

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Dockery, Vice Chair

MEETING DATE: Thursday, January 26, 2012

TIME: 1:30 —3:30 p.m.

PLACE: *James E. "Jim" King, Jr. Committee Room*, 401 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Dockery, Vice Chair; Senators Flores, Lynn, Montford, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1112 Altman (Identical H 4103)	Certification of Minority Business Enterprises; Deleting provisions establishing the Minority Business Certification Task Force, requiring that criteria for the certification of minority business enterprises be approved by the task force, and authorizing the task force to amend the statewide and interlocal agreement for the certification of minority business enterprises, etc.	
		CM 01/26/2012 BC	
2	SB 1398 Gardiner (Similar CS/H 7023)	Regional Workforce Boards; Citing this act as the "Regional Workforce Boards Accountability Act"; authorizing the chief elected official in the area of a regional workforce board to appoint representatives to the board if authorized by the Governor; requiring members and the executive director of a regional workforce board to make financial disclosures; providing that the selection of the chair of a regional workforce board is subject to the approval of the Governor; providing that members of a regional workforce board serve at the pleasure of the Governor; requiring that staff of the Department of Economic Opportunity, under the direction of Workforce Florida, Inc., assign staff to review the performance of regional workforce boards, etc.	
		CM 01/26/2012 BC	
3	SB 1416 Bogdanoff (Identical H 7027, Compare H 7041, CS/S 1204)	Unemployment Compensation; Revising a short title to rename "unemployment compensation" as "reemployment assistance"; renaming the Unemployment Appeals Commission as the Reemployment Assistance Appeals Commission; providing scoring requirements relating to initial skills reviews; prohibiting benefits from being charged to the employment record of an employer that is forced to lay off workers as a result of a manmade disaster of national significance; deleting an exemption from public records requirements for unemployment compensation records and reports, etc.	
		CM 01/26/2012 BC	

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Thursday, January 26, 2012, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1324 Norman (Compare H 1323)	Theft of Copper; Requiring that a secondary metals recycler execute a bond in a specified amount for the benefit of any person wrongfully injured by malfeasance, misfeasance, neglect of duty, or incompetence by the secondary metals recycler for purchasing regulated metals property stolen from an electrical substation site; prohibiting a secondary metals recycler from purchasing regulated metals property from a seller under certain circumstances; providing that a person who removes or assists another to remove copper or other nonferrous metals from an electrical substation site commits a felony of the first degree, etc. CM 01/26/2012 CJ BC	
5	SB 1434 Gibson (Similar H 1199)	Tax Refund Program for Qualified Target Industry Businesses; Permitting a business that fails to satisfy the terms of its agreement with the Department of Economic Opportunity to apply for a prorated tax refund, etc. CM 01/26/2012 BC	
6	SB 596 Storms (Identical H 545)	Employee Compensation/Nongovernmental Organizations, Quasi-governmental Entities, and Not-for-profit Organizations; Providing a limitation on the salaries of employees of certain nongovernmental organizations, quasi-governmental entities, and not-for-profit organizations; providing a means for approval of salaries in excess of such limitation, etc. CM 01/26/2012 GO BC	
7	SB 676 Smith (Identical H 307)	Workers' Compensation Certificate-of-exemption Process; Revising requirements relating to election of exemption from coverage to include applicability to members of limited liability companies; revising requirements for submitting a notice of election of exemption; revising duties of the Department of Financial Services relating to the expiration of certificates of exemption; expanding applicability of requirements relating to certificates of exemption, etc. BI 01/09/2012 Favorable CM 01/19/2012 Temporarily Postponed CM 01/26/2012 BC	

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Thursday, January 26, 2012, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 678 Smith (Identical H 649)	State Contracts; Requiring all state contracts of more than a certain amount to require any call-center services to be staffed by persons located within the United States, etc. GO 01/09/2012 Favorable CM 01/19/2012 Temporarily Postponed CM 01/26/2012 BC	

- 9 Presentation by the Department of Economic Opportunity on services for military veterans

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Board of Directors, Enterprise Florida, Inc.			
10	Dempsey, Hayden R. ()	09/30/2015	
	Kise, Christopher M. Esquire (Tallahassee)	09/13/2015	
	Rodriguez, Henry (Nokomis)	09/30/2014	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate committee page on the Senate's website, www.flsenate.gov.

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 Commerce and Tourism Committee

BILL: SB 1112

INTRODUCER: Senator Altman

SUBJECT: Certification of Minority Business Enterprises

DATE: January 25, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Philo	Hrdlicka	CM	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1112 deletes provisions that provide for the establishment and responsibilities of the Minority Business Certification Task Force (task force). The task force is a statutorily created advisory group attached to the Office of Supplier Diversity within the Department of Management Services (DMS). The task force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. The Florida Advisory Council on Small and Minority Business Development can pursue reciprocal agreements with other certification entities under its existing statutory authority, and has already provided input and guidance in this context to the Office of Supplier Diversity.

Abolishing the task force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of DMS.

There is no fiscal impact associated with the abolishment of the non-operational task force.

This bill substantially amends s. 287.0943, F.S.

II. Present Situation:

During the 2010 Regular Session, the Department of Management Services was among the departments that the Legislature reviewed under the Florida Government Accountability Act.^{1,2}

¹ See ss. 11.901-11.920, F.S. (2010). The Florida Government Accountability Act was repealed during the 2011 Regular Session. See ch. 2011-34, L.O.F. (2011).

² See s. 11.905, F.S. (2010).

The act previously subjected most state agencies to a sunset review process to determine whether the agency should be retained, modified, or abolished. Part of that review included an examination of agency advisory committees.³

Two statutorily created advisory committees, the Florida Advisory Council on Small and Minority Business Development and the Minority Business Certification Task Force, are assigned to the Office of Supplier Diversity within the Department of Management Services (DMS) to assist in specified responsibilities.⁴

The Minority Business Certification Task Force (task force) was created in s. 287.0943, F.S., to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises.^{5,6} The primary purpose of the task force is to propose a final list of the criteria and procedures for consideration by the Secretary of DMS. The task force is authorized to seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the reliability of the certification criteria developed.

The 19-member task force is intended to be regionally balanced and primarily comprised of officials representing governmental entities who administer programs to assist minority businesses procure or develop government-sponsored programs. Six organizations (Florida League of Cities, Florida Association of Counties, Florida School Boards Association, Association of Special Districts, Florida Association of Minority Business Enterprise Officials, and Florida Association of Government Purchasing Officials) are each authorized to appoint two members to the task force. The Office of Supplier Diversity within DMS appoints seven members, consisting of three representatives of minority business enterprises, two office representatives, and two at-large members.

The task force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. DMS placed the criteria in the Florida Administrative Code over 14 years ago.⁷ According to the Office of Supplier Diversity, the task force has not met in recent years primarily because the use of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2003.⁸ Although the Secretary of DMS wishes to reestablish reciprocal agreements with other certification entities, such as cities

³ See s. 11.906, F.S. (2010).

⁴ The Office of Supplier Diversity's function is to improve business and economic opportunities for Florida minority, women, and service-disabled veteran business enterprises. To accomplish this goal the primary functions of the office include certification of business enterprises, advocacy and outreach, and matchmaking activities. See DMS website for information on the responsibilities of the office at http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd.

⁵ See ch. 94-322, L.O.F.

⁶ Pursuant to s. 20.03(8), F.S., a task force created by specific statutory enactment is, by definition, limited to "a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment."

⁷ Office of Program Policy Analysis & Government Accountability Sunset Review Report, *Department of Management Services Advisory Committees Assessment*, Report No. 08-S11 (Dec. 2008) (OPPAGA Sunset Review Report), at 4 (available online at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/08-S11.pdf>, and on file with the Senate Commerce and Tourism Committee).

⁸ *Id.* This information was also confirmed by Mr. Thad Fortune, Certification Administrator (Senior Manager), Office of Supplier Diversity, DMS, via telephone on January 13, 2012.

and school districts, it is not necessary to reconvene the task force to pursue such agreements. Instead, the Florida Advisory Council on Small and Minority Business Development can pursue reciprocal agreements with other certification entities under its existing statutory authority to advise and assist DMS in this general context.⁹

Abolishing the task force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of DMS.¹⁰

III. Effect of Proposed Changes:

The bill abolishes the Minority Business Certification Task Force. Abolishment will have no effect since the statutory responsibility of the task force has been fulfilled, the task force has not been functional for several years, and the statutory authority of the Florida Advisory Council on Small and Minority Business Development permits the council to provide guidance and assistance to the Office of Supplier Diversity in this context.¹¹

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.

⁹ See s. 287.0947, F.S.; OPPAGA Sunset Review Report, at 4.

¹⁰ OPPAGA Sunset Review Report, at 4.

¹¹ According to the Office of Supplier Diversity, the office has begun reaching out to local governments for reciprocal agreements, now referred to as certification agreements. The office has already received some guidance from the Florida Advisory Council on Small and Minority Business Development relating to reciprocal agreements. This information was confirmed by Mr. Thad Fortune at DMS via telephone on January 13, 2012. Mr. Fortune advised that the renewal of use of the task force had been discussed but not pursued by DMS.

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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military Affairs, Space, and Domestic Security,
Chair
Budget - Subcommittee on Finance and Tax,
Vice Chair
Budget
Budget - Subcommittee on Higher Education
Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Higher Education
Reapportionment
Regulated Industries

SENATOR THAD ALTMAN

24th District

January 11, 2012

The Honorable Nancy Detert, Chair
Committee on Commerce and Tourism
318 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

JAN 11 2012

COMMERCE

Dear Chair Detert:

Senate Bill 1112, relating to Certification of Minority Business Enterprises, has been referred to your committee for the first committee of reference.

I respectfully request SB 1112 be placed on the Commerce and Tourism committee agenda at your earliest convenience. Thank you for your consideration and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Thad Altman

TA/kj

cc: Jennifer Hrdlicka, Staff Director
310 Knott Building

posted 1/11/12
psb

REPLY TO:

- ☐ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- ☐ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5053

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
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Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Higher Education
Reapportionment
Regulated Industries

SENATOR THAD ALTMAN

24th District

January 26, 2012

The Honorable Nancy Detert, Chair
Committee on Commerce & Tourism
318 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Detert:

Senate Bill 1112, relating to *Certification of Minority Business Enterprises* has been placed on the agenda for the Commerce and Tourism Committee, meeting January 26, 2012.

Unfortunately due to a scheduling conflict, I will not be able to attend. However, my legislative assistant, Rick Kendust, will be in attendance to present the bill. Thank you and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Thad Altman".

Thad Altman

cc: Jennifer Hrdlicka, Staff Director
325 Knott Building

REPLY TO:

- ☐ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- ☐ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5053

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

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 Commerce and Tourism Committee

BILL: SB 1398

INTRODUCER: Senator Gardiner and Senator Fasano

SUBJECT: Regional Workforce Boards

DATE: January 25, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Pre-meeting
2.			BC	
3.				
4.				
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I. Summary:

SB 1398 amends statutes related to Florida's workforce system, and includes measures designed to increase the accountability of the workforce system.

Specifically the bill:

- Limits the total membership of each local regional workforce board to the minimum membership required under federal law. However, upon approval by the Governor the local elected official may appoint additional members;
- Requires each member and the executive director or person responsible for the operational and administrative functions of a regional workforce board to file a disclosure of financial interest pursuant to s. 112.3145, F.S., if they are not already required to file a financial disclosure pursuant to s. 8, art. II, of the State Constitution, or s. 112.3144, F.S.;
- Provides that the chair and the executive director or person responsible for the operational and administrative functions of a regional workforce board shall serve subject to approval of and at the pleasure of the Governor;
- Provides authority for the Governor to remove any member of a regional workforce board for cause;
- Requires the regional workforce board to develop an annual budget for the purpose of carrying out its duties that must be approved by the local elected official and submitted to Workforce Florida, Inc., within 2 weeks of approval;
- Requires Workforce Florida, Inc., to evaluate the development of a single, statewide workforce-system brand for Florida and submit a report to the Governor by a date certain;

- Revives from expiration the provision which prohibits the regional workforce boards from utilizing state or federal funds for meals, food, beverages, entertainment, or recreational activities;
- Revives from expiration the provision which requires that any contract between a regional workforce board and a member of the board, or a contract between a board and a relative of a member or employee of the board, has to be approved by a two-thirds vote of the board; and
- Saves from repeal a provision that provides that state workforce services participants in an adult or youth work experience activity are considered employees of the state for the purpose of workers' compensation coverage.

This bill amends ss. 445.007 and 445.009, F.S.

II. Present Situation:

Florida's Workforce System

The Workforce Innovation Act of 2000 was passed in an effort to better connect the state's economic development strategies with its workforce development system.¹ The act established a three-tier system for the delivery of workforce services.²

The Department of Economic Opportunity (DEO) is Florida's lead state workforce agency.³ However, Workforce Florida, Inc., (WFI) sets the state's workforce development policy and guidance.⁴ Workforce services in Florida are provided by 24 regional workforce boards (RWB or board) who deliver services through nearly 90 One-Stop Career Centers around the state.

WFI is a nonprofit corporation that provides state-level policy, planning, performance evaluation, and oversight to DEO and the 24 regional workforce boards.⁵ DEO manages the performance-based contract with WFI for the statewide administration and coordination of workforce services. DEO assists WFI in developing and disseminating policies, providing technical assistance, and monitoring a variety of workforce programs.

DEO is the state agency which receives the federal funds for employment-related programs, such as Welfare to Work, Temporary Assistance to Needy Families, and the Workforce Investment Act, and distributes these funds to the state's 24 RWBs. The workforce services programs are over 96 percent federally funded.⁶ DEO is responsible for financial and performance reports which are provided to the U.S. Department of Labor and other federal organizations.

Each RWB develops a local plan for using the funds provided by DEO and oversees workforce development activities in the region. The boards also select contractors to operate local One-Stop

¹ Chapter 2000-165, L.O.F. See staff analysis for SB 2050 and HB 1135 (2000).

² See ch. 445., F.S.

³ Primarily through the Division of Workforce Services.

⁴ WFI is Florida's state workforce investment board. See 29 U.S.C. 2821.

⁵ Section 445.004, F.S.

⁶ Data from the Sunset Review Report for the Agency for Workforce Innovation (June 30, 2010), on file with the Commerce and Tourism Committee.

Career Centers. The One-Stop Career Centers deliver employment services to job seekers and employers. Services include job placement and recruitment assistance as well as funding for skills training.⁷

Each RWB operates under a charter approved by WFI; they also enter into performance based memorandums of understanding for program support services provided by DEO.⁸ DEO monitors the RWB and One-Stop Career Center activities to ensure that they comply with federal and state requirements. DEO provides One-Stop Program Support services (workforce program information, guidance, training, and technical assistance) to the RWBs.

Regional Workforce Boards

The service areas of the RWBs align with community college system.⁹ Approval of each RWB's service plan and budget is done by the local government or local coalition (for boards whose service areas serve multiple counties).¹⁰ Each board is allowed to implement the policies based upon the economic development, business, and workforce needs of its particular region of the state.¹¹

The county or city governing bodies, within an RWB's designated service area, enter into an inter-local agreement to establish the local parameters under which the RWB will operate. This includes the manner in which board members are appointed. Once board appointments are made, board members select a chair. The board chair may serve for a term of not more than 2 years and cannot serve more than two terms. Board membership must comply with the requirements outlined in federal workforce law.¹² Specifically, the Governor of the state, in partnership with the state board, shall establish criteria for use by chief elected officials in the local areas for appointment of members of the local boards. Such criteria shall require, at a minimum, that the membership of each local board shall include the following:

- Representatives of business in the local area, who:
 - Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;
 - Represent businesses with employment opportunities that reflect the employment opportunities of the local area; and
 - Are appointed from among individuals nominated by local business organizations and business trade associations;
- Representatives of local educational entities, including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and postsecondary educational institutions (including representatives of community colleges, where such entities exist), selected from among individuals

⁷ Sections 445.007 and 445.009, F.S.

⁸ Section 445.009(3), F.S.

⁹ See also 29 U.S.C. 2831.

¹⁰ 29 U.S.C. s. 2832(3). Additionally, each local plan is required to be submitted to the Governor for approval. 29 U.S.C. 2833.

¹¹ See s. 445.003, F.S.

¹² 29 U.S.C. s. 2832.

- nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities;
- Representatives of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations, or (for a local area in which no employees are represented by such organizations), other representatives of employees;
 - Representatives of community-based organizations (including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present);
 - Representatives of economic development agencies, including private sector economic development entities;
 - Representatives of each of the one-stop partners; and
 - Other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

The appointment of an executive director to staff a regional workforce board is made by the board members. Additionally, the chairman of the regional workforce board is elected by its members and is not subject to Senate confirmation.

Federal law defines the “chief elected official” as the chief elected executive officer of a unit of general local government in a local area.¹³ In a case in which a local area includes more than one unit of general local government, an agreement must be reached specifying each chief elected official’s role. In general, the chief elected official in a local or regional area shall serve as the local grant recipient for, and shall be liable for any misuse of, the grant funds allocated to the local or regional area.¹⁴

Contract Approval and Spending Prohibitions

Section 445.007(11), F.S., expired July 1, 2011, and had required that if a board enters into a contract with an organization or individual represented on the board of directors, (1) the contract must be approved by a two-thirds vote of the board, a quorum having been established, and (2) the board member who could benefit financially from the transaction must abstain from voting on the contract. In August 2011, WFI approved a policy prohibiting contracts between a board and a member of the board that has a relationship with the vendor, with certain exceptions.¹⁵

Section 445.007(10), F.S., expired July 1, 2011, and had prohibited state and federal funds from being used to pay for meals, food, or beverages for staff or board members of the RWBs, DEO, or WFI. However, preapproved, reasonable, and necessary per diem allowances and travel expenses were allowed for reimbursement as established in s. 112.061, F.S. Further, the section prohibited the use of state or federal funds for entertainment costs or recreational activities for RWB members and staff.

¹³ 29 U.S.C. s. 2801(6).

¹⁴ 29 U.S.C. s. 2832(3).

¹⁵ See materials from WFI Board of Directors meeting on August 18, 2011, available at <http://www.workforceflorida.com/Calendar/calendar2011.php> (last visited 1/20/2012).

Additionally, proviso language in the FY 2011-12 General Appropriations Act related to funding for boards set certain requirements:¹⁶

- Any expenditures by boards for “outreach,” “advertising,” or “public relations” must have a direct program benefit and shall be spent in strict accordance with all applicable federal regulations and guidance. Costs of promotional items, including but not limited to capes, blankets, clothing, and memorabilia, including models, gifts, and souvenirs, which exceed \$5,000 for outreach purposes must be approved prior to purchase by DEO.
- No funds may be used directly or indirectly to pay for meals, food, or beverages for board members, staff, or employees of regional workforce boards, WFI, or DEO except as expressly authorized by state law. Preapproved, reasonable, and necessary per diem allowances and travel expenses may be reimbursed.¹⁷
- No funds may be used for entertainment costs and recreational activities for board members and employees as these terms are defined in 2 C.F.R. part 230.¹⁸
- No funds may be used for any contract exceeding \$25,000 between a board and a member of that board that has any relationship with the contracting vendor, unless the contract has been reviewed by AWI and WFI.¹⁹

U.S. Department of Labor Investigation

Currently, the U.S. Department of Labor is conducting an on-going statewide investigation for misspending funds and fraud. The following boards have received subpoenas:

- Region 8 – First Coast Workforce Development, Inc. – Baker, Clay, Duval, Nassau, Putnam, St. Johns
- Region 11 – Center for Business Excellence – Flagler/Volusia
- Region 12 – Workforce Central Florida – Orange, Osceola, Seminole, Lake and Sumter
- Region 14 – Worknet Pinellas – Pinellas
- Region 15 – Tampa Bay Workforce Alliance – Hillsborough
- Region 17 – Polk County Workforce Development Board – Polk
- Region 19 – Heartland Workforce – DeSoto, Hardee, Highlands
- Region 21 – Workforce Alliance – Palm Beach
- Region 22 – Workforce One – Broward
- Region 23 – South Florida Workforce Investment Board – Miami-Dade/Monroe

Recent Spending Disallowed

As part of the state monitoring requirements, DEO also investigates complaints of misspending by RWBs. In recent years, spending was disallowed by the former Agency for Workforce Innovation (AWI) (calendar years 2010-2011), including:

- Tampa Bay Workforce Alliance –
 - AWI disallowed \$147,128.18 for food purchases and expenditures for activities, meetings, sponsorships, and the purchase of promotional materials by the board.

¹⁶ Line 2006, s. 6, ch. 2011-69, L.O.F.

¹⁷ Previously included in FY 2010-11 General Appropriations Act.

¹⁸ Id.

¹⁹ Id.

- Workforce Central Florida –
 - AWI disallowed a total of \$38,875.60 that the board could have saved by reimbursing employees instead of purchasing 20 cars for \$258,800.
 - AWI and the U.S. Department of Justice disallowed \$739,605 improperly spent on a legal settlement with SunTrust over a broken lease agreement.
- Polk County Workforce Development Board (Polk Works) –
 - AWI disallowed \$155,559 for revocations done to local One-Stop Career Centers because the board did not correctly seek bids for the upgrades and repairs.

Additionally, in the spring of 2010, AWI conducted a survey of boards, at the request of Senator Fasano, to determine the value of contracts and individual training account entered into between the board and board members or their relatives. The survey found:

- 574 related party contracts, about \$55.4 million (60 percent with public organizations (like community colleges); 22 percent with private non-profits; and 18 percent with private for-profits); and
- Compliance with state law about related party contract approval was inconsistent.

Funds disallowed and found to be misspent must be repaid; because of the federal law, if the regional workforce board cannot repay the fund, the responsibility may fall to the local governments.²⁰

In September 2011, Governor Rick Scott placed the Workforce Central Florida RWB on a 2 week probationary period, after which if certain steps had not been taken the board would have been subject to decertification.²¹ The required steps included that certain senior executive staff be relieved of their duties, including the CEO and president of the board, and that the then current board of directors be removed and replaced with a new board. The Governor's letter to the chair of the Central Florida Area Workforce Investment Consortium stated that the RWB had nearly \$5.3 million in reviewed expenditures that had been found not to be in compliance with federal fiscal requirements.²²

Financial Disclosures

Section 112.3145(2), F.S., requires the following:

- Each state or local officer and specified state employee to file a statement of financial interests no later than July 1 of each year;
- Each state or local officer and specified state employee must file a final statement of financial interests within 60 days after leaving his or her public position. The disclosure covers the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure; and
- Each state or local officer who is appointed and each specified state employee who is employed must file a statement of financial interests within 30 days from the date of

²⁰ See discussion of Regional Workforce Boards above.

²¹ Federal law vests such authority with the Governor.

²² Letter from Governor Rick Scott to Mayor Teresa Jacobs, Mayor of Orange County, dated September 21, 2011, on file with the Senate Commerce and Tourism Committee.

appointment or, in the case of a specified state employee, from the date on which the employment begins.

A 2008 opinion by the Commission on Ethics stated that “[a]ppointed and ex officio members of the board of directors of a regional workforce development board are not subject to the financial disclosure provisions in Section 112.3145, Florida Statutes.”²³

Workers’ Compensation Coverage

The Welfare Transition Program, the Food Stamp Employment and Training Program, and the Workforce Investment Act Program provide work experience for adult and youth participants.

In the Welfare Transition Program, participants engage in work experience as a condition for their continued receipt of cash assistance under the federal Temporary Assistance for Needy Families (TANF) Program. In the Food Stamp Employment and Training Program, certain participants are required to engage in work experience as a condition for their continued receipt of food stamp benefits. In the Workforce Investment Act Program, work experience is an activity that is primarily used for youth who have had limited exposure to the world of work.

Federal law requires that participants in a federally funded work experience activity must be covered either under the state workers’ compensation law or comparable insurance coverage must be secured. The cost for any workers’ compensation coverage provided under this proposal would be paid for by the applicable federal grant program. The overall cost would be lower if all participants were covered under the state’s plan rather than each regional workforce board and each individual service provider having to negotiate separate insurance coverage for their participants.

Section 445.009(11), F.S., allows a participant in an adult or youth work experience activity to be deemed an employee of the state for purposes of workers’ compensation coverage.²⁴ This subsection of statute is set to expire on June 30, 2012.

III. Effect of Proposed Changes:

SB 1398 creates the Regional Workforce Boards Accountability Act.

Section 2 amends s. 445.007, F.S., related to regional workforce boards to:

- Limit the total membership of each local RWB to the minimum membership required under federal law. However, upon approval by the Governor the local elected official may appoint additional members;
- Require each member and the executive director or person responsible for the operational and administrative functions of a RWB to file a disclosure of financial interest pursuant to s. 112.3145, F.S., if they are not already required to file a financial disclosure pursuant to s. 8, art. II, of the State Constitution, or s. 112.3144, F.S.;

²³ Florida Commission on Ethics, “Financial Disclosure: Applicability of Disclosure Law to Incorporated Workforce Development Board,” CEO 08-3 (January 30, 2008), on file with the Senate Commerce and Tourism Committee.

²⁴ Section 47, ch. 2011-147, L.O.F., amended this provision in order to implement Specific Appropriation 2008 of the 2011-2012 General Appropriations Act.

- Codify the federal law which sets the requirements for board chairs;
- Provide that the chair and the executive director or person responsible for the operational and administrative functions of a RWB shall serve subject to approval of and at the pleasure of the Governor;
- Provide authority for the Governor to remove any member of a RWB for cause, including engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, or official incompetence and irresponsibility;
- Require the RWB to develop an annual budget for the purpose of carrying out its duties that must be approved by the local elected official and submitted to WFI within two weeks of approval;
- Requires DEO, under the direction of WFI, to assign staff to meet with each RWB annually to review the board's performance and to certify that the board is in compliance with applicable state and federal law;²⁵
- Revives from repeal the provision which prohibits the regional workforce boards from utilizing state or federal funds for meals, food, beverages, entertainment, or recreational activities; and
- Revives from expiration the provision which requires that any contract between a regional workforce board and a member of the board, or a contract between a board and a relative of a member or employee of the board, has to be approved by a two-thirds vote of the entire board. Any such contract in excess of \$25,000 must also be reported to DEO and WFI within 30 days of approval.

Section 3 amends s. 445.009, F.S., to save from repeal a provision that provides that state workforce services participants in an adult or youth work experience activity are considered employees of the state for the purpose of workers' compensation coverage.

Section 4 requires WFI to evaluate the development of a single, statewide workforce-system brand for Florida and submit a report to the Governor by a date certain.

Section 5 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.

²⁵ Under current law, WFI is required to assign staff for these purposes, and does not specify that the staff may be from DEO.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill continues the state's current policy to provide that state workforce services participants in an adult or youth work experience activity are employees of the state for workers compensation coverage. This provision allows existing federal funds to be efficiently utilized and reduces the overall cost of workers' compensation coverage to the state.

DEO indicated that expenditures associated with the department would be insignificant as the duties inherited through the bill could be performed through existing resources.²⁶

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.

²⁶ DEO Bill Analysis for SB 1398 (January 9, 2012), on file with the Senate Commerce and Tourism Committee.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 108 - 116
and insert:

(b) The chair serves at the pleasure of the Governor. A chair shall be appointed ~~described in Pub. L. No. 105-220, Title I, s. 117(b)(2)(A)(i)~~ to serve for a term of no more than 2 years and shall serve no more than two terms.

(c) The executive director of the board or other person responsible for the operational and administrative functions of the board serves at the pleasure of the Governor.



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

And the title is amended as follows:

Delete lines 9 - 12

and insert:

providing that the chair and members of a regional
workforce board serve at the pleasure of the Governor;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 223 - 248
and insert:
the regional workforce board or a relative, as defined in s.
112.3143(1)(b), of a regional workforce board member or employee
of the board. Such contracts may ~~shall~~ not be executed before or
without the approval of Workforce Florida, Inc. Such contracts,
as well as documentation demonstrating adherence to this section
as specified by Workforce Florida, Inc., must be submitted to
the Department of Economic Opportunity ~~Agency for Workforce~~
~~Innovation~~ for review and recommendation according to criteria



639538

to be determined by Workforce Florida, Inc. Such contracts ~~between relatives, as defined in s. 112.3143(1)(b), of a board member or employee of a board~~ must be approved by a two-thirds vote of the ~~entire~~ board, a quorum having been established; all conflicts of interest must be disclosed before ~~prior to~~ the vote; and any member who may benefit from the contract, or whose relative may benefit from the contract, must abstain from the vote ~~and the contract must be reviewed and approved as stated above~~. Contracts under \$25,000 between a regional workforce board and a member of that board or between relatives, as defined in s. 112.3143(1)(b), of a board member or employees of a board are not required to have the prior approval of Workforce Florida, Inc., exempt from the review and recommendation process but must be approved by a two-thirds vote of the ~~entire~~ board, a quorum having been established, and must be reported to the Department of Economic Opportunity ~~Agency for Workforce Innovation~~ and Workforce Florida, Inc., within 30 days after approval. If a contract cannot be approved by Workforce Florida, Inc., a review of the decision to disapprove the contract may be requested by the regional workforce board or other parties to the disapproved contract. ~~This subsection expires July 1, 2011.~~

(13) All contracts totaling \$2,500 or greater that are not subject to the provisions of subsection (12) are required to be approved by a majority vote of the board, a quorum having been established, and must be reported to the Department of Economic Opportunity and Workforce Florida, Inc., within 30 days after approval. All conflicts of interest must be disclosed before the vote and any member who may benefit from the contract must abstain from the vote.



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

And the title is amended as follows:

Delete line 25

and insert:

a member or employer of the board; providing for
contracts totaling \$2,500 or greater to be approved by
the regional workforce board and reported to the
Department of Economic Opportunity and Workforce
Florida, Inc.; requiring a



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 44 and 45
insert:

Section 2. Paragraph (a) of subsection (3) of section
445.003, Florida Statutes, is amended to read:

445.003 Implementation of the federal Workforce Investment
Act of 1998.—

(3) FUNDING.—

(a) Title I, Workforce Investment Act of 1998 funds;
Wagner-Peyser funds; and NAFTA/Trade Act funds will be expended



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based on the 5-year plan of Workforce Florida, Inc. The plan shall outline and direct the method used to administer and coordinate various funds and programs that are operated by various agencies. The following provisions shall also apply to these funds:

1. At least 50 percent of the Title I funds for Adults and Dislocated Workers that are passed through to regional workforce boards shall be allocated and expended on ~~to~~ Individual Training Accounts unless a regional workforce board obtains a waiver from Workforce Florida, Inc. Tuition, books, and fees of training providers qualify as an Individual Training Account expenditure, ~~as do other programs developed by regional workforce boards in compliance with policies of Workforce Florida, Inc.~~

2. Fifteen percent of Title I funding shall be retained at the state level and shall be dedicated to state administration and used to design, develop, induce, and fund innovative Individual Training Account pilots, demonstrations, and programs. Of such funds retained at the state level, \$2 million shall be reserved for the Incumbent Worker Training Program, created under subparagraph 3. Eligible state administration costs include the costs of: funding for the board and staff of Workforce Florida, Inc.; operating fiscal, compliance, and management accountability systems through Workforce Florida, Inc.; conducting evaluation and research on workforce development activities; and providing technical and capacity building assistance to regions at the direction of Workforce Florida, Inc. Notwithstanding s. 445.004, such administrative costs shall not exceed 25 percent of these funds. An amount not to exceed 75 percent of these funds shall be allocated to



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Individual Training Accounts and other workforce development strategies for other training designed and tailored by Workforce Florida, Inc., including, but not limited to, programs for incumbent workers, displaced homemakers, nontraditional employment, and enterprise zones. Workforce Florida, Inc., shall design, adopt, and fund Individual Training Accounts for distressed urban and rural communities.

3. The Incumbent Worker Training Program is created for the purpose of providing grant funding for continuing education and training of incumbent employees at existing Florida businesses. The program will provide reimbursement grants to businesses that pay for preapproved, direct, training-related costs.

a. The Incumbent Worker Training Program will be administered by Workforce Florida, Inc. Workforce Florida, Inc., at its discretion, may contract with a private business organization to serve as grant administrator.

b. To be eligible for the program's grant funding, a business must have been in operation in Florida for a minimum of 1 year prior to the application for grant funding; have at least one full-time employee; demonstrate financial viability; and be current on all state tax obligations. Priority for funding shall be given to businesses with 25 employees or fewer, businesses in rural areas, businesses in distressed inner-city areas, businesses in a qualified targeted industry, businesses whose grant proposals represent a significant upgrade in employee skills, or businesses whose grant proposals represent a significant layoff avoidance strategy.

c. All costs reimbursed by the program must be preapproved by Workforce Florida, Inc., or the grant administrator. The



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71 program will not reimburse businesses for trainee wages, the
72 purchase of capital equipment, or the purchase of any item or
73 service that may possibly be used outside the training project.
74 A business approved for a grant may be reimbursed for
75 preapproved, direct, training-related costs including tuition;
76 fees; books and training materials; and overhead or indirect
77 costs not to exceed 5 percent of the grant amount.

78 d. A business that is selected to receive grant funding
79 must provide a matching contribution to the training project,
80 including, but not limited to, wages paid to trainees or the
81 purchase of capital equipment used in the training project; must
82 sign an agreement with Workforce Florida, Inc., or the grant
83 administrator to complete the training project as proposed in
84 the application; must keep accurate records of the project's
85 implementation process; and must submit monthly or quarterly
86 reimbursement requests with required documentation.

87 e. All Incumbent Worker Training Program grant projects
88 shall be performance-based with specific measurable performance
89 outcomes, including completion of the training project and job
90 retention. Workforce Florida, Inc., or the grant administrator
91 shall withhold the final payment to the grantee until a final
92 grant report is submitted and all performance criteria specified
93 in the grant contract have been achieved.

94 f. Workforce Florida, Inc., may establish guidelines
95 necessary to implement the Incumbent Worker Training Program.

96 g. No more than 10 percent of the Incumbent Worker Training
97 Program's total appropriation may be used for overhead or
98 indirect purposes.

99 4. At least 50 percent of Rapid Response funding shall be



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dedicated to Intensive Services Accounts and Individual Training Accounts for dislocated workers and incumbent workers who are at risk of dislocation. Workforce Florida, Inc., shall also maintain an Emergency Preparedness Fund from Rapid Response funds which will immediately issue Intensive Service Accounts and Individual Training Accounts as well as other federally authorized assistance to eligible victims of natural or other disasters. At the direction of the Governor, for events that qualify under federal law, these Rapid Response funds shall be released to regional workforce boards for immediate use. Funding shall also be dedicated to maintain a unit at the state level to respond to Rapid Response emergencies around the state, to work with state emergency management officials, and to work with regional workforce boards. All Rapid Response funds must be expended based on a plan developed by Workforce Florida, Inc., and approved by the Governor.

===== 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:

providing a short title; amending s. 445.003, F.S.;
providing that tuition, books, and fees of training
providers qualify as an Individual Training Account
expenditure; amending s. 445.007, F.S.;



639722

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete line 57
and insert:

authorized by the Governor. If a public education or training
provider is represented on the board, then a representative of a
private non-profit provider and a representative of a private
for-profit provider must also be appointed to the board.

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

And the title is amended as follows:



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13 Delete line 6

14 and insert:

15

16 to the board if authorized by the Governor; providing

17 that additional members may be added to the board

18 under certain circumstances; requiring



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete line 155

and insert:

party. Consistent with the intent of the Workforce Investment Act, regional workforce boards should provide the greatest possible choice of training providers to those who qualify for training services. A regional workforce board may not restrict the choice of training providers based upon cost, location, or historical training arrangement. A board, however, may restrict the amount of training resources available to any one client.



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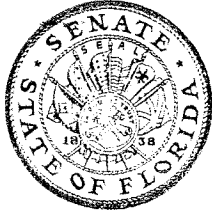
Such restrictions may vary based upon the cost of training in
the client's chosen occupational area. The regional workforce
board may be designated as a one-

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

And the title is amended as follows:

Delete line 25
and insert:

a member or employee of the board; encouraging each
regional workforce board to provide the greatest
possible choice of training providers to those who
qualify for training services; requiring a



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities,
Chair
Budget - Subcommittee on Finance and Tax
Judiciary
Reapportionment
Rules

SENATOR ANDY GARDINER

Majority Leader
9th District

RECEIVED
JAN 17 2012
COMMERCE

January 12, 2012

The Honorable Nancy Detert, Chair
Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chairwoman Detert,

Senate Bill 1398 Regional Workforce Boards has been referred to your committee. This legislation includes measures to increase the accountability of the workforce system. I respectfully request that Senate Bill 1398 be heard before your committee.

If you have any questions regarding this request, please do not hesitate to contact my office. Thank you for your time and consideration of this legislation.

Sincerely,

Andy Gardiner
State Senate, District 09

Cc: Jennifer Hrdlicka, Staff Director
Patty Blackburn, Committee Administrative Assistant

AG: svc

posted 1/17/12
psb

REPLY TO:

- ☐ 1013 East Michigan Street, Orlando, Florida 32806 (407) 428-5800
- ☐ 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5047

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

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 Commerce and Tourism Committee

BILL: SB 1416

INTRODUCER: Senator Bogdanoff

SUBJECT: Unemployment Compensation

DATE: January 25, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1416 rebrands the state's unemployment compensation program in ch. 443, F.S., as the reemployment assistance program.

The bill makes additional changes, including:

- Requiring the Department of Economic Opportunity (DEO) to establish a numeric score on the initial skills review which demonstrates a minimum proficiency in workforce skills. Individuals who fall below the minimum score may elect to take workforce skills training, and DEO is required to evaluate the training and report findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013;
- Clarifying that individuals who are non-Florida residents, on temporary layoffs, union members, or participating in short-time compensation plans are not required to complete the initial skill review;
- Reducing the number of required work search contacts from 5 to 3 to individuals who live in small counties;
- Clarifying work search requirements for union members and individuals on temporary layoffs or participating in short-time compensation plans;
- Increasing the period of disqualification for making a fraudulent claim from the time that the fraudulent claim was made until 1 year after DEO discovers the fraud or until all fraudulent overpayments are repaid in full.
- Extending the statute of limitations related to the collection of overpayments by providing that the commencement of collections must be initiated within 7 years after the redetermination or decision.

- Authorizing DEO to noncharge the accounts of employers that are forced to lay off workers due to a man-made disaster of national significance.
- Incorporating federal provisions relating to the release of confidential information.

This bill amends the following sessions of the Florida Statutes: ss. 443.011; 443.012; 443.036; 443.051; 443.071; 443.091; 443.101; 443.111; 443.1113; 443.1116; 443.1215; 443.1216; 443.131; 443.1113; 443.131; 443.1312; 443.1313; 443.1315; 443.1316; 443.1317; 443.141; 443.151; 443.163; 443.171; 443.1715; 443.17161; 443.181; 443.191; 443.221; 20.60; 27.52; 40.24; 45.031; 55.204; 57.082; 61.046; 61.1824; 61.30; 69.041; 77.041; 110.205; 110.502; 120.80; 125.9502; 212.096; 213.053; 216.292; 220.03; 220.181; 220.191; 220.194; 222.15; 222.16; 225.20; 288.075; 288.1045; 288.106; 288.1081; 288.1089; 334.30; 408.809; 409.2563; 409.2576; 414.295; 435.06; 440.12; 440.15; 440.381; 440.42; 445.009; 445.016; 446.50; 448.110; 450.31; 450.33; 468.529; 553.791; 624.509; 679.4061; 679.4081; 895.02; 896.101; 921.0022; 946.513; 946.523; 985.618; 1003.496; 1008.39; and 1008.41, F.S.

II. Present Situation:

Unemployment Compensation Overview

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.¹ The program is administered as a partnership of the federal government and the states.² The individual states collect unemployment compensation (UC) payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).³ FUTA collections go to the states for costs of administering state UC and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.⁴

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937.⁵ The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's UC laws, primarily through its Division of Workforce Services. DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.⁶

¹USDOL, Employment and Training Administration (ETA), State Unemployment Insurance Benefits, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited 1/20/2012).

² There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

³ FUTA is codified at 26 U.S.C. 3301-3311.

⁴ USDOL, ETA, Unemployment Insurance Tax Topic, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited 1/20/2012).

⁵Chapter 18402, L.O.F.

⁶ Section 443.1316, F.S.

State Unemployment Compensation Benefits

A qualified claimant may receive UC benefits equal to 25 percent of wages, not to exceed \$6,325 in a benefit year.⁷ Benefits range from a minimum of \$32 per week to a maximum weekly benefit amount of \$275 for up to 23 weeks, depending on the claimant's length of prior employment and wages earned, and the unemployment rate.⁸

To receive UC benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

Determinations and Redeterminations

DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.⁹ Determinations and redeterminations are statements by the department regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account.

Able and Available for Work

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. These include a finding by DEO that the individual:¹⁰

- Has filed a claim for benefits;
- Is registered to work and reports to the One-Stop Career Center;
- Takes and completes the initial skills review;
- Is able to and available for work;¹¹
- Contacts at least 5 prospective employers each week or reports to the One-Stop Career Center for reemployment services;
- Participates in reemployment services;
- Has been unemployed for a waiting period of 1 week;
- Has been paid total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period; and
- Has submitted a valid social security number to DEO.

The law does not distinguish between part-time and full-time work with respect to benefits. With respect to the requirements of being able to work and available for work, Rule 60BB-3.021(2),

⁷ Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.

⁸ Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent.

⁹ Section 443.151(3), F.S.

¹⁰ Section 443.091(1), F.S.

¹¹ "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought. "Available for work" means actively seeking and being ready and willing to accept suitable employment. See s. 443.036(1) and (6), F.S. Additionally, DEO has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work. See Rule 60BB-3.021, F.A.C.

F.A.C., provides that in order to be eligible for benefits an individual must be able to work and available for work during the major portion of the individual's customary work week. Consequently, individuals whose benefits are not based on full-time work are not required to seek or be available to accept full-time work.

Initial Skills Review

Claimants are required to participate in an initial skills review. The administrator or operator of the online education or training program is required to report to DEO that the individual has taken the initial skills test for benefit eligibility purposes, and to the regional workforce board or One-Stop Career Center the results of the initial skills test for purposes of reemployment services. The regional workforce board is required to develop a plan to use the initial skills review to refer individuals training and employment opportunities.¹²

An initial skills review is an online education or training program, like Florida Ready to Work,¹³ that is approved by DEO and designed to measure an individual's mastery of workplace skills.¹⁴

Florida Ready to Work is an employee credentialing program that is funded by the state.¹⁵ To participate, individuals must first go to a local assessment center to sign up for the program. Once signed up, an individual may take the initial skills review at the assessment center or online at any location with Internet access. The assessment measures general skills necessary for 90 percent of all jobs in three areas: locating information, reading, and applied math. All the questions are based on workplace scenarios. After taking the initial skills review, an individual may take additional course material to try to improve his or her skills. An individual who completes the entire program may receive a Florida Ready to Work Credential to use as a tool when applying for jobs. This program is provided to Floridians at no cost.

DEO has contracted with Worldwide Interactive Network (WIN), the contractor for Florida Ready to Work, to provide the initial skills review required by the unemployment statute.¹⁶ The Florida Ready to Work initial skills review is integrated into the process of applying for benefits to provide a streamlined process. The total cost of contracting with WIN for the initial skills review is \$10 million for FY 2011-12; however WIN provided DEO with an \$8 million discount, making the actual cost \$2 million.¹⁷ The Florida Ready to Work program was funded by \$3

¹² Section 443.091(1)(c), F.S.

¹³ Section 445.06, F.S.

¹⁴ Section 443.036(26), F.S.

¹⁵ Website available at <http://floridareadytowork.com/> (last visited 1/20/2012). The 2006 Florida Legislature created the Florida Ready to Work Certificate Program to enhance the workplace skills of Florida's students to better prepare them for successful employment in specific occupations. See s. 35, ch. 2006-74, L.O.F. A student who earns a Ready to Work Credential (credential) will be considered equipped with the skills to enter the workforce. Any Florida student or resident is eligible to earn the credential. Prior to FY 2011-12 the program was administered by the Florida Department of Education (DOE), Division of Workforce Education, in cooperation with Worldwide Interactive Network (WIN) and the nationally recognized ACT® WorkKeys program.

¹⁶ The 2011 Florida Legislature transferred the Ready to Work Certificate Program from the DOE to the newly created Department of Economic Opportunity (DEO). See ss. 5 and 476, ch. 2011-142, L.O.F.

¹⁷ Contract on file with the Senate Commerce and Tourism Committee. With other costs, such as additional training and certifications available, the total cost of the Florida Ready to Work Program under the contract is \$5 million.

million in General Revenue and \$2 million from the Workers' Compensation Administration Trust Fund in FY 2011-12.¹⁸

Reemployment

To maintain eligibility for benefits, an individual must be ready, willing, and able to work and must be actively seeking work. An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. To aid unemployed individuals, free reemployment services and assistance are available. DEO defines reemployment services as: job search assistance, job and vocational training referrals, employment counseling and testing, labor market information, employability skills enhancement, needs assessment, orientation, and other related services provided by One-Stop Career Centers operated by local regional workforce boards.¹⁹

DEO's website provides links to local, state, and national employment databases.²⁰ Claimants are automatically registered with their local One-Stop Career Center when their claims are filed and are required to report to the One-Stop Career Center as directed by the regional workforce board for reemployment services.²¹ The One-Stops provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from Employ Florida Marketplace with information about employment services or available jobs.²² Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).²³

Disqualification for Unemployment Compensation

Section 443.101, F.S., specifies the circumstances under which an individual would be disqualified from receiving unemployment compensation benefits, to include:

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;²⁴
- Failing to apply for available suitable work when directed by DEO or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;²⁵

¹⁸ See s. 2, ln. 98, ch. 2011-69, L.O.F. Of these funds, \$2.3 million from the General Revenue Fund was provided from recurring funds, and the remainder of both funds was provided from nonrecurring funds.

¹⁹ Rule 60BB-3.011(12), F.A.C.

²⁰ For example, on www.fluidnow.com, where individuals can claim their weeks online.

²¹ Section 443.091(1)(b), F.S.

²² Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and DEO. It provides job-matching and workforce resources. <https://www.employflorida.com>.

²³ REAs are in-person interviews with selected UC claimants to review the claimants' adherence to state UC eligibility criteria, determine if reemployment services are needed for the claimant to secure future employment, refer individuals to reemployment services, as appropriate, and provide labor market information which addresses the claimant's specific needs. Research has shown that interviewing claimants for the above purposes reduces UC duration and saves UC trust fund resources by helping claimants find jobs faster and eliminating payments to ineligible individuals. Florida administers the REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., provides more information on reemployment services and requirements for participation.

²⁴ An individual is not disqualified for voluntarily leaving temporary work to return to full time work or to relocate with his or her military spouse due to relocation orders. An individual who voluntarily quits work for a good *personal* cause not related to any of the conditions specified in the statute will be disqualified from receiving benefits.

²⁵ Section 443.101(2), F.S., sets forth the requirements to determine "suitable work."

- Making false or fraudulent representations in filing for benefits;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work; and
- Discharge from employment due to drug use or rejection from a job offer for failing a drug test.

The statute specifies the duration of the disqualification and the requirements for requalification for an individual's next benefit claim, depending on the reason for the disqualification.

Collection of Overpayments

Current law provides several options for the state to recoup overpaid unemployment benefits, including, but not limited to, wage garnishment, deducting any outstanding balance from future unemployment benefits or lottery winnings, and forwarding any unpaid balance to a contracted debt collection agency.²⁶ Any recovery or recoupment of benefits must be effected within 5 years of a redetermination or decision for cases involving fraud, and within 3 years for all other cases of overpayments.

Employee Leasing Companies

An employee leasing company is “a form of business entity engaged in an arrangement whereby the entity assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.”²⁷ The leasing company provides services for the client companies, such as handling the filing of UC taxes and workers' compensation. Under current law, employee leasing companies are required to report leased employees under the leasing company's UC tax account and contribution rate.²⁸

Temporary State Extended Benefits

In 2009, the Legislature enacted a temporary state extended benefits program for unemployed individuals in order to qualify for federal funds.²⁹ Under this program, the federal government pays 100 percent of temporary state extended benefits to former private sector employees. The federal funds are paid from a separate federal general revenue account and do not affect the balance of Florida's UC Trust Fund. There is no cost to private employers; however, “reimbursable” employers like state and local governments are not covered by the federal government and must pay for the benefits themselves. These benefits are not charged to employers and have no effect on an employer's experience rating.

Since the implementation of the temporary state extended benefits program in the American Recovery and Reinvestment Act of 2009, the existence of the program has been extended several times by the federal government. Most recently, in December 2011, Congress extended the

²⁶ Section 443.151(6), F.S.

²⁷ Department of Business and Professional Regulation, Board of Employee Leasing Companies, definitions, available at <http://www.myfloridalicense.com/dbpr/pro/emplo/codes.html> (last visited 1/21/2012).

²⁸ Section 443.1216, F.S.

²⁹ Chapter 2009-99, L.O.F. Temporary extended benefits was originally created and funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 2005, Public L. No. 111-5.

eligibility window for Emergency Unemployment Compensation (EUC) and for state extended benefits through March 7, 2012.³⁰

Florida already had an extended benefits program in statute,³¹ but in order to participate in the federal program, Florida had to enact a temporary state extended benefits program with an alternate trigger rate based upon the average total unemployment rate (TUR).³² Florida's regular state extended benefits program triggers "on" based upon a higher individual unemployment rate (IUR). In the past, the program has generally been set forth in state statute, adopted by the Legislature. However, on January 6, 2012, Governor Scott signed an executive order extending the program after the federal bill was signed into law.³³

III. Effect of Proposed Changes:

SB 1416 rebrands the state's unemployment compensation program in ch. 443, F.S., as the reemployment assistance program.

To make the rebranding changes, the bill amends the following statutes: ss. 443.011 (**Section 1**); 443.012 (**Section 2**); 443.036 (**Section 3**); 443.051 (**Section 4**); 443.071 (**Section 5**); 443.091; 443.101 (**Section 7**); 443.111 (**Section 8**); 443.1113 (**Section 9**); 443.1116 (**Section 10**); 443.1215 (**Section 11**); 443.1216 (**Section 12**); 443.131 (**Section 13**); 443.1113 (**Section 10**); 443.131 (**Section 13**); 443.1312 (**Section 14**); 443.1313 (**Section 15**); 443.1315 (**Section 16**); 443.1316 (**Section 17**); 443.1317 (**Section 18**); 443.141 (**Section 19**); 443.151 (**Section 20**); 443.163 (**Section 21**); 443.171 (**Section 22**); 443.1715 (**Section 23**); 443.17161 (**Section 24**); 443.181 (**Section 25**); 443.191 (**Section 26**); 443.221 (**Section 27**); 20.60 (**Section 28**); 27.52 (**Section 29**); 40.24 (**Section 30**); 45.031 (**Section 31**); 55.204 (**Section 32**); 57.082 (**Section 33**); 61.046 (**Section 34**); 61.1824 (**Section 35**); 61.30 (**Section 36**); 69.041 (**Section 37**); 77.041 (**Section 38**); 110.205 (**Section 39**); 110.502 (**Section 40**); 120.80 (**Section 41**); 125.9502 (**Section 42**); 212.096 (**Section 43**); 213.053 (**Section 44**); 216.292 (**Section 45**); 220.03 (**Section 46**); 220.181 (**Section 47**); 220.191 (**Section 48**); 220.194 (**Section 49**); 222.15 (**Section 50**); 222.16 (**Section 51**); 225.20 (**Section 52**); 288.075 (**Section 53**); 288.1045 (**Section 54**); 288.106 (**Section 55**); 288.1081 (**Section 56**); 288.1089 (**Section 57**); 334.30 (**Section 58**); 408.809 (**Section 59**); 409.2563 (**Section 60**); 409.2576 (**Section 61**); 414.295 (**Section 62**); 435.06 (**Section 63**); 440.12 (**Section 64**); 440.15 (**Section 65**); 440.381 (**Section 66**); 440.42 (**Section 67**); 445.009 (**Section 68**); 445.016 (**Section 69**); 446.50 (**Section 70**); 448.110 (**Section 71**); 450.31 (**Section 72**); 450.33 (**Section 73**); 468.529 (**Section 74**); 553.791 (**Section 75**); 624.509 (**Section 76**); 679.4061 (**Section 77**); 679.4081 (**Section 78**); 895.02 (**Section 79**); 896.101 (**Section 80**); 921.0022 (**Section 81**); 946.513 (**Section 82**); 946.523 (**Section 83**); 985.618 (**Section 84**); 1003.496 (**Section 85**); 1008.39 (**Section 86**); and 1008.41, F.S. (**Section 87**).

Section 3 also amends s. 443.036, F.S., to define "reemployment assistance" to mean, in part, cash benefits payable to individuals due to their unemployment.

³⁰ Pub. L. No. 112-78.

³¹ Section 443.1115, F.S.

³² Section 443.1117, F.S., expired January 4, 2012.

³³ Executive Order No. 12-03.

Section 6 amends provisions in s. 443.091, F.S., related to the initial skills review and work search requirements.

Initial Skills Review

The bill requires DEO to prescribe a numeric score on the initial skills review that demonstrates a minimal proficiency in workforce skills. Any individual who falls below the minimal proficiency score will be offered training opportunities, at no cost to the individual, to improve his or her workforce skills. DEO is required to evaluate the use, effectiveness, and costs associated with the voluntary training offered, and report the department's findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013.

Additionally, the bill specifies that individuals who are non-Florida residents, on temporary layoffs, union members, or participating in short-time compensation plans are not required to complete the initial skill review.

Work Search Requirements

Under current law, most individuals receiving unemployment benefits are required to contact at least five potential employers each week. Individuals may also meet the work search requirement by reporting to a local one-stop career center to meet with a representative of the center for reemployment services.

Under the bill, individuals who live in small counties are only required to contact three potential employers each week.³⁴ Further, union members who customarily obtain employment through a union hiring hall may satisfy the work search requirement by reporting to their union hall. Further, the work search requirements do not apply to individuals on temporary layoffs or participating in short-time compensation plans.

Section 7 also amends s. 443.101, F.S., to increase the duration of disqualification from receiving benefits for making fraudulent representations. Under current law, an individual who makes false or fraudulent representations to obtain benefits is disqualified from receiving benefits for 1 year from the date of discovery of the fraud by DEO. Under the bill, such individual is disqualified from the week in which the false or fraudulent representation is made until 1 year from the date of discovery of the fraud by DEO and until any overpayment of benefits resulting from such fraud has been repaid in full.

Section 13 also amends s. 443.131, F.S., to provide tax relief to employers by noncharging benefits paid to individuals who separated from work as a direct result of an oil spill, terrorist attack, or other similar disaster of national significance not subject to a federal declaration of disaster.

Section 20 also amends s. 443.151, F.S., to extend the period of time that DEO may seek recovery of benefits wrongly or incorrectly paid. Under current law, DEO must collect the benefits within 5 years of the determination that the benefits were wrongly or incorrectly paid,

³⁴ The term "small counties" is defined in s. 120.52(19), F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

either due to fraud or other reason. Under the bill, DEO's recovery efforts must be commenced within 7 years of the determination that the benefits were wrongly or incorrectly paid. After commencing recovery efforts, DEO has an unlimited time to recover the benefits.

Section 22 also amends s. 443.171, F.S., and **Section 23** also amends s. 443.1715, F.S., to incorporate federal provisions related to the release of confidential information released to the unemployment compensation program.

Section 88 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:

Individuals who fraudulently or mistakenly receive unemployment benefits will be liable to repay DEO to a longer period of time.

C. Government Sector Impact:

The changes proposed could be accomplished by DEO using existing 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.)

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.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 189 - 249

and insert:

generated by a personal identification number, password, or other identifying code used by the department in establishing that a certification or claim for one or more weeks of benefits was made against the benefit account of the individual, together with documentation that payment was paid by a state warrant made to the order of the person, ~~or by~~ direct deposit via electronic means, or department issued debit card, constitutes prima facie evidence that the person claimed and received reemployment



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13 assistance ~~unemployment~~ benefits from the state.

14 (8) All records relating to investigations of reemployment
15 assistance ~~unemployment compensation~~ fraud in the custody of the
16 Department of Economic Opportunity or its tax collection service
17 provider are available for examination by the Department of Law
18 Enforcement, the state attorneys, or the Office of the Statewide
19 Prosecutor in the prosecution of offenses under s. 817.568 or in
20 proceedings brought under this chapter.

21 Section 6. Paragraphs (c), (d), and (f) of subsection (1)
22 of section 443.091, Florida Statutes, are amended to read:

23 443.091 Benefit eligibility conditions.—

24 (1) An unemployed individual is eligible to receive
25 benefits for any week only if the Department of Economic
26 Opportunity finds that:

27 (c) To make continued claims for benefits, she or he is
28 reporting to the department in accordance with this paragraph
29 and department ~~agency~~ rules, and participating in an initial
30 skills review, as directed by the department ~~agency~~. Department
31 ~~Agency~~ rules may not conflict with s. 443.111(1)(b) , which
32 requires that each claimant continue to report regardless of any
33 pending appeal relating to her or his eligibility or
34 disqualification for benefits.

35 1. For each week of unemployment claimed, each report must,
36 at a minimum, include the name, address, and telephone number of
37 each prospective employer contacted, or the date the claimant
38 reported to a one-stop career center, pursuant to paragraph (d).

39 2. The administrator or operator of the initial skills
40 review shall notify the department ~~agency~~ when the individual
41 completes the initial skills review and report the results of



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the review to the regional workforce board or the one-stop career center as directed by the workforce board. The department shall prescribe a numeric score on the initial skills review that demonstrates a minimal proficiency in workforce skills. The department, workforce board, or one-stop career center shall use the initial skills review to develop a plan for referring individuals to training and employment opportunities. The failure of the individual to comply with this requirement will result in the individual being determined ineligible for benefits for the week in which the noncompliance occurred and for any subsequent week of unemployment until the requirement is satisfied. However, this requirement does not apply if the individual is able to affirmatively attest to being unable to complete such review due to illiteracy or a language impediment or is exempt from the work registration requirement as set forth in paragraph (b).

3. Any individual that falls below the minimal proficiency score prescribed by the department in subparagraph 2. on the initial skills review shall be offered training opportunities and encouraged to participate in such training at no cost to the individual in order to improve his or her workforce skills to the minimal proficiency level.

4. The department shall coordinate with Workforce Florida, Inc., the workforce boards, and the one-stop career centers to identify, develop, and utilize best practices for improving the skills of individuals who chose to participate in training opportunities with a minimal proficiency score below the prescribed score prescribed in subparagraph 2.

5. The department, in coordination with Workforce Florida,



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Inc., the workforce boards, and the one-stop career centers,
shall evaluate the use, effectiveness, and costs associated with
the training prescribed in subparagraph 3. and report its
findings and recommendations for training and the use of best
practices to the Governor, the President of the Senate, and the
Speaker of the House of Representatives by January 1, 2013.

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

And the title is amended as follows:

Delete lines 10 - 13

and insert:

conform to changes made by the act; amending s.
443.071, F.S.; specifying what constitutes prima facie
evidence that the person claimed and received
reemployment assistance from the state through
transaction history and payment; revising references
to conform to changes made by the act; amending s.
443.091, F.S.; providing scoring requirements relating
to initial skills reviews; providing for workforce
training for certain eligible claimants; requiring the
development and use of best practices; providing

Delete line 43

and insert:

440.381, 440.42, 443.051, 443.111, 443.1113,



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete lines 639 - 987
and insert:

a. However, except for the internal employees of an employee leasing company, each employee leasing company may make a separate one-time election to report and pay contributions under the tax identification number and contribution rate for each client of the employee leasing company. Under the client method, an employee leasing company choosing this option must assign leased employees to the client company that is leasing the employees. The client method is solely a method to report



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13 and pay unemployment contributions and whichever method is
14 chosen, such election may not impact any other aspect of state
15 law. An employee leasing company that elects the client method
16 must pay contributions at the rates assigned to each client
17 company.

18 (I) The election applies to all of the employee leasing
19 company's current and future clients.

20 (II) The employee leasing company must notify the
21 Department of Revenue of its election by July 1, 2012, and such
22 election applies to reports and contributions for the first
23 quarter of the following calendar year. The notification must
24 include:

25 (A) A list of each client company and the unemployment
26 account number or, if one has not yet been issued, the federal
27 employment identification number, as established by the employee
28 leasing company upon the election to file by client method;

29 (B) A list of each client company's current and previous
30 employees and their respective social security numbers for the
31 prior 3 state fiscal years or, if the client company has not
32 been a client for the prior 3 state fiscal years, such portion
33 of the prior 3 state fiscal years that the client company has
34 been a client must be supplied;

35 (C) The wage data and benefit charges associated with each
36 client company for the prior 3 state fiscal years or, if the
37 client company has not been a client for the prior 3 state
38 fiscal years, such portion of the prior 3 state fiscal years
39 that the client company has been a client must be supplied. If
40 the client company's employment record is chargeable with
41 benefits for less than 8 calendar quarters while being a client



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of the employee leasing company, the client company must pay contributions at the initial rate of 2.7 percent; and

(D) The wage data and benefit charges for the prior 3 state fiscal years that cannot be associated with a client company must be reported and charged to the employee leasing company.

(III) Subsequent to choosing the client method, the employee leasing company may not change its reporting method.

(IV) The employee leasing company shall file a Florida Department of Revenue Employer's Quarterly Report for each client company by approved electronic means, and pay all contributions by approved electronic means.

(V) For the purposes of calculating experience rates when the client method is chosen, each client's own benefit charges and wage data experience while with the employee leasing company determines each client's tax rate where the client has been a client of the employee leasing company for at least 8 calendar quarters before the election. The client company shall continue to report the nonleased employees under its tax rate.

(VI) The election is binding on each client of the employee leasing company, for as long as a written agreement is in effect between the client and the employee leasing company pursuant to s. 468.525(3)(a). If the relationship between the employee leasing company and the client terminates, the client retains the wage and benefit history experienced under the employee leasing company.

(VII) Notwithstanding which election method the employee leasing company chooses, the applicable client company is an employing unit for purposes of s. 443.071. The employee leasing company or any of its officers or agents are liable for any



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71 violation of s. 443.071 engaged in by such persons or entities.
72 The applicable client company or any of its officers or agents
73 are liable for any violation of s. 443.071 engaged in by such
74 persons or entities. The employee leasing company or its
75 applicable client company are not liable for any violation of s.
76 443.071 engaged in by the other party or by the other party's
77 officers or agents.

78 (VIII) If an employee leasing company fails to select the
79 client method of reporting not later than July 1, 2012, the
80 entity is required to report under the employee leasing
81 company's tax identification number and contribution rate.

82 (IX) After an employee leasing company is licensed pursuant
83 to part XI of chapter 468, each newly licensed entity has 30
84 days after the date the license is granted to notify the tax
85 collection service provider in writing of their selection of the
86 client method. A newly licensed employee leasing company that
87 fails to timely select reporting pursuant to the client method
88 of reporting must report under the employee leasing company's
89 tax identification number and contribution rate.

90 (X) Irrespective of the election, each transfer of trade or
91 business, including workforce, or a portion thereof, between
92 employee leasing companies is subject to the provisions of s.
93 443.131(3)(g) if, at the time of the transfer, there is common
94 ownership, management, or control between the entities.

95 ~~b.a.~~ In addition to any other report required to be filed
96 by law, an employee leasing company shall submit a report to the
97 Labor Market Statistics Center within the Department of Economic
98 Opportunity which includes each client establishment and each
99 establishment of the employee leasing company, or as otherwise



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directed by the department. The report must include the following information for each establishment:

(I) The trade or establishment name;

(II) The former reemployment assistance ~~unemployment compensation~~ account number, if available;

(III) The former federal employer's identification number ~~(FEIN)~~, if available;

(IV) The industry code recognized and published by the United States Office of Management and Budget, if available;

(V) A description of the client's primary business activity in order to verify or assign an industry code;

(VI) The address of the physical location;

(VII) The number of full-time and part-time employees who worked during, or received pay that was subject to reemployment assistance ~~unemployment compensation~~ taxes for, the pay period including the 12th of the month for each month of the quarter;

(VIII) The total wages subject to reemployment assistance ~~unemployment compensation~~ taxes paid during the calendar quarter;

(IX) An internal identification code to uniquely identify each establishment of each client;

(X) The month and year that the client entered into the contract for services; and

(XI) The month and year that the client terminated the contract for services.

~~c.b.~~ The report must ~~shall~~ be submitted electronically or in a manner otherwise prescribed by the Department of Economic Opportunity in the format specified by the Bureau of Labor Statistics of the United States Department of Labor for its



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Multiple Worksite Report for Professional Employer Organizations. The report must be provided quarterly to the Labor Market Statistics Center within the department, or as otherwise directed by the department, and must be filed by the last day of the month immediately after ~~following~~ the end of the calendar quarter. The information required in sub-sub-paragraphs b.(X) and (XI) ~~a.(X) and (XI)~~ need be provided only in the quarter in which the contract to which it relates was entered into or terminated. The sum of the employment data and the sum of the wage data in this report must match the employment and wages reported in the reemployment assistance ~~unemployment compensation~~ quarterly tax and wage report. A report is not required for any calendar quarter preceding the third calendar quarter of 2010.

~~d.e.~~ The department shall adopt rules as necessary to administer this subparagraph, and may administer, collect, enforce, and waive the penalty imposed by s. 443.141(1)(b) for the report required by this subparagraph.

~~e.d.~~ For the purposes of this subparagraph, the term "establishment" means any location where business is conducted or where services or industrial operations are performed.

3. An individual other than an individual who is an employee under subparagraph 1. or subparagraph 2., who performs services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or drycleaning services for his or her principal.

b. As a traveling or city salesperson engaged on a full-



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time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in the ~~their~~ business operations. This sub-subparagraph does not apply to an agent-driver or a commission-driver and does not apply to sideline sales activities performed on behalf of a person other than the salesperson's principal.

4. The services described in subparagraph 3. are employment subject to this chapter only if:

a. The contract of service contemplates that substantially all of the services are to be performed personally by the individual;

b. The individual does not have a substantial investment in facilities used in connection with the services, other than facilities used for transportation; and

c. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(d) If two or more related corporations concurrently employ the same individual and compensate the individual through a common paymaster, each related corporation is considered to have paid wages to the individual only in the amounts actually disbursed by that corporation to the individual and is not considered to have paid the wages actually disbursed to the individual by another of the related corporations. The department and the state agency providing reemployment assistance ~~unemployment~~ tax collection services may adopt rules



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necessary to administer this paragraph.

1. As used in this paragraph, the term "common paymaster" means a member of a group of related corporations that disburses wages to concurrent employees on behalf of the related corporations and that is responsible for keeping payroll records for those concurrent employees. A common paymaster is not required to disburse wages to all the employees of the related corporations; however, this subparagraph does not apply to wages of concurrent employees which are not disbursed through a common paymaster. A common paymaster must pay concurrently employed individuals under this subparagraph by one combined paycheck.

2. As used in this paragraph, the term "concurrent employment" means the existence of simultaneous employment relationships between an individual and related corporations. Those relationships require the performance of services by the employee for the benefit of the related corporations, including the common paymaster, in exchange for wages that, if deductible for the purposes of federal income tax, are deductible by the related corporations.

3. Corporations are considered related corporations for an entire calendar quarter if they satisfy any one of the following tests at any time during the calendar quarter:

a. The corporations are members of a "controlled group of corporations" as defined in s. 1563 of the Internal Revenue Code of 1986 or would be members if s. 1563(a)(4) and (b) did not apply.

b. In the case of a corporation that does not issue stock, at least 50 percent of the members of the board of directors or other governing body of one corporation are members of the board



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of directors or other governing body of the other corporation or the holders of at least 50 percent of the voting power to select those members are concurrently the holders of at least 50 percent of the voting power to select those members of the other corporation.

c. At least 50 percent of the officers of one corporation are concurrently officers of the other corporation.

d. At least 30 percent of the employees of one corporation are concurrently employees of the other corporation.

4. The common paymaster must report to the tax collection service provider, as part of the reemployment assistance ~~unemployment compensation~~ quarterly tax and wage report, the state reemployment assistance ~~unemployment compensation~~ account number and name of each related corporation for which concurrent employees are being reported. Failure to timely report this information shall result in the related corporations being denied common paymaster status for that calendar quarter.

5. The common paymaster shall remit ~~also has the primary responsibility for remitting~~ contributions due under this chapter for the wages it disburses as the common paymaster. The common paymaster must compute these contributions as though it were the sole employer of the concurrently employed individuals. If a common paymaster fails to timely remit these contributions or reports, in whole or in part, the common paymaster is ~~remains~~ liable for the full amount of the unpaid portion of these contributions. In addition, each of the other related corporations using the common paymaster is jointly and severally liable for its appropriate share of these contributions. Each related corporation's share equals the greater of:



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a. The liability of the common paymaster under this chapter, after taking into account any contributions made.

b. The liability under this chapter which, notwithstanding this section, would have existed for the wages from the other related corporations, reduced by an allocable portion of any contributions previously paid by the common paymaster for those wages.

(8) Services not covered under paragraph (7)(b) which are performed entirely outside of this state, and for which contributions are not required or paid under a reemployment assistance or ~~an~~ unemployment compensation law of any other state or of the Federal Government, are deemed to be employment subject to this chapter if the individual performing the services is a resident of this state and the tax collection service provider approves the election of the employing unit for whom the services are performed, electing that the entire service of the individual is deemed to be employment subject to this chapter.

(12) The employment subject to this chapter includes services covered by a reciprocal arrangement under s. 443.221 between the Department of Economic Opportunity or its tax collection service provider and the agency charged with the administration of another state reemployment assistance or unemployment compensation law or a federal reemployment assistance or unemployment compensation law, under which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, if the department or its tax collection service provider approved an election of the employing unit in which all of the services



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performed by the individual during the period covered by the election are deemed to be insured work.

(13) The following are exempt from coverage under this chapter:

(f) Service performed in the employ of a public employer as defined in s. 443.036, except as provided in subsection (2), and service performed in the employ of an instrumentality of a public employer as described in s. 443.036(36)(b) or (c) ~~443.036(35)(b) or (c)~~, to the extent that the instrumentality is immune under the United States Constitution from the tax imposed by s. 3301 of the Internal Revenue Code for that service.

(h) Service for which reemployment assistance ~~unemployment compensation~~ is payable under a reemployment assistance or an unemployment compensation system established by the United States Congress, of which this chapter is not a part.

(p) Service covered by an arrangement between the Department of Economic Opportunity, or its tax collection service provider, and the agency charged with the administration of another state or federal reemployment assistance or unemployment compensation law under which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election is deemed to be performed entirely within the other agency's state or under the federal law.

Section 13. Paragraph (a) and (f) of subsection (3) of section 443.131, Florida Statutes, are amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—



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(a) *Employment records.*—The regular and short-time compensation benefits paid to an eligible individual shall be charged to the employment record of each employer who paid the individual wages of at least \$100 during the individual's base period in proportion to the total wages paid by all employers who paid the individual wages during the individual's base period. Benefits may not be charged to the employment record of an employer who furnishes part-time work to an individual who, because of loss of employment with one or more other employers, is eligible for partial benefits while being furnished part-time work by the employer on substantially the same basis and in substantially the same amount as the individual's employment during his or her base period, regardless of whether this part-time work is simultaneous or successive to the individual's lost employment. Further, as provided in s. 443.151(3), benefits may not be charged to the employment record of an employer who furnishes the Department of Economic Opportunity with notice, as prescribed in rules of the department, that any of the following apply:

1. If an individual leaves his or her work without good cause attributable to the employer or is discharged by the employer for misconduct connected with his or her work, benefits subsequently paid to the individual based on wages paid by the employer before the separation may not be charged to the employment record of the employer.

2. If an individual is discharged by the employer for unsatisfactory performance during an initial employment probationary period, benefits subsequently paid to the individual based on wages paid during the probationary period by



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the employer before the separation may not be charged to the employer's employment record. As used in this subparagraph, the term "initial employment probationary period" means an established probationary plan that applies to all employees or a specific group of employees and that does not exceed 90 calendar days following the first day a new employee begins work. The employee must be informed of the probationary period within the first 7 days of work. The employer must demonstrate by conclusive evidence that the individual was separated because of unsatisfactory work performance and not because of lack of work due to temporary, seasonal, casual, or other similar employment that is not of a regular, permanent, and year-round nature.

3. Benefits subsequently paid to an individual after his or her refusal without good cause to accept suitable work from an employer may not be charged to the employment record of the employer if any part of those benefits are based on wages paid by the employer before the individual's refusal to accept suitable work. As used in this subparagraph, the term "good cause" does not include distance to employment caused by a change of residence by the individual. The department shall adopt rules prescribing for the payment of all benefits whether this subparagraph applies regardless of whether a disqualification under s. 443.101 applies to the claim.

4. If an individual is separated from work as a direct result of a natural disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. ss. 5121 et seq., benefits subsequently paid to the individual based on wages paid by the employer before the separation may not be charged to the employment record of the employer.



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5. If an individual is separated from work as a direct result of an oil spill, terrorist attack, or other similar disaster of national significance not subject to a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, benefits subsequently paid to the individual based on wages paid by the employer before the separation may not be charged to the employment record of the employer.

(f) *Transfer of employment records.*—

1. For the purposes of this subsection, two or more employers who are parties to a transfer of business or the subject of a merger, consolidation, or other form of reorganization, effecting a change in legal identity or form, are deemed a single employer and are considered to be one employer with a continuous employment record if the tax collection service provider finds that the successor employer continues to carry on the employing enterprises of all of the predecessor employers and that the successor employer has paid all contributions required of and due from all of the predecessor employers and has assumed liability for all contributions that may become due from all of the predecessor employers. In addition, an employer may not be considered a successor under this subparagraph if the employer purchases a company with a lower rate into which employees with job functions unrelated to the business endeavors of the predecessor are transferred for the purpose of acquiring the low rate and avoiding payment of contributions. As used in this paragraph, notwithstanding s. 443.036(14), the term "contributions" means all indebtedness to the tax collection service provider, including, but not limited to, interest, penalty, collection



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fee, and service fee. A successor employer must accept the transfer of all of the predecessor employers' employment records within 30 days after the date of the official notification of liability by succession. If a predecessor employer has unpaid contributions or outstanding quarterly reports, the successor employer must pay the total amount with certified funds within 30 days after the date of the notice listing the total amount due. After the total indebtedness is paid, the tax collection service provider shall transfer the employment records of all of the predecessor employers to the successor employer's employment record. The tax collection service provider shall determine the contribution rate of the combined successor and predecessor employers upon the transfer of the employment records, as prescribed by rule, in order to calculate any change in the contribution rate resulting from the transfer of the employment records.

2. Regardless of whether a predecessor employer's employment record is transferred to a successor employer under this paragraph, the tax collection service provider shall treat the predecessor employer, if he or she subsequently employs individuals, as an employer without a previous employment record or, if his or her coverage is terminated under s. 443.121, as a new employing unit.

3. The state agency providing reemployment assistance ~~unemployment~~ tax collection services may adopt rules governing the partial transfer of experience rating when an employer transfers an identifiable and segregable portion of his or her payrolls and business to a successor employing unit. As a condition of each partial transfer, these rules must require the



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following to be filed with the tax collection service provider:
an application by the successor employing unit, an agreement by
the predecessor employer, and the evidence required by the tax
collection service provider to show the benefit experience and
payrolls attributable to the transferred portion through the
date of the transfer. These rules must provide that the
successor employing unit, if not an employer subject to this
chapter, becomes an employer as of the date of the transfer and
that the transferred portion of the predecessor employer's
employment record is removed from the employment record of the
predecessor employer. For each calendar year after the date of
the transfer of the employment record in the records of the tax
collection service provider, the service provider shall compute
the contribution rate payable by the successor employer or
employing unit based on his or her employment record, combined
with the transferred portion of the predecessor employer's
employment record. These rules may also prescribe what
contribution rates are payable by the predecessor and successor
employers for the period between the date of the transfer of the
transferred portion of the predecessor employer's employment
record in the records of the tax collection service provider and
the first day of the next calendar year.

4. This paragraph does not apply to an employee leasing
company and client contractual agreement as defined in s.
443.036, except as provided in s. 443.1216(1)(a)2.a. The tax
collection service provider shall, if the

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

And the title is amended as follows:



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448 Delete line 20
449 and insert:
450 Act; amending s. 443.1216, F.S.; providing that
451 employee leasing companies may make a one-time
452 election to report leased employees under the
453 respective unemployment account of each leasing
454 company client; providing procedures and application
455 for such election; revising references to conform to
456 the changes made by the act; amending s. 443.131,
457 F.S.; prohibiting benefits
458 Delete line 44
459 and insert:
460 443.1116, 443.1215, 443.1312, 443.1313,



801534

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete line 3260
and insert:

Section 88. Notwithstanding the expiration date contained in section 13 of chapter 2011-235, Laws of Florida, operating retroactive to January 4, 2012, and expiring March 11, 2012, section 443.1117, Florida Statutes, is revived, readopted, and amended to read:

443.1117 Temporary extended benefits.—

(1) APPLICABILITY OF EXTENDED BENEFITS STATUTE.—Except if the result is inconsistent with other provisions of this



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section, s. 443.1115(2), (3), (4), (6), and (7) apply to all claims covered by this section.

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

(a) "Regular benefits" and "extended benefits" have the same meaning as in s. 443.1115.

(b) "Eligibility period" means the weeks in an individual's benefit year or emergency benefit period which begin in an extended benefit period and, if the benefit year or emergency benefit period ends within that extended benefit period, any subsequent weeks beginning in that period.

(c) "Emergency benefits" means benefits ~~Emergency Unemployment Compensation~~ paid pursuant to Pub. L. No. 110-252, and any subsequent federal law that provides for the payment of Emergency Unemployment Compensation ~~Pub. L. No. 110-449, Pub. L. No. 111-5, Pub. L. No. 111-92, Pub. L. No. 111-118, Pub. L. No. 111-144, Pub. L. No. 111-157, Pub. L. No. 111-205, and Pub. L. No. 111-312.~~

(d) "Extended benefit period" means a period that:

1. Begins with the third week after a week for which there is a state "on" indicator; and

2. Ends with any of the following weeks, whichever occurs later:

a. The third week after the first week for which there is a state "off" indicator; or

b. The 13th consecutive week of that period.

However, an extended benefit period may not begin by reason of a state "on" indicator before the 14th week after the end of a prior extended benefit period that was in effect for this state.



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(e) "Emergency benefit period" means the period during which an individual receives emergency benefits.

(f) "Exhaustee" means an individual who, for any week of unemployment in her or his eligibility period:

1. Has received, before that week, all of the regular benefits and emergency benefits, if any, available under this chapter or any other law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemembers under 5 U.S.C. ss. 8501-8525, in the current benefit year or emergency benefit period that includes that week. For the purposes of this subparagraph, an individual has received all of the regular benefits and emergency benefits, if any, available even if, as a result of a pending appeal for wages paid for insured work which were not considered in the original monetary determination in the benefit year, she or he may subsequently be determined to be entitled to added regular benefits;

2. Had a benefit year that expired before that week, and was paid no, or insufficient, wages for insured work on the basis of which she or he could establish a new benefit year that includes that week; and

3.a. Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act or other federal laws as specified in regulations issued by the United States Secretary of Labor; and

b. Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if an individual is seeking those benefits and the appropriate agency finally determines that she or he is not entitled to



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benefits under that law, she or he is considered an exhaustee.

(g) "State 'on' indicator" means, with respect to weeks of unemployment ending on or before February 11, 2012 ~~December 10, 2011~~, the occurrence of a week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor, for the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those rates for the corresponding 3-month period ending in any or all of the preceding 3 calendar years; and

2. Equals or exceeds 6.5 percent.

(h) "High unemployment period" means, with respect to weeks of unemployment ending on or before February 11, 2012 ~~December 10, 2011~~, any week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor, for the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those rates for the corresponding 3-month period ending in any or all of the preceding 3 calendar years; and

2. Equals or exceeds 8 percent.

(i) "State 'off' indicator" means the occurrence of a week in which there is no state "on" indicator or which does not constitute a high unemployment period.

(3) TOTAL EXTENDED BENEFIT AMOUNT.—Except as provided in subsection (4):

(a) For any week for which there is an "on" indicator



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pursuant to paragraph (2)(g), the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Fifty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Thirteen times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(b) For any high unemployment period, the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Eighty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Twenty times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(4) EFFECT ON TRADE READJUSTMENT.—Notwithstanding any other provision of this chapter, if the benefit year of an individual ends within an extended benefit period, the number of weeks of extended benefits the individual is entitled to receive in that extended benefit period for weeks of unemployment beginning after the end of the benefit year, except as provided in this section, is reduced, but not to below zero, by the number of weeks for which the individual received, within that benefit year, trade readjustment allowances under the Trade Act of 1974, as amended.

Section 89. The provisions of s. 443.1117, Florida Statutes, as revived, readopted, and amended by this act, apply only to claims for weeks of unemployment in which an exhaustee



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establishes entitlement to extended benefits pursuant to that
section which are established for the period between January 4,
2012, and March 11, 2012.

Section 90. If any provision of this act or its application
to any person or circumstance is held invalid, the invalidity
does not affect other provisions or applications of the act
which can be given effect without the invalid provision or
application, and to this end the provision of the act are
severable.

Section 91. The Legislature finds that this act fulfills an
important state interest.

Section 92. Except as otherwise expressly provided in this
act, this act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete lines 51 - 52

and insert:

conform to changes made by this act; reviving,
readopting, and amending s. 443.1117, F.S., relating
to temporary extended benefits; providing for
retroactive application; providing for applicability
relating to extended benefits for certain weeks and
for periods of high unemployment; providing for
applicability; providing severability; providing that
the act fulfills an important state interest;
providing effective dates.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 314 and 315
insert:

(3) Benefits based on service in employment described in s. 443.1216(2) and (3) are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable based on other service subject to this chapter, except that:

(a) Benefits are not payable for services in an instructional, research, or principal administrative capacity for an educational institution or an institution of higher education for any week of unemployment commencing during the



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period between 2 successive academic years; during a similar period between two regular terms, whether or not successive; or during a period of paid sabbatical leave provided for in the individual's contract, to any individual, if the individual performs those services in the first of those academic years or terms and there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution or institution of higher education in the second of those academic years or terms.

(b) Benefits may not be based on services in any other capacity for an educational institution or an institution of higher education to any individual for any week that commences during a period between 2 successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform those services in the second of the academic years or terms. However, if compensation is denied to any individual under this paragraph and the individual was not offered an opportunity to perform those services for the educational institution for the second of those academic years or terms, that individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this paragraph.

(c) Benefits are not payable based on services provided to an educational institution or institution of higher learning to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs any services described in paragraph (a) or



838686

paragraph (b) in the period immediately before the vacation period or holiday recess and there is a reasonable assurance that the individual will perform any service in the period immediately after the vacation period or holiday recess.

(d) Benefits are not payable for services in any capacity specified in paragraphs (a), (b), and (c) to any individual who performed those services in an educational institution while in the employ of a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing those services to one or more educational institutions.

(e) Benefits are not payable for services in any capacity specified in paragraphs (a), (b), (c), and (d) to any individual who provided those services to or on behalf of an educational institution, or an institution of higher education.

(f) Paragraphs (a)-(e) apply to any individual who provided services for an educational institution while in the employ of a private employer holding a contractual relationship with such educational institution, but only if at least 75 percent of the individual's base period wages with the private employer are attributable to services performed in an educational institution.

(g)~~(f)~~ As used in this subsection, the term:

1. "Fixed contract" means a written agreement of employment for a specified period of time.

2. "Continuing contract" means a written agreement that is automatically renewed until terminated by one of the parties to the contract.



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D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 204 - 205

and insert:

Section 6. Paragraphs (c), (d), and (f) of subsection (1)
and subsection (3) of section 443.091, Florida Statutes, are
amended to read:

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

And the title is amended as follows:

Between lines 16 and 17

insert:

providing for the applicability of certain exceptions
relating to benefits based on employment with a
private employer under contract with an educational
institution;



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LEGISLATIVE ACTION

Senate

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House

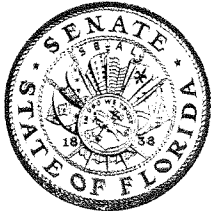
The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment to Amendment (838686)

Delete line 57

and insert:

Beginning July 1 2013, paragraphs (a)-(e) apply to any individual who provided



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

RECEIVED

JAN 18 2012

COMMERCE

COMMITTEES:

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Chair
Budget
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and Economic Development Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Governmental Oversight and Accountability
Regulated Industries

JOINT COMMITTEE:

Administrative Procedures, *Alternating Chair*

SENATOR ELLYN SETNOR BOGDANOFF
25th District

January 17, 2012

Senator Nancy Detert, Chair
Senate Committee on Commerce and Tourism
310 Knott Building
Tallahassee, FL 32399

Re: SB 1416, Relating to Unemployment Compensation

Chair Detert:

I am writing to request that you place **SB 1416, Relating to Unemployment Compensation** on the agenda of your Committee on Commerce and Tourism at your earliest convenience.

Feel free to contact me with any questions or concerns about this legislation.

Sincerely,

Senator Ellyn Setnor Bogdanoff
Florida Senate - District 25

cc: Jennifer Hrdlicka, Staff Director

posted 1/18/12
psb

REPLY TO:

- ☐ 312 Clematis Street, Suite 403, West Palm Beach, FL 33401 (561) 650-6833
- ☐ 1845 Cordova Road, Suite 202, Fort Lauderdale, Florida 33316 (954) 467-4205
- ☐ 212 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5100

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

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 Commerce and Tourism Committee

BILL: SB 1324

INTRODUCER: Senator Norman

SUBJECT: Theft of Copper

DATE: January 25, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	Pre-meeting
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 1324 deals with the regulation of secondary metals recyclers. Specifically, the bill defines copper and includes copper in the definition of a regulated metals property; requires secondary metals recyclers to execute a bond annually in the amount of \$1.5 million for the benefit of any person wrongfully injured by the secondary metals recycler; specifies additional prohibited activities as they relate to the purchase of regulated metals property; and provides that a person who removes or assists another to remove copper or other nonferrous metals from an electrical substation site commits a felony of the first degree.

This bill amends the following sections of the Florida Statutes: ss. 538.18, 538.23, 538.26, and 812.145

This bill reenacts the following section of the Florida Statutes: s. 319.30(1)(u), F.S.

II. Present Situation:

Part II of ch. 538, F.S., addresses the regulation of secondary metals recyclers¹ and purchase transactions² involving “regulated metals property.”³ With the economic recession, the value of metals has risen significantly, prompting an increase in metal theft crimes statewide. Law enforcement agencies have testified before county commission boards as to the negative consequences that increased criminal activity relating to the theft of secondary metals and secondary metal products has had on their respective jurisdictions.⁴

Additionally, the unlawful removing of metal from private property and government structures has caused economic loss for both the private and public sectors.⁵ In an issue paper published by the National Conference of State Legislatures it was noted that “stealing copper and other metals from utilities can cause electric outages and [that] expensive repairs impact ratepayers.” “The Department of Energy estimates that a theft of just \$100 in copper wire can cost the utility more than \$5,000 to repair.”⁶ In Miami Dade County alone, “since 2009, the County’s Public Works Department has spent thousands of dollars to repair or replace vandalized light poles.”⁷ Furthermore, with the influx of the number of foreclosures, metal theft has become common in unoccupied properties, which has impeded the ability of property owners, banks, and mortgage holders to sell both residential and commercial properties.⁸

In 2008, the Legislature revised part II of ch. 538, F.S., considerably. The new statutory provisions included increasing the record keeping requirements for purchase transactions by requiring additional seller information to be obtained; enhancing penalties for third or subsequent violations of the statute and for providing false verification of ownership or false or altered identification to a secondary metals recycler; prohibiting secondary metals recyclers from entering into cash transactions for over the amount of \$1,000; as well as requiring that all secondary metals recyclers register with the Department of Revenue prior to engaging in business.^{9, 10} In 2009, part II of ch. 538, F.S., was once again amended when s. 538.21, F.S., added a clause whereby all municipal and county ordinances relating to the issuance of hold notices by law enforcement were preempted.¹¹

¹ The definition for “secondary metals recyclers” is defined in s. 538.18(8)(a), F.S.

² Section 538.18(6), F.S. (2011)(“Any transaction in which a secondary metals recycler gives consideration for regulated metals property.”).

³ Section 538.18(7) F.S. (2011)(“Any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers . . .”).

⁴ See Orange County, Fla. Ordinance 2010-16, pmbl (Dec. 7, 2010); See also Miami-Dade County, Fla. Ordinance 11-17, pmbl (April 4, 2011).

⁵ Jacquelyn Pless, *Copper Theft Can Cause Major Outages and Impact Ratepayers: A Hot Issue in 2011* (October 2011), NCSL.org, available at <http://www.ncsl.org/default.aspx?tabid=23720> (last visited December 16, 2011).

⁶ *Id.* (citing U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, *An Assessment of Copper Wire Thefts from Electric Utilities*, DOE.org, available at <http://www.oe.netl.doe.gov/docs/copper042707.pdf>. (April 2007).

⁷ Miami-Dade County, Fla. Ordinance 11-17, pmbl (April 4, 2011).

⁸ *Id.*

⁹ Chapter 2008-69, L.O.F. (2008).

¹⁰ In 2008, the number of secondary metals recyclers registered with the Florida Department of Revenue was 278. As of August 2011, that number increased to 769. See, Fla. Dept. of Revenue, *Secondary Dealers and Secondary Metals Recyclers by County* (August 2011), available at http://dor.myflorida.com/dor/taxes/pdf/secondhand_dealers_recyclers.pdf (last visited January 3, 2012).

¹¹ Chapter 2009-162, L.O.F. (2009) (creating s. 538.21(4), F.S., effective October 1, 2009).

III. Effect of Proposed Changes:

Section 1 amends s. 538.18, F.S., by including copper within the definition of a regulated metals property. Furthermore, copper is newly defined as “the nonferrous metal known as copper and includes, but is not limited to, copper, copper alloy, copper utility service wire and copper communication service wire.”

Section 2 amends s. 538.23, F.S., by correcting a cross-reference, as well as by requiring a secondary metals recycler to annually execute a bond in the amount of \$1.5 million with a surety company authorized to do business in Florida for the benefit of any person wrongfully injured by any malfeasance,¹² misfeasance,¹³ neglect of duty, or incompetence by the secondary metals recycler for purchasing metals property stolen from an electrical substation site.

Section 3 amends s. 538.26, F.S., specifying that a secondary metals recycler is prohibited from purchasing regulated metals property from a seller who either uses a name other than his or her own name or the registered name of the seller’s business; is younger than 18 years of age; or is under the influence of drugs or alcohol, if such condition is visible or apparent.

Section 4 amends s. 812.145, F.S., to provide that anyone who removes or assists with the removal of copper or other nonferrous metals from an electrical substation site commits a felony of the first degree.¹⁴

Section 5 reenacts s. 319.30(1)(u), F.S., as it relates to the definition for secondary metals recyclers.

Section 6 provides that this act shall take effect October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

¹² Defined as a wrongful or unlawful act. *See* Black’s Law Dictionary (9th ed. 2009).

¹³ Defined as a lawful act performed in a wrongful manner. *See* Black’s Law Dictionary (9th ed. 2009).

¹⁴ A felony of the first degree is punishable by a term of imprisonment not exceeding 30 years or a fine of up to \$10,000. *See* ss. 775.082 and 775.083, F.S. (2011).

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

None.

B. Private Sector Impact:

SB 1324 imposes the requirement that secondary metals recyclers annually execute a bond for the amount of \$1.5 million with a surety company authorized to do business in Florida. As such, this requirement will impose an additional operating cost for secondary metals recyclers. Conversely, the requirement that bonds be issued by a surety company located in Florida will positively affect the state's surety industry by creating a new demand.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The definition of copper appears logically circular since it enumerates examples of copper rather than defines it. Furthermore, reference to copper is already made where a nonferrous metal¹⁵ is defined. Seeing that regulated metals property¹⁶ includes nonferrous metals, the inclusion of copper in that definition appears redundant.

Additionally, it is unclear who the required bond should benefit: the purchaser of stolen property from an electrical substation site or the actual victim of the theft, the electrical substation site. Furthermore, it appears that the remedy would only be triggered in the limited case where the property at issue is stolen from an electrical substation site.

VII. 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.

¹⁵ Nonferrous metals is defined as metals not containing significant quantities of iron or steel, including, without limitation, *copper*, brass, aluminum, bronze, lead, zinc, nickel, and alloys. *See* s. 538.18(4), F.S.

¹⁶ Regulated metals property is defined as any item composed primarily of any *nonferrous metals* . . . s. 538.18(7), F.S.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 538.23, Florida
Statutes, is amended to read:

538.23 Violations and penalties.—

(1)(a) Except as provided in paragraph (b), A secondary
metals recycler who knowingly and intentionally:

1. Violates s. 538.20 or s. 538.21;

2. Engages in a pattern of failing to keep records required



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by s. 538.19;

3. Violates s. 538.26(4); or

4. Violates s. 538.235,

commits a felony ~~misdemeanor~~ of the third ~~first~~ degree,
punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A secondary metals recycler who commits a third or
subsequent violation of paragraph (a) commits a felony of the
first ~~third~~ degree, punishable as provided in s. 775.082, s.
775.083, or s. 775.084.

Section 2. Present paragraphs (d) and (e) of subsection (1)
of section 812.145, Florida Statutes, are redesignated as
paragraphs (e) and (f), respectively, a new paragraph (d) is
added to that subsection, and subsection (3) is added to that
section, to read:

812.145 Theft of copper or other nonferrous metals.—

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

(d) "Electrical substation" means a facility that takes
electricity from the transmission grid and converts it to a
lower voltage so it can be distributed to customers in the local
area on the local distribution grid through one or more
distribution lines less than 69 kilovolts in size.

(3) A person who knowingly and intentionally removes, or
assists with the removal of, copper or other nonferrous metals
from an electrical substation without authorization of the
utility commits a felony of the first degree, punishable as
provided in s. 775.082, s. 775.083, or s. 775.084.

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



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to metal theft; amending s. 538.23,
F.S.; increasing the criminal penalties for specified
violations relating to secondary metals recycling;
providing increased criminal penalties for third and
subsequent criminal violations; amending s. 812.145,
F.S.; defining the term "electrical substation";
prohibiting removing or assisting with the removal of
copper or other nonferrous metals from an electrical
substation site without authorization of the utility;
providing criminal penalties; providing an effective
date.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Vice Chair*
Budget - Subcommittee on Finance and Tax
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Health Regulation
Military Affairs, Space, and Domestic Security
Transportation

JOINT COMMITTEE:

Legislative Auditing Committee, *Alternating Chair*

SENATOR JIM NORMAN

12th District

January 11, 2012

The Honorable Nancy C. Detert, Chair
Senate Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

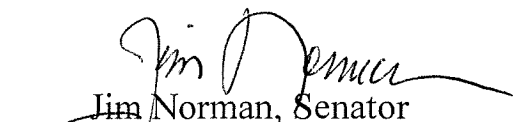
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JAN 12 2012
COMMERCE

Dear Chairman Detert:

My Senate Bill 1324, an act relating to Theft of Copper has been referred to your committee. I respectfully request that this bill be placed on the first possible agenda for a hearing.

Should you or your staff have any questions, please do not hesitate to contact me or my chief aide, Ben Kelly.

Sincerely,


Jim Norman, Senator
12th District
JN:dlc

posted 1/12/12
psh

cc: Jennifer Hrdlicka, Staff Director – Senate Commerce and Tourism

REPLY TO:

- ☐ 14031 North Dale Mabry Boulevard, Tampa, Florida 33618 (813) 265-6260
- ☐ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5068

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

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 Commerce and Tourism Committee

BILL: SB 1434

INTRODUCER: Senator Gibson

SUBJECT: Tax Refund Program for Qualified Target Industry Businesses

DATE: January 24, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Philo	Hrdlicka	CM	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1434 amends s. 288.106, F.S., to allow for a prorated tax refund to a qualified target industry (QTI) business that fails to comply with its tax refund agreement if (1) the QTI business's project has resulted in the creation of at least 10 jobs, and (2) the average wage paid by the QTI business is at least 90 percent of the wage specified in the agreement, with certain limitations. The bill sets forth a formula for calculating the prorated refund, less a 10 percent penalty.

This bill substantially amends s. 288.106, F.S.

II. Present Situation:

General Overview

The Legislature created the QTI program in 1994 "to encourage the growth of higher-wage jobs and a diverse economic base by providing state tax refunds to qualified target industry businesses that originate or expand in the state or that relocate to the state."¹ The definition of "target industry business" includes consideration of future growth, stability, high wages, market and

¹ Section 288.106(1), F.S. For comprehensive overviews of the QTI program, see Office of Economic & Demographic Research, *Tax Refund Program for Qualified Target Industry Business—A review of the methodology and model used in determining the state's return on investment* (Sept. 1, 2010) (available at <http://edr.state.fl.us/Content/special-research-projects/economic/ROI.pdf>); The Florida Senate, *Sunset Review of the Qualified Target Industry Tax Refund Incentive Program, Section 288.106, F.S.*, Interim Report 2010-211 (Dec. 2009) (available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-211cm.pdf); and Enterprise Florida's website at <http://www.eflorida.com/ContentSubpage.aspx?id=472>.

resource independence, industrial base diversification and strengthening, and positive economic impact.²

The Department of Economic Opportunity (DEO) is authorized to certify a business as a QTI business after an extensive application and review process.³ Upon certification, the QTI business enters into a tax refund agreement with DEO under which it receives refunds on taxes it pays related to the project at issue.⁴ Eligible for refund are the state corporate income tax, insurance premium tax, sales and use tax, intangible personal property tax, excise taxes, and communications taxes, as well as local, non-school ad valorem taxes.⁵

The QTI business must comply with the agreement in order to receive a tax refund each year. If the QTI business fails to comply, it loses its certification and tax refund eligibility, unless DEO grants an economic recovery extension or the QTI business is eligible to receive and elects to accept a prorated refund.⁶

There have been a total of 1,013 QTI approvals and 888 contracts executed since the program's 1994 inception.⁷ Of the approvals, 268 are active; 165 are inactive; 371 have been terminated; 114 have been vacated; 2 have been withdrawn; and 93 are complete.⁸ Businesses with active QTI agreements have cumulatively committed to create 38,599 new jobs over the life of their agreements, are contractually obligated to have 15,559 of those new jobs in place as of their last reporting period, and have actually created 17,171 new jobs (i.e., 10 percent more than required). Businesses with completed QTI agreements cumulatively committed to create 18,369 new jobs over the life of their agreements and actually created 28,628 of them (i.e., 56 percent more than required).⁹

Criteria and Refund Details

The basic criteria for a certified QTI business to receive a refund payment are to:

- Commit to create at least 10 net-new jobs, as specified in the agreement;
- Commit to pay at least 115 percent of the area average private-sector wage at the time of certification; and
- Meet any other requirements specified in the agreement.¹⁰

² Section 288.106(2)(q), F.S. The most recent target industry list contemplates manufacturing, corporate headquarters, and research and development in clean technology, life sciences, information technology, aviation/aerospace, homeland security/defense, and financial/professional services. Enterprise Florida, *The Target Industry Update* (2010), at 21-22 (available at http://www.eflorida.com/download/Target_Industry_Update.pdf).

³ Section 288.106(4), F.S. (incorporating s. 288.061, F.S.).

⁴ Section 288.106(5), F.S.

⁵ Section 288.106(3)(d), F.S.

⁶ Section 288.106(5)(b), F.S.

⁷ Enterprise Florida's 2011 Annual Incentives Report, at 17 (Table 5) (available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf). Enterprise Florida explains that the gap between the number of approvals (1,013) and the number of executed contracts (888) exists because not all businesses approved for incentives decide to commence their projects in Florida. *Id.* at 16.

⁸ *Id.*

⁹ *Id.*, at 18 (Table 6).

¹⁰ Section 288.106(4)(b), F.S.; DEO Analysis of SB 1434, at 1 (Jan. 9, 2012) (on file with the Committee on Commerce and Tourism).

The wage requirement may be waived for projects in rural counties, brownfields, or in enterprise zones, or at the request of a local governing board and Enterprise Florida; and for manufacturing companies under specified circumstances.¹¹ Typically, the QTI program requires a 20 percent match from the local community where the project is to be located; the local match may be waived for rural counties or reduced (until June 30, 2014) for the eight coastal Northwest Florida counties disproportionately impacted by the 2010 Deepwater Horizon oil spill.¹²

Upon approval by DEO, a QTI business is eligible for refund payments of \$3,000 per job created in Florida, or \$6,000 per job if the project is located in a rural county or an enterprise zone. There are additional tax refund payments of:

- \$1,000 per job if it pays an annual average wage of at least 150 percent of the average private sector wage in the area or \$2,000 per job if it pays an annual average wage of at least 200 percent of the average private sector wage in the area;
- \$1,000 per job if the local financial support is equal to that of the state's incentive award; and
- \$2,000 per job if the business falls within one of the high-impact sectors designated under s. 288.108, F.S., or increases exports of its goods through a seaport or airport in the state by at least 10 percent in value or tonnage in each of the years that the business receives a tax refund.¹³

Currently, a qualified target industry business may not receive more than \$1.5 million in refunds in a single fiscal year, or more than \$2.5 million if the project is located in an enterprise zone. Additionally, a qualified target industry business may not receive more than \$5 million in refund payments in all fiscal years, or more than \$7.5 million if the project is located in an enterprise zone.¹⁴

Non-Compliance

Compliance with the terms and conditions of the agreement is a condition precedent for the receipt of a tax refund each year. If a QTI business fails to comply with the agreement, it loses its certification and tax refund eligibility, unless (A) DEO grants an economic recovery extension, or (B) the QTI business is eligible to receive and elects to accept a prorated refund.¹⁵

A. Economic Recovery Extension

A QTI business is terminated from the program if it fails to meet the threshold percentages for new job creation and wages, unless it applies for, and DEO approves, an Economic Recovery Extension (ERE). The QTI business must document to DEO the reasons why it was unable to achieve its specified commitments. DEO can grant a 1- or 2-year ERE, during which time a QTI business's agreement is modified to push out the requirements. During the term of an ERE, the QTI business does not receive any refunds

¹¹ Section 288.106(4)(b)1.b., F.S.; DEO Analysis, at 1.

¹² Sections 288.106(2)(j)-(k), (4)(a)10., & (4)(f), F.S.; DEO Analysis, at 1.

¹³ Section 288.106(3)(b), F.S.; DEO Analysis, at 2.

¹⁴ Section 288.106(3)(c), F.S.; DEO Analysis, at 2.

¹⁵ Section 288.106(5)(b), F.S.

from the state. According to DEO, 54 QTI projects have received EREs. The ERE provision expires July 1, 2012.¹⁶

B. Prorated Refund

A QTI business may receive a prorated refund if it falls short of its commitments under the agreement, as provided in s. 288.106.106(6)(e), F.S. That section provides:

A prorated tax refund, less a 5-percent penalty, shall be approved for a qualified target industry business if all other applicable requirements have been satisfied and the business proves to the satisfaction of the [DEO] that:

1. It has achieved at least 80 percent of its projected employment; and
2. The average wage paid by the business is at least 90 percent of the average wage specified in the tax refund agreement, but in no case less than 115 percent of the average private sector wage in the area available at the time of certification, or 150 percent or 200 percent of the average private sector wage if the business requested the additional per-job tax refund authorized in paragraph (3)(b) for wages above those levels. The prorated tax refund shall be calculated by multiplying the tax refund amount for which the qualified target industry business would have been eligible, if all applicable requirements had been satisfied, by the percentage of the average employment specified in the tax refund agreement which was achieved, and by the percentage of the average wages specified in the tax refund agreement which was achieved.^[17]

III. Effect of Proposed Changes:

Section 1 amends ss. 288.106(5) and (6), F.S., to allow DEO the discretion to approve a prorated tax refund to a QTI business that fails to comply with its tax refund agreement. A similar provision already exists requiring DEO to approve such a refund with a 5 percent penalty when a non-compliant QTI business has achieved at least 80 percent of its projected employment and its average wage is at least 90 percent of the average wage specified in the agreement (the exact language of s. 288.106.106(6)(e), F.S., is block-quoted immediately above in the “Present Situation” portion of this analysis). The present bill adds a new option for a prorated refund that: (1) applies a penalty of 10 percent (as opposed to 5 percent); (2) makes DEO’s approval discretionary (as opposed to mandatory); and (3) requires the QTI business’s project to have

¹⁶ Section 288.106(5)(b), F.S.; DEO Analysis, at 2.

¹⁷ Section 288.106.106(6)(e), F.S. This provision was added in 1996, but originally required only the condition of 80 percent of projected employment. Ch. 96-320, s. 44, L.O.F. The corresponding 1996 staff analysis notes the change but does not otherwise discuss it. Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, at 16 (Mar. 18, 1996) (on file with the Senate Commerce and Tourism Committee). The 90 percent of average wage condition was added in 2002. Ch. 2002-392, s. 4, L.O.F. The corresponding 2002 staff analysis notes the change and explains that the Office of Tourism, Trade, and Economic Development (now DEO) was “concerned that the recent economic conditions might cause many QTI Program businesses to miss their contractual performance targets, thus eliminating the businesses from the program.” Senate Staff Analysis and Economic Impact Statement for SB 40-E, at 4-5 (Apr. 29, 2002) (available at <http://archive.flsenate.gov/data/session/2002E/Senate/bills/analysis/pdf/2002s0040E.cm.pdf>). The staff analysis concluded that the subject amendment “expands the conditions under which a prorated tax refund shall be approved, thus potentially keeping businesses in the [QTI program] that might normally have dropped out due to non-compliance with their tax refund agreements.” *Id.* at 12.

resulted in the creation of at least 10 jobs (as opposed to achieving at least 80 percent of its projected employment).

According to DEO, the practical effect of the bill likely will be to retain QTI businesses that otherwise would be terminated for failing to hire at least 80 percent of its committed employment – particularly since the only current recourse available to such businesses, the ERE, expires July 1, 2012. However, the ERE has, for all intents and purposes, already expired, since most businesses have until February 28, 2012, to request it from DEO—and then only if they were granted a one-month extension from filing their FY 2011-12 claims for calendar year 2010 commitments.¹⁸

The present bill further amends ss. 288.106(5) and (6) to provide cross-references to the new prorated refund; update references from the Office of Tourism, Trade, and Economic Development to DEO per the 2011 session's governmental reorganization;¹⁹ and make incidental grammatical and numbering changes.

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:

The Revenue Estimating Conference has not yet determined the impact of this bill.

¹⁸ DEO Analysis, at 3

¹⁹ Ch. 2011-142, s. 4, L.O.F., transferred the functions and trust funds of the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to DEO.

B. Private Sector Impact:

The bill creates an additional opportunity under which a QTI business can fail to meet its jobs commitment during a claim period but still receive a prorated award and stay certified for future QTI refunds (rather than be terminated from the QTI program or stay in the program but receive no refunds for 1 or 2 years, as would occur under the current law).²⁰

C. Government Sector Impact:

DEO suggests that the bill could have a substantial impact on its budget to cover the QTI tax refund payments each fiscal year.²¹

VI. Technical Deficiencies:

According to DEO, line 192 of the bill, referring to “at least 10 jobs” could be a source of debate, because it does not track the nomenclature elsewhere in s. 288.106, F.S., for “net-new jobs.” This is an important distinction when DEO is evaluating refund claims. “Net-new jobs” are those which are clearly in addition to retained jobs a QTI company is typically required to maintain. Under existing agreements, if a company reduces its retained employee workforce, it must hire enough employees to fill those vacant slots, as well as hire employees to meet the scheduled net-new job creation requirements, in order to qualify for its QTI refund.²²

VII. Related Issues:

The bill may create policy implications for local governments that provided the 20 percent match or other forms of financial support to companies they believed would create a significant number of jobs, but which are allowed to create only 10 and stay in the QTI program and receive lower prorated refunds.²³

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.

²⁰ DEO Analysis, at 1.

²¹ DEO Analysis, at 3.

²² DEO Analysis, at 4.

²³ DEO Analysis, at 1, 3-4.



The Florida Senate

Committee Agenda Request

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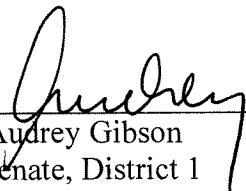
To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 18, 2012

I respectfully request that **Senate Bill # 1434**, relating to Tax Refund Program for Qualified Target Industry Businesses, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.



Senator Audrey Gibson
Florida Senate, District 1

posted 1/18/12
psb

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 Commerce and Tourism Committee

BILL: SB 596

INTRODUCER: Senator Storms and others

SUBJECT: Employee Compensation

DATE: January 25, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	Pre-meeting
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 596 relates to the compensation of employees of nongovernmental organizations, quasi-governmental organizations, and not-for-profit organizations and provides that employees of such organizations may not receive a salary in excess of the salary paid to the highest statewide elected official as established in the General Appropriations Act.

This bill creates a general law not contained in a designated section of the Florida Statutes.

II. Present Situation:

State Procurement

The Department of Management Services (department) is the agency charged with overseeing statewide procurement activity, as provided under ch. 287, F.S. Thus, the mission of the department is:

- (1) To promote efficiency, economy, and the conservation of energy and 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.
- (3) To procure and distribute federal surplus tangible personal property allocated to the state by the Federal Government.¹

¹ Section 287.032, F.S. (2011).

State agencies also engage in the procurement process directly. Specifically, s. 287,056, F.S., provides that “agencies shall, and eligible users² may, purchase commodities and contractual services from purchasing agreements established and state term contracts³ procured to s. 287.057, F.S., by the department.” Thus, the statutory framework enables state agencies to enter into contracts for the provision of services by not-for-profit corporations, for-profit corporations, counties, and municipalities in cases where the outsourcing of needed services would prove to be more cost-effective for the department.

Salaries of State Employees and Elected Officials

The salaries of state employees in both the executive and judicial branches can be found online at MyFlorida.com.⁴ A search query for three of Florida’s statewide elected officials, the Attorney General, Commissioner of Agriculture, and Chief Financial Officer, provide that each official is compensated annually in the amount of \$128,971.96.⁵

To date, the state’s fourth statewide elected official, the Governor, is compensated at \$.12 annually⁶; however, it should be noted that the General Appropriations Act for FY 2011-2012 provides that the Governor is to be compensated at the amount of \$130,273.⁷ Moreover, the Lieutenant Governor is compensated annually in the amount of \$124,851.

Lastly, the salaries for non-elected state employees and state employees employed by the state university system are also provided online.⁸ Based on the reports of agency and statewide public universities, the highest paid non-elected state employee is compensated in the amount of \$275,000, while the highest paid state university system employee is compensated at \$1,213,362.⁹

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of the Florida Statutes and imposes salary limitations on employees of a nongovernmental organization, quasi-governmental entity, or not-for-profit organization that receives two-thirds or more of its budget from state-appropriated funds, including state-appropriated federal funds.

Specifically, employees of such enumerated organizations may not receive a salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of the salary paid to the highest statewide elected official as established in the General Appropriations Act. An exception to this limitation exists for those organizations or entities that receive approval from the Legislative Budget Commission.

² Rule 60A-1.005, F.A.C. (2011).

³ A state term contract is a term contract that is competitively procured by the department pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S. See s. 287.012(27), F.S.

⁴ Available at: <http://dmssalaries.herokuapp.com/salaries> (last visited January 24, 2012).

⁵ *Id.*; See also ch. 2011-69, L.O.F.

⁶ *Id.*

⁷ Chapter 2011-69, L.O.F.

⁸ Available at: http://www.floridahasarighttoknow.com/search_state_payroll.html (last visited January 24, 2012).

⁹ *Id.*

Currently, the salary of the highest-paid statewide elected official is \$128,971.96.^{10, 11} As such, the effect of SB 596 would be to limit the base pay or base pay combined with any bonus or incentive payments of employees falling under this bill's restrictions to that amount. As created by this bill, state employees would not be directly subject to such salary limitations.

Section 2 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Impairment of Contracts

Article 1, Section 10 of the United States Constitution provides that no state shall pass a law impairing the obligation of contracts.¹² The key inquiry when analyzing issues under the contract clause is whether the statute at issue impairs *performance* of the contract or impairs the *obligation* of the contract.¹³ If the former, then a constitutional violation has likely not been triggered seeing that a remedy for the aggrieved party continues to exist in the form of a suit for breach of contract.¹⁴ However, if the law is being used "to materially alter the scope of a contract" than it could be construed as unconstitutionally impairing the obligation of that contract.¹⁵

¹⁰ See *supra*, note 4.

¹¹ Note that if the statute is construed to state that a nongovernmental, quasi-governmental entity, or not-for-profit organization may not be paid in excess of the highest salary paid to a statewide elected official, irrespective of whether the elected official receives such salary, then the correct amount would be \$130,273. See *supra*, note 7.

¹² See also FLA CONST. art. 1, s. 10

¹³ See *Hays v. Port of Seattle*, 251 U.S. 233, 237 (1920) See also, *Jackson Sawmill Co. Inc. v. United States*, 580 F.2d 302, 312 (8th Cir. 1978), *cert denied*, 439 U.S. 1070 (1979) (holding that holders of municipal bonds issued by city to finance interstate bridge project did not have contract clause claim under the federal constitution in the absence of any statute impairing the obligations arising from the terms of the contract); Compare, *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 29 (1977) (holding that the contract clause prohibited the retroactive repeal of a 1962 covenant that limited the ability of the Port Authority of New York and New Jersey to subsidize rail passenger transportation facilities from revenues and reserves funds that would be used to guarantee Port Authority bondholders).

¹⁴ *E&E Hauling, Inc. v. Forest Preserve District of DuPage County, Ill.*, 613 F.2d 675, 679 (7th Cir. 1980) (referring to *St. Paul Gaslight Co. v. City of St. Paul*, 181 U.S. 142, 149 (1901)); See also, *Brooks v. Watchtower Bible & Tract Society, Inc.* 706 So. 2d 85, 90 (4th DCA 1998).

¹⁵ *U.S. Trust Co. of New York*, 431 U.S. at 20-29.

As such, SB 596 could potentially trigger contract clause claims under both the federal and state constitution or breach of contract claims, if it is found that the ability of a state agency to carry out the terms of a contract with a nongovernmental organization, quasi-governmental entity, or not-for-profit organization is retroactively impaired.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

SB 596 applies to nongovernmental organizations and quasi-governmental entities; however, the absence of any statutory guidance to qualify the meaning of these terms may result in a confusing interpretation when determining what organizations and entities fall under such categories.

Additionally, a monitoring and auditing mechanism should be created to review the terms and execution of all contracts entered into by state agencies for compliance purposes. As such, rulemaking authority should be authorized to the appropriate agency to establish a framework for enforcing the provisions created by this bill.

VII. Related Issues:

None.

VIII. Additional Information:

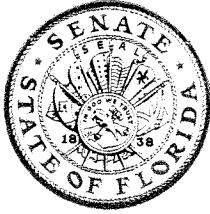
A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children, Families, and Elder Affairs, *Chair*
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Community Affairs
Military Affairs, Space, and Domestic Security
Reapportionment
Transportation

SENATOR RONDA STORMS

10th District

November 4, 2011

RECEIVED

NOV 16 2011

COMMERCE

Senator Nancy Detert, Chair
Senate Committee on Commerce and Tourism
318 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Detert:

Senate Bill 596, relating to *Employee Compensation/Nongovernmental Organizations, Quasi-governmental Entities, and Not-for-profit Organizations*, has been referred to your committee for its first committee of reference.

I would greatly appreciate you placing SB 596 on the Commerce and Tourism committee's agenda at your earliest convenience. Please do not hesitate to contact me should you have any questions.

Thank you for your consideration of this request.

Sincerely,

Senator Ronda Storms
Florida State Senate
10th District

RRS/tp

Cc: Mr. Matthew M. Carter II, Ph.D., Staff Director
531 Knott Building

posted 11/16/11
psh

REPLY TO:

- ☐ Lithia Oaks Business Center, 421 Lithia Pinecrest Road, Brandon, Florida 33511 (813) 651-2189 FAX: (813) 651-2188
 - ☐ 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5072
- Internet Address: storms.ronda.web@flsenate.gov

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

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 Commerce and Tourism Committee

BILL: SB 676

INTRODUCER: Senator Smith

SUBJECT: Workers' Compensation Certificate-of-Exemption Process

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	Favorable
2.	Philo	Hrdlicka	CM	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 676 amends laws related to the workers' compensation certificate of exemption process. This bill addresses three issues:

First, a full-time member of a non-construction limited liability company (LLC) is currently not an "employee" as defined by workers' compensation law. The bill allows such a person to elect to be included in the definition of "employee" by mailing a notice to that effect to the Department of Financial Services (DFS).

Second, corporate officers (both generally and specifically as to the construction industry) are defined as "employees" under current workers' compensation law, but may elect to be exempt from the law by mailing written notice of the election to DFS. Construction industry corporate officers making such an election must currently submit certain additional information and documentation. The bill streamlines the process by providing for electronic submission (as opposed to paper mailing), and alters the required information and documentation to facilitate such submission.

Third, the resulting certificates of election issued by DFS are currently valid for 2 years from issuance in the construction industry. The bill applies this 2-year limit to all certificates (not just to those issued in the construction industry) issued on or after January 1, 2013.

This bill substantially amends sections 440.02 and 440.05, F.S.

I. Present Situation:

Non-Construction LLCs

Under ch. 440, F.S., Florida employers are required to maintain workers' compensation coverage for "employees." Full-time sole proprietors or partners not engaged in the construction industry may include themselves in the definition of "employee" by mailing a notice of election (opt-in) as provided in section 440.05(2), F.S. If no notice is made, the sole proprietor or partner shall not be considered an employee and not eligible for workers' compensation benefits. Full-time members of a non-construction LLC are not currently afforded such an opt-in provision. The Florida Limited Liability Companies Act defines an LLC member as "any person who has been admitted to a limited liability company as a member in accordance with this chapter and has an economic interest in a limited liability company which may, but need not, be represented by a capital account or, in the case of a foreign limited liability company, has been admitted to a limited liability company as a member in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized."¹

Corporate Officers

The term "employee" is further defined to include corporate officers.² A "corporate officer" is in turn defined as any person who fills a position provided for in the articles of incorporation filed with the Division of Corporations of the Department of State, or as permitted or required by ch. 607, F.S.³ Specifically as to the construction industry, the term "corporate officer" includes a member owning at least 10 percent of an LLC created and approved under ch. 608, F.S. Corporate officers (both generally and specifically as to the construction industry) may elect to be exempt from workers' compensation law by mailing a written notice of the election to DFS on a form prescribed by the Department.⁴

That prescribed form (DWC-Form 250) in turn calls for, among other things, the corporate officer's name, social security number, federal tax identification number, all certified or registered licenses issued pursuant to ch. 489, F.S. held by the person seeking the exemption, the registration number of the corporation, and sworn notarization of the corporate officers signature. For construction corporate officers, the form further calls for a \$50 filing fee and documentary proof of the required 10 percent ownership in the corporation.⁵

Upon receipt of the notice of exemption, DFS has 30 days to determine if the corporate officer is eligible for exemption. If the requirements are met, DFS will issue a Certificate of Election to be Exempt.⁶ During FY 2010-2011, DFS issued 73,741 exemptions.⁷

¹ Section 608.402(21), F.S.

² Section 440.02(15)(b), F.S.

³ Section 440.02(9), F.S.

⁴ See section 440.05(1), and (3), F.S.

⁵ Section 440.05(8)(a), F.S.

⁶ Section 44.05(5), F.S.

⁷ DFS Staff Review, November 16, 2011, on file with the Senate Committee on Commerce and Tourism.

Expiration of Certificate

Construction certificates of election are valid for 2 years from issuance and, within 60 days prior to the expiration date of the certificate, DFS must send to the certificateholder both a notice of the expiration date and an application for renewal.⁸

II. Effect of Proposed Changes:

SB 676 amends laws related to the workers' compensation certificate of exemption process.

First, Section 1 amends section 440.02, F.S., to allow a member of a non-construction LLC who devotes full time to the LLC to elect to be included in the definition of employee for the purposes of workers' compensation. If no election is made, the member would not be considered an employee for premium calculation purposes and would not be eligible for workers' compensation benefits.

Second, Section 2 amends section 440.05, F.S., to require corporate officers in the construction industry to submit their notices of election electronically (as opposed to paper mailing). They will no longer be required to provide their social security number, a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by DFS, a copy of the relevant occupational license in the primary jurisdiction of the business, or a copy of the stock certificate evidencing the required ownership; however, they will be newly required to provide their date of birth and Florida driver's license number or Florida identification card number. The notice will no longer need to be notarized under oath. These changes will presumably make the process easier, more efficient, and less expensive for all involved.⁹

Third, Section 3 amends section 440.05, F.S., to apply a 2-year limit to all certificates of election (not just to those issued in the construction industry) issued on or after January 1, 2013. The bill allows DFS to send its notice of the expiration date to the certificateholder via e-mail, and deletes the requirement that it simultaneously provide an application for renewal. This section is effective January 1, 2013.

Finally, Section 4 provides an effective date upon becoming law, except as otherwise provided.

⁸ Section 440.05(6), F.S.

⁹ These changes were made in the subsection of the statute specifically addressing construction corporate officers (section 440.05(3), F.S.). The subsection of the statute addressing corporate officers (as opposed to construction corporate officers) remains unchanged and will continue to require that they "shall mail to the department in Tallahassee [their notice of intent] in accordance with a form prescribed by the department." Section 440.05(1), F.S. Significantly, the "form prescribed by the department" in this context is DWC-Form 250, which DFS uses for both corporate officers and construction corporate officers alike. Changes DFS will necessarily make to its form based on this bill will thus de facto apply to both. Moreover, the term "mail" in section 440.05(1), F.S., can be broadly construed to encompass the electronic submission contemplated in section 440.05(3), F.S. See generally Black's Law Dictionary (9th ed. 2009) (defining "mail" as, among other things, "[o]ne or more written or oral messages sent electronically (e.g., through e-mail or voicemail)"). Thus, while a technical argument can be made otherwise, the changes at issue can be legitimately construed to apply to both corporate officers generally and construction corporate officers specifically.

III. Constitutional Issues:**a. Municipality/County Mandates Restrictions:**

None.

b. Public Records/Open Meetings Issues:

None.

c. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:**a. Tax/Fee Issues:**

None.

b. Private Sector Impact:

Allowing members of full-time non-construction LLCs the choice on whether to elect to be included in the definition of employee for the purposes of workers' compensation will allow the LLCs to avoid the expense of workers' compensation coverage if they so choose.

The regulatory steps and cost of submitting notices is reduced for employers with the elimination of the notary requirement. DFS will continue to provide walk-in assistance in all district offices and will provide computers in its district offices for exemption applicants who may not have access to a computer.

c. Government Sector Impact:

DFS indicates allowing non-construction LLC's to elect to be considered employees will result in less governmental regulation of similarly situated LLCs and eliminate the time and resources DFS spends on administrative challenges to denials of non-construction certificates of exemption.

According to DFS, requiring an electronic application process for notices of election for exemption would eliminate the need for eight positions who review and process exemptions. This is a 23 percent reduction of exemption processing staff and a savings of \$287,416 in salaries and \$14,000 in benefits for a total of \$301,816 for the FY 2012-2013 budget.¹⁰

¹⁰ DFS Staff Review, November 16, 2011, on file with the Senate Committee on Commerce and Tourism.

V. Technical Deficiencies:

See footnote 9, supra.

VI. Related Issues:

None.

VII. 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.



The Florida Senate

Committee Agenda Request

A large, handwritten checkmark is drawn in the upper right corner of the page.

To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 11, 2012

I respectfully request that **Senate Bill #676**, relating to Workers' Compensation Certificate-of-exemption Process, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A large, stylized handwritten signature in black ink, which appears to read "Chris Smith", is written over a horizontal line.

Senator Christopher L. "Chris" Smith
Florida Senate, District 29

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 Commerce and Tourism Committee

BILL: SB 678

INTRODUCER: Senator Smith

SUBJECT: State Contracts

DATE: January 12, 2012

REVISED: _____

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

I. Summary:

This bill adds the requirement that all state contracts exceeding \$35,000 include a provision requiring any call-center services to be staffed by persons located within the United States.

This bill amends s. 287.058, F.S.

II. Present Situation:

Procurement laws govern the manner in which a government receives goods and services. In Florida, ch. 287, F.S., broadly, governs the public procurement of personal property and services. Of particular interest, s. 287.058, F.S., outlines the minimum requirements that must be present in public procurement contracts that exceed the amount of \$35,000.¹

Similarly, the federal government has its own body of law that regulates procurement activities. One of the most well known pieces of legislation regulating federal procurement is The Buy American Act (act), which restricts the federal government from purchasing nondomestic end products,² unless an enumerated exception provided in the statute is applicable.^{3, 4}

¹ Section, 287.017, F.S., sets forth purchasing categories by the threshold amount. Procurement contracts that exceed \$35,000 are designated as a category two.

² “According to the Federal Acquisition Regulation (FAR), a domestic end product means an unmanufactured end product mined or produced in the United States, or an end product manufactured in the U.S. if the cost of its components that are mined, produced, or manufactured in the U.S. exceeds 50 percent of the cost of all its components.” United States Government Accountability Office, *Federal Procurement: International Agreements Result in Waivers of Some U.S. Restrictions* (January 2005), available at <http://www.gao.gov/assets/250/245118.pdf> (last visited January 13, 2012).

³ 41 U.S.C. s. 10(a) (2006).

Notably, the expansion of international trade between the United States and foreign governments has also led to the proliferation of agreements that contain mutually beneficial government procurement obligations. In the spirit of promoting trade relations, governments have agreed to require that each party's goods and service be given the same treatment as domestic goods and services, irrespective of their foreign status.⁵ As such, under these agreements, a government is prohibited from arbitrarily giving preferential treatment to domestic goods at the expense of foreign goods originating from a country where there is an enforceable and standing trade agreement espousing mutually beneficial government procurement obligations.

Historically, international trade agreements have been treated as congressional-executive agreements (CEA), which require the majority of both houses in Congress to be implemented,⁶ as opposed to two-thirds vote of the Senate.⁷ One explanation for the use of CEAs in the context of international trade agreements stems from the view that participation by the House of Representatives is appropriate in light of its constitutional role in revenue raising.⁸ Moreover, congressional authorization has also been deemed necessary as trade agreements have become much more elaborate by regulating a broader spectrum of subjects ranging from subsidies, government procurement, and product standards.⁹ As such, to avoid challenges that Congress was broadly delegating legislative authority to the executive branch to enter into such agreements, Congress enacted the Trade Act of 1974 and Trade Act of 2002, which provides the President with guidelines and authorization to engage in such trade negotiations.¹⁰

The most well-known examples of CEAs are the World Trade Organization Government Procurement Agreement (GPA), the North American Free Trade Agreement (NAFTA), and numerous other bilateral free trade agreements (FTA).¹¹

World Trade Organization Government Procurement Agreement (GPA)

The agreement that established the World Trade Organization (WTO)¹² came as a result of the Uruguay Rounds of Multilateral Trade Negotiations, which also produced a series of other

⁴ See *supra*, note 2 (Exceptions include the following: "where the cost of the domestic end product would be unreasonable; where domestic end products are not reasonably available in sufficient commercial quantities of a satisfactory quality; where the agency head determines that a domestic preference would be inconsistent with the public interest; where the purchases are for use outside of the United States; where the purchases are less than the micro purchase threshold; and where the purchases are for commissary resale.").

⁵ *Id.*

⁶ The Congressional Research Service, *Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather than Treaties* (July 28, 2004), available at http://assets.opencrs.com/rpts/97-896_20040728.pdf (last visited January 13, 2012).

⁷ See U.S. Const. art. 2, s. 2.

⁸ Restatement Third of Foreign Relations Law s. 303, note 9 (1987).

⁹ The Congressional Research Service, *Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather than Treaties* (July 28, 2004), available at http://assets.opencrs.com/rpts/97-896_20040728.pdf (last visited January 13, 2012).

¹⁰ *Id.*

¹¹ A list of the federal government's current procurement obligations under international agreements is available at <http://www.ustr.gov/trade-topics/government-procurement>.

¹² In a letter dated November 7, 1991, Governor Lawton Chiles authorized coverage of Florida under the GATT/WTO Government Procurement Agreement. (See email correspondence with Jean Grier, Senior Procurement Negotiator in the

international agreements, including the GPA.¹³ As enumerated in the preamble, the GPA's objective is the expansion of world trade through three primary measures:

- Prohibition on discrimination based on national origin;
- Establishment of clear, transparent laws, regulations, procedures, and practices regarding governmental procurement; and
- Application of competitive procedural requirements related to notification, tendering (bidding), contract award, tender (bid) protest, etc.¹⁴

With respect to discrimination on the basis of national origin, Article III of the agreement expressly forbids the application of less favorable treatment to the products, services and suppliers of other foreign parties than that which would be accorded to domestic products, services, and suppliers or the products, services, and suppliers of another party to the GPA.¹⁵ Moreover, the agreement further provides that all parties will ensure that the laws, regulations, procedures, and practice regulating government procurement in their home state will be executed in a nondiscriminatory manner.¹⁶

Accordingly, procurement provisions stipulated in the Buy American Act will yield to nondiscriminatory provisions espoused in international trade agreements. The interplay between the act and international trade agreements is described below:

[T]he Trade Agreements Act of 1979 authorizes the President to waive any otherwise applicable "law, regulation or procedure regarding Government procurement" that would accord foreign products less favorable treatment than that given to domestic products. Article 1004 of The North American Free Trade Agreement (between the United States, Mexico, and Canada) disallows domestic protection legislation, such as the Buy-American Act, in government procurement. Other treaties and agreements also place limitations on the application of the act and must be considered when looking at any Buy American question.^{17, 18}

Office of the United States Trade Representative, on file with the Senate Committee on Governmental Oversight and Accountability).

¹³ Signatory countries: Armenia, Canada, Austria Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia, Bulgaria, Romania, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, and Chinese Taipei.

¹⁴ 1994 Uruguay Round Agreement on Government Procurement, April 15, 1994, WTO Agreement, Annex 4(b) (hereinafter "GPA"), and see GPA Appendix I (United States), Annex 2 (discusses sub-central government entities, such as Florida), both available at http://www.wto.org/english/docs_e/legal_e/legal_e.htm (last visited January 16, 2012).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Congressional Research Service, *The Buy American Act: Requiring Government Procurements to Come from Domestic Sources*, (March 13, 2009), available at http://assets.opencrs.com/rpts/97-765_20080829.pdf (last visited January 13, 2012).

¹⁸ See 19 U.S.C. ss. 2511(a), 2531, 2532, and 2533 (2011); see also Exec. Order No. 12260, 48 C.F.R. 25.402, reprinted as 19 U.S.C. 2512(b)(2), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=44462#axzz1jXJhYUyX> (last visited January 16, 2012).

As such, Florida's executive branch is covered under the GPA¹⁹ for purchases that exceed \$552,000 for commodities and services and \$7,777,000 for construction services.²⁰ Florida was 1 of 37 states to agree to procure in accordance with the GPA.²¹

Free Trade Agreements

In addition to the GPA, the United States has also entered into several bilateral free trade agreements²² and two multilateral free trade agreement,²³ with the most highly recognized being NAFTA. As with the GPA, all these agreements contain provisions that call for fair and non-discriminatory treatment of products, goods, and services by all state parties. When necessary, the United States has issued waivers to protect parties from discriminatory purchasing requirements found under existing law that would be contrary to the covenants embodied in such international agreements.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 287.058, F.S., to require that state agency contracts in excess of \$35,000 must include a provision specifying that all call center services provided by the contractor and all subcontractors must be staffed by persons located within the United States.

Section 2 provides that the bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None

¹⁹ See Annex 2 (Sub-Central Government Entities), *supra*, note 14.

²⁰ 76 F.R. 76808-01, Dec. 8, 2011.

²¹ In a letter dated November 7, 1991, Governor Lawton Chiles authorized coverage of Florida under the GATT/WTO Government Procurement Agreement. (See email correspondence with Jean Grier, Senior Procurement Negotiator in the Office of the United States Trade Representative, on file with the Senate Committee on Governmental Oversight and Accountability).

²² The United States has entered bilateral free trade agreements with the following countries: Australia, Bahrain, Canada, Chile, Israel, Morocco, Oman, Peru, and Singapore. This information is available at <http://www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations> (last visited January 14, 2012).

²³ NAFTA (member countries: United States, Mexico, and Canada) and DR-CAFTA (El Salvador, Dominican Republic, Guatemala, Honduras, Nicaragua, and Costa Rica). This information is available at <http://www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations> (last visited January 14, 2012).

²⁴ See *supra*, note 18.

D. Other Constitutional Issues:

The Foreign Commerce Clause and Market Participant Exception

That Commerce Clause found in Article I, Section 8, Clause 3 provides that Congress shall have the power “to regulate commerce with foreign Nations, and among the several States.”²⁵ The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.²⁶ As such, states may not enact laws which improperly intrude upon the federal government’s exclusive power to set foreign affairs policy for the nation as a whole.²⁷

For this reason, courts review state action affecting foreign commerce with heightened scrutiny.²⁸ The U.S. Supreme Court has explained the applicable standard as follows: “It is a well-accepted rule that state restrictions burdening foreign commerce are subjected to a more rigorous and searching scrutiny. It is crucial to the efficient execution of the Nation’s foreign policy that the federal government . . . speak with one voice when regulating commercial relations with foreign governments.”²⁹ Accordingly, requiring domestic call-center services for state contracts may potentially implicate the Commerce Clause of the U.S. Constitution.

Equally, it should also be noted that because the state is acting as a “market participant” under this bill, the market participant exception to the Commerce Clause limitations on state action may be applicable. When a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Interstate Commerce Clause.³⁰ A state is considered to be a “market participant” when it is acting as an economic actor, such as a purchaser of goods and services.³¹

However, as it relates to the Foreign Commerce Clause, the law is unsettled regarding the applicability of the market participant exception. In *Trojan Techs., Inc. v. Pennsylvania* the federal Third Circuit Court of Appeals upheld the validity of a Pennsylvania procurement statute that required suppliers contracting with a public agency for public works projects to provide products made of American steel.³² There, the court found that the market participant exception did extend to the Foreign Commerce Clause.³³ Conversely, the federal First Circuit Court of Appeals, in *National Foreign Trade Council v. Natsios*, refused to extend the market participant exception to the Interstate Commerce Clause.³⁴

²⁵ U.S. CONST. Art. I, s. 8.

²⁶ See *Gibbons v. Ogden*, 22 U.S. 1 (1824).

²⁷ *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 450 (1970); see also, Shannon Klinger and Lynn Sykes, *Exporting the Law: A Legal Analysis of State and Federal Outsourcing Legislation*, National Foundation for American Policy, April 2004.

²⁸ *Id.* at 446. (“When construing Congress’ power to ‘regulate commerce with foreign Nations,’ a more extensive constitutional inquiry is required.”).

²⁹ *South-Central Timber Develop., Inc. v. Wunnicke*, 467 U.S. 82, 100 (1984) (citing *Michelin Tire Corp. v. Wages*, 723 U.S. 276, 285 (1979)).

³⁰ See *White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204, 208 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).

³¹ *Id.*

³² *Trojan Techs., Inc. v. Pennsylvania*, 916 F.2d 903, 912 (3d Cir. 1990), *cert denied*, 501 U.S. 1212 (1991).

³³ *Id.* at 910.

³⁴ *National Foreign Trade Council v. Natsios*, 181 F.3d 38, 60 (1st Cir. 1999), *cert granted*, 528 U.S. 1018 (1999).

To date, neither the federal Eleventh Circuit Court of Appeals nor the U.S. Supreme Court has spoken on the matter.

Federal Preemption

In addition to the Foreign Commerce Clause, SB 678 may also implicate federal preemption. When dealing with subject matter relating to foreign affairs, the U.S. Supreme Court (Supreme Court) has stated the following: “Our system of government is such that the interest of the people of the whole nation imperatively requires that federal power in the field of affecting foreign relations be left entirely free from local interference.”³⁵ As such, a series of cases by the Supreme Court have struck down state laws directed at foreign conduct that have been interpreted by the Court as conflicting with federal policy and intent.

In *Zschernig v. Miller*, the Supreme Court struck down an Oregon probate law that restricted the right of an alien not residing within the United States or its territories to take either real or personal property by succession or testamentary disposition was dependent upon the existence of a reciprocal right in that alien’s home country.³⁶ While the law did not explicitly direct its application to any particular county, the Supreme Court, nevertheless, held that the statute did constitute an “intrusion by the state into the field of foreign affairs which the Constitution entrusts to the President and Congress” and was therefore unconstitutional.³⁷

Similarly, in *American Insurance Association v. Garamendi*, the Supreme Court concluded that a California law that required insurance companies doing business in California and who had sold policies in Europe to Holocaust victims during World War II to disclose information concerning those policies was preempted under federal law.³⁸ During the time that California enacted that law, the federal government was engaging in international discussions with Germany and other international stakeholders with the aim of establishing a comprehensive framework for identifying and resolving such outstanding insurance claims.³⁹ As such, the state law was held unconstitutional for impermissibly conflicting with the federal government’s foreign relation power.⁴⁰

Additionally, the Supreme Court in *Garamendi* also addressed the weight to be given to executive agreements when it held that “valid executive agreements are fit to preempt state law, just as treaties are.”⁴¹ To this end, the Court relied on its previous holding in *Zschernig* when it stated that “state action with more than an incidental effect on foreign affairs is preempted, even absent any affirmative federal activity in the subject area of the state law, and hence without any showing of conflict.”⁴²

³⁵ *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 418 (2003) (citing *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941)).

³⁶ *Zschernig v. Miller*, 389 U.S. 429, 441 (1968).

³⁷ *Id.* at 433 (finding that Department of Justice’s acquiescence to the Oregon statute did not justify upholding the statute seeing the potential for great diplomatic disruption).

³⁸ *Garamendi*, 539 U.S. at 420.

³⁹ *Id.* at 406-408.

⁴⁰ *Id.* at 420.

⁴¹ *Id.* at 416.

⁴² *Id.* at 418 (“Our system of government is such that the interest of cities, counties, and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.”).

Lastly, with respect to state government procurement activity, the Supreme Court, in *Crosby v. National Foreign Trade Council*, concluded that a Massachusetts' law prohibiting its agencies from purchasing goods and services from companies that did business with Burma, with some limited exceptions, was unconstitutional.⁴³ Similar to *Garamendi*, the federal government had acted and was reassessing its current foreign relations status with Burma in light of reports of human rights violations by the government. As such, Congress passed a statute that imposed a set of mandatory and conditional sanctions on Burma, as well as authorized the President to impose such sanctions subject to the limitation that they would only limit United States persons from conducting *new* business in Burma.⁴⁴

The existence of both the state and federal law created a direct conflict, seeing that Massachusetts' ban restricted all contracts between the state and companies doing business in Burma, making the state law more overreaching than the prohibitions imposed by the President through congressional authorization. Accordingly, the Supreme Court concluded the following:

[T]he state act undermines the President's capacity, in this instance, for effective diplomacy. It is not merely that the differences between the state and federal acts in scope and type of sanctions threaten to complicate discussions; they comprise the very capacity of the President to speak for the Nation with one voice in dealing with other governments. We need not get into any general consideration of limits of state action affecting foreign affairs to realize that the President's maximum power to persuade rests on his capacity to bargain for the benefits of access to the entire national economy without exception for enclaves fenced off willy-nilly by inconsistent political tactics. When such exceptions do qualify his capacity to present a coherent position on behalf of the national economy, he is weakened, of course, not only in dealing with the Burmese regime, but in working together with other nations in hopes of reaching common policy and "comprehensive" strategy.⁴⁵

Accordingly, because SB 678 implicates foreign relations by requiring that state agency contracts in excess of \$35,000 must include a provision specifying that all call center services provided by the contractor and all subcontractors must be staffed by persons located within the United States it may be subject to a federal preemption challenge for the reasons described above. While the statute does not appear to target any specific country, as was the case in *Crosby*, it does implicate foreign relations in a manner similar to that described in *Garamendi* and *Zschernig*, seeing that the SB 678's requirement may conflict with existing government procurement obligations as enumerated in the international agreements entered into by the United States with other nations, which this state is subject to comply with.

⁴³*Crosby v. National Foreign Trade Council*, 530 U.S. 363, 388 (2000).

⁴⁴*Id.* at 378-382; *See also, Id.* at 375 ("When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.").

⁴⁵*Id.* at 381-382.

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

None.

B. Private Sector Impact:

SB 678 could limit the number of private companies qualified to enter into procurement contracts with the state.

C. Government Sector Impact:

SB 678 could have fiscal implications if the cost of domestic labor is higher than the cost of labor in foreign markets.

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.



481542

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete line 31
and insert:
Florida. This also applies to all call-center services

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

And the title is amended as follows:

Delete lines 5 - 6
and insert:
services to be staffed by persons located within



481542

12

Florida; providing an effective date.



The Florida Senate

Committee Agenda Request



To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 11, 2012

I respectfully request that **Senate Bill #678**, relating to State Contracts, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "Chris Smith", is written over a horizontal line.

Senator Christopher L. "Chris" Smith
Florida Senate, District 29



**FLORIDA
DEPARTMENT *of*
ECONOMIC
OPPORTUNITY**

Veterans Services and Programs

Thursday, January 26, 2012



Employment Services

DEO Veterans' Workforce Program promotes and maximizes the employment of Florida's veteran population, especially those with barriers to employment.



Veterans Programs

- Transition Assistance Programs (TAP)
- The Veterans' Administration Vocational Rehabilitation and Employment (VR&E) Program
- Transitioning Incarcerated Veterans Program (TIVP)
- Military Family Employment Advocates



Veterans Employment Initiatives

- Yellow Ribbon Program events
- Florida National Guard training weekends
- Employ Florida Marketplace – Veterans Portal
- Hiring Florida's Heroes



Employ Florida Marketplace – Veterans Portal

- www.veterans.employflorida.com
- Function of the Employ Florida Marketplace tailored to the needs and interests of veterans
- Translates Military Specialty Codes
- Tax incentives for hiring veterans



Hiring Florida's Heroes

- Promote hiring returning veterans to Florida's employers
 - Connect employers with a variety of resources to assist in the hiring process
 - Toll Free Number for Businesses: 866-352-2345
- Proposed legislation – SB 922:
 - Expands state contracting benefits to veteran-owned businesses
 - Qualified veterans admitted to any Florida College System institution



Housing Services

- Administers the **Neighborhood Stabilization Program** along with local partners
- Provides funding to purchase foreclosed homes
- Rehabilitates the homes
- Available for rent and purchase to low-to-moderate income Floridians
- Often target veterans



The Home Front Apartments

Tallahassee

- Housing to homeless veterans
- Six units are ADA compliant
- 53 one-bedroom units rehabbed with NSP funds
- Energy-efficient through Weatherization Assistance Program funds



Questions?

Employment Services: Tom Clendenning

Director, Workforce Services

Phone: (850) 245-7499

tom.clendenning@deo.myflorida.com

Housing Services: Ken Reecy

Assistant Director, Housing and Community Development

Phone: (850) 717-8436

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Florida Department of Economic Opportunity

107 East Madison Street

Tallahassee, FL 32399-4135

www.floridajobs.org | www.veterans.employflorida.com



720

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

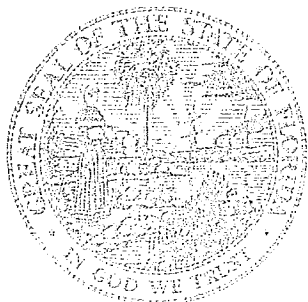
I, Kurt S. Browning, Secretary of State,
do hereby certify that

Hayden Dempsey

is duly appointed a member of the

**Board of Directors,
Enterprise Florida, Inc.**

for a term beginning on the
Twelfth day of August, A.D., 2011,
until the Thirtieth day of September, A.D., 2015
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital,
this the Fourteenth day of October, A.D., 2011.*

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

OATH OF OFFICE RECEIVED
(Art. II, § 5(b), Fla. Const.)

11 OCT 13 AM 10:52

STATE OF FLORIDA

County of LEON

DIVISION OF ELECTIONS
SECRETARY OF STATE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Board of Directors, Enterprise Florida, Inc
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God," See § 92.52, Fla. Stat.]

[Signature]
Signature

Sworn to and subscribed before me this 11 day of October, 2011

S. Cartwright
Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public



Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

101 E College Ave
Street or Post Office Box

Tallahassee FL 32301
City, State, Zip Code

Hayden Dempsey
Print name as you desire commission issued

[Signature]
Signature



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2011 SEP 16 PM 4:00
DIVISION OF ELECTIONS
TALLAHASSEE, FL

September 13, 2011

Mr. Kurt S. Browning, Secretary
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following appointment under the provisions of Section 288.901, Florida Statutes:

Mr. Hayden Dempsey
3239 Appleton Drive
Tallahassee, Florida 32311

as a member of the Board of Directors, Enterprise Florida, Inc., succeeding Donald E. Phillips, subject to confirmation by the Senate. This appointment is effective August 12, 2011, for a term ending September 30, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/nj

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.

Please type or print in blue or black ink.

October 5, 2011

Date Completed

1. Name: Hayden Dempsey
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: 101 E. College Ave., Tallahassee, FL 32301
STREET OFFICE # CITY

850-222-6891
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 3239 Appleton Dr. Tallahassee
STREET CITY COUNTY

FL 32311 850-556-1985
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business ☒ Residence ☐ Fax # _____
(optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
2020 Golf Terrace Dr., Tallahassee,	FL	1997	2003
1310 Magnolia Dr., Winter Park,	FL	1996	1997
1015 Greentree Dr., Winter Park,	FL	1984	1987

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM

5. Date of Birth: 12/13/67 Place of Birth: Tampa, FL

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes ☒ No ☐ If "Yes" Explain

Bernard Hayden Dempsey - changed name on adoption

RECEIVED
11 OCT -6 AM 11:14
DIVISION OF ELECTIONS
SECRETARY OF STATE

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? Lifetime

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Leon B. Current Party Affiliation: Republican

12. Education

A. High School: Georgetown Preparatory School Year Graduated: 1986

(NAME AND LOCATION)
Bethesda, MD

B. List all postsecondary educational institutions attended:

NAME & LOCATION

DATES ATTENDED

CERTIFICATES/DEGREES RECEIVED

Wake Forest University 1986-1990 BA Political Science

Nova Southeastern University Law School 1991-1994 JD

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service:

B. Branch or Component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes ☒ No ☐ If "Yes" give details:

DATE

PLACE

NATURE

DISPOSITION

1987 Wintson-Salem, NC Possession of alcohol \$10 fine

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS

TYPE OF BUSINESS

OCCUPATION/JOB TITLE

PERIOD OF EMPLOYMENT

Greenber Traurig, Law Firm, Shareholder, Dec 2003-Present

Executive Office of the Governor, Special Counsel, Jan 2011-August 2011

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐ If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION

EMPLOYING AGENCY

PERIOD OF EMPLOYMENT

Special Counsel, Exec. Office of Governor, Jan. 2011-Aug. 2011

Legislative Affairs Director, Deputy General Counsel, Counsel for Legislative Affairs, EOG, Sept. 1999-July 2002

Administrative Assistant II, EOG, Sept 1990-August 1991

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

As Special Counsel to Governor Scott, I worked with the
Legislature and the executive branch agencies to restructure
Florida government to help attract businesses and jobs to
Florida. My governmental experience will hopefully provide the
EFI Board perspective and insights into how EFI can best leverage
Florida's resources to accomplish its mission. I have also →

- B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

- C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☐ If "Yes", list:

- D. Identify all association memberships and association offices held by you that relate to this appointment:

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☒ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
--------------	---------------------------------	----------------	---------------------

<u>Board Member, Gulf States Marine Fisheries Commission</u>			
<u>June 2004-2009</u>			

Continuation of answer to #17 on previous page:

represented numerous small and large businesses and understand many of the factors they consider when deciding where to locate their operations.

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Bi-annual

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED

MEETINGS MISSED

REASON FOR ABSENCE

Attended Spring 2004, Spring 2005, Spring/Fall 2006, Spring 2008. Missed Fall 2005, business conflict, Spring 2007 business conflict, Fall 2007, term expired, Fall 2008, business conflict.

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

DATE

NATURE OF VIOLATION

DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☒ No ☐ If "Yes", list:

A. Title of Office: Board Member, Gulf States Marine Fisheries Commission

B. Term of Appointment: 2004-2007

C. Confirmation results: Confirmed

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☒ No ☐ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE

ORIGINAL

ISSUING AUTHORITY

DISCIPLINARY ACTION/DATE

TITLE & NUMBER

ISSUE DATE

Florida Bar 14435, The Florida Bar, No disciplinary action

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☒ No ☐ If "Yes", explain:

NAME OF BUSINESS

YOUR RELATIONSHIP TO BUSINESS

BUSINESS' RELATIONSHIP TO AGENCY

Greenberg Traurig Law Firm, Shareholder. Greenberg Traurig provided legal representation to numerous state agencies and local governments.

- B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☒ No ☐ If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
<u>State of Florida, Angela Dempsey, former spouse, Circuit Judge 2nd Judicial Circuit.</u>			
<u>Dept. Children & Families, Matt Demspey, brother, employee.</u>			

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☐

A. Did you receive any compensation other than reimbursement for expenses? Yes ☒ No ☐

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED
<u>Florida Legislature, Executive Office fo the Governor 2011</u>	
<u>See attached 2010 lobbyist registration list</u>	

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
<u>Fred Baggett,</u>			
<u>Pete Antonacci,</u>			
<u>Gus Corbella,</u>			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
<u>Republican Lawyers Association PO Box 18965, Washington, DC</u>			
<u>Board member, 2004-2010</u>			
<u>Big Bend YMCA, 2001 Appalachee PWY, Tallahassee, FL, Board</u>			
<u>member 2010-2011,</u>			
<u>The Florida Bar</u>			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

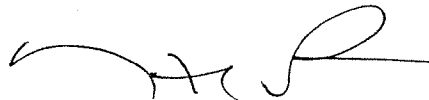
30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

CERTIFICATION

STATE OF FLORIDA, COUNTY OF

Before me, the undersigned Notary Public of Florida, personally appeared

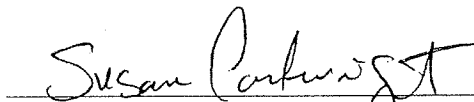
Hayden Dempsey, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.



Signature of Applicant-Affiant

Sworn to and subscribed before me

this 5 day of October, 20 11.



Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☐

Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) _____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

Select Year:

Select Type:

Select View:

2010 Legislative Lobbyist

The "Industry Code" listed below each principal address states the North American Industry Classification System (NAICS) code that most accurately describes the principal's main business. You may view the full list of codes and titles on the site: <http://www.census.gov/naics/2007/NAICO607.HTM>.

Hayden R. Dempsey

Mailing Address:

Greenberg Traurig 101 E College Ave
Tallahassee, FL 32301

Phone Number:

850/222-6891

Principals:

Alzheimer's Association, Florida Gulf Coast Chapter

9365 US Hwy 19 N Ste B Pinellas Park, FL 33782

Industry Code: 624120

Effective: 01/11/2010

~~Amerigroup Corporation~~

~~4425 Corporation Ln Virginia Beach, VA 23462 (Withdrawal Date: 02/08/2010)~~

~~Industry Code: 524114~~

~~Effective: 01/11/2010~~

Broward County Sheriff's Office

2601 W Broward Blvd Ft Lauderdale, FL 33312

Industry Code: 922120

Effective: 01/11/2010

City of North Port

4970 City Hall Blvd North Port, FL 34286

Industry Code: 921110

Effective: 01/11/2010

Enterprise Leasing Company of Florida, LLC

5105 Johnson Rd Coconut Creek, FL 33073

Industry Code: 532111

Effective: 01/11/2010

Florida Association of Court Clerks & Comptrollers

3544 Maclay Blvd Tallahassee, FL 32312
Industry Code: 921110
Effective: 01/11/2010

~~Florida Association of Health Plans, Inc~~

~~201 E Park Ave Tallahassee, FL 32301 (Withdrawal Date: 02/08/2010)
Industry Code: 813910
Effective: 01/11/2010~~

Keefe Commissary Network

1260 Andes Blvd St. Louis, MO 63132
Industry Code: 454390
Effective: 05/19/2010

Maxim Health Care

600 N Westshore Blvd Ste 600 Tampa, FL 33609
Industry Code: 621610
Effective: 03/11/2010

~~MAXIMUS~~

~~41419 Sunset Hills Rd Reston, VA 20190 (Withdrawal Date: 02/08/2010)
Industry Code: 921190
Effective: 01/11/2010~~

Meridian Behavioral Healthcare

4310 SW 13th St Gainesville, FL 32614
Industry Code: 621420
Effective: 01/11/2010

Mylan, Inc

1500 Corporate Dr Canonsburg, PA 15317-8580
Industry Code: 325412
Effective: 01/11/2010

Pediatric Services of America, Inc

310 Technology Pky Norcross, GA 30092
Industry Code: 621610
Effective: 01/11/2010

Public Risk Underwriters

615 Crescent Exec Cir 6th Floor Lake Mary, FL 32746
Industry Code: 524298
Effective: 04/12/2010

Skanska Infrastructure Development

99 Canal Center Plaza Ste 125 Alexandria, VA 22314
Industry Code: 237310

Effective: 01/11/2010

United Healthcare Services, Inc

9900 Bren Rd E Minnetonka, MN 55343

Industry Code: 524114

Effective: 01/07/2010

~~Williams Scotsman, Inc~~

~~801 Jetstream Dr Orlando, FL 32824 (Withdrawal Date: 02/04/2010)~~

~~Industry Code: 053213~~

~~Effective: 01/11/2010~~

Select Year:

Select Type:

Select View:

2010 Executive Lobbyist

The "Industry Code" listed below each principal address states the North American Industry Classification System (NAICS) code that most accurately describes the principal's main business. You may view the full list of codes and titles on the site: <http://www.census.gov/epcd/naics02/naico602.htm>.

Hayden R. Dempsey

Mailing Address:

Greenberg Traurig 101 E College Ave
Tallahassee, FL 32302

Phone Number:

850/222-6891

Principals:

~~AMERIGROUP Corporation~~

~~4425 Corporation Lane Virginia Beach, VA 23462 (Withdrawal Date: 02/08/2010)~~

~~Industry Code: 524114~~

~~Effective: 01/06/2010~~

Broward County Sheriff's Office

2601 W Broward Blvd Fort Lauderdale, FL 33312

Industry Code: 922120

Effective: 01/06/2010

City of North Port

4970 City Hall Blvd North Port, FL 34286

Industry Code: 446199

Effective: 01/06/2010

Enterprise Leasing Company of Florida, LLC

5105 Johnson Rd Coconut Creek, FL 33073

Industry Code: 532111

Effective: 01/06/2010

Florida Association of Court Clerks & Comptrollers

3544 Maclay Blvd Tallahassee, FL 32312

Industry Code: 921110

Effective: 01/06/2010

~~Florida Association of Health Plans, Inc~~

~~201 East Park Ave Tallahassee, FL 32301 (Withdrawal Date: 02/08/2010)~~
~~Industry Code: 813910~~
~~Effective: 01/06/2010~~

Isocorp

2022-2 Raymond Diehl Rd Tallahassee, FL 32308
Industry Code: 541512
Effective: 07/09/2010

Keefe Commissary Network

1260 Andes Blvd St Louis, MO 63132
Industry Code: 454390
Effective: 05/19/2010

Maxim Health Care

600 N Westshore Blvd Ste 600 Tampa, FL 33609
Industry Code: 621610
Effective: 03/11/2010

~~Maximus~~

~~41419 Sunset Hills Rd Reston, VA 20190 (Withdrawal Date: 02/08/2010)~~
~~Industry Code: 921190~~
~~Effective: 01/06/2010~~

Meridian Behavioral Healthcare

4310 SW 13th At Gainesville, FL 32614
Industry Code: 621420
Effective: 01/06/2010

Mylan, Inc

1500 Corporate Dr Canonsburg, PA 15317-8580
Industry Code: 325412
Effective: 01/06/2010

Pediatric Services of America, Inc

310 Technology Pkwy Norcross, GA 30092
Industry Code: 621610
Effective: 01/06/2010

Public Risk Underwriters

615 Crescent Executive Circle FL 6 Lake Mary, FL 32746
Industry Code: 524298
Effective: 04/13/2010

Skanska Infrastructure Development

99 Canal Center Plaza Ste 125 Alexandria, VA 22314
Industry Code: 237310

Effective: 01/06/2010

United Healthcare Services, Inc

9900 Bren Road East Minnetonka, MN 55343

Industry Code: 524114

Effective: 01/07/2010

~~Williams Scotsman, Inc~~

~~801 Jetstream Dr Orlando, FL 32824 (Withdrawal Date: 02/04/2010)~~

~~Industry Code: 532310~~

~~Effective: 01/06/2010~~

720

Amended

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Kurt S. Browning, Secretary of State,
do hereby certify that

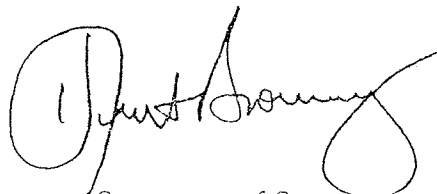
Christopher M. Kise

is duly appointed a member of the
**Board of Directors,
Enterprise Florida, Inc.**

for a term beginning on the
Thirteenth day of June, A.D., 2011,
until the Thirtieth day of September, A.D., 2015
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital,
this the Twenty-Second day of November, A.D.,*




Secretary of State



RICK SCOTT
GOVERNOR

2011 NOV 10 AM 10:24

DEPARTMENT OF STATE
DIVISION OF ELECTIONS

November 8, 2011

Mr. Kurt S. Browning, Secretary
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have amended the following appointment under the provisions of Section 288.901, Florida Statutes:

Mr. Christopher M. Kise
106 East College Avenue
Suite 900
Tallahassee, Florida 32301

as a member of the Board of Directors, Enterprise Florida, Inc., succeeding T. Martin Fiorentino, subject to confirmation by the Senate. This appointment is effective June 13, 2011, for a term ending September 30, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/nj

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of LEON

2011 JUN 14 AM 8:18

FLORIDA STATE
DIVISION OF ELECTIONS

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Board of Directors, Enterprise Florida
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]



Signature

Sworn to and subscribed before me this 13th day of June 2011.

Bridgett Hurn
Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

106 E. College Ave, Suite 900
Street or Post Office Box

Tallahassee, FL 32301
City, State, Zip Code

Christopher M. Kise
Print name as you desire commission issued

Signature

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.

Please type or print in blue or black ink.

11. July. 2011

1. Name: MR. KISE CHRISTOPHER Date Completed MICHAEL
MR / MRS / MS LAST FIRST MIDDLE / MA / DEN
2. Business Address: 106 EAST COLLEGE AVENUE SUITE 900 TALLAHASSEE
STREET OFFICE # CITY
FL 32301 850-222-6100
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER
3. Residence Address: 3235 APPLETON DRIVE TALLAHASSEE LEON
STREET CITY COUNTY
FL 32311 850-513-3474
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER
- Specify the preferred mailing address: Business ☒ Residence ☐ Fax # _____
(optional)

4. A. List all your places of residence for the last five (5) years.

3235 APPLETON DRIVE TALL, FL 32311 2004 PRESENT
ADDRESS CITY & STATE FROM TO

- B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

N/A
ADDRESS CITY & STATE FROM TO

5. Date of Birth: 12/23/1964 Place of Birth: MIAMI, FL
6. Social Security Number: _____
7. Driver License Number: _____ Issuing State: FLORIDA
8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes" Explain _____

2011 JUL 12 PM 1:26
FLORIDA STATE
DIVISION OF ELECTIONS

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 1964

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: LEON

B. Current Party Affiliation: REPUBLICAN

12. Education

A. High School: WEBSTER CHRISTIAN SCHOOL

(NAME AND LOCATION)

MIAMI, FL

Year Graduated: 1982

B. List all postsecondary educational institutions attended:

NAME & LOCATION

DATES ATTENDED

CERTIFICATES/DEGREES RECEIVED

UNIVERSITY OF MIAMI

'83-'86

BBA ACCOUNTING 1986

FLORIDA STATE UNIVERSITY

COLLEGE OF LAW

'87-'90

J.D. 1990

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service:

B. Branch or Component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes ☐ No ☒ If "Yes" give details:

DATE @ 1987 PLACE TALLAHASSEE, FL

NATURE RECKLESS DRIVING

DISPOSITION ADJUDICATION

@ 2004/2005 TAMPA, FL

BOATING TICKET
RE: LIFE JACKETS

WITH HELD COMMUNITY SERVICE
MINOR FINE

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS

TYPE OF BUSINESS

OCCUPATION/JOB TITLE

PERIOD OF EMPLOYMENT

FOLEY & LARNER

LAW FIRM

PARTNER

11/07 - PRESENT

EXECUTIVE OFFICE OF GOVERNOR

COUNSELLOR

1/07 - 10/07

FOLEY & LARNER

LAW FIRM

PARTNER

7/06 - 12/06

FLORIDA ATTORNEY GENERAL

SOLICITOR GENERAL

1/03 - 7/06

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐ If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION

EMPLOYING AGENCY

PERIOD OF EMPLOYMENT

COUNSELLOR

EXECUTIVE OFFICE OF GOVERNOR

1/07 - 10/07

SOLICITOR GENERAL

ATTORNEY GENERAL

1/03 - 7/06

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

1. EMPLOYMENT WITH & REPRESENTATION OF
FLORIDA CORPORATIONS

2. SMALL BUSINESS OWNER (LAW FIRM 1992-2000)

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

ACCOUNTING DEGREE - UNIVERSITY OF MIAMI 1986

LAW DEGREE - FSU 1990

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

N/A

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
SOLICITOR GENERAL	January 2003	1/03 - 7/06	ATTORNEY GENERAL / STATE

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: N/A

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED

MEETINGS MISSED

REASON FOR ABSENCE

N/A

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☒ No ☐ If "Yes", give details:

DATE

NATURE OF VIOLATION

DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☒ If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☐ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE

ORIGINAL

ISSUING AUTHORITY

DISCIPLINARY ACTION/DATE

TITLE & NUMBER

ISSUE DATE

855545

10/1990

FLORIDA BAR

N/A

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☒ No ☐ If "Yes", explain:

NAME OF BUSINESS

YOUR RELATIONSHIP TO BUSINESS

BUSINESS' RELATIONSHIP TO AGENCY

FOLEY & LARNER

PARTNER

LEGAL REPRESENTATION

OF STATE OF

FLORIDA (FDEP

FAOT

Bond Counsel)

- B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☐

A. Did you receive any compensation other than reimbursement for expenses? Yes ☒ No ☐

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED
EXECUTIVE BRANCH	FLORIDA ROULETTE / CAROLINA MARKETING
	PROGRESS ENERGY / FEC INDUSTRIES / NICHOLAS CORTINA
	WAB ENTERPRISES
LEGISLATIVE	FEC INDUSTRIES / WAB ENTERPRISES / EXECUTIVE OFFICE OF GOVERNOR

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
JOHN J. JES			
VINCENT DEAN			
HAYDEN DEMPSEY			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
FLORIDA BAR	TALLAHASSEE, FL	N/A	10/1990 - PRESENT
CITY OF NEW YORK BAR ASSOCIATION	NEW YORK, NY	N/A	1995 - PRESENT
AMERICAN BAR ASSOCIATION	CHICAGO, IL	N/A	1990 - PRESENT

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

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JUL 12 2011

CERTIFICATION

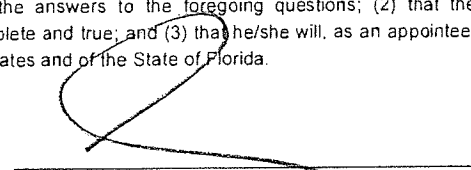
2011 JUL 12 PM 1:25
STATE OF FLORIDA, COUNTY OF

DEPARTMENT OF STATE
DIVISION OF ELECTIONS

Before me, the undersigned Notary Public of Florida, personally appeared

CHRISTOPHER M. KISE

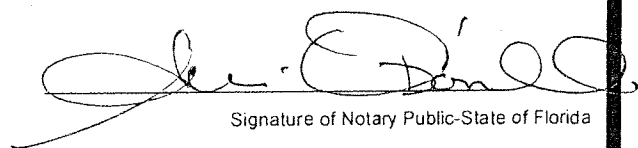
, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.



Signature of Applicant-Affiant

Sworn to and subscribed before me

this 12th day of July, 2011.



Signature of Notary Public-State of Florida

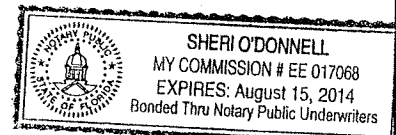
Sheri O'Donnell

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



(seal)

2011 JUL 12 PM 1:25

MEMORANDUM DEPARTMENT OF STATE
DIVISION OF ELECTIONS

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☐ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

N/A

Because: (please provide cite.) _____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

720

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Kurt S. Browning, Secretary of State,
do hereby certify that

Henry Rodriguez

is duly appointed a member of the

**Board of Directors,
Enterprise Florida, Inc.**

for a term beginning on the
Thirteenth day of September, A.D., 2011,
until the Thirtieth day of September, A.D., 2014
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital,
this the Thirteenth day of October, A.D., 2011.*

A handwritten signature in dark ink, appearing to read "Kurt S. Browning", is written over a horizontal line.

Secretary of State

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Sarasota

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11 OCT 13 AM 10:52

DIVISION OF ELECTIONS
SECRETARY OF STATE

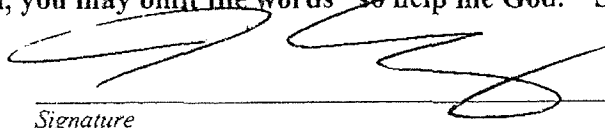
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Board of Director, Enterprise Florida, Inc.

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]



Signature

Sworn to and subscribed before me this 10 day of October, 2011.

Brenda B. Creech

Signature of Officer Administering Oath or of Notary Public

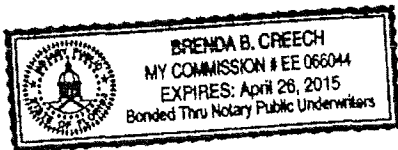
Brenda B. Creech

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

P.O. Box 579

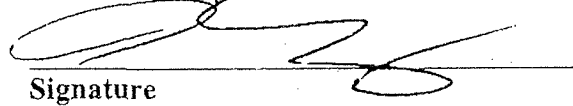
Street or Post Office Box

Osprey, FL 34229

City, State, Zip Code

Henry Rodriguez

Print name as you desire commission issued



Signature



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2011 SEP 16 PM 4:00
DIVISION OF ELECTIONS
TALLAHASSEE, FL

September 13, 2011

Mr. Kurt S. Browning, Secretary
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following appointment under the provisions of Section 288.901, Florida Statutes:

Mr. Henry Rodriguez
2718 Casey Key Road
Nokomis, Florida 34275

as a member of the Board of Directors, Enterprise Florida, Inc., succeeding John J. Falconetti, subject to confirmation by the Senate. This appointment is effective September 13, 2011, for a term ending September 30, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/nj

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.

Please type or print in blue or black ink.

9/28/11

Date Completed

1. Name: Mr. Rodriguez Henry
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: 1515 Ringling Blvd, Suite #890 Sarasota
STREET OFFICE # CITY
FL 34236 (941) 312-5996
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 2718 Casey Key Rd. Nokomis Sarasota
STREET CITY COUNTY
FL 34275 (941) 966-4200
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business ☒ Residence ☐ Fax # (941) 312-5997 wk.
(optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
<u>2718 Casey Key Rd.</u>	<u>Nokomis, FL</u>	<u>3/4/03</u>	<u>Current</u>

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
<u>2573 Hy Top Rd.</u>	<u>Young Harris, GA</u>	<u>3/4/03</u>	<u>Current</u>
<u>8 Caja Inga</u>	<u>San Pierce, Puerto Rico</u>		

5. Date of Birth: 3/30/65 Place of Birth: New York, USA

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: FL

8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes" Explain

RECEIVED
11 OCT -3 AM 11:25
DIVISION OF ELECTIONS
SECRETARY OF STATE

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 1994

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Sarasota B. Current Party Affiliation: Republican

12. Education

A. High School: Plantation High School Year Graduated: 1979 GED
(NAME AND LOCATION)

- B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
<u>Broward Community College</u>	<u>1980's</u>	<u>AA Degree</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service: _____

B. Branch or Component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes ☐ No ☒ If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
<u>Woodmore Capital Mgmt</u>	<u>Investments</u>	<u>CEO</u>	<u>2011</u>
<u>Rodriguez Investment Mgmt</u>	<u>Investment</u>	<u>CEO</u>	<u>2006 - Current</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☐ No ☐ If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
<u>Board of Directors</u>	<u>Sarasota Manatee Airport Authority</u>	<u>12/9/10 -</u>

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Enterprise Florida, Inc - Board of Director (Previous Administration)

- B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

- C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

- D. Identify all association memberships and association offices held by you that relate to this appointment:

Sarasota Manatee Airport Authority

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☒ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
<u>Sarasota Manatee Airport Authority</u>	<u>12/9/10 -</u>	<u>11/1/14</u>	<u>State</u>
<u>Enterprise Florida, Inc.</u>	<u>4/27/07 -</u>	<u>7/1/10</u>	<u>State</u>
<u>Space Florida</u>	<u>2011</u>		<u>State</u>

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Quarterly

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED

MEETINGS MISSED

REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

DATE

NATURE OF VIOLATION

DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☒ No ☐ If "Yes", list:

A. Title of Office: Enterprise Florida, Inc

B. Term of Appointment: April 27, 2007 - July 1, 2010

C. Confirmation results: Confirmed / Appointed

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☒ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE
TITLE & NUMBER

ORIGINAL
ISSUE DATE

ISSUING AUTHORITY

DISCIPLINARY ACTION/DATE

NONE

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

NAME OF BUSINESS

YOUR RELATIONSHIP TO BUSINESS

BUSINESS' RELATIONSHIP TO AGENCY

- B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☐ No ☒

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☒ N/A

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
Dr. Gary Kompathearas			
Steven Burton			
Steve Diaco			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
Enterprise Florida, Inc.			
Sarasota Chamber of Commerce			
FL Tax Watch			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

N/A

☐

Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) _____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

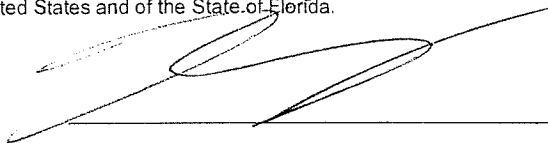
The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

CERTIFICATION

STATE OF FLORIDA, COUNTY OF

Before me, the undersigned Notary Public of Florida, personally appeared

Henry Rodriguez, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.



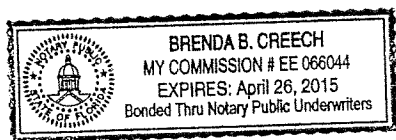
Signature of Applicant-Affiant

Sworn to and subscribed before me

this 28 day of September, 20 11.



Signature of Notary Public-State of Florida



Brenda B. Creech

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 4/26/2015

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)