Criminal intelligence or criminal investigative information as defined in s. 119.011;

b. Surveillance techniques or procedures or personnel;

c. The identity of a confidential informant or confidential source;

d. The identify of undercover personnel of a criminal justice agency;

e. A security system plan; or

f. Trade secret as defined in s. 688.002 or s. 812.081.

(e) The posting of information on the contract tracking system or the provision of contract information on a website for public viewing and downloading does not eliminate the duty of an entity to respond to a public record request for such information or to a subpoena for such information.

1. A request for a copy of a contract or procurement document or a certified copy of a contract or procurement document shall be made to the entity that is party to the contract and that maintains the original documents. Such request may not be made to the Chief Financial Officer or the Department of Financial Services or any officer, employee, or contractor thereof unless the Chief Financial Officer or the department is a party to the contract.

2. A subpoena for a copy of a contract or procurement document or certified copy of a contract or procurement document must be served on the entity that is a party to the contract and that maintains the original documents. The Chief Financial Officer or the Department of Financial Services or any officer, employee, or contractor thereof may not be served a subpoena for those records unless the Chief Financial Officer or the department is a party to the contract.

(f) The Department of Financial Services may adopt rules to administer this subsection.

Section 4. Section 216.0111, Florida Statutes, is repealed.

Section 5. Effective October 1, 2013, section 287.032,

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Florida Statutes, is amended to read:

287.032 Departmental responsibility ~~purpose of department~~.—Pursuant to the administration of this chapter:

(1) ~~It shall be~~ The responsibility ~~purpose~~ of the Department of Management Services is to:

(a) ~~(1) To~~ Promote efficiency, economy, and the conservation of energy and coordinate ~~to effect coordination in~~ the purchase of commodities and contractual services for the state.

~~(2) To provide uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by agencies and eligible users.~~

(b) ~~(3) To~~ Procure and distribute federal surplus tangible personal property allocated to the state by the Federal Government.

(2) The responsibility of the Department of Financial Services is to:

(a) Provide uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by agencies and eligible users.

(b) Monitor agencies with respect to compliance with established policies, rules, and procedures.

Section 6. Effective October 1, 2013, section 287.042, Florida Statutes, is amended to read:

287.042 Powers, duties, and functions of the Department of Management Services.—The department is responsible for the procurement of commodities and contractual services for agencies and has ~~shall have~~ the following powers, duties, and functions:

(1) ~~(a)~~ To canvass all sources of supply, establish and maintain a vendor list, and contract for the purchase, lease, or

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acquisition, including purchase by installment sales or lease-purchase contracts which may provide for the payment of interest on unpaid portions of the purchase price, of all commodities and contractual services required by an ~~any~~ agency under this chapter. A ~~Any~~ contract providing for deferred payments and the payment of interest is ~~shall be~~ subject to specific rules adopted by the Department of Financial Services.

(a) ~~(b)~~ The department shall develop a list of interested vendors to be maintained by classes of commodities and contractual services. The list may not be used to prequalify a vendor or to exclude an interested vendor from bidding. However, a vendor barred by the Chief Financial Officer pursuant to s. 287.044(7) may not be included on the list. The department may remove from the ~~its~~ vendor list any source of supply which fails to fulfill any of its duties specified in a contract with the state. The department ~~It~~ may reinstate ~~any~~ such source of supply if the department ~~when it~~ is satisfied that further instances of default will not occur.

(b) ~~(c)~~ In order to promote the cost-effective procurement of commodities and contractual services, the department or an agency may enter into contracts that limit the liability of a vendor consistent with s. 672.719.

~~(d) The department shall issue commodity numbers for all products of the corporation operating the correctional industry program which meet or exceed department specifications.~~

(c) ~~(e)~~ The department shall include the products offered by the corporation operating the correctional industry program on any listing prepared by the department which lists state term contracts executed by the department. The products or services

shall be placed on such list in a category based upon specification criteria developed through a joint effort of the department and the corporation and approved by the department.

1. ~~(f)~~ The corporation may submit products and services to the department for testing, analysis, and review relating to the quality and cost comparability. If, after review and testing, the department approves ~~of~~ the products and services, the department shall give written notice ~~thereof~~ to the corporation. The corporation shall pay a reasonable fee ~~charged~~ for the testing of its products by the Department of Agriculture and Consumer Services.

2. The department shall issue a commodity number for all products of the corporation which meet or exceed department specifications.

(d) ~~(g)~~ The department shall include products and services that are offered by a qualified nonprofit agency for the blind or for the other severely handicapped ~~organized pursuant to chapter 413~~ and that have been determined to be suitable for purchase pursuant to s. 413.035 on a ~~any~~ department listing of state term contracts. The products and services shall be placed on such list in a category based upon specification criteria developed by the department in consultation with the ~~qualified~~ nonprofit agency.

(e) ~~(h)~~ The department may collect fees for the use of its electronic information services. The fees may be imposed on an individual transaction basis or as a fixed subscription for a designated period of time. At a minimum, the fees shall be determined in an amount sufficient to cover the department's projected costs for ~~of~~ the services, including overhead, in

accordance with the policies of the department ~~of Management Services~~ for computing its administrative assessment. All fees collected under this paragraph shall be deposited in the Operating Trust Fund for disbursement as provided by law.

(2)~~(a)~~ To establish purchasing agreements and procure state term contracts for commodities and contractual services, pursuant to s. 287.057, under which state agencies shall, and eligible users may, make purchases pursuant to s. 287.056.

(a) The department may restrict purchases by ~~from some term contracts to~~ state agencies from ~~only for those~~ term contracts if ~~where~~ the inclusion of other governmental entities will have an adverse effect on competition or on ~~to those~~ federal facilities located in this state. In such planning or purchasing, the office ~~of Supplier Diversity~~ may monitor to ensure that opportunities are afforded for contracting with minority business enterprises. The department, for state term contracts, and all agencies, for multiyear contractual services or term contracts, shall explore reasonable and economical means to use ~~utilize~~ certified minority business enterprises. Purchases by any county, municipality, private nonprofit community transportation coordinator designated pursuant to chapter 427~~, while~~ conducting business related solely to the Commission for the Transportation Disadvantaged, or other local public agency under the provisions in the state purchasing contracts, and purchases, from the corporation operating the correctional work programs, of products or services that are subject to paragraph (1)(c) ~~(1)(f)~~, are exempt from the competitive solicitation requirements otherwise applying to their purchases.

(b) As an alternative to ~~any provision in~~ s. 120.57(3)(c), the department may proceed with the competitive solicitation or contract award process of a term contract if ~~when~~ the secretary of the department or his or her designee sets forth in writing particular facts and circumstances that ~~which~~ demonstrate that the delay incident to staying the solicitation or contract award process would be detrimental to the interests of the state. If, after the award of the ~~a~~ contract resulting from a competitive solicitation in which a timely protest was received and in which the state did not prevail, the contract may be canceled and reawarded.

(c) Any person who files an action protesting a decision or intended decision pertaining to contracts administered by the department, a water management district, or an agency pursuant to s. 120.57(3)(b) shall post with the department, the water management district, or the agency at the time of filing the formal written protest a bond payable to the department, the water management district, or agency in an amount equal to 1 percent of the estimated contract amount. For protests of decisions or intended decisions pertaining to exceptional purchases, the bond must ~~shall be in an amount~~ equal ~~to~~ 1 percent of the estimated contract amount for the exceptional purchase.

1. The estimated contract amount shall be based upon the contract price submitted by the protestor or, if no contract price was submitted, the department, water management district, or agency shall estimate the contract amount based on factors, including, but not limited to, the price of previous or existing contracts for similar commodities or contractual services, the

amount appropriated by the Legislature for the contract, or the fair market value of similar commodities or contractual services. The agency shall provide the estimated contract amount to the vendor within 72 hours, excluding Saturdays, Sundays, and state holidays, after the filing of the notice of protest by the vendor. The estimated contract amount is not subject to protest pursuant to s. 120.57(3).

2. The bond shall be conditioned upon the payment of all costs and charges that are adjudged against the protestor in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding.

3. In lieu of a bond, the department, ~~the~~ water management district, or agency may~~, in either case,~~ accept a cashier's check, official bank check, or money order in the amount of the bond.

4. If, after completion of the administrative hearing process and any appellate court proceedings, the department, water management district, or agency prevails, it shall recover all costs and charges, which must ~~shall~~ be included in the final order or judgment, excluding attorney ~~attorney's~~ fees. ~~This section shall not apply to protests filed by the Office of Supplier Diversity.~~ Upon payment of such costs and charges by the protestor, the bond, cashier's check, official bank check, or money order shall be returned to the protestor. If, after the completion of the administrative hearing process and any appellate court proceedings, the protestor prevails, the protestor may ~~shall~~ recover from the department, water management district, or agency all costs and charges that are ~~which shall be~~ included in the final order or judgment,

excluding attorney ~~attorney's~~ fees.

5. This paragraph does not apply to protests filed by the office.

~~(3) To establish a system of coordinated, uniform procurement policies, procedures, and practices to be used by agencies in acquiring commodities and contractual services, which shall include, but not be limited to:~~

~~(a) Development of a list of interested vendors to be maintained by classes of commodities and contractual services. This list shall not be used to prequalify vendors or to exclude any interested vendor from bidding.~~

~~(b)1. Development of procedures for advertising solicitations. These procedures must provide for electronic posting of solicitations for at least 10 days before the date set for receipt of bids, proposals, or replies, unless the department or other agency determines in writing that a shorter period of time is necessary to avoid harming the interests of the state. The Office of Supplier Diversity may consult with the department regarding the development of solicitation distribution procedures to ensure that maximum distribution is afforded to certified minority business enterprises as defined in s. 288.703.~~

~~2. Development of procedures for electronic posting. The department shall designate a centralized website on the Internet for the department and other agencies to electronically post solicitations, decisions or intended decisions, and other matters relating to procurement.~~

~~(c) Development of procedures for the receipt and opening of bids, proposals, or replies by an agency. Such procedures~~

~~shall provide the Office of Supplier Diversity an opportunity to monitor and ensure that the contract award is consistent with the requirements of s. 287.09451.~~

~~(d) Development of procedures to be used by an agency in deciding to contract, including, but not limited to, identifying and assessing in writing project needs and requirements, availability of agency employees, budgetary constraints or availability, facility equipment availability, current and projected agency workload capabilities, and the ability of any other state agency to perform the services.~~

~~(e) Development of procedures to be used by an agency in maintaining a contract file for each contract which shall include, but not be limited to, all pertinent information relating to the contract during the preparatory stages; a copy of the solicitation; documentation relating to the solicitation process; opening of bids, proposals, or replies; evaluation and tabulation of bids, proposals, or replies; and determination and notice of award of contract.~~

~~(f) Development of procedures to be used by an agency for issuing solicitations that include requirements to describe commodities, services, scope of work, and deliverables in a manner that promotes competition.~~

~~(g) Development of procedures to be used by an agency when issuing requests for information and requests for quotes.~~

~~(h) Development of procedures to be used by state agencies when procuring information technology commodities and contractual services that ensure compliance with public records requirements and records retention and archiving requirements.~~

~~(4)(a) To prescribe the methods of securing competitive~~

~~sealed bids, proposals, and replies. Such methods may include, but are not limited to, procedures for identifying vendors; setting qualifications; conducting conferences or written question and answer periods for purposes of responding to vendor questions; evaluating bids, proposals, and replies; ranking and selecting vendors; and conducting negotiations.~~

~~(b) To prescribe procedures for procuring information technology and information technology consultant services that provide for public announcement and qualification, competitive solicitations, contract award, and prohibition against contingent fees. Such procedures are limited to information technology consultant contracts for which the total project costs, or planning or study activities, are estimated to exceed the threshold amount provided in s. 287.017, for CATEGORY TWO.~~

(3)~~(5)~~ To prescribe specific commodities and quantities to be purchased locally.

~~(6)(a) To govern the purchase by any agency of any commodity or contractual service and to establish standards and specifications for any commodity.~~

(4)~~(b)~~ Except for the purchase of insurance, to ~~the department may~~ delegate to agencies the authority for the procurement of and contracting for commodities or contractual services.

~~(7) To establish definitions and classes of commodities and contractual services. Agencies shall follow the definitions and classes of commodities and contractual services established by the department in acquiring or purchasing commodities or contractual services. The authority of the department under this section shall not be construed to impair or interfere with the~~

~~determination by state agencies of their need for, or their use of, services including particular specifications.~~

~~(8) To provide any commodity and contractual service purchasing rules to the Chief Financial Officer and all agencies through an electronic medium or other means. Agencies may not approve any account or request any payment of any account for the purchase of any commodity or the procurement of any contractual service covered by a purchasing or contractual service rule except as authorized therein. The department shall furnish copies of rules adopted by the department to any county, municipality, or other local public agency requesting them.~~

(5) ~~(9)~~ To require that every agency furnish information relative to its commodity and contractual services purchases and methods of purchasing commodities and contractual services to the department when so requested.

(6) ~~(10)~~ To prepare statistical data concerning the method of procurement, terms, usage, and disposition of commodities and contractual services by agencies. All agencies shall furnish such information for this purpose to the office and to the department, as the department or office may call for, but at least ~~no less frequently than~~ annually, on such forms or in such manner as the department may prescribe.

~~(11) To establish and maintain programs for the purpose of disseminating information to government, industry, educational institutions, and the general public concerning policies, procedures, rules, and forms for the procurement of commodities and contractual services.~~

(7) ~~(12)~~ Except as otherwise provided in this section ~~herein~~, to adopt rules necessary to carry out the purposes of

this section, including the authority to delegate to any agency any and all of the responsibility conferred by this section, retaining to the department any and all authority for supervision thereof. Such purchasing of commodities and procurement of contractual services by state agencies must also ~~shall~~ be in strict accordance with the rules and procedures prescribed by the Department of Financial Services.

(8) ~~(13)~~ If the department determines in writing that it is in the best interest of the state, to award to multiple suppliers contracts for commodities and contractual services established by the department for use by all agencies. Such awards may be on a statewide or regional basis. If regional contracts are established by the department, multiple supplier awards may be based upon multiple awards for regions. Agencies may award contracts to a responsible and responsive vendor on a statewide or regional basis.

(9) ~~(14)~~ To procure and distribute federal surplus tangible personal property allocated to the state by the Federal Government.

(10) ~~(15)~~ To enter into joint agreements with governmental agencies, as defined in s. 163.3164, for the purpose of pooling funds for the purchase of commodities or information technology that can be used by multiple agencies.

(a) Each agency that has been appropriated or has existing funds for such purchase, shall, upon contract award by the department, transfer their portion of the funds into the department's Operating Trust Fund for payment by the department. The funds shall be transferred by the Executive Office of the Governor pursuant to the agency budget amendment request

provisions in chapter 216.

(b) Agencies that sign the joint agreements are financially obligated for their portion of the agreed-upon funds. If an agency becomes more than 90 days delinquent in paying the funds, the department shall certify to the Chief Financial Officer the amount due, and the Chief Financial Officer shall transfer the amount due to the Operating Trust Fund of the department from any of the agency's available funds. The Chief Financial Officer shall report these transfers and the reasons for the transfers to the Executive Office of the Governor and the legislative appropriations committees.

(11) ~~(16)~~ To evaluate contracts let by the Federal Government, another state, or a political subdivision for the provision of commodities and contract services, and, if it is determined in writing to be cost-effective and in the best interest of the state, to enter into a written agreement authorizing an agency to make purchases under such contract.

(12) ~~(17) (a)~~ To enter into contracts pursuant to chapter 957 for the designing, financing, acquiring, leasing, constructing, or operating of private correctional facilities. The department shall enter into such ~~a contract or~~ contracts with one contractor per facility ~~for the designing, acquiring, financing, leasing, constructing, and operating of that facility~~ or may, if specifically authorized by the Legislature, separately contract for each of ~~any~~ such services.

(a) ~~(b)~~ The department shall also ~~To~~ manage and enforce compliance with existing or future contracts entered into pursuant to chapter 957.

(b) The department may not delegate the responsibilities

conferred by this subsection.

Section 7. Effective October 1, 2013, section 287.044, Florida Statutes, is created to read:

287.044 Powers, duties, and functions of the Department of Financial Services.—The Department of Financial Services is responsible for establishing and enforcing procurement and contracting policies and procedures for the Department of Management Services and all agencies. The Department of Financial Services has the following powers, duties, and functions:

(1) To establish a system of coordinated and uniform procurement policies, procedures, and practices to be used by agencies when acquiring commodities and contractual services, which includes, but is not limited to:

(a) The development of procedures to be used by an agency for issuing or advertising solicitations which include requirements for the agency to describe commodities, services, scope of work, and deliverables in a manner that promotes competition.

1. Such procedures must provide for electronic posting of solicitations at least 10 days before the date set for receipt of bids, proposals, or replies, unless the agency determines in writing that a shorter period of time is necessary to avoid harming the interests of the state.

2. The office may consult with the department regarding the development of solicitation distribution procedures to ensure that maximum distribution is afforded to certified minority business enterprises as defined in s. 288.703.

3. The department shall designate a centralized website on

the Internet for the department and other agencies to electronically post solicitations, decisions or intended decisions, and other matters relating to procurement.

(b) The development of procedures to be used by an agency when issuing requests for information and requests for quotes.

(c) The development of procedures to be used by state agencies when procuring information technology commodities and contractual services which ensure compliance with public records requirements and records retention and archiving requirements.

(d) The development of procedures for the receipt and opening of bids, proposals, or replies by an agency. Such procedures must provide the office an opportunity to monitor and to ensure that the contract award is consistent with the requirements of s. 287.09451.

(e) The development of procedures to be used by an agency in deciding to contract, including, but not limited to, identifying and assessing in writing project needs and requirements, availability of agency employees, budgetary availability or constraints, availability of facility equipment, current and projected agency workload capabilities, and the ability of another state agency to perform the services.

(f) The development of procedures for recording and maintaining support documentation for a cost or price analysis to be performed before the award of a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR. The cost or price analysis shall be used to validate the reasonableness of bids, proposals, or replies.

(g) The development of procedures to be used by state agencies when entering into contracts which ensure standard

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formats, quantifiable and measurable deliverables, performance measures, and financial consequences for nonperformance.

(h) The development of procedures to be used by an agency in maintaining a contract file for each contract which includes, but is not limited to, all pertinent information relating to the contract during the preparatory stages; the solicitation process, including a copy of the solicitation; the opening of bids, proposals, or replies; the evaluation and tabulation of bids, proposals, or replies; and the determination and notice of contract award.

(2) To prescribe the methods of securing competitive sealed bids, proposals, and replies. Such methods may include, but are not limited to, procedures for identifying vendors; setting qualifications; conducting conferences or written question and answer periods for purposes of responding to vendor questions; evaluating bids, proposals, and replies; ranking and selecting vendors; and conducting negotiations.

(3) To prescribe procedures for procuring information technology and information technology consultant services which provide for public announcement and qualification, competitive solicitations, the contract award, and a prohibition against contingent fees. Such procedures are limited to information technology consultant contracts for which the total project costs, or planning or study activities, are estimated to exceed the threshold amount provided in s. 287.017 for CATEGORY TWO.

(4) To govern the purchase by an agency of any commodity or contractual service and to establish standards and specifications for a commodity. The Chief Financial Officer shall establish definitions and classes of commodities and

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contractual services which agencies must adhere to in acquiring or purchasing commodities or contractual services. The department's authority under this section may not impair or interfere with an agency's determination of its need for, or use of, services that include particular specifications.

(5) To provide to agencies through an electronic medium or other means rules for purchasing commodities and contractual services. Agencies may not approve any account, or request payment of any account, for the purchase of any commodity or the procurement of any contractual service covered by a purchasing or contractual service rule except as authorized by such rule. The department shall furnish copies of rules adopted by the department to any county, municipality, or other local public agency requesting them.

(6) To establish and maintain programs that disseminate information to governmental entities, industry vendors, educational institutions, and the general public concerning policies, procedures, rules, and forms for the procurement of commodities and contractual services.

(7) To establish and maintain a list of vendors that are not allowed to do business with the state pursuant to ss. 287.132(4) and 287.133. The department may add to the list vendors that are not compliant with federal or state laws, or that the department determines have uncollected accounts that are owed to the state.

Section 8. Paragraph (f) of subsection (3) and subsections (9), (14), and (16) of section 287.057, Florida Statutes, are amended, and subsection (24) is added to that section, to read:

287.057 Procurement of commodities or contractual

services.—

(3) When the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, no purchase of commodities or contractual services may be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

(f) The following contractual services and commodities are not subject to the competitive-solicitation requirements of this section:

~~1. Artistic services. For the purposes of this subsection, the term "artistic services" does not include advertising or typesetting. As used in this subparagraph, the term "advertising" means the making of a representation in any form in connection with a trade, business, craft, or profession in order to promote the supply of commodities or services by the person promoting the commodities or contractual services.~~

~~2. Academic program reviews if the fee for such services does not exceed $50,000.~~

~~3. Lectures by individuals.~~

1.~~4.~~ Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.

2.~~5.a.~~ Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration, and,~~.~~

~~b.~~ beginning January 1, 2011, health services, including, but not limited to, substance abuse and mental health services~~,~~ involving examination, diagnosis, treatment, prevention, or medical consultation, if ~~when~~ such services are offered to

eligible individuals participating in a specific program that qualifies multiple providers and uses a standard payment methodology. Reimbursement of administrative costs for providers of services purchased in this manner are ~~shall~~ also ~~be~~ exempt. For purposes of this subparagraph ~~sub-subparagraph~~, the term "providers" means health professionals, health facilities, or organizations that deliver or arrange for the delivery of health services.

3.~~6.~~ Services provided to persons with mental or physical disabilities by not-for-profit corporations that ~~which~~ have obtained exemptions under ~~the provisions of~~ s. 501(c)(3) of the United States Internal Revenue Code or if ~~when~~ such services are governed by the provisions of Office of Management and Budget Circular A-122. However, in acquiring such services, the agency must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past performance, willingness to meet time requirements, and price.

4.~~7.~~ Medicaid services delivered to an eligible Medicaid recipient, unless the agency is directed otherwise in law.

5.~~8.~~ Family placement services.

6.~~9.~~ Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways, operated by not-for-profit corporations. However, in acquiring such services, the agency must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past performance, willingness to meet time requirements, and price.

~~10. Training and education services provided to injured employees pursuant to s. 440.491(6).~~

7.~~11.~~ Contracts entered into pursuant to s. 337.11.

8.~~12.~~ Services or commodities provided by governmental

agencies.

(9) An agency may ~~shall~~ not divide the solicitation of commodities or contractual services so as to avoid the requirements of subsections (1)-(3) and reduce the ability of businesses to openly compete.

(14) For each contractual services contract, the agency shall designate an employee to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Each contract manager who is responsible for one or more contracts in excess of the threshold amount provided under s. 287.017 for CATEGORY FIVE ~~TWO~~ must be certified pursuant to s. 287.1312 ~~attend training conducted by the Chief Financial Officer for accountability in contracts and grant management~~. The Chief Financial Officer shall establish and disseminate uniform procedures pursuant to s. 17.03(3) to ensure that contractual services have been rendered in accordance with the contract terms before the agency processes the invoice for payment. The procedures must ~~shall~~ include, but need not be limited to, procedures for monitoring and documenting contractor performance, reviewing and documenting all deliverables for which payment is requested by vendors, and providing written certification by contract managers of the agency's receipt of goods and services.

(16) For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

(a) At least three persons to evaluate proposals and replies who collectively have experience and knowledge in the

program areas and service requirements for which commodities or contractual services are sought.

(b) At least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought. When the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a contract negotiator based upon rules adopted by the Department of Financial Services ~~Management Services~~ in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator. If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

(24) An agency or other eligible user may purchase commodities or services through another agency's existing contract rather than through competitive competition if the use of such contract is in the best interest of the state.

Section 9. Paragraph (e) of subsection (1) of section 287.058, Florida Statutes, is amended, and subsections (7) through (11) are added to that section, to read:

287.058 Contract document.—

(1) Every procurement of contractual services in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO, except for the providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by the provisions of chapter 440, shall be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services, which shall, where applicable, include, but not be limited to, a provision:

(e) Dividing the contract into quantifiable, measurable, and verifiable units of deliverables which ~~that~~ must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify a performance measure. As used in this paragraph, the term "performance measure" means the required minimum level of service to be performed and criteria for evaluating the successful completion of each deliverable.

In lieu of a written agreement, the department may authorize the use of a purchase order for classes of contractual services, if the provisions of paragraphs (a)-(i) are included in the purchase order or solicitation. The purchase order must include, but need not be limited to, an adequate description of the services, the contract period, and the method of payment. In lieu of printing the provisions of paragraphs (a)-(i) in the contract document or purchase order, agencies may incorporate the requirements of paragraphs (a)-(i) by reference.

(7) The Chief Financial Officer may review and approve

contracts subject to this chapter before the execution of such contracts in accordance with rules adopted by the department. The review must ensure that all contracting laws have been met; that the contract document contains a clear statement of work, quantifiable and measureable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the interests of the state; that documentation is available to support the contract; and that the associated costs of the contract are not unreasonable or inappropriate. A contract that does not comply with this subsection may be rejected and returned to the submitting agency for revision.

(8) The Chief Financial Officer may establish dollar thresholds and other criteria for sampling the agreements that are to be reviewed prior to execution. The Chief Financial Officer may revise such thresholds and other criteria for an agency or the unit of any agency as he or she deems appropriate.

(9) The department's review of contract documentation may include, but need not be limited to:

(a) Evidence of advertising the procurement opportunity, if applicable;

(b) The bid, proposal, or reply itself, whether an invitation to bid, request for proposals, or invitation to negotiate, as applicable;

(c) The preprocurement conference questions and answers;

(d) Any additional documentation provided to bidders, proposers, or repliers;

(e) The list of bidders, proposers, or repliers solicited;

(f) The evaluation instrument and process description

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related to the contract;

(g) The bid tabulation or evaluation record;

(h) Documentation that supports the agency's determination of vendor responsibility;

(i) The successful bid, proposal, or reply in addition to the unsuccessful bids, proposals, or replies;

(j) Documentation that supports the selection of the contractor;

(k) The reasonableness of the price;

(l) Verification that all statutory and regulatory requirements have been met; and

(m) The proposed contract.

(10) The department shall verify that a competitive process was used, if required by law, and that the contract was appropriately awarded on the basis of lowest price or best value to a responsive and reasonable bidder, proposer, or replier. For contracts not competitively awarded, the procurement record shall be reviewed for restrictive specifications and the agency's justification for the noncompetitive method used in awarding the contract, including justification for the selection of the vendor and the reasonableness of the terms.

(11) The department has 30 days to make a final determination regarding approval of a contract. The department and the agency entering into the contract may agree to a longer review period to ensure the thorough consideration of the procurement process and its results.

Section 10. Subsection (3) of section 287.095, Florida Statutes, is repealed.

Section 11. Section 287.1312, Florida Statutes, is created

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to read:

287.1312 Contract manager certification.—

(1) The Department of Financial Services shall establish a training certification program for contract and grant managers and negotiators of contracts and grants. A state employee may not manage a contract or grant agreement in excess of the threshold amount provided in s. 287.017 for CATEGORY FIVE without obtaining a valid certification from the Department of Financial Services under this section. The program must include training in the following areas:

(a) Procurement and the development of contracts.

(b) Development and administration of grant agreements involving federal and state financial assistance.

(c) Responsibilities of a contract manager in the management of state contracts and grant agreements.

(d) Federal and state audit and reporting requirements.

(e) Laws and rules relating to procurement and contract administration.

(f) Any other subject matter that the Chief Financial Officer determines will promote accountability in contract and grant management.

(2) The program shall provide for periodic recertification, as necessary. The Department of Financial Services shall determine course requirements, maintain information on certifications, and monitor the performance of contract and grant managers. As part of such monitoring, the department shall annually publish the results of agency manager audits and error rates related to contract and grant management on its website.

(3) The Department of Financial Services may revoke a

manager's certification for incompetence or conduct inconsistent with the responsibilities of contract or grant management.

(4) The Department of Financial Services shall adopt rules to administer this section.

Section 12. Paragraph (d) of subsection (1) of section 287.133, Florida Statutes, is amended to read:

287.133 Public entity crime; denial or revocation of the right to transact business with public entities.—

(1) As used in this section:

(d) "Department" means the Department of Financial ~~Management~~ Services.

Section 13. Paragraph (h) of subsection (3) of section 255.25, Florida Statutes, is amended to read:

255.25 Approval required prior to construction or lease of buildings.—

(3)

(h) ~~The Department of Management Services may,~~ Pursuant to s. 287.042(2)~~(a)~~, the department shall procure a term contract for real estate consulting and brokerage services. A state agency may not purchase services from the contract unless the contract has been procured under s. 287.057(1) after March 1, 2007, and contains the following provisions or requirements:

1. Awarded brokers ~~must~~ maintain an office or presence in the market served. In awarding the contract, preference must be given to brokers who ~~that~~ are licensed in this state under chapter 475 and who ~~that~~ have 3 or more years of experience in the market served. The contract may be made with up to three tenant brokers in order to serve the marketplace in the north, central, and south areas of the state.

2. Each contracted tenant broker works ~~shall work~~ under the direction, supervision, and authority of the state agency, subject to the rules governing lease procurements.

3. The department provides ~~shall provide~~ training for the awarded tenant brokers concerning the rules governing the procurement of leases.

4. Tenant brokers ~~must~~ comply with all applicable provisions of s. 475.278.

5. Real estate consultants and tenant brokers are ~~shall be~~ compensated by the state agency, subject to the provisions of the term contract, and such compensation is subject to appropriation by the Legislature. A real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered under the term contract. Moneys paid by a lessor to the state agency under a facility leasing arrangement are not subject to the charges imposed under s. 215.20. All terms relating to the compensation of the real estate consultant or tenant broker must ~~shall~~ be specified in the term contract and may not be supplemented or modified by the state agency using the contract.

6. The department conducts ~~shall conduct~~ periodic customer-satisfaction surveys.

7. Each state agency reports ~~shall report~~ the following information to the department:

a. The number of leases that adhere to the goal of the workspace-management initiative of 180 square feet per full-time employee ~~FTE~~.

b. The quality of space leased and the adequacy of tenant-improvement funds.

c. The timeliness of lease procurement, measured from the date of the agency's request to the finalization of the lease.

d. Whether cost-benefit analyses were performed before execution of the lease in order to ensure that the lease is in the best interest of the state.

e. The lease costs compared to market rates for similar types and classifications of space according to the official classifications of the Building Owners and Managers Association.

Section 14. Subsection (12) of section 287.012, Florida Statutes, is amended to read:

287.012 Definitions.—As used in this part, the term:

(12) "Exceptional purchase" means any purchase of commodities or contractual services excepted by law or rule from the requirements for competitive solicitation, including, but not limited to, purchases from a single source; purchases upon receipt of fewer ~~less~~ than two responsive bids, proposals, or replies; purchases made by an agency, after receiving approval from the department, from a contract procured, pursuant to s. 287.057(1), or by another agency; and purchases made without advertisement in the manner required under ~~by~~ s. 287.044(1)(a) ~~287.042(3)(b)~~.

Section 15. Paragraph (a) of subsection (2) of section 402.7305, Florida Statutes, is amended to read:

402.7305 Department of Children and Family Services; procurement of contractual services; contract management.—

(2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

(a) Notwithstanding s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~, if ~~whenever~~ the department intends to contract with a public postsecondary institution to provide a service, the department

must allow all public postsecondary institutions in this state which ~~that~~ are accredited by the Southern Association of Colleges and Schools to bid on the contract. Thereafter, notwithstanding any other provision of law ~~to the contrary~~, if a public postsecondary institution intends to subcontract for any service awarded in the contract, the subcontracted service must be procured by competitive procedures.

Section 16. Subsection (3) of section 427.0135, Florida Statutes, is amended to read:

427.0135 Purchasing agencies; duties and responsibilities.—Each purchasing agency, in carrying out the policies and procedures of the commission, shall:

(3) Not procure transportation disadvantaged services without initially negotiating with the commission, as provided in s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~, or unless otherwise authorized by statute. If the purchasing agency, after consultation with the commission, determines that it cannot reach mutually acceptable contract terms with the commission, the purchasing agency may contract for the same transportation services provided in a more cost-effective manner and of comparable or higher quality and standards. The Medicaid agency shall implement this subsection in a manner consistent with s. 409.908(18) and as otherwise limited or directed by the General Appropriations Act.

Section 17. Subsection (2) of section 946.515, Florida Statutes, is amended to read:

946.515 Use of goods and services produced in correctional work programs.—

(2) A ~~No~~ similar product or service of comparable price and

quality found necessary for use by any state agency may not be purchased from any source other than the corporation if the corporation certifies that the product is manufactured by, or the service is provided by, inmates and the product or service meets the comparable performance specifications and comparable price and quality requirements as specified under s. 287.042(1)(c) ~~287.042(1)(f)~~ or as determined by an individual agency as provided in this section. The purchasing authority of ~~any~~ such state agency may make reasonable determinations of need, price, and quality with reference to products or services available from the corporation. In the event of a dispute between the corporation and a ~~any~~ purchasing authority based upon price or quality under this section or s. 287.042(1)(c) ~~287.042(1)(f)~~, either party may request a hearing with the Department of Management Services and, if not resolved, ~~either party~~ may request a proceeding pursuant to ss. 120.569 and 120.57, which shall be referred to the Division of Administrative Hearings within 60 days after such request, to resolve any dispute under this section. A ~~No~~ party is not entitled to any appeal pursuant to s. 120.68.

Section 18. Procurement review and report.—

(1) The Chief Financial Officer shall review and investigate:

(a) All current state laws that govern the state procurement of goods, services, and facilities;

(b) The procurement policies, rules, procedures, and practices followed by the state agencies, boards, commissions, offices, and other instrumentalities of the executive branch of state government;

(c) The organization and management processes involved in the state procurement of goods, services, and facilities before the award of a state procurement contract, during the solicitation of bids, the evaluation, and the negotiation of a contract, and subsequent to the award of the contract to determine the extent to which these organization and management processes facilitate the legislative policy set forth in this act; and

(d) Any other areas that the Chief Financial Officer deems relevant to the review and investigation.

(2) In order to accomplish the procurement review directed by this section, the Chief Financial Officer may:

(a) Acquire information directly from the head of any state department or agency for the purpose of conducting this review. All departments and agencies shall cooperate with the Chief Financial Officer and furnish all information requested to the extent permitted by law.

(b) Procure the services of experts and consultants.

(c) Contract with private organizations and nonprofit institutions to carry out studies and prepare reports to facilitate the review.

(3) By December 31, 2012, the Chief Financial Officer shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report of findings and recommendations for changes in statutes, rules, policies, procedures, and organization necessary to carry out the policies set forth in this act.

Section 19. The Legislature recognizes the need to reform the purchasing cycle, from the development of a purchasing

agreement to the payment for goods or services provided to the state. Therefore, chapter 287, Florida Statutes, is repealed effective July 30, 2014.

Section 20. (1) For the 2012-2013 fiscal year, the sum of $400,000 in nonrecurring funds is appropriated from the Administrative Trust Fund in the Department of Financial Services to contract for the Chief Financial Officer's review of the state's procurement process.

(2) For the 2012-2013 fiscal year, the sum of $375,000 in nonrecurring funds is appropriated from the Administrative Trust Fund in the Department of Financial Services to contract for the Chief Financial Officer's administration of the certified contract manager and negotiator programs.

(3) For the 2012-2013 fiscal year, the sum of $X00,000 in recurring funds from the General Revenue fund and ___ full-time equivalent positions and associated salary rate of ___ are appropriated to the Chief Financial Officer for the purpose of implementing the Chief Financial Officer's expanded contract auditing responsibilities under this act. Funds remaining unexpended or unencumbered from this appropriation as of June 30, 2013, shall revert and be reappropriated for the same purpose in the 2013-2014 fiscal year.

Section 21. Except as otherwise expressly provided in this act, 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)

2/7/12
Meeting Date

Topic Section 3 - Local Govt Contracts Bill Number SB 1626 *(if applicable)*

Name Kraig Conn Amendment Barcode *(if applicable)*

Job Title

Address 301 S. Bronough Phone
Street

Tall FL 32301 E-mail
City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information

Representing Florida League of Cities

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic SB 1626 Bill Number SB 1626 *(if applicable)*

Name Logan McFaddin Amendment Barcode *(if applicable)*

Job Title Legislative Affairs Director

Address Capitol LL-26 Phone 413-2890
Street

Tallahassee FL 32399 E-mail logan.mcfaddin@myfloridacfo.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing CFO's Office

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)

2/7/2012
Meeting Date

Topic _____ Bill Number 1626 *(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 1650
INTRODUCER:	Governmental Oversight and Accountability Committee, Senator Hays, and Senator Dean
SUBJECT:	Public Records/Nonpublished Reports or Data/Department of Citrus
DATE:	February 7, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Buford	AG	**Favorable**
2.	Seay	Roberts	GO	**Fav/CS**
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 creates a public records exemption for information contained in nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof that is conducted, caused to be conducted, or funded by the Department of Citrus. The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 601.10 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

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

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

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

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

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

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

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[1] Section 1390, 1391 F.S. (Rev. 1892).
[2] Article I, s. 24 of the State Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.
[5] Section 119.011(11), F.S.

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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

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

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c), Fla. Constitution.
[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(5)(a), F.S.

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

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

Department of Citrus

The Florida Citrus Commission acts as the head of the Department of Citrus (the department).[17] The department carries out commission policy and acts as the commission's staff by conducting a wide variety of programs involving regulation, scientific, market, and economic research, advertising, merchandising, public and industry relations, and consumer promotion. The purpose of the department is to protect and enhance the quality and reputation of Florida citrus fruit and processed citrus products in both domestic and foreign markets. It also acts to protect public health and welfare and to stabilize and protect the state's citrus industry.

Current law provides that the powers of the department include the preparation and dissemination of important information to citrus growers, handlers, shippers, processors and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any such information described above that constitutes a trade secret is confidential and exempt from public records requirements and must not be disclosed.[18]

Citrus Research

Current law governing citrus research requires the department to:

- Conduct, or cause to be conducted, a thorough and comprehensive study of citrus fruit and citrus fruit juices;
- Provide suitable and sufficient laboratory facilities and equipment, making use of the laboratory facilities and equipment of the University of Florida, for the purpose of

[16] Section 119.15(4)(b), F.S.
[17] *See generally* section 601.04, F.S.
[18] Section 601.10(8), F.S.

conducting thorough and comprehensive study and research to determine all possible new and further uses for citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured, as well as to determine and develop new and profitable methods and instruments of distribution;

- Carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of each, and determine and develop new and further use for citrus fruit and citrus fruit juices or the products and byproducts into which the same can be converted or manufactured;
- Carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of any and all new profitable methods and instruments of distribution of citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured;
- Carry on, or cause to be carried on, an economic and marketing research program relating to citrus fruits, products, or byproducts;
- Enter into any mutually satisfactory contracts or agreements with any person, firm, institution, corporation, or business unit, as well as any state or federal agency, that the department deems wise, necessary, and expedient in the carrying out of any of the provisions of this chapter; and
- Incur and pay such expenses and obligations necessary for the proper carrying out of the provisions of this chapter.[19]

III. Effect of Proposed Changes:

Section 1 amends s. 601.10, F.S., providing a public records exemption for any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the Department of Citrus under s. 601.13, F.S. It provides that this public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 of the bill expresses legislative findings that this public records exemption is a public necessity in order to:

- Achieve the cooperation of the citrus industry in the state to obtain access to samples of such citrus fruit, citrus fruit juices, and the products and byproducts thereof, trade secrets, and proprietary business information.
- Assure the citrus industry that any nonpublished reports or data related to studies or research will not be disclosed until the analysis of such data and until the reports of such studies or research are complete and approved for publication.
- Avoid a chilling effect that reduces access by the Department of Citrus to the necessary samples and information provided by the industry.

Section 3 provides a contingent effective date.

[19] Section 601.13, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

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 – February 7, 2012

- The CS amended the original bill to include a reference to Senate Bill 1648 in the contingent effective date.

B. Amendments:

None.

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

883338

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 72
and insert:
CS for SB 1648 or similar legislation takes effect, if such legislation

By Senator Hays

20-01161-12 20121650__

A bill to be entitled

An act relating to public records; amending s. 601.10, F.S.; providing an exemption from public records requirements for nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof that is conducted, caused to be conducted, or funded by the Department of Citrus; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) 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:

(8)(a) To prepare and disseminate information of importance to citrus growers, handlers, shippers, processors, and industry-related and interested persons and organizations~~,~~ relating to department ~~of Citrus~~ activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any information that constitutes ~~which consists of~~ a trade secret as defined in s. 812.081(1)(c)

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

20-01161-12 20121650__

is confidential and exempt from ~~the provisions of~~ s. 119.07(1)~~,~~ and shall not be disclosed. For referendum and other notice and informational purposes, the department ~~of Citrus~~ may prepare and maintain, from the best available sources, a citrus grower mailing list. Such list shall be a public record available as other public records, but it shall not be subject to the purging provisions of s. 283.55.

(b) Any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any nonpublished reports or data related to studies or research conducted under s. 601.13, Florida Statutes, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In order to conduct or cause to be conducted studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof, the Department of Citrus must achieve the cooperation of the citrus industry in the state to obtain access to samples of such citrus fruit, citrus fruit juices, and the products and byproducts thereof, trade secrets, and proprietary business information. Unless the Department of Citrus can assure the citrus industry that any nonpublished reports or data related to such studies or research

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

will not be disclosed until the analysis of such data and until the reports of such studies or research are complete and approved for publication, a chilling effect will arise that reduces access by the Department of Citrus to the necessary samples and information provided by the citrus industry, thereby undermining the validity and value of such studies and research. Thus, the Legislature declares that it is a public necessity that any nonpublished reports or data related to studies or research conducted under s. 601.13, Florida Statutes, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that SB ____ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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)

2/7/2012
Meeting Date

Topic _____ Bill Number 1650 *(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.

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 1856
INTRODUCER:	Committee on Heath Regulation and Senator Flores
SUBJECT:	Public Meetings and Public Records
DATE:	February 3, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**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 committee substitute (CS) exempts from Florida's public records and public meetings laws information related to a peer review panel's review of applications for biomedical research grants under the James and Esther King Biomedical Research Program (King Program) and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program).

The CS authorizes the disclosure of the exempted information under certain circumstances.

The CS provides for the repeal of the public records and public meetings exemption in accordance with the Open Government Sunset Review Act, and provides a statement of public necessity for the exemption.

Because this CS creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This CS is linked to CS/SB 616 and will take effect on the same date that CS/SB 616 or similar legislation becomes a law.

This CS creates two undesignated sections of law.

II. Present Situation:

The James and Esther King Biomedical Research Program

The purpose of the King Program[1] is to provide an annual and perpetual source of funding to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.[2] The long-term goals of the program are to:

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

The King Program offers competitive grants to researchers throughout Florida. Grant applications from any university or established research institute[3] in Florida will be considered for biomedical research funding. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding.

The State Surgeon General, after consultation with the council, is authorized to award grants and fellowships on the basis of scientific merit[4] within the following three categories:

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

---

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

[2] Section 215.5602, F.S.

[3] An "established research institute" is any Florida non-profit or foreign non-profit corporation covered under ch. 617, F.S., with a physical location in Florida, whose stated purpose and power is scientific, biomedical or biotechnological research or development and is legally registered with the Florida Department of State, Division of Corporations. This includes the federal government and non-profit medical and surgical hospitals, including veterans' administration hospitals. *See* James & Esther King Biomedical Research Program, *Call for Grant Applications: Biomedical, Biotechnological, and Social Scientific Research and Development, Fiscal Year 2009-2010*, page 7, available at: http://forms.floridabiomed.com/jek_call/King%20Call%2009-10.pdf (Last visited on January 23, 2012).

[4] *See* the "Grant Application Review and Processing" section of Senate Interim Report 2010-219, page 7, for more information about assessing scientific merit. The report is available at: http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-219hr.pdf (Last visited on January 23, 2012).

The King Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature continued the program in 2010 by enacting HB 5311.[6]

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

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

Applications for funding cancer research from any university or established research institute in the state will be considered under the Bankhead-Coley Program. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding. The State Surgeon General, after consultation with the council, is authorized to award grants and fellowships on the basis of scientific merit[8] within the following three categories:

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

As with the King Program, the Bankhead-Coley Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature also continued this program in 2010 when it enacted HB 5311.[9]

Biomedical Research Advisory Council[10] and Peer Review Panel[11]

The purpose of the council is to advise the State Surgeon General as to the direction and scope of the King Program. The council is also required to consult with the State Surgeon General concerning grant awards for cancer research through the Bankhead-Coley Program.[12] Currently there are 11 members on the council, authorized to serve no more than two consecutive, 3-year terms.

In order to ensure that proposals for research funding within the King Program and the Bankhead-Coley Program are appropriate and evaluated fairly on the basis of scientific merit, a peer review panel of independent, scientifically qualified individuals is appointed to review the scientific content of each proposal to establish a "scientific"[13] priority score.[14] To eliminate

[5] Section 215.5602(5)(b), F.S.
[6] Chapter 2010-161, L.O.F.
[7] Section 381.922, F.S., (ch. 2006-182, L.O.F.).
[8] *Supra* fn. 5.
[9] Chapter 2010-161, L.O.F.
[10] Section 215.5602(3), F.S.
[11] Section 215.5602(6) and (7), and s. 381.922(3)(b), F.S.
[12] Section 381.922(3)(a), F.S. However, s. 215.5602(11), F.S., contains an inconsistency with respect to the responsibility of the Council concerning awarding grants for cancer research.
[13] The King Program requires a *scientific* priority score in s. 215.5602(6), F.S. The Bankhead-Coley Program requires a priority score in s. 381.922(3)(b), F.S.

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

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

Public Records

Article I, s. 24 of the State Constitution, provides that:

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

In addition to the State Constitution, the Public Records Act,[15] which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

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

Unless specifically exempted, all agency[16] records are available for public inspection. The term "public record" is broadly defined to mean:

> . . .all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[17]

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[14] A Bridge Grant application is ranked solely by the priority score or percentile assigned to its qualifying federal proposal in an eligible federal review process.
[15] Chapter 119, F.S.
[16] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[17] s. 119.011(12), F.S.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.[18] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[19]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[20] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[21]

The Open Government Sunset Review Act (the Act)[22] provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act. The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[23]

The Act also requires the Legislature to consider the following:

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

[18] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[19] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[20] Attorney General Opinion 85-62.
[21] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[22] s. 119.15, F.S.
[23] s. 119.15(6)(b), F.S.

Linked Bill

SB 616 is linked to this CS and revises several provisions relating to the King Program and the Bankhead-Coley Program.

III. Effect of Proposed Changes:

The CS exempts from Florida's public records and public meetings laws information related to a peer review panel's review of applications for biomedical research grants under the King Program and the Bankhead-Coley Program.

Specifically, the CS:

- Exempts that portion of a meeting of a peer review panel in which applications for biomedical research grants under the King Program and the Bankhead-Coley Program are discussed.
- Makes confidential and exempt any records generated by the peer review panel relating to the review of applications for biomedical research grants, except final recommendations.
- Makes confidential and exempt research grant applications provided to the peer review panel.

Information made confidential and exempt from Florida's public records laws by the CS may be disclosed with the express written consent of the individual to whom the information pertains or the individual's legally authorized representative, or by court order upon showing good cause.

The CS makes the exemption subject to the Open Government Sunset Review Act, which requires the repeal of the exemption on October 2, 2017, unless the Legislature reviews the exemption and saves it from repeal through reenactment.

The CS also provides a statement of public necessity for the exemption. The statement provides that research grant applications contain information of a confidential nature, including ideas and processes, which could injure the affected researcher if such information was disclosed. In addition, the statement provides that maintaining confidentiality is a hallmark of scientific peer review, as practiced by the national Science Foundation and the National Institutes of Health, when awarding grants and allows for candid exchanges between reviewers critiquing proposals. Furthermore, closing access to meetings of the scientific peer review panels in which biomedical research applications are discussed and protecting the records generated during such meetings ensures that decisions are based upon merit without bias or undue influence.

The CS will take effect on the same date that the linked bill or similar legislation takes effect, if such a bill is adopted during the same legislative session or extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

This CS exempts portions of meetings of a peer review panel in which applications for biomedical research grants under the King Program and the Bankhead-Coley Program are discussed from Florida's public meetings laws. The CS makes confidential and exempt from Florida's public records laws any records generated by the peer review panel relating to the review of such applications, except final recommendations. The CS also makes confidential and exempt from public records laws research grant applications provided to the peer review panel.

The CS authorizes the disclosure of the confidential and exempt public records if the person to whom the confidential and exempt information pertains, or his or her legal representative, provides express written consent to the disclosure or if a court orders the disclosure upon a showing of good cause.

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Information discussed by a peer review panel, related records, and applications for biomedical research grants will be made confidential and exempt from public record.

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 Health Regulation on January 31, 2012:
Creates a public records exemption relating to peer review panels, which is linked to the substantive bill CS/SB 616, concerning biomedical research.
Specifically, the CS:

- Exempts the portion of a meeting of a peer review panel in which applications for biomedical research grants are discussed.
- Exempts any records generated by the peer review panel relating to the review of such applications, except records of the panel's final recommendations.
- Exempts research grant applications provided to the panel.
- Provides for the disclosure of the exempted information under certain circumstances.
- Provides a sunset review of the public records exemption.
- Expands the public necessity statement.
- Revises the effective date of the bill, to make the effective date contingent on the passing of CS/SB 616 or similar legislation.

B. Amendments:

None.

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

By the Committee on Health Regulation; and Senator Flores

588-02727-12 20121856c1

A bill to be entitled

An act relating to public meetings and public records; providing an exemption from public meeting requirements for certain meetings of a peer review panel under the James and Esther King Biomedical Research Program and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program; providing an exemption from public records requirements for certain records related to biomedical research grant applications; providing an exemption from public records requirements for research grant applications provided to, and reviewed by, the peer review panel; providing exceptions to the exemption; providing for legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Exemptions from public records and public meetings requirements; peer review panels.—

(1) That portion of a meeting of a peer review panel in which applications for biomedical research grants under s. 215.5602 or s. 381.922, Florida Statutes, are discussed is exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution.

(2) Any records generated by the peer review panel relating to review of applications for biomedical research grants, except final recommendations, are confidential and exempt from s.

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588-02727-12 20121856c1

119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(3) Research grant applications provided to the peer review panel are confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(4) Information which is held confidential and exempt under this section may be disclosed with the express written consent of the individual to whom the information pertains or the individual's legally authorized representative, or by court order upon showing good cause.

(5) Subsections (1), (2), and (3) are subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that meetings of peer review panels under the James and Esther King Biomedical Research Program and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program, in which applications for the biomedical research grants are discussed, certain records generated by the peer review panel related to the review of applications for biomedical research grants, and research grant applications provided to such peer review panels be held confidential and exempt from disclosure. The research grant applications contain information of a confidential nature, including ideas and processes, the disclosure of which could injure the affected researcher. Maintaining confidentiality is a hallmark of scientific peer review when awarding grants, is practiced by the National

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

Science Foundation and the National Institutes of Health, and allows for candid exchanges between reviewers critiquing proposals. The Legislature further finds that closing access to meetings of scientific peer review panels in which biomedical research applications are discussed serves a public good by ensuring that decisions are based upon merit without bias or undue influence. Further, the Legislature finds that records generated during meetings of the peer review panels related to the review of applications for biomedical research grants must be protected for the same reasons that justify the closing of such meetings.

Section 3. This act shall take effect on the same date that CS for SB 616 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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)

2/7/2012
Meeting Date

Topic _____ Bill Number 1856 *(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

2.7
Meeting Date

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

Topic Public Records Bill Number 1856 *(if applicable)*

Name Mike Fischer Amendment Barcode _____ *(if applicable)*

Job Title _____

Address PO Box 1197 *Street* Phone 727-[illegible]

TLH *City* FL *State* 32302 *Zip* E-mail mike@[illegible]

Speaking: ☑ For ☐ Against ☐ Information

Representing American Cancer Society

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

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

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

S-001 (10/20/11)

The Florida Senate

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 2048
INTRODUCER:	Governmental Oversight and Accountability Committee and Children, Families, and Elder Affairs Committee
SUBJECT:	Department of Children and Family Services
DATE:	February 8, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	**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 legislation reenacts and authorizes the Department of Children and Family Services (DCF, or the department) to reorganize. The bill changes the name of the agency to "Department of Children and Families," establishes organizational units called "circuits" and "regions," and changes the mission of the agency. The bill removes provisions related to program offices and directors, and removes obsolete language related to service districts and a prototype region.

This bill substantially amends ss. 20.04, 20.19, 20.43, 39.01, 394.78 and 420.622 of the Florida Statutes.

II. Present Situation:

Background

The department has undergone major reorganizations and divestitures over the years. In 2002, the Governor's Blue Ribbon Panel on Child Protection found that the Florida Legislature had mandated some form of reorganization for the department 22 times in the preceding 33 years.[1]

In 1975, the department was reorganized to transfer operational responsibilities to a local service district level under a single administrator in an effort to resolve the problems associated with providing and coordinating health and human services to a multi-problem client. Divisions were abolished and program offices were created. Eleven service districts were established with a district administrator having line authority over all programs and services within that district.[2]In 1992, four additional service districts were created for a total of 15.[3]

In 2000, significant reorganization was mandated, including the establishment of a prototype region and community alliances.[4] The goal of creating a prototype region was to improve the efficiency and effectiveness of operation as well as to provide a model for the subsequent regionalization of the remainder of the department. The SunCoast region was implemented in 2001 and consisted of Pasco, Pinellas, Hillsborough, Manatee, Sarasota, and De Soto counties. The law stipulated that:

> …The department shall evaluate the efficiency and effectiveness of the operation of the prototype region and upon a determination that there has been a demonstrated improvement in management and oversight of services or cost savings from more efficient administration of services, the secretary may consolidate management and administration of additional areas of the state…[5]

Unless the Legislature provides authorization, any such consolidation must conform to the districts and subdistricts established in s. 20.19(5), F.S. To date, no additional regions have been established in law. However, the department is currently operating six regions in accordance with temporary legislative authority.[6,7]

Community alliances of stakeholders, community leaders, client representatives, and funders of human services were required to be established in each county to provide a focal point for community participation and governance of community-based services. According to the department, community alliances were never developed in some areas, while in other areas they are active and effective.[8]

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[1] Governor's Blue Ribbon Panel on Child Protection (May 27, 2002) Retrieved January 3, 2012 from http://archives.cnn.com/2002/US/05/27/florida.child.report/index.html.
[2] Chapter 75-48, L.O.F.
[3] Chapter 92-58, L.O.F.
[4] Chapter 2000-139, L.O.F.
[5] *Id.*
[6] Chapter 2007-174, L.O.F.
[7] The SunCoast region now consists of Pasco, Pinellas, Manatee, Sarasota, De Soto, Hillsborough, Charlotte, Glades, Hendry, Lee and Collier counties.
[8] Department of Children and Families, Staff Analysis and Economic Impact Statement, SB 1214, (March 3, 2011).

The department is responsible for planning, evaluating, and implementing comprehensive statewide substance abuse and mental health programs. These programs include adult community mental health, children's mental health, receiving and treatment facilities, and substance abuse prevention, intervention, and treatment services for adults and children.

Prior to 2003, the department's substance abuse and mental health programs operated within the decentralized district structure. The department's central office performed administrative functions, while the 13 districts and one region operated somewhat autonomously and controlled their own budgets, personnel, purchasing, contracting, and operations. A major issue that emerged as a result of this organizational structure was that staff reported to two separate chains of command. Local program supervisors reported to their district administrators, who reported to the department's Deputy Secretary for Operations. In the central office, substance abuse and mental health each had a separate director who answered to the department's Deputy Secretary for Programs. The central office had little influence with regard to district personnel and performance issues.[9]

In response to these issues and related concerns, the Florida Legislature mandated significant restructuring of the program in 2003.[10] To increase visibility and focus, a new program structure was created which gave the central office more control over policy, programs, and budget. The Legislature also required the secretary to appoint an Assistant Secretary of Substance Abuse and Mental Health as well as a Director for Substance Abuse and a Director for Mental Health. Each of these program directors exerts direct line authority over all district substance abuse and mental health programs, including state hospital and institutional staff and control of program budgets and contracts. The Assistant Secretary for Substance Abuse and Mental Health is also required to enter into a memorandum of understanding with each district or region administrator describing their working relationship.[11] As a result of flexibility provided by the Legislature to reorganize in 2007, the statutory organizational structure is no longer consistent with the working organizational structure.[12]

According to a 2005 evaluation of the reorganization by the Office of Program Policy Analysis and Government Accountability (OPPAGA), the more centralized structure offered a number of benefits including:[13]

- Greater visibility and program support;
- Greater intradepartmental cohesion due to bringing mental health and substance abuse programs together;
- Faster decision-making;
- Increased standardization of policies and practices; and

[9] The Florida Senate. *Agency Sunset Review of the Department of Children and Family Services*. Committee on Children, Families, and Elder Affairs. Issue Brief 2009-304, January2009.
[10] Chapter 2003-279, L.O.F.
[11] *Id*.
[12] DCF, *Reorganization of the Department of Children and Families, Report to the Legislature*. (January 1, 2008). Retrieved January 3, 2012, from http://www.dcf.state.fl.us/publications/docs/ReorgReport013108.pdf.
[13] Office of program Policy Analysis and Government Accountability, *Centralizing DCF Substance Abuse and Mental Health Programs Provides Benefits But Also Challenges.* Report No. 05-07, February 2005.

- Enhanced accountability.

There have also been significant challenges associated with increased centralization which have prompted the department to initiate changing the structure again. The OPPAGA report identified two major issues:[14]

- Difficulty for both district and central office staff to maintain communication with other programs, both inside and outside the department; and
- Difficulty for central office staff to become familiar with local substance abuse and mental health issues.

An additional concern has been that substance abuse and mental health programs were not included in the 2004 department restructuring that consolidated its districts into six large zones for administrative purposes. Although the department's rationale for keeping substance abuse and mental health programs at the district level was to retain the community-based nature of these programs, one consequence has been that they must work within a different administrative structure.[15]

Current Statutory Organizational Requirements

The department is created and organizationally structured pursuant to s. 20.19, F.S., with the express mission "to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served." Although the department name established in statute is the Department of Children and Family Services, the department is authorized to use the name Department of Children and Families.[16]

The department is headed by a Secretary appointed by the Governor, subject to confirmation by the Senate. The Secretary is directed by current law to appoint the following specified positions:[17]

- Deputy Secretary who shall act in the absence of the Secretary;
- Assistant Secretary for Substance Abuse and Mental Health;
- Program Director for Mental Health and Program Director for Substance Abuse;
- Program directors to whom the Secretary may delegate responsibilities for the management, policy, program, and fiscal functions of the department; and
- District administrators for each of the service districts delineated in s. 20.19(5), F.S.

Section 20.19(7), F.S., provides for one prototype regional operational structure for the counties in the third, twelfth, and thirteenth judicial circuits (SunCoast Region). The service districts and prototype region are statutorily responsible for all service delivery operations in their respective areas, with the exception of substance abuse and mental health services.[18]

[14] *Id*.
[15] The Florida Senate. *Agency Sunset Review of the Department of Children and Family Services*. Committee on Children, Families, and Elder Affairs. Issue Brief 2009-304, January 2009.
[16] Chapter 2007-174, L.O.F.
[17] ss. 20.19(2) and (3), F.S. and s. 20.19(5)(b), F.S.

Section 20.04(4), F.S., provides that within the department "there are organizational units called 'program offices,' headed by program directors." Section 20.19(4)(b), F.S., establishes the following program offices for the department:

- Adult Services;
- Child Care Services;
- Domestic Violence;
- Economic Self-Sufficiency Services;
- Family Safety;
- Mental Health;
- Refugee Services; and
- Substance Abuse.

The Secretary is authorized to consolidate, restructure, or rearrange program and support offices in consultation with the Executive Office of the Governor, provided that any such changes are capable of meeting the functions, activities, and outcomes delineated in law. The Secretary is likewise authorized to appoint additional managers and administrators at his or her discretion. However, DCF is one of three executive agencies for which any additional offices may only be established by statutory enactment.[19]

Departmental Organization Work Group

On January 17, 2007, Secretary Butterworth established a Department Organizational Review Work Group to examine the organizational structure of DCF. As a result of its review, the Work Group made multiple recommendations including the following:[20]

Regionalization of Services
- Adopt a regional structure for field operations.
- Implement a circuit-based model for the provision of community services and ensure a departmental leadership presence in each of Florida's 20 judicial circuits.

Organizational Structure
- Adopt a standardized template for the provision of community and administrative services and support at the regional and community level.

Assistant Secretary for Operations
- Modify the table of organization for the Office of the Assistant Secretary for Operations to reflect the changes in field services delivery.

[18] Pursuant to section 20.19(2)(c)1., F.S., the Program Director for Substance Abuse and the Program Director for Mental Health have direct line authority over all district substance abuse and mental health staff. Mental health institutions report to the Program Director for Mental Health.
[19] Section 20.04(7)(b), F.S. The Departments of Transportation and Corrections are also subject to this restriction.
[20] *Organizational Review of the Department of Children and Families, Final Report of the Organizational Review Work Group* (DRAFT)(April 2, 2007).

Assistant Secretary for Programs

- Realign the table of organization for the Office of the Assistant Secretary for Programs to parallel the three elements of the Department's formal Mission Statement.
- Expand the role of the existing Office of Provider Relations.
- Reassign Headquarters Substance Abuse and Mental Health (SAMH) staff and treatment facilities to the Office of the Assistant Secretary for Programs and SAMH field personnel to the appropriate regional reporting structure.[21]
- Establish an ombudsman position.

Office of Strategic Planning and Innovation

- Create and staff an Office of Strategic Planning and Innovation.

Quality Management

- Designate the Office of Strategic Planning and Innovation as the entity responsible for setting quality and training standards, identifying appropriate resources to support Headquarters and field activities, and maintaining centralized databases on techniques and training standards.
- Transfer the Contract Oversight Unit to the Assistant Secretary for Programs to assure integration of efforts and to maximize communication.
- Distribute quality functions within regions, rather than reporting to Central Office.
- Move responsibility for strategic planning at the regional level to performance and planning teams.
- Adopt a regional model for Quality Assurance and Quality Improvement.

Current Organizational Structure of DCF

In 2007, the Legislature authorized the department to reorganize its administrative structure.[22,23] Pursuant to this authority, and consistent with the recommendations of the Work Group, the department now plans, administers, and delivers most of its services to target groups through offices in six regions and 20 circuits aligned to match the state's 20 judicial circuits.[24] The regional offices are responsible for support services, contract management, and local program office functions. The circuits are responsible for field operations, such as protective

[21] In reviewing the organization of Substance Abuse and Mental Health, the Work Group concluded that "the creation of the position of Assistant Secretary for Substance Abuse and Mental Health (SAMH) with a separate chain of command for SAMH personnel in the field, albeit necessary at one time to assure proper attention to the issue, has created a silo which impedes both communication and effective management of Departmental field resources."

[22] Chapter 2007-174, L.O.F. Prior to passage of ch. 2007-174, L.O.F., services were provided by DCF in 13 operating districts and one prototype region (SunCoast), supported by six administrative zones and the Central Office Headquarters. Each district had a district administrator or, in the case of the SunCoast region, a regional director appointed by and responsible to the Secretary. The district administrator or regional director assumed responsibility for fiscal accountability in his or her district or region. In each zone, one designated district administrator acted as zone manager.

[23] The 2007 legislation provided the flexibility to the department to continue the process of making organizational changes notwithstanding the structural requirements of s. 20.19, F.S., to better serve the needs of citizens of Florida through additional improvements to the social services system in the State. That flexibility was extended through proviso in the 2008, 2009, 2010, and 2011 legislative sessions.

[24] DCF, *Reorganization of the Department of Children and Families, Report to the Legislature*, January 1, 2008. Retrieved January 3, 2012, from http://www.dcf.state.fl.us/publications/docs/ReorgReport013108.pdf. Circuits were made consistent with the geographic boundaries of judicial circuits, because of the department's ongoing and regular interaction with the State's court system.

investigations for children and adults and public assistance eligibility determination.[25] An additional administrative change is the reintegration of the substance abuse and mental health programs into the administrative structure of the department. These programs now report to the deputy secretary and no longer have direct line authority over regional program supervisors. Community alliances, comprised of community leaders, clients, and human service organizations, are responsible for establishing community priorities for service delivery, setting community-level outcome goals, promoting prevention and early intervention services, and serving as a catalyst for community resource development. The department is also permitted to establish additional community partnerships at the request of local communities to improve the delivery of services, and state level advisory groups to ensure and enhance communication among stakeholders, community leaders, and clients.

According to the department, prior to reorganization, local district administrators had authority over child welfare, economic self-sufficiency, and adult services. After reorganization, the circuit administrators (formerly known as district administrators) also have direct authority over substance abuse and mental health services, homelessness, domestic violence, and refugee programs. The objective of moving decision-making to the circuit level is to allow the circuit administrators more opportunities for focusing resources as needed in the community:[26]

> In its reorganization, the Department has pushed decision-making to the lowest appropriate level. Circuit Administrators have more authority over the entire array of Department services than in previous years… This allows Circuit Administrators the ability to focus resources as needed for direct services in their communities.[27]

To assure consistency and efficiency of operations throughout the state, the department has also adopted a standardized template for the provision of administrative services and support at the regional and circuit level.

In order to integrate Substance Abuse and Mental Health (SAMH) into the department's overall approach to the delivery of services, and to further align substance abuse and mental health services with the specific needs of the community, the department has:

- Appointed an Assistant Secretary for SAMH;
- Aligned the SAMH programs with the department's overall approach to circuit-based service delivery;
- Revised the organizational structure of the SAMH programs, so that SAMH activities in each circuit are being led by a SAMH Program Supervisor who reports to the circuit administrator;
- Taken action to more closely align SAMH programs statewide, by combining the SAMH Contract and Data Units in the central office; and

[25] *Id*.
[26] *Id.*
[27] *Id.*

- Continued oversight for the State Mental Health Treatment Facilities, which report to the Assistance Secretary for SAMH, with assistance from the Mental Health Chief of Facilities and the Director of Mental Health.[28]

III. Effect of Proposed Changes:

The bill re-enacts the Department of Children and Family Services and places in statute the reorganization plans already accomplished by DCF in response to direction given during the 2007 legislative session.[29] The bill amends s. 20.04, F.S., and substantially rewords s. 20.19, F.S., as follows:

Department Reorganization

- Renames the "Department of Children and Family Services" to "Department of Children and Families;"
- Changes the mission of the department to "protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency."
- Removes the statutory responsibilities of the director for Substance Abuse and Mental Health, including but not limited to, line authority over district staff;
- Deletes the directive for the director for Substance Abuse and Mental Health to have direct authority over mental health institutions;
- Requires the appointment of the Assistant Secretary for Substance Abuse and Mental Health;
- Provides authorization for the department to provide certain specified services;
- Amends current law changing service districts to organizational units to be called "circuits" and "regions." Circuits must conform to the geographic boundaries of judicial circuits prescribed in s. 26.021, F.S., and regions are to be comprised of multiple circuits; and
- Deletes the prototype region structure in current law, s. 20.19(7), F.S.

The bill specifies changes to the membership of a community alliance, by replacing a district administrator with a representative from the department.

The bill also amends s. 20.43, F.S., relating to the Department of Health (DOH), s. 39.01, F.S., relating to definitions, and s. 394.78. F.S., relating to operation and administration, to conform cross-references, and amends s. 420.622, F.S., relating to the State Office on Homelessness, to delete the requirement for the Governor to appoint an executive director of the office.

The bill provides for legislation during the 2013 regular legislative session to conform the Florida Statutes to changes made by the bill.

[28] *Id.*
[29] Chapter 2007-174, L.O.F.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on February 7, 2011:
The CS amends the wording of the mission of the department, and amends the requirements for membership on community alliances to provide for the option of including the state attorney and public defender, as in current law.

B. Amendments:

None.

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

602770

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 50 - 53
and insert:
(a) The mission of the Department of Children and Families ~~Family Services~~ is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency ~~ensure the safety, well-being, and self-sufficiency of the people served~~.

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

602770

And the title is amended as follows:

Delete line 8

and insert:

to the establishment of the department; revising the mission of the department; providing for

465554

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 223 - 227
and insert:
increase the membership of the alliance to include the state attorney for the judicial circuit in which the community alliance is located, or his or her designee, the public defender for the judicial circuit in which the community alliance is located, or his or her designee, and other individuals and

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

465554

And the title is amended as follows:

Delete lines 13 - 14

and insert:

service districts; deleting

By the Committee on Children, Families, and Elder Affairs

586-02087-12 20122048__

A bill to be entitled

An act relating to the Department of Children and Family Services; amending s. 20.04, F.S.; changing the name of the department to the "Department of Children and Families"; requiring that the department be geographically organized into circuits and regions; amending s. 20.19, F.S.; revising provisions relating to the establishment of the department; providing for a Director for Substance Abuse and Mental Health, appointed by the secretary of the department; revising the services provided by the department and abolishing the program offices; deleting provisions establishing service districts; revising the membership requirements for community alliances; deleting provisions providing for a prototype region; deleting provisions providing an exemption from competitive bids for certain health services; amending s. 20.43, F.S., relating to the service areas of the Department of Health; conforming provisions to the abolishment of the service districts of the Department of Children and Family Services; amending s. 39.01, F.S.; conforming a cross-reference; amending s. 394.78, F.S.; removing an obsolete reference to health and human services boards; amending s. 420.622, F.S., relating to the State Office on Homelessness within the Department of Children and Families; removing a requirement that the executive director of the office be appointed by the Governor; providing for legislation to conform the Florida Statutes to changes

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

586-02087-12 20122048__

made by the act; providing an effective date.

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

Section 1. Subsection (4) of section 20.04, Florida Statutes, is amended to read:

20.04 Structure of executive branch.—The executive branch of state government is structured as follows:

(4) Within the Department of Children and Families ~~Family Services~~ there are organizational units called "circuits" and "regions." ~~"program offices," headed by program directors.~~ Each circuit is aligned geographically with each of the state's judicial circuits, and each region is comprised of multiple circuits that are in geographical proximity to each other.

Section 2. Section 20.19, Florida Statutes, is amended to read:

20.19 Department of Children and Families ~~Family Services~~.—There is created a Department of Children and Families ~~Family Services~~.

(1) MISSION AND PURPOSE.—

(a) The mission of the Department of Children and Family Services is to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served.

(b) The department shall develop a strategic plan for fulfilling its mission and establish a set of measurable goals, objectives, performance standards, and quality assurance requirements to ensure that the department is accountable to the people of Florida.

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(c) To the extent allowed by law and within specific appropriations, the department shall deliver services by contract through private providers.

(2) SECRETARY OF CHILDREN AND FAMILIES ~~FAMILY SERVICES~~; DEPUTY SECRETARY.—

(a) The head of the department is the Secretary of Children and Families ~~Family Services~~. The secretary is appointed by the Governor, subject to confirmation by the Senate. The secretary serves at the pleasure of the Governor.

(b) The secretary shall appoint a deputy secretary who shall act in the absence of the secretary. The deputy secretary is directly responsible to the secretary, performs such duties as are assigned by the secretary, and serves at the pleasure of the secretary.

(c)1. The secretary shall appoint an Assistant Secretary for Substance Abuse and Mental Health. The assistant secretary shall serve at the pleasure of the secretary and must have expertise in both areas of responsibility.

2. The secretary shall appoint a ~~Program~~ Director for Substance Abuse and ~~a Program Director for~~ Mental Health who has ~~have~~ the requisite expertise and experience ~~in their respective fields~~ to head the state's Substance Abuse and Mental Health Program Office ~~programs~~.

~~a. Each program director shall have line authority over all district substance abuse and mental health program management staff.~~

~~b. The assistant secretary shall enter into a memorandum of understanding with each district or region administrator, which must be approved by the secretary or the secretary's designee,~~

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~~describing the working relationships within each geographic area.~~

~~c. The mental health institutions shall report to the Program Director for Mental Health.~~

~~d. Each program director shall have direct control over the program's budget and contracts for services. Support staff necessary to manage budget and contracting functions within the department shall be placed under the supervision of the program directors.~~

~~(d) The secretary has the authority and responsibility to ensure that the mission of the department is fulfilled in accordance with state and federal laws, rules, and regulations.~~

~~(3) PROGRAM DIRECTORS.—The secretary shall appoint program directors who serve at the pleasure of the secretary. The secretary may delegate to the program directors responsibilities for the management, policy, program, and fiscal functions of the department.~~

(3) ~~(4)~~ SERVICES PROVIDED ~~PROGRAM OFFICES AND SUPPORT OFFICES~~.—

(a) The department shall provide the following services: ~~is authorized to establish program offices and support offices, each of which shall be headed by a director or other management position who shall be appointed by and serves at the pleasure of the secretary.~~

~~(b) The following program offices are established:~~

1. Adult Protection ~~Services~~.

2. Child Care Regulation ~~Services~~.

3. Child Welfare.

4.~~3.~~ Domestic Violence.

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5.4. Economic Self-Sufficiency ~~Services~~.

~~5. Family Safety.~~

6. Mental Health.

7. Refugee Services.

8. Substance Abuse.

(b) ~~(c) Program~~ Offices ~~and support offices~~ may be consolidated, restructured, or rearranged by the secretary, in consultation with the Executive Office of the Governor, if ~~provided any~~ such consolidation, restructuring, or rearranging is capable of meeting functions and activities and achieving outcomes as delineated in state and federal laws, rules, and regulations. The secretary may appoint additional managers and administrators as he or she determines are necessary for the effective management of the department.

~~(5) SERVICE DISTRICTS.—~~

~~(a) The department shall plan and administer its programs of family services through service districts and subdistricts composed of the following counties:~~

~~1. District 1.—Escambia, Santa Rosa, Okaloosa, and Walton Counties.~~

~~2. District 2, Subdistrict A.—Holmes, Washington, Bay, Jackson, Calhoun, and Gulf Counties.~~

~~3. District 2, Subdistrict B.—Gadsden, Liberty, Franklin, Leon, Wakulla, Jefferson, Madison, and Taylor Counties.~~

~~4. District 3. Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Union, Bradford, Putnam, and Alachua Counties.~~

~~5. District 4.—Baker, Nassau, Duval, Clay, and St. Johns Counties.~~

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~~6. District 5.—Pasco and Pinellas Counties.~~

~~7. District 6.—Hillsborough and Manatee Counties.~~

~~8. District 7, Subdistrict A.—Seminole, Orange, and Osceola Counties.~~

~~9. District 7, Subdistrict B.—Brevard County.~~

~~10. District 8, Subdistrict A.—Sarasota and DeSoto Counties.~~

~~11. District 8, Subdistrict B.—Charlotte, Lee, Glades, Hendry, and Collier Counties.~~

~~12. District 9. Palm Beach County.~~

~~13. District 10. Broward County.~~

~~14. District 11, Subdistrict A.—Miami-Dade County.~~

~~15. District 11, Subdistrict B.—Monroe County.~~

~~16. District 12.—Flagler and Volusia Counties.~~

~~17. District 13.—Marion, Citrus, Hernando, Sumter, and Lake Counties.~~

~~18. District 14.—Polk, Hardee, and Highlands Counties.~~

~~19. District 15.—Indian River, Okeechobee, St. Lucie, and Martin Counties.~~

~~(b) The secretary shall appoint a district administrator for each of the service districts. The district administrator shall serve at the pleasure of the secretary and shall perform such duties as assigned by the secretary.~~

(c) Each fiscal year the secretary shall, in consultation with the relevant employee representatives, develop projections of the number of child abuse and neglect cases and shall include in the department's legislative budget request a specific appropriation for funds and positions for the next fiscal year in order to provide an adequate number of full-time equivalent:

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1. Child protection investigation workers so that caseloads do not exceed the Child Welfare League Standards by more than two cases; and

2. Child protection case workers so that caseloads do not exceed the Child Welfare League Standards by more than two cases.

(4) ~~(6)~~ COMMUNITY ALLIANCES.—

(a) The department shall, in consultation with local communities, establish a community alliance of the stakeholders, community leaders, client representatives, and funders of human services in each county to provide a focal point for community participation and governance of community-based services. An alliance may cover more than one county when such arrangement is determined to provide for more effective representation. The community alliance shall represent the diversity of the community.

(b) The duties of the community alliance shall include, but not necessarily be limited to:

1. Joint planning for resource utilization in the community, including resources appropriated to the department and any funds that local funding sources choose to provide.

2. Needs assessment and establishment of community priorities for service delivery.

3. Determining community outcome goals to supplement state-required outcomes.

4. Serving as a catalyst for community resource development.

5. Providing for community education and advocacy on issues related to delivery of services.

6. Promoting prevention and early intervention services.

(c) The department shall ensure, to the greatest extent possible, that the formation of each community alliance builds on the strengths of the existing community human services infrastructure.

(d) The ~~initial~~ membership of the community alliance in a county shall be composed of the following:

1. A representative from the department. ~~The district administrator.~~

2. A representative from county government.

3. A representative from the school district.

4. A representative from the county United Way.

5. A representative from the county sheriff's office.

6. A representative from the circuit court corresponding to the county.

7. A representative from the county children's board, if one exists.

(e) At any time after the initial meeting of the community alliance, the community alliance shall adopt bylaws and may increase the membership of the alliance to include ~~the state attorney for the judicial circuit in which the community alliance is located, or his or her designee, the public defender for the judicial circuit in which the community alliance is located, or his or her designee, and~~ other individuals and organizations who represent funding organizations, are community leaders, have knowledge of community-based service issues, or otherwise represent perspectives that will enable them to accomplish the duties listed in paragraph (b), if, in the judgment of the alliance, such change is necessary to adequately

represent the diversity of the population within the community alliance service circuits ~~districts~~.

(f) A member of the community alliance, other than a member specified in paragraph (d), may not receive payment for contractual services from the department or a community-based care lead agency.

(g) Members of the community alliances shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses, as provided in s. 112.061. Payment may also be authorized for preapproved child care expenses or lost wages for members who are consumers of the department's services and for preapproved child care expenses for other members who demonstrate hardship.

(h) Members of a community alliance are subject to the provisions of part III of chapter 112, the Code of Ethics for Public Officers and Employees.

(i) Actions taken by a community alliance must be consistent with department policy and state and federal laws, rules, and regulations.

(j) Alliance members shall annually submit a disclosure statement of services interests to the department's inspector general. Any member who has an interest in a matter under consideration by the alliance must abstain from voting on that matter.

(k) All alliance meetings are open to the public pursuant to s. 286.011 and the public records provision of s. 119.07(1).

~~(7) PROTOTYPE REGION.—~~

~~(a) Notwithstanding the provisions of this section, the department may consolidate the management and administrative~~

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~~structure or function of the geographic area that includes the counties in the sixth, twelfth, and thirteenth judicial circuits as defined in s. 26.021. The department shall evaluate the efficiency and effectiveness of the operation of the prototype region and upon a determination that there has been a demonstrated improvement in management and oversight of services or cost savings from more efficient administration of services, the secretary may consolidate management and administration of additional areas of the state. Any such additional consolidation shall comply with the provisions of subsection (5) unless legislative authorization to the contrary is provided.~~

~~(b) Within the prototype region, the budget transfer authority defined in paragraph (5)(b) shall apply to the consolidated geographic area.~~

~~(c) The department is authorized to contract for children's services with a lead agency in each county of the prototype area, except that the lead agency contract may cover more than one county when it is determined that such coverage will provide more effective or efficient services. The duties of the lead agency shall include, but not necessarily be limited to:~~

~~1. Directing and coordinating the program and children's services within the scope of its contract.~~

~~2. Providing or contracting for the provision of core services, including intake and eligibility, assessment, service planning, and case management.~~

~~3. Creating a service provider network capable of delivering the services contained in client service plans, which shall include identifying the necessary services, the necessary volume of services, and possible utilization patterns and~~

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~~negotiating rates and expectations with providers.~~

~~4. Managing and monitoring of provider contracts and subcontracts.~~

~~5. Developing and implementing an effective bill payment mechanism to ensure all providers are paid in a timely fashion.~~

~~6. Providing or arranging for administrative services necessary to support service delivery.~~

~~7. Utilizing departmentally approved training and meeting departmentally defined credentials and standards.~~

~~8. Providing for performance measurement in accordance with the department's quality assurance program and providing for quality improvement and performance measurement.~~

~~9. Developing and maintaining effective interagency collaboration to optimize service delivery.~~

~~10. Ensuring that all federal and state reporting requirements are met.~~

~~11. Operating a consumer complaint and grievance process.~~

~~12. Ensuring that services are coordinated and not duplicated with other major payors, such as the local schools and Medicaid.~~

~~13. Any other duties or responsibilities defined in s. 409.1671 related to community-based care.~~

(5) ~~(8)~~ CONSULTATION WITH COUNTIES ON MANDATED PROGRAMS.—It is the intent of the Legislature that when county governments are required by law to participate in the funding of programs, the department shall consult with designated representatives of county governments in developing policies and service delivery plans for those programs.

~~(9) PROCUREMENT OF HEALTH SERVICES.—Nothing contained in~~

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~~chapter 287 shall require competitive bids for health services involving examination, diagnosis, or treatment.~~

Section 3. Subsection (5) of section 20.43, Florida Statutes, is amended to read:

20.43 Department of Health.—There is created a Department of Health.

(5) The department shall plan and administer its public health programs through its county health departments and may, for administrative purposes and efficient service delivery, establish up to 15 service areas to carry out such duties as may be prescribed by the State Surgeon General. The boundaries of the service areas shall ~~be the same as, or combinations of, the service districts of the Department of Children and Family Services established in s. 20.19 and, to the extent practicable,~~ ~~shall~~ take into consideration the boundaries of the jobs and education regional boards.

Section 4. Subsection (27) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(27) "District administrator" means the chief operating officer of each service district of the department as defined in s. 20.19 ~~(5)~~ and, where appropriate, includes any district administrator whose service district falls within the boundaries of a judicial circuit.

Section 5. Subsection (5) of section 394.78, Florida Statutes, is amended to read:

394.78 Operation and administration; personnel standards; procedures for audit and monitoring of service providers;

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resolution of disputes.—

~~(5) In unresolved disputes regarding this part or rules established pursuant to this part, providers and district health and human services boards shall adhere to formal procedures specified under s. 20.19(8)(n).~~

Section 6. Subsection (1) of section 420.622, Florida Statutes, is amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(1) The State Office on Homelessness is created within the Department of Children and Families ~~Family Services~~ to provide interagency, council, and other related coordination on issues relating to homelessness. ~~An executive director of the office shall be appointed by the Governor.~~

Section 7. During the 2013 regular legislative session, the Legislature shall adopt legislation to conform the Florida Statutes to the provisions of this act.

Section 8. 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)

2/7/2012
Meeting Date

Topic _____ Bill Number 2048 *(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)

2/7/12
Meeting Date

Topic DLF Rep Bill Number 2048 *(if applicable)*

Name DAN HENDRICKSON Amendment Barcode _____ *(if applicable)*

Job Title Asst Public Defender

Address 301 S Monroe 4th Flr N *Street* Phone 850 606 1037

Tall *City* FL *State* 32301 *Zip* E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Public Defenders 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:	SB 2080
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	OGSR/Lifeline Assistance Plan Participants
DATE:	February 2, 2012 REVISED:

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

I. Summary:

This bill is the result of the Governmental Oversight and Accountability Committee's Open Government Sunset Review of the public records exemption for personal identifying information of Lifeline Assistance Plan participants. This public records exemption will expire October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. This bill reenacts this public records exemption. In addition, the bill creates a penalty for the unauthorized intentional disclosure of the protected information by an officer or employee of the Public Service Commission.

Section 364.107, F.S. currently provides that personal identifying information of a participant in a telecommunication carrier's Lifeline Assistance Plan held by the Public Service Commission is confidential and exempt from disclosure under the public records requirements of s. 119.07(1), F.S., and Article 1, Section 24(a) of the Florida Constitution.

This bill substantially amends section 364.107 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.[1] One-hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory

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

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

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

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

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

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

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

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

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[2] FLA. CONST. art. I, s. 24.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* note 3.
[5] Section 119.011(12), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

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

Only the Legislature is authorized to create exemptions to open government requirements.[10] Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[11] A bill enacting an exemption[12] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[13]

Open Government Sunset Review Act

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

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

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

The Act also requires the Legislature to consider the following:

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[8] Florida Attorney General Opinion 85-62.
[9] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).
[10] *Supra* note 1.
[11] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).
[12] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[13] *Supra* note 1.
[14] Section 119.15, F.S.
[15] Section 119.15(6)(b),F.S.
[16] *Id.*

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

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

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

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

Lifeline Assistance Plan

The Lifeline Assistance Plan is part of a federal program designed to enable low-income households to afford basic local telephone service. Plan participants are eligible for a monthly credit. In Florida, the plan is administered by the Public Service Commission (PSC).[18] In order to enroll in the plan, a telecommunications customer must submit an application with the Public Service Commission that requires certain personal identifying information. Prospective participants must submit his or her name, address, telephone number, service provider, and the last four digits of his or her social security number.[19] In addition, any state agency that determines a person is eligible for Lifeline Assistance Plan service is required to immediately forward that person's information to the PSC to ensure that the person is automatically enrolled in the Lifeline program.[20]

Public Records Exemption for Lifeline Assistance Plan participants

Section 364.107, F.S., provides that personal identifying information of a participant in a telecommunication carrier's Lifeline Assistance Plan held by the Public Service Commission is

[17] *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).
[18] Section 364.10, F.S.
[19] Florida Public Service Commission, *Application for Link-Up Florida and Lifeline Assistance*, *available at* http://www.psc.state.fl.us/utilities/telecomm/lifeline/LifelinePDFs/ApplicationEnglish.pdf.
[20] Section 364.10(2)(g)(2), F.S.

confidential and exempt from disclosure under the public records requirements of s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution.

This public records exemption specifies that the protected information may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.[21] The exemption also authorizes an officer or employee of a telecommunications carrier to intentionally disclose the information only as:

- Authorized by the customer;
- Necessary for billing purposes;
- Required by subpoena, court order, or other process of court;
- Necessary to disclose to an agency as defined in s. 119.011 or a governmental entity for purposes directly connected with implementing service for, or verifying eligibility of, a participant in a Lifeline Assistance Plan or auditing a Lifeline Assistance Plan; or
- Otherwise authorized by law.

The exemption provides that any officer or employee of a telecommunications carrier who otherwise intentionally discloses the protected information commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Open Government Sunset Review of Section 364.107, F.S.

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Governmental Oversight and Accountability Committee recommended that the Legislature retain the public records exemption found in s. 364.107, F.S., which makes personal identifying information of Lifeline Assistance Plan participants held by the Public Service Commission confidential and exempt from disclosure.

The Open Government Sunset Review of this exemption concluded that there is a public necessity to continue to protect information of a sensitive personal nature concerning the participant and that without the exemption, the effective and efficient administration of this program would be impaired. The Sunset Review also recommended amending the current statute to provide that an officer or employee of the Public Service Commission who intentionally discloses the protected information in violation of the exemption's provisions is subject to the provided penalty, in addition to the officers and employees of a telecommunications carrier who are already subject to the penalty.

III. Effect of Proposed Changes:

Section 1 amends s. 364.107, F.S., reenacts and saves from repeal the public records exemption for personal identifying information for Lifeline Assistance Plan participants; and provides that an officer or employee of the Public Service Commission who intentionally discloses the exempt information commits a misdemeanor of the second degree.

[21] Federal Communications Commission (FCC) rules currently require at least twice-yearly verification that a participant still qualifies for the plan.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this bill does not expand the existing public records exemption, passage is not subject to the two-thirds vote requirement by both houses of the Legislature. The bill complies with the requirement of Article I, section 24 of the State Constitution that public records and meetings exemptions may only be addressed in legislation separate from substantive changes in law.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

By the Committee on Governmental Oversight and Accountability

585-02462-12 20122080__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 364.107, F.S., relating to an exemption from public records requirements for personal identifying information of Lifeline Assistance Plan participants; providing a penalty for intentional disclosure of confidential and exempt information by an officer or employee of the Public Service Commission; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 364.107, Florida Statutes, is amended to read:

364.107 Public records exemption; Lifeline Assistance Plan participants.—

(1) Personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan under s. 364.10 held by the Public Service Commission is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Information made confidential and exempt under subsection (1) may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

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

585-02462-12 20122080__

(3)(a) An officer or employee of a telecommunications carrier shall not intentionally disclose information made confidential and exempt under subsection (1), except as:

1. Authorized by the customer;

2. Necessary for billing purposes;

3. Required by subpoena, court order, or other process of court;

4. Necessary to disclose to an agency as defined in s. 119.011 or a governmental entity for purposes directly connected with implementing service for, or verifying eligibility of, a participant in a Lifeline Assistance Plan or auditing a Lifeline Assistance Plan; or

5. Otherwise authorized by law.

(b) Nothing in this section precludes a telecommunications carrier from disclosing information made confidential and exempt under subsection (1) to the extent such information is otherwise publicly available or from disclosing to a customer his or her own account record through telephonic means.

(4) ~~(c)~~ Any officer or employee of a telecommunications carrier or of the Public Service Commission who intentionally discloses information in violation of this section ~~paragraph (a)~~ commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 2082
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	OGSR/Florida Workers' Compensation Joint Underwriting Association
DATE:	February 2, 2012 REVISED:

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

I. Summary:

This bill is the result of the Governmental Oversight and Accountability Committee's Open Government Sunset Review of the public records and meetings exemption for certain records and meetings held by the Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA). This public records and meetings exemption is subject to the Open Government Sunset Review Act, s. 119.15, F.S., and will expire October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. This bill reenacts the public records exemption. The bill also removes redundant language currently in the exemption.

Section 627.3121, F.S., currently provides that certain records and meetings held by the JUA are confidential and exempt from the public records requirements found in s. 119.07(1), F.S. and Article I, Section 24(a) of the Florida Constitution, and from the public meetings requirements found in s. 286.011, F.S., and Article I, Section 24(b) of the Florida Constitution. The public records and meetings exemption specifies circumstances under which the protected information may be disclosed.

This bill substantially amends section 627.3121 of the Florida Statutes.

II. Present Situation:

Florida's Public Records and Public Meetings Laws

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

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

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

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

Unless specifically exempted, all agency[4] records are available for public inspection. The term "public record" is broadly defined to mean:

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

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

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[1] Section 1390, 1391 Florida Statutes. (Rev. 1892).
[2] Article I, s. 24, Fla. Constitution.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[5] Section 119.011(12), F.S.

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

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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

Open Government Sunset Review Act

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

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[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Art. I, s. 24(c), Fla. Constitution.
[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c), Fla. Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.

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

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[15]

The Act also requires the Legislature to consider the following:

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

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.[16] The Legislature is only limited in its review process by constitutional requirements.

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

> … notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Florida Workers' Compensation Joint Underwriting Association, Inc.

The Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA), created by the Legislature in 1993, is a nonprofit, self-funding entity that is the insurer of last resort for

[15] Section 119.15(6)(b), F.S.
[16] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

employers who are unable to secure workers' compensation insurance coverage in the voluntary market.[17] The JUA board consists of: three members appointed by the Financial Services Commission; two members representing the top 20 domestic insurers writing workers' compensation; two members representing the top 20 foreign insurers writing workers' compensation; one person appointed by the largest property and casualty insurance agents' association; and the Consumer Advocate for the Department of Financial Services.[18]

The Office of the Attorney General has previously stated that other joint underwriting associations are subject to public records requirements.[19] The Attorney General's Office has opined that residual markets are "agencies" as defined in Ch. 119, F.S., and are accordingly subject to provisions of the Sunshine Law in Ch. 286, F.S., unless specifically exempted from the provisions.[20]

Public Records and Meetings Exemption Under Review

Section 627.3121, F.S. provides that the following records and portions of meetings held by the Florida Workers' Compensation Joint Underwriting Association are confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- Underwriting files, except that a policyholder or an applicant is authorized access to his or her own underwriting files;
- Claims files until the termination of all litigation and settlement of all claims arising out of the same accident, except that portions of the claims files may remain confidential or exempt if otherwise provided by law;
- Records obtained or generated by an internal auditor until the audit is completed, or if the audit is part of an investigation, until the investigation is closed or ceases to be active;
- Proprietary information licensed to the JUA under contract when the contract requires the association to maintain the confidentiality;
- Medical records, which include information relating to the medical condition or medical status of an individual;
- All records relative to the participation of an employee in an employee assistance program, except as otherwise provided in s. 440.102(8);
- Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations;
- Reports regarding suspected fraud or other criminal activity and producer appeals and related reporting regarding suspected misconduct until the investigation is closed or ceases to be active;
- Information secured from the Department of Revenue regarding payroll information and client lists of employee leasing companies authorized under ss. 440.381 and 468.529, F.S.;
- A public record prepared by an attorney retained by the association to protect or represent the interests of the association or prepared at the attorney's express direction, that reflects a

[17] Florida Workers' Compensation Joint Underwriting Association, Inc., http://www.fwcjua.com/ (last visited Jan. 18, 2012). *See also* section 627.311(5)(a), F.S.
[18] Section 627.311(5)(b), F.S.
[19] *See* Attorney General Opinion 94-32.
[20] *Id.*

mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association.

- That portion of a meeting of the association's board of governors or any subcommittee thereof at which exempt records are discussed; all exempt portions must be recorded and transcribed and preserved for a minimum of 5 years; and
- The transcript and minutes of exempt portions of meetings at which confidential and exempt records are discussed until termination of all litigation and settlement of all claims with regard to that claim.

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Governmental Oversight and Accountability Committee recommended that the Legislature retain the public records and meetings exemption established in s. 627.3121, F.S. The recommendation was made in light of the information gathered for the Sunset Review, which indicated that a public necessity continues to exist in maintaining the exemption in order to promote the efficient and effective administration of a governmental program, to protect information of a sensitive personal nature concerning individuals, and to protect information of a confidential nature concerning entities. The Sunset Review also recommended amending s. 627.3121(1)(e) from its current language to "medical information" to remove superfluous language. Additionally, use of the term "medical information" is more consistent with definitions in other statutory provisions.

III. Effect of Proposed Changes:

Section 1 amends s. 627.3121, F.S., reenacts and saves from repeal the public records and meetings exemption for the Florida Workers' Compensation Joint Underwriting Association; removes superfluous language to create the term "medical information."

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

585-02460-12 20122082__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 627.3121, F.S., which provides an exemption from public records requirements for records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., and an exemption from public meetings requirements for meetings of the association's board of governors, or a subcommittee of the association's board, at which confidential and exempt records are discussed; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Section 627.3121, Florida Statutes, is amended to read:

627.3121 Public records and public meetings exemptions.—

(1) The following records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Underwriting files, except that a policyholder or an applicant shall be provided access to his or her own underwriting files.

(b) Claims files until termination of all litigation and the settlement of all claims arising out of the same accident, except that portions of the claims files may remain confidential

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or exempt if otherwise provided by law.

(c) Records obtained or generated by an auditor pursuant to a routine audit until the audit is completed or, if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

(d) Proprietary information licensed to the association under contract if the contract requires the association to maintain the confidentiality of such information.

(e) Medical ~~records, which include~~ information relating to the medical condition or medical status of an individual.

(f) All records relative to an employee's participation in an employee assistance program upon the entrance of the employee into the program, except as otherwise provided in s. 440.102(8).

(g) Information relating to negotiations for financing, reinsurance, reinsurance commutation agreements, depopulation, or contractual services until the conclusion of the negotiations.

(h) Reports provided to or submitted by the association regarding suspected fraud or other criminal activity and producer appeals and related reporting regarding suspected misconduct until such investigation is closed or ceases to be active.

(i) Information received from the Department of Revenue regarding payroll information and client lists of employee leasing companies obtained pursuant to ss. 440.381 and 468.529.

(j) A public record prepared by an attorney retained by the

association to protect or represent the interests of the association, or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association. This protection is not waived by the release of such public record to another employee or officer of the same association or any person consulted by the association attorney.

(2)(a) The association may release confidential and exempt underwriting files and claims files to:

1. A carrier that is considering underwriting a risk insured by the association;

2. A producer seeking to place such a risk with such a carrier; or

3. Another entity seeking to arrange voluntary market coverage for association risks.

(b) Prior to the release authorized in paragraph (a), the carrier, producer, or other entity must agree in writing, notarized and under oath, to maintain the confidential and exempt status of such file until that carrier, producer, or other entity agrees to underwrite the risk or provide voluntary market coverage.

(3) Records made confidential and exempt by this section may be released, upon written request, to another agency in the performance of that agency's official duties and responsibilities.

(4)(a) That portion of a meeting of the association's board of governors, or any subcommittee of the association's board, at which records made confidential and exempt by this section are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the

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

State Constitution.

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

(c) Subject to this section and s. 119.021(2), the court reporter's notes of any exempt portion of a meeting shall be retained by the association for a minimum of 5 years.

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

2. Those portions of the transcript or the minutes pertaining to a confidential and exempt claims file are no longer confidential and exempt upon termination of all litigation with regard to that claim.

~~(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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 2084
INTRODUCER:	Governmental Oversight and Accountability Committee and Governmental Oversight and Accountability Committee
SUBJECT:	State Employment
DATE:	February 7, 2012 REVISED:

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

Please see Section VIII. for Additional Information:

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

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,

[1] Chapter 92-279, Laws of Florida.

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. 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.

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[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).
[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.*

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 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]

[9] Section 110.1245(3)-(5), F.S.
[10] Section 110.131(2), F.S.
[11] Section 110.131(7), F.S.

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; 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

[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.

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]

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

[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).
[23] Section 14.202, F.S.

Section 6 creates s. 110.1056, F.S., providing that the Department of Management Services may periodically audit agency records to determine compliance with Chapter 110, F.S. and department rules.

Section 7 transfers, renumbers, and amends s. 110.405, F.S. to s. 110.106, F.S., clarifying language governing advisory committees organized by the Secretary of Management Services to provide consultation on matters affecting the State Personnel System.

Section 8 creates s. 110.1065, F.S., establishing the general employment policies and requirements of the State Personnel System; granting rulemaking authority to the Department of Management Services to administer this section.

Section 9 transfers, renumbers, and amends s. 110.233, F.S. to s. 110.1075, F.S., replacing references to the "Career Service" with "Civil Service"; granting rulemaking authority to the Department of Management Services to administer this section.

Section 10 amends s. 110.1099, F.S., clarifying language relating to elective education and professional development opportunities for state employees.

Section 11 transfers, renumbers, and amends s. 110.235, F.S. to s. 110.1115, F.S., providing that state agencies shall implement professional development programs for employees; providing that state agencies shall provide requested information to the Department of Management Services; specifying subjects for training programs administered by each agency; providing that each individual agency is responsible for ensuring that personnel are trained in the administration of state personnel system policies and procedures; permitting the Department of Management Services to coordinate with state universities and community colleges to sponsor conferences relating to human resources management; permitting the Department of Management Services to open such conferences to state and local public employers with common interests; granting rulemaking authority to the Department of Management Services to administer this section.

Section 12 amends s. 110.112, F.S., removing the Administration Commission approval requirement for agencies' affirmative action plans; requiring the Department of Management Services to include the demographic composition of the State Personnel System in its annual workforce report; requiring agencies to provide the Department of Management Services data regarding the demographic composition of their employees; requiring each state agency to ensure freedom from discrimination in employment through application of relevant state and federal laws; requiring the phrase "An Equal Opportunity Provider" be included in all recruitment literature listing State Personnel System vacancies; granting rulemaking authority to the Department of Management Services to administer this section.

Section 13 creates s. 110.1135, F.S., requiring each state agency to keep accurate records of all hours of work performed and any authorized leave taken by each employee; specifying that the ultimate responsibility for the accuracy and maintenance of attendance and leave records lies with the agency head.

Section 14 amends s. 110.116, F.S., replacing references to the "Career Service" with "Civil Service"; replacing references to the "personnel information system" with "human resources

information system"; granting rulemaking authority to the Department of Management Services to administer this section.

Section 15 amends s. 110.1245, F.S., removing references to government employers outside the State Personnel System; providing that state agencies may pay employees bonuses in accordance with criteria and instructions included in the annual General Appropriations Act; providing that an employee may not receive bonus awards totaling more than $1,000 per fiscal year; requiring agencies to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the dollar value and number of such cash awards given in the previous fiscal year by September 1st of each year; allowing agency heads to issue noncash tokens of recognition to employees not exceeding $150; specifying which classes of employees are eligible to receive noncash tokens of recognition.

Section 16 amends s. 110.125, F.S., providing that administrative expenses and costs paid by individual state agencies to be based on the number of authorized full-time equivalent positions appropriated to the agency, the average number of OPS employees paid by the agency, and the total administrative expenses and costs of operating the State Personnel System; specifying that governmental entities outside the State Personnel System that use or receive services from the personnel system must pay the Department of Management Services, 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; providing that a probationary period is capped at 18 months. This section clarifies that an employee that has attained merit status in one position, is promoted to another position and does not meet performance standards of the promotional position *shall* be returned to the original position, or to a position with substantially similar duties and responsibilities, if such a position is available. 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; permitting state agencies to submit a furlough plan for approval by the Governor or the Chief Justice of the Supreme Court; requiring approved furlough plans to be submitted to the Legislative Budget Commission; requiring the Legislative Budget Commission to consult with the Revenue Estimating Conference regarding the deficit; providing that agencies may also impose furloughs as directed by the Legislature in the General Appropriations Act in the event of a deficit.

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.)

CS by Governmental Oversight and Accountability – February 7, 2012:
The CS amended the original bill in that it:

- Provides that if a state agency certifies or projects a deficit in an agency fund that supports salary and benefit appropriations, the agency may propose a detailed plan to furlough employees. The plan must be approved by the Governor or Chief Justice of the Supreme Court, and then sent to the Legislative Budget Commission. To ensure that the agency is truly facing a deficit, the Legislative Budget Commission must consult with the Revenue Estimating Conference regarding the deficit.
- Providing an 18 month cap to probationary periods and clarifying that when an employee that has attained merit status in one position is promoted to another position and does not meet performance standards of the promotional position, they shall be returned to the original position, or to a position with substantially similar duties and responsibilities, if such a position is available.
- Restoring to current law a provision guaranteeing collective bargaining rights.

B. Amendments:

None.

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

639338

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 292 - 294

and insert:

(3) ~~(5)~~ ~~Nothing in~~ This chapter does not ~~shall be construed either to~~ infringe upon or ~~to~~ supersede the rights guaranteed to public employees under chapter 447.

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 1899 - 1908
and insert:
The length of the probationary period may not exceed 18 months. 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 failing to meet the established performance standards of the

101204

promotional position while in probationary status, the agency, before such dismissal, shall return the employee to his or her former position or to a position having substantially similar duties and

463212

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
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The Committee on Governmental Oversight and Accountability (Ring) recommended the following:

Senate Amendment

Delete lines 3108 - 3125

and insert:

112.920 ~~110.1225~~ Furloughs.—If ~~When~~ a deficit is projected or certified to occur ~~by the Revenue Estimating Conference~~ pursuant to s. 216.221 ~~216.136(3),~~ in any state agency fund that supports salary and benefit appropriations for state employees, the affected state agency or the judicial branch, upon approval of the Governor or the Chief Justice of the Supreme Court, as applicable, ~~Administration Commission~~ may propose a furlough plan and related budget amendments for consideration by the

463212

Legislative Budget Commission. The commission, after consulting with the Revenue Estimating Conference regarding the projected deficit, may ~~to the Legislature, which must~~ approve or disapprove such plan and budget amendments in total. This section is subject to the notice and review procedures set forth in s. 216.177. 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.

(1) 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 state employees for a specified fiscal year, a state agency or the judicial branch may also impose furloughs as directed by the Legislature in the General Appropriations Act.

(2) For the purposes of this section, the term "furlough" means a temporary reduction in the regular hours of employment administered as leave without pay.

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

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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.

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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

APPEARANCE RECORD

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

2/7/12
Meeting Date

Topic State Employment

Bill Number 2084 *(if applicable)*

Name Doug Martin

Amendment Barcode *(if applicable)*

Job Title Legislative Dir.

Address 3064 Highland Oaks Terr. *Street*

Phone 850-212-7447

Tallahassee FL 32301 *City State Zip*

E-mail dmartin@afscmefl.org

Speaking: ☐ For ☐ Against ☐ Information

Representing AFSCME Florida Council 79

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/7/2012
Meeting Date

Topic

Bill Number 2084 *(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.

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S-001 (10/20/11)