The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

BUDGET
Senator Alexander, Chair
Senator Negron, Vice Chair

MEETING DATE: Monday, April 25, 2011
TIME: 1:15 —5:30 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Alexander, Chair; Senator Negron, Vice Chair; Senators Altman, Benacquisto, Bogdanoff, Fasano, Flores, Gaetz, Hays, Joyner, Lynn, Margolis, Montford, Rich, Richter, Simmons, Siplin, Sobel, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	An electronic copy of the Appearance Request form is now available to download from any Senate Committee page on the Senate's website, www.flsenate.gov.		
1	**CS/SB 1656** Education Pre-K - 12 / Wise (Identical CS/H 1329)	McKay Scholarships/Students With Disabilities; Makes John M. McKay Scholarships available to students with disabilities who have a 504 accommodation plan issued under s. 504 of the federal Rehabilitation Act. Allows a parent to request and receive a scholarship for a student to enroll and attend a private school if the student has a 504 accommodation plan. Provides that students with certain temporary 504 accommodation plans are ineligible for a scholarship. Provides that a parent may choose to enroll the student in a public school in an adjacent district under certain conditions, etc. ED 04/14/2011 Fav/CS BC 04/25/2011	
2	**SB 1822** Benacquisto (Identical CS/H 1331)	School Choice; Revises legislative intent and eligibility requirements for participation in the Opportunity Scholarship Program. Deletes provisions that authorize an opportunity scholarship for attendance at a private school. Requires that an opportunity scholarship remain in force until the student graduates from high school. Revises school district obligations and deletes provisions relating to private schools to conform to changes made by the act. Deletes an obsolete provision relating to the John M. McKay Scholarships for Students with Disabilities Program, etc. ED 03/23/2011 Favorable BC 04/25/2011	

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3	**SB 1620** Flores (Compare CS/H 7197)	K-12 Educational Instruction; Adds statewide virtual providers to the list of public school choices. Authorizes the creation of a virtual charter school. Requires the virtual charter school to contract with an approved statewide virtual provider. Provides for funding of the virtual charter school. Provides for a blended-learning charter school. Provides that home education students may enroll in certain virtual education courses or courses offered in the school district in which they reside, etc. ED 04/05/2011 Favorable BC 04/13/2011 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011 Not Considered BC 04/25/2011 RC 04/15/2011 Not Received	
4	**SJR 592** Bennett (Similar CS/HJR 439)	Veteran's Property Tax Discount; Proposes an amendment to the State Constitution to expand the availability of the property tax discount on the homesteads of veterans who became disabled as the result of a combat injury to veterans who were not Florida residents when they entered the military. MS 03/17/2011 Favorable CA 03/28/2011 Favorable BC 04/25/2011 RC	
5	**SB 880** Garcia (Similar CS/CS/H 281)	Value Adjustment Boards; Requires a petitioner challenging ad valorem taxes before the value adjustment board to pay a specified percentage of the taxes by a certain date. Requires the board to deny the petition if the required amount of taxes is not timely paid. Deletes a provision providing for a discount for ad valorem taxes paid within 30 days after the mailing of a tax notice resulting from the action of the value adjustment board. CA 04/04/2011 Favorable BC 04/25/2011	

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6	**CS/CS/SB 1816** Budget Subcommittee on Finance and Tax / Banking and Insurance / Fasano (Similar CS/H 1227)	Surplus Lines Insurance; Requires a surplus lines agent to file quarterly on or before a specified time an affidavit stating that all surplus lines insurance transacted during the preceding quarter has been submitted to the Florida Surplus Lines Service Office. Authorizes the Department of Financial Services and the Office of Insurance Regulation to enter into a specified type of agreement with other states pursuant to federal law for the collection and allocation of certain nonadmitted insurance taxes, etc. BI 03/22/2011 Fav/CS BFT 04/06/2011 Not Considered BFT 04/13/2011 Fav/CS BC 04/25/2011	
7	**CS/CS/SB 728** Judiciary / Commerce and Tourism / Detert (Compare H 1283, CS/CS/H 7005, S 1058, S 1728, S 2044, S 2156)	Unemployment Compensation; Increases the number of employer payroll service providers who qualify for access to unemployment tax information by filing a memorandum of understanding. Revises provisions relating to statutory construction. Requires that an individual claiming benefits report certain information and participate in an initial skills review. Disqualifies an individual for benefits for any week he or she is incarcerated. Requires claims to be submitted by electronic means, etc. CM 02/07/2011 Temporarily Postponed CM 02/22/2011 Fav/CS JU 03/09/2011 Fav/CS BC 04/25/2011	
8	**SJR 2084** Judiciary	Repeal of Supreme Court Rule by General Law; Proposes an amendment to the State Constitution to reduce the vote threshold required for the Legislature to enact a law repealing a rule of court and to prohibit the Supreme Court from readopting a rule repealed by the Legislature for a prescribed period. JU 04/04/2011 Favorable BC 04/25/2011	

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9	**SB 1182** Ring (Similar H 7155)	State Board of Administration; Authorizes the board to invest the assets of a governmental entity in the Local Government Surplus Funds Trust Fund without a trust agreement with that governmental entity. Provides that certain investments made by the board under a trust agreement are subject only to the restrictions and limitations contained in the trust agreement. Corrects cross-references. Clarifies provisions prohibiting certain conflicts of interest by investment advisers and managers retained by the board. GO 03/23/2011 Temporarily Postponed GO 03/30/2011 Not Considered GO 04/05/2011 Fav/1 Amendment BC 04/25/2011	
10	**SCR 4** Haridopolos	Balanced Federal Budget; Urges Congress to call a convention for the purpose of proposing amendments to the Constitution of the United States to achieve and maintain a balanced federal budget. BC 04/15/2011 Not Considered BC 04/25/2011	
11	**CS/SB 2078** Communications, Energy, and Public Utilities / Communications, Energy, and Public Utilities (Compare H 1349, H 7217, S 1102, S 1336, S 1724)	Energy; Requires a utility to purchase excess electrical output generated by any property owner's rooftop solar equipment within its service area. Requires all public utilities to perform a free energy audit of the business structures of commercial customers. Provides that the audit is deemed satisfied under certain conditions. Requires the Department of Management Services to prioritize buildings for an energy audit and retrofits and to proceed with performing those audits and retrofits, etc. CU 04/04/2011 Fav/CS BC 04/25/2011	
12	**CS/CS/SB 178** Commerce and Tourism / Banking and Insurance / Oelrich (Similar CS/CS/H 99)	Commercial Insurance Rates; Exempts certain liability and property insurance lines from specific rate standards and filing requirements. Revises certain reporting and recordkeeping requirements for such exempt insurers and certain rating organizations regarding rate changes. Requires such entities to pay certain examination costs. Deletes a provision that permits the Office of Insurance Regulation of the Financial Services Commission to require such insurers to provide certain information regarding rates at the insurer's expense, etc. BI 02/07/2011 Fav/CS CM 03/16/2011 Fav/CS BC 04/25/2011	

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13	**CS/SB 1884** Commerce and Tourism / Gaetz (Similar CS/CS/H 1303)	Consumer Protection; Prohibits a post-transaction third-party seller from charging a consumer for a good or service sold over the Internet unless certain disclosures are made and the seller receives the informed consent of the consumer. Requires a post-transaction third-party seller to provide a simple mechanism for a consumer to cancel a purchase of a good or service and stop any recurring charges. Prohibits an initial merchant from disclosing certain account numbers of a consumer to a post-transaction third-party seller under certain circumstances, etc. CM 04/12/2011 Fav/CS BC 04/25/2011	
14	**CS/SB 414** Health Regulation / Oelrich (Similar CS/CS/H 137)	Prostate Cancer Awareness Program; Revises the structure and objectives of the Prostate Cancer Awareness Program. Authorizes the University of Florida Prostate Disease Center, in collaboration with other organizations and institutions, to increase community education and public awareness of prostate cancer. Requires the University of Florida Prostate Disease Center to establish an advisory council to replace the existing advisory committee. Provides for membership and duties of the advisory council. Requires an annual report to the Governor, Legislature, and State Surgeon General. HR 02/08/2011 Fav/CS BHI 03/11/2011 Favorable BC 04/25/2011 RC	
15	**CS/SJR 140** Judiciary / Ring	Justices and Judges/Qualifications; Proposes amendments to the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office and to increase the period of time that a person must be a member of The Florida Bar before becoming eligible for the office of circuit court or county court judge. JU 01/11/2011 Fav/CS BC 04/25/2011	
16	**SB 1886** Wise (Similar CS/H 1039)	Controlled Substances; Includes certain hallucinogenic substances on the list of controlled substances in Schedule I. Reenacts provisions relating to prohibited acts and penalties regarding controlled substances and the offense severity chart of the Criminal Punishment Code, to incorporate the amendment to s. 893.03, F.S., in references thereto. CJ 04/04/2011 Fav/1 Amendment BC 04/25/2011	

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17	**CS/SB 1300** Criminal Justice / Storms (Similar CS/H 997, Compare H 839)	Juvenile Civil Citations; Requires the Department of Juvenile Justice to encourage and assist in the implementation and improvement of civil citation and similar diversionary programs. Requires that a juvenile civil citation and similar diversion program be established at the local level with the concurrence of the chief judge of the circuit and other designated persons. Authorizes a law enforcement agency, the Department of Juvenile Justice, a juvenile assessment center, the county or municipality, or an entity selected by the county or municipality to operate the civil citation or similar diversion program, etc. CJ 03/22/2011 Fav/CS JU 03/28/2011 Favorable BC 04/13/2011 Temporarily Postponed BC 04/14/2011 Not Considered BC 04/15/2011 Not Considered BC 04/25/2011	
18	**SB 1942** Bennett (Identical H 4031)	Local Government Services; Repeals provisions relating to efficiency and accountability in local government services. CA 04/04/2011 Favorable BC 04/25/2011	
19	**CS/SB 1610** Commerce and Tourism / Detert (Similar CS/H 1425)	State Minimum Wage; Conforms a provision to changes made by the act. Provides for calculating the adjusted real wage rate and its application as the Florida minimum wage when both the previous year's Florida minimum wage and the federal minimum wage are lower. Provides definitions. Conforms a cross-reference. CM 04/12/2011 Fav/CS GO 04/14/2011 Favorable BC 04/25/2011	
20	**CS/CS/SB 2086** Rules / Rules Subcommittee on Ethics and Elections / Rules Subcommittee on Ethics and Elections (Similar CS/CS/H 1355, Compare H 559, H 813, CS/CS/H 1261, CS/S 242, CS/S 1504, CS/CS/S 1618, S 1968)	Elections; Expands the list of responsibilities of the Secretary of State when acting in his or her capacity as chief election officer. Replaces a requirement for the Department of State to print copies of a pamphlet containing the Election Code with a requirement that the pamphlet be made available. Requires that third-party voter registration organizations register with the Division of Elections. Requires such organizations to provide the division with certain information, etc. EE 04/04/2011 Fav/CS RC 04/15/2011 Fav/CS BC 04/25/2011	

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21	**CS/SB 1382** Governmental Oversight and Accountability / Bennett (Compare CS/CS/H 993)	Rulemaking; Requires that an agency include in its notice of intended rulemaking a statement as to whether the proposed rule will require legislative ratification. Clarifies that certain proposed rules are effective only when ratified by the Legislature. Reduces the time before an agency files a rule for adoption within which the agency must notify the person who submitted a lower cost alternative and the Administrative Procedures Committee, etc. GO 04/05/2011 Fav/CS BC 04/25/2011	
22	**SB 870** Storms (Identical H 19)	Compensation of County Officials; Authorizes each member of a board of county commissioners, each clerk of the circuit court, county comptroller, each sheriff, each supervisor of elections, each property appraiser, and each tax collector to reduce his or her salary on a voluntary basis. CA 03/07/2011 Favorable BC 04/25/2011	
23	**SB 1330** Hays	Residential Property Insurance; Authorizes an insurer to use a rate for residential property insurance that differs from its otherwise filed rate after a specified date under certain circumstances. Requires insurance agents to obtain a signed acknowledgment from an applicant for coverage and certain policyholders relating to surcharges and assessments potentially being imposed under a Citizens Property Insurance Corporation policy. Specifies circumstances under which an insurer may offer or renew residential property insurance policies subject to the amendments to provisions contained in this act, etc. BI 03/16/2011 Favorable BC 04/15/2011 BC 04/25/2011 RC	

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24	**CS/SB 1714** Banking and Insurance / Hays (Compare CS/CS/H 1243)	Citizens Property Insurance Corporation; Discontinues policy discounts relating to the Citizens Property Insurance Corporation after a certain date. Directs the corporation to provide coverage to certain excluded residential structures but at rates deemed appropriate by the corporation. Provides that certain residential structures are not eligible for coverage by the corporation after a certain date. Prohibits the corporation from levying certain assessments with respect to a year's deficit until the corporation has first levied a specified surcharge, etc. BI 03/29/2011 Fav/CS BC 04/14/2011 Not Considered BC 04/15/2011 Temporarily Postponed BC 04/25/2011 RC	
25	**CS/SB 584** Health Regulation / Flores (Similar H 49)	Massage Therapy; Requires applicants to apply for a temporary permit upon forms prepared and furnished by the Department of Health in accordance with the Board of Massage Therapy's rules. Authorizes the Board of Massage Therapy to issue temporary permits to applicants who meet certain qualifications to practice massage therapy. Provides for the expiration of temporary permits. Provides limitations. Provides for a temporary permit fee. HR 03/09/2011 Fav/CS BHA 04/13/2011 Favorable BC 04/25/2011 RC	
26	**CS/SB 1736** Health Regulation / Latvala (Compare CS/H 119, H 199, CS/CS/H 445, H 1295, H 7183, CS/H 7233, CS/S 94, S 690, S 694, CS/S 1458, CS/CS/S 1522, CS/CS/CS/S 1972, CS/S 1992)	Health Care; Amends provisions relating to the Drug-Free Workplace Act. Deletes a provision that requires a laboratory to submit to the AHCA a monthly report containing statistical information regarding the testing of employees and job applicants. Deletes a requirement that facilities licensed under part I of ch. 395, F.S., pay licensing fees at the time of inspection. Provides that a nurse registry is exempt from certain license penalties and fines otherwise imposed by the AHCA on a nurse registry under certain circumstances, etc. HR 03/22/2011 Fav/CS BC 04/25/2011	

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27	**CS/SB 1676** Judiciary / Thrasher (Identical CS/H 1393, Compare S 1924, CS/CS/CS/S 1972)	Sovereign Immunity; Provides that specified provisions relating to sovereign immunity for health care providers do not apply to certain affiliation agreements or contracts to provide certain comprehensive health care services. Provides that the portion of the not-for-profit entity deemed to be an agent of the state for purpose of indemnity is also an agency of the state for purpose of public records laws, etc. HR 04/04/2011 Favorable JU 04/12/2011 Fav/CS BC 04/25/2011	
28	**CS/SB 1388** Education Pre-K - 12 / Flores (Similar CS/CS/H 965)	Department of Revenue; Authorizes the department to release certain taxpayers' names and addresses to certain scholarship-funding organizations. Deletes a limitation on the amount of tax credit allowable for contributions made to certain scholarship-funding organizations. Extends the carry-forward period for the use of certain tax credits resulting from contributions to the Florida Tax Credit Scholarship Program. Deletes a restriction on a taxpayer's ability to rescind certain tax credits resulting from contributions to the program. ED 03/30/2011 Fav/CS BC 04/13/2011 Not Considered BC 04/14/2011 Not Considered BC 04/15/2011 Not Considered BC 04/25/2011 RC 04/15/2011 Not Received	
29	**CS/SB 1428** Regulated Industries / Latvala (Compare H 1205, H 1437, S 1586)	Veterinary Practice; Defines the term "limited service veterinary vaccination clinic." Revises terminology. Requires that the Board of Veterinary Medicine establish minimum standards for limited service veterinary vaccination clinics rather than limited service veterinary medical practices. Deletes provisions that limit the practice privileges of out-of-state or foreign health care professionals or veterinarians who are in this state for a specific sporting event. RI 03/29/2011 Fav/CS BGA 04/13/2011 Favorable BC 04/25/2011 RC	

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30	**CS/SB 1590** Banking and Insurance / Hays (Similar CS/CS/CS/CS/H 479, Compare S 1892, CS/CS/CS/S 1972)	Medical Malpractice; Requires the Department of Health to issue expert witness certificates to certain physicians and dentists licensed outside the state. Provides application and certification requirements. Requires the Board of Medicine and the board of Osteopathic Medicine to adopt within a specified period certain patient forms specifying cataract surgery risks. Provides that certain insurance information is not admissible as evidence in medical negligence actions. Limits the liability of hospitals related to certain medical negligence claims, etc. HR 03/30/2011 Not Considered HR 04/04/2011 Favorable BI 04/12/2011 Fav/CS BC 04/25/2011	
31	**CS/CS/SB 1594** Budget Subcommittee on Finance and Tax / Regulated Industries / Sachs (Similar CS/CS/H 1145, Compare CS/CS/S 666)	Pari-mutuel Permitholders; Provides that a greyhound permitholder is not required to conduct a minimum number of live performances. Revises requirements for an application for a license to conduct performances. Provides an extended period to amend certain applications. Removes a requirement for holders of certain converted permits to conduct a full schedule of live racing to qualify for certain tax credits. Revises a condition of licensure for the conduct of slot machine gaming, etc. RI 03/16/2011 Fav/CS BFT 04/06/2011 Not Considered BFT 04/13/2011 Fav/CS BC 04/25/2011 RC	
32	**CS/SB 822** Judiciary / Bogdanoff (Similar CS/H 391)	Expert Testimony; Provides that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case under certain circumstances. Requires the courts of this state to interpret and apply the principles of expert testimony in conformity with specified United States Supreme Court decisions, etc. JU 03/09/2011 Fav/CS BC 04/25/2011 RC	

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33	**CS/CS/SJR 658** Judiciary / Community Affairs / Fasano (Similar CS/CS/CS/CS/HJR 381, Compare HJR 273, HJR 537, CS/H 1053, CS/CS/H 1163, SJR 210, SJR 390, SJR 1578, Link S 1564, CS/S 1722)	Homestead/Nonhomestead Property; Proposes amendments to the State Constitution to allow the Legislature by general law to prohibit increases in the assessed value of homestead and specified nonhomestead property if the just value of the property decreases, reduce the limitation on annual assessment increases applicable to nonhomestead real property, provide an additional homestead exemption for owners of homestead property who have not owned homestead property for a specified time before purchase of the current homestead property, etc. CA 03/14/2011 Fav/CS JU 04/04/2011 Not Considered JU 04/12/2011 Fav/CS BC 04/25/2011 RC	
34	**CS/SB 1722** Judiciary / Fasano (Compare CS/CS/CS/CS/HJR 381, CS/H 1053, CS/CS/H 1163, Link CS/CS/SJR 658, S 1564)	Ad Valorem Taxation; Reduces the amount that any change in the value of certain real property resulting from an annual reassessment may exceed the assessed value of the property for the prior year under specified circumstances. Provides a first-time Florida homesteader with an additional homestead exemption. Requires the Legislature to appropriate funds to fiscally constrained counties to offset reductions in ad valorem tax revenue as the result of the implementation of certain proposed revisions to the State Constitution, etc. CA 03/28/2011 Favorable JU 04/04/2011 Not Considered JU 04/12/2011 Fav/CS BC 04/25/2011 RC	
35	**CS/SB 1570** Transportation / Evers (Compare CS/CS/H 1363, H 1371, CS/CS/S 1180)	Billboard Regulations; Revises requirements for an application for a permit to remove, cut, or trim trees or vegetation around a sign. Requires that the application include a vegetation management plan, a mitigation contribution to a trust fund, or a combination of both. Requires the Department of Transportation to provide notice to the sign owner of beautification projects or vegetation planting. Creates the tourist-oriented commerce signs pilot program. Exempts commercial signs that meet certain criteria from permit requirements, etc. TR 03/16/2011 Fav/CS CA 04/04/2011 Favorable BC 04/25/2011	
	BILLS FOR EXPEDITED CONSIDERATION:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
36	**CS/SB 1176** Judiciary / Ring (Compare H 763, CS/H 831)	High School Athletic Trainers; Revises membership requirements for the Board of Athletic Training. Revises requirements for licensure by examination for athletic trainers. Requires certification requirements for license renewal. Revises continuing education requirements for licensure renewal. Encourages school districts to employ or contract with certified athletic trainers at certain high schools in this state. Requires athletic trainers to be certified by the Board of Certification of the National Athletic Trainers' Association, etc. ED 03/30/2011 Favorable JU 04/12/2011 Fav/CS BC 04/25/2011	
37	**SB 1000** Wise (Identical H 797)	Interscholastic and Intrascholastic Sports; Removes certain provisions relating to a pilot program in which a middle school student or a high school student in a private school may participate in athletics at a public school. Provides for statewide implementation of the program. Requires that the athletic director of each public school maintain the records of students participating in the program. Limits participation in the program to students who are enrolled in non-FHSAA member private schools consisting of a maximum number of students, etc. ED 03/17/2011 Favorable HR 04/12/2011 Favorable BC 04/25/2011	
38	**CS/CS/SB 1254** Budget Subcommittee on Education Pre-K - 12 Appropriations / Education Pre-K - 12 / Wise (Compare H 937, CS/CS/H 1255, CS/CS/S 1696)	Auditory-oral Education Programs; Cites this act as the "Auditory Oral-Education Act." Revises provisions relating to public school choice options for parents of public school students to include auditory-oral education programs. Provides that a parent of a child who is deaf or hard of hearing may enroll the child in an auditory-oral education program at a school accredited by OPTION Schools, Inc., or at a school in which the supervisor and the majority of faculty are certified as Listening and Spoken Language Specialists by the AG Bell Academy for Listening and Spoken Language, etc. ED 03/17/2011 Fav/CS BEA 04/13/2011 Fav/CS BC 04/25/2011 RC	

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39	**CS/CS/SB 1696** Budget Subcommittee on Education Pre-K - 12 Appropriations / Education Pre-K - 12 / Wise (Similar CS/CS/H 1255, Compare H 937, H 1341, CS/H 7087, CS/CS/S 1254, S 1678, S 1832, CS/S 1844, CS/S 1996, S 2026)	Education Accountability; Deletes a provision that requires the Florida Virtual School to be administratively housed within the Office of Technology and Information Services within the Office of the Commissioner of Education. Revises the powers and duties of district school boards relating to student access to Florida Virtual School courses. Prohibits district school board members and their relatives from soliciting or accepting certain gifts. Revises provisions relating to the qualifications for nondegreed teachers of career education, etc. ED 03/30/2011 Fav/CS BEA 04/13/2011 Fav/CS BC 04/25/2011 RC	
40	**SB 874** Hays (Similar H 597)	Public Records/Emergency Notification Information; Provides an exemption from public records requirements for information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. Provides for retroactive effect of the exemption. Provides for future legislative review and repeal of the exemption. Provides a statement of public necessity. CA 03/07/2011 Favorable GO 04/05/2011 Favorable BC 04/25/2011	
41	**SB 978** Flores (Identical H 469)	Individual Retirement Accounts; Clarifies the exemption of inherited individual retirement accounts from legal processes. Provides intent. Provides for retroactive application. BI 03/22/2011 Favorable JU 03/28/2011 Favorable BC 04/25/2011	
42	**CS/SB 224** Governmental Oversight and Accountability / Dean (Similar CS/H 107)	Local Government Accountability; Amends provisions relating to the Legislative Auditing Committee to clarify when the Department of Community Affairs may institute procedures for declaring that a special district is inactive. Specifies the level of detail required for each fund in the sheriff's proposed budget. Revises the schedule for submitting a local governmental entity's audit and annual financial reports to the Department of Financial Services. Revises provisions relating to the guidelines for district school boards to maintain an ending fund balance for the general fund, etc. CA 01/25/2011 Favorable GO 04/14/2011 Fav/CS BC 04/25/2011	

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43	**CS/CS/SB 296** Community Affairs / Commerce and Tourism / Wise (Similar CS/H 901)	Household Moving Services; Provides for the biennial renewal of mover and moving broker registrations. Prohibits a mover or moving broker from conducting business without being registered with the department. Preempts local ordinances and regulations except in certain counties. Restricts the levy or collection of local registration fees and taxes of movers and moving brokers. Provides for local registration and bonding, etc. CM 03/16/2011 Temporarily Postponed CM 03/29/2011 Fav/CS CA 04/11/2011 Fav/CS BC 04/25/2011	
44	**CS/CS/SB 396** Regulated Industries / Community Affairs / Bennett (Compare CS/H 709, CS/CS/H 849, CS/H 5007, CS/S 960)	Building Construction and Inspection; Exempts certain rule proceedings relating to the Florida Building Code. Requires that state agencies, local governments, and the court system adopt a sustainable building rating system for new and renovated buildings. Revises the continuing education requirements for licensed home inspectors. Removes certain application requirements for a person who performs home inspection services and who qualifies for licensure on or before a specified date, etc. CA 02/21/2011 Temporarily Postponed CA 03/07/2011 Fav/CS RI 03/16/2011 Fav/CS BC 04/25/2011	
45	**CS/SB 1426** Banking and Insurance / Hays (Identical CS/H 4101)	Repeal of Health Insurance Provisions; Repeals provisions relating to a requirement that the board of directors of the Florida Health Insurance Plan annually report to the Governor and the Legislature. Deletes a requirement that the Office of Insurance Regulation of the Department of Financial Services annually report to the Governor and the Legislature concerning the Small Employers Access Program. BI 03/16/2011 Fav/CS HR 04/04/2011 Not Considered HR 04/12/2011 Favorable BC 04/25/2011	
46	**CS/SB 1574** Military Affairs, Space, and Domestic Security / Latvala (Compare H 1161)	Business Enterprise Opportunities/Wartime Veterans; Revises legislative intent. Renames and revises the Florida Service-Disabled Veteran Business Enterprise Opportunity Act to expand the vendor preference in state contracting to include certain businesses owned and operated by wartime veterans or veterans of a period of war. MS 04/05/2011 Fav/CS GO 04/14/2011 Favorable BC 04/25/2011	

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47	**CS/SB 858** Agriculture / Hays (Identical CS/H 707, Compare CS/CS/H 991, CS/CS/CS/S 408)	Agriculture; Prohibits a county from enforcing certain limits on the activity of a bona fide farm operation on agricultural land under certain circumstances. Prohibits a county from charging agricultural lands for stormwater management assessments and fees under certain circumstances. Allows an assessment to be collected if credits against the assessment are provided for implementation of best management practices. Creates the "Agricultural Land Acknowledgement Act," etc. AG 03/07/2011 Fav/CS CA 03/21/2011 Favorable BC 04/25/2011	
48	**CS/SB 1650** Military Affairs, Space, and Domestic Security / Storms (Compare CS/H 621)	Child Custody; Provides that a parent's activation, deployment, or temporary assignment to military service and the resultant temporary disruption to the child may not be the sole factor in granting a petition for or modification of time-sharing and parental responsibility. Provides that a time-sharing and parental responsibility order in effect before a temporary change due to a parent's military service shall automatically be reinstated after a specified period after return and notice by the returning parent, etc. JU 03/22/2011 Favorable MS 03/30/2011 Fav/CS CF 04/04/2011 Favorable BC 04/25/2011	
49	**CS/CS/SB 2076** Budget Subcommittee on General Government Appropriations / Agriculture / Agriculture (Similar CS/H 7215, Compare CS/CS/CS/H 949, H 7217, CS/CS/CS/S 1290, S 1810, S 2122)	Department of Agriculture and Consumer Services; Deletes the Division of Dairy within the Department of Agriculture and Consumer Services. Exempts certain direct-support organizations and citizen support organizations for the Department of Agriculture and Consumer Services from obtaining an independent audit. Provides for the grantee of easements for electrical transmission to pay the lead manager of the state-owned lands or, when there is no lead manager, the Department of Environmental Protection, if suitable replacement uplands cannot be identified, etc. AG 04/04/2011 Fav/CS BGA 04/13/2011 Fav/CS BC 04/25/2011 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
50	**CS/SB 1332** Banking and Insurance / Richter (Similar CS/H 1121)	Financial Institutions; Authorizes the Office of Financial Regulation (OFR) to appoint provisional directors or executive officers. Specifies which accounting practice must be followed by financial institutions. Authorizes the OFR to conduct additional examinations of financial institutions if warranted. Revises the criteria for approval of a financial entity's plan of conversion. Provides for the transfer of assets from a federally chartered or out-of-state chartered institution. Revises provisions relating to banker's banks, etc. BI 03/16/2011 Fav/CS BGA 04/13/2011 Favorable BC 04/25/2011 RC	
51	**CS/CS/SB 1316** Budget Subcommittee on General Government Appropriations / Banking and Insurance / Detert (Identical CS/CS/H 823)	Loan Processing; Specifies rulemaking powers of the Financial Services Commission. Includes in-house loan processors in disciplinary provisions. Provides that specified provisions do not apply to a licensed contract loan processor who has on file with the office a declaration of intent to act solely as a contract loan processor. Requires that in order to renew a mortgage lender license a mortgage lender must authorize the Nationwide Mortgage Licensing System and Registry to obtain an independent credit report on each of the mortgage lender's control persons, etc. BI 03/22/2011 Fav/CS BGA 04/13/2011 Fav/CS BC 04/25/2011 RC	
52	**CS/SB 380** Children, Families, and Elder Affairs / Wise (Identical CS/H 279)	Training/Certification/Child Welfare Personnel; Provides required criteria for the approval of credentialing entities that develop and administer certification programs for persons who provide child welfare serves. Revises the use of the Child Welfare Training Trust Fund within the Department of Children and Family Services. Requires persons who provide child welfare services to be certified by a third-party credentialing entity. Allows entities to contract for training. Requires persons to master core competencies. Authorizes approval of third-party credentialing entities, etc. CF 02/08/2011 Fav/CS GO 03/23/2011 Favorable BC 04/25/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
53	**SB 2064** Children, Families, and Elder Affairs	Mental Health and Substance Abuse Treatment; Redefines the term "court" to include county courts in certain circumstances. Requires the Department of Children and Family Services to provide a discharged defendant with up to a 7-day supply of psychotropic medication when he or she is returning to jail from a state treatment facility. Authorizes a county court to order the conditional release of a defendant for the provision of outpatient care and treatment. Creates the Forensic Hospital Diversion Pilot Program, etc. CF 03/28/2011 Favorable JU 04/04/2011 Not Considered JU 04/12/2011 Favorable BC 04/25/2011	
54	**CS/SB 1158** Children, Families, and Elder Affairs / Garcia (Similar CS/H 843)	Teaching Agency for Home and Community-based Care; Authorizes the Department of Elderly Affairs to designate a home health agency as a teaching agency for home and community-based care. Establishes criteria for qualification. Authorizes a teaching agency to be affiliated with an academic research university in the state that meets certain criteria. Authorizes a teaching agency to be affiliated with an academic health center, etc. CF 03/28/2011 Fav/CS HR 04/12/2011 Favorable BC 04/25/2011	
55	**CS/SB 504** Children, Families, and Elder Affairs / Bogdanoff (Identical CS/H 387)	Child Visitation; Requires probable cause of sexual abuse in order to create a presumption of detriment. Provides that persons meeting specified criteria may not visit or have contact with a child without a hearing and court order. Revises requirements for a hearing seeking to rebut a presumption of detriment. Revises provisions relating to hearings on whether to prohibit or restrict visitation or other contact with the person who is alleged to have influenced a child's testimony, etc. CF 03/22/2011 Fav/CS JU 04/04/2011 Not Considered JU 04/12/2011 Favorable BC 04/25/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
56	**CS/CS/SB 1366** Health Regulation / Children, Families, and Elder Affairs / Storms (Similar CS/CS/H 959)	Child Welfare/Mental Health/Substance Abuse; Requires the DCFS, the DOH, the APD, the AHCA, community-based care lead agencies, managing entities, and agencies that have contracted with monitoring agents to adopt certain revised policies for the administrative monitoring of child welfare service providers, mental health service providers, and substance abuse service providers. Limits the frequency of required administrative, licensure, and programmatic monitoring for mental health service providers and substance abuse service providers that are accredited by specified entities, etc. CF 03/14/2011 Fav/CS HR 04/04/2011 Fav/CS BC 04/25/2011	
57	**CS/SB 720** Higher Education / Gaetz (Similar H 377)	Cancer Research and Control; Changes the carryforward period of certain funds of the Biomedical Research Trust Fund. Modifies the terms and membership and establishes a staggered membership for appointed members of the Biomedical Research Advisory Council. Authorizes the council to recommend a portion of the allocation for the James and Esther King Biomedical Research Program for specified purposes and to develop a grant application and review mechanism, etc. HR 03/22/2011 Favorable HE 04/04/2011 Fav/CS BC 04/25/2011	
58	**CS/CS/SB 1228** Military Affairs, Space, and Domestic Security / Health Regulation / Altman (Compare CS/CS/H 1319, S 1812)	Certificates/Licenses/Health Care Practitioners; Provides for issuance of a temporary license to specified health care practitioners who are spouses of active duty members of the Armed Forces under certain circumstances. Provides for criminal history checks. Provides that certain persons are ineligible for such license. Requires certain temporary licensees to practice under the indirect supervision of other licensees. Names the temporary certificates issued to physicians who practice in areas of critical need after Rear Admiral LeRoy Collins, Jr., etc. HR 03/14/2011 Fav/CS MS 03/23/2011 Fav/CS BC 04/25/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
59	**CS/SB 1410** Health Regulation / Negron (Compare CS/CS/H 935)	Patient's Bill of Rights and Responsibilities; Authorizes a primary care provider to publish and post a schedule of certain charges for medical services offered to patients. Provides that the schedule may group the provider's services by price levels and list the services in each price level. Provides an exemption from continuing education requirements for a primary care provider who posts such a schedule. Requires a primary care provider's estimates of charges for medical services to be consistent with the prices listed on the posted schedule, etc. HR 04/04/2011 Fav/CS BHA 04/13/2011 Favorable BC 04/25/2011 RC	
60	**CS/CS/SB 632** Community Affairs / Higher Education / Oelrich (Compare H 4175, H 4177, H 5201, CS/H 7151, CS/CS/S 1732)	Postsecondary Education; Revises provisions relating to the disposal of personal property lost or abandoned on a university or Florida College System institution campus and the disposition of proceeds from the sale of such property. Repeals a provision relating to an exemption for students who earn 9 or more credits from one or more of the articulated acceleration mechanisms from any requirement of a public postsecondary educational institution which mandates enrollment during a summer term, etc. HE 03/14/2011 Temporarily Postponed HE 03/22/2011 Fav/CS CA 04/11/2011 Fav/CS BC 04/25/2011	
61	**SB 404** Wise (Similar CS/H 739, Identical H 151)	Transition-to-adulthood Services; Provides legislative intent concerning transition-to-adulthood services for youth in the custody of the Department of Juvenile Justice (DJJ). Provides for eligibility for services for youth served by the DJJ who are legally in the custody of the Department of Children and Family Services (DCFS). Provides that an adjudication of delinquency does not disqualify a youth in foster care from certain services from the DCFS. Provides powers and duties of the DJJ for transition services. Provides for assessments, etc. CF 03/28/2011 Favorable CJ 04/12/2011 Fav/1 Amendment BC 04/25/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
62	**CS/CS/SB 1206** Judiciary / Criminal Justice / Negron (Compare CS/CS/H 821)	Eyewitness Identification; Cites this act as the "Eyewitness Identification Reform Act." Requires state, county, municipal, and other law enforcement agencies that conduct lineups to follow certain specified procedures. Requires the eyewitness to sign an acknowledgement that he or she received the instructions about the lineup procedures from the law enforcement agency. Requires the Criminal Justice Standards and Training Commission to create educational materials and conduct training programs on how to conduct lineups in compliance with the act, etc. CJ 03/28/2011 Fav/CS JU 04/04/2011 Fav/CS BC 04/25/2011	
63	**CS/CS/SB 846** Judiciary / Criminal Justice / Benacquisto (Similar CS/H 595)	Prevention of Child Exploitation; Prohibits controlling or intentionally viewing any photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation that includes sexual conduct by a child. Provides an exception. Provides penalties. Conforms provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made by the act, etc. CJ 04/04/2011 Fav/CS JU 04/12/2011 Fav/CS BC 04/25/2011	
64	**CS/SB 438** Criminal Justice / Hill (Similar CS/CS/H 563)	Injunctions for Protection Against Violence; Subject to available funding, directs the Florida Association of Court Clerks and Comptrollers to develop an automated process by which a petitioner for an injunction for protection may request notification of service of the injunction or notice of other court actions related to the injunction. Requires that notice be given to the petitioner within a specified time. Provides for the content of the notice. CJ 03/14/2011 Fav/CS JU 03/28/2011 Favorable BC 04/25/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
65	**SB 1494** Evers (Similar H 1029)	Interstate Compact for Juveniles; Reenacts provisions which expired by operation of law on August 26, 2010. Provides purpose of the compact. Provides for an Interstate Commission for Juveniles. Provides for the activities of the Interstate Commission to be financed by an annual assessment from each compacting state. Provides for judicial enforcement. Provides for dissolution of the compact. Reenacts provisions which expired by operation of law on August 26, 2010. Creates the State Council for Interstate Juvenile Offender Supervision to oversee state participation in the compact, etc. CJ 03/22/2011 Favorable BJA 04/13/2011 Favorable BC 04/25/2011 RC	
66	**CS/SB 580** Community Affairs / Oelrich (Similar CS/H 407)	Residential Building Permits; Prohibits local enforcement agencies and building code officials or entities from requiring certain inspections of buildings, structures, or real property as a condition of issuance of certain residential building permits. Provides certain exceptions to the application of the act. Provides for expiration of the act following an amendment to the Florida Building Code by the Florida Building Commission which incorporates the provisions of the act. CA 04/04/2011 Fav/CS RI 04/12/2011 Favorable BC 04/25/2011	
67	**CS/CS/SB 1824** Transportation / Regulated Industries / Hays (Compare CS/H 63, H 413, CS/CS/CS/H 883, H 4023, CS/H 5005, CS/H 5007, CS/S 366, CS/S 476, S 662)	Regulated Professions and Occupations; Authorizes the Department of Highway Safety and Motor Vehicles to release certain digital images to the Department of Business and Professional Regulation to identify certain persons. Authorizes the Department of Business and Professional Regulation to grant waivers of renewal fees under certain circumstances. Revises continuing education requirements for certain license reactivations. Repeals provisions relating to Uniform Standards of Professional Appraisal Practice, etc RI 03/29/2011 Fav/CS TR 04/05/2011 Fav/CS BC 04/25/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
68	**CS/CS/SB 1318** Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations / Commerce and Tourism / Benacquisto (Compare CS/CS/H 879)	Tax Refund Program/Target Industry Businesses; Revises the criteria for the determination of target industry businesses by the Office of Tourism, Trade, and Economic Development. Provides for notification by the local governing body recommending the project of the private-sector wage calculation. CM 03/29/2011 Fav/CS BTA 04/13/2011 Fav/CS BC 04/25/2011 RC	

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 Budget Committee

BILL:	CS/SB 1656
INTRODUCER:	Education Pre-K Committee and Senator Wise
SUBJECT:	McKay Scholarships/Students With Disabilities
DATE:	April 14, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	**Fav/CS**
2.	Hamon	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill allows a student with a disability to be eligible for a John M. McKay Scholarship for Students with Disabilities if he or she has a 504 accommodation plan. However, the student would be ineligible if his or her plan was for six months or less.

The bill requires school districts to notify the parent of a student with a 504 accommodation plan about available school choice options by April 1 of each year and within ten days after a 504 accommodation plan is issued.

The bill allows parents of a student with a 504 accommodation plan to enroll their children in a public school in an adjacent school district which has available space, if the school has a program with the services agreed to in the 504 accommodation plan. Parents would be responsible for transportation.

The scholarship amount for the student would be based on the current student program cost factor generated by the student under the Florida Education Finance Program (FEFP).

This bill substantially amends section 1002.39 of the Florida Statutes.

II. Present Situation:

John M. McKay Scholarships for Students with Disabilities Program
Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school, using a John M. McKay Scholarships for Students with Disabilities Program.[1] To be eligible for a McKay scholarship to attend a private school, a K-12 student with a disability[2] must have an individual education plan (IEP) and have spent the prior school year in attendance at a Florida public school.[3]

A student is ineligible to receive a McKay scholarship if he or she is enrolled in a Department of Juvenile Justice commitment program or enrolled in the Florida School for the Deaf and the Blind; receives a Florida Tax Credit Scholarship; [4] receives an Opportunity Scholarship;[5] participates in a home education program; participates in a private tutoring program; participates in a virtual school, correspondence school, or distance learning program that receives state funding unless the student's participation is limited to no more than two courses per school year; or does not have regular and direct contact with their private school teachers at the school's physical location.[6]

The scholarship amount is based in part on a matrix of services. A matrix of services is developed for students with disabilities who are funded at the highest level of need, support levels 4 and 5, based on needs identified in a student's IEP. Consistent with the services identified through the IEP, a matrix of services is used to determine which one of two cost factors would apply to each eligible exceptional education student and the support level needed.[7] If a matrix of services has not yet been assigned, the scholarship amount must be based on the matrix that assigns the student to support level I of service as it existed prior to the 2000-2001 school year until the school district completes the matrix for that student.[8]

For FY 2009-2010, there were 985 participating schools and 21,054 scholarship recipients, with a total of $72,885,767 in scholarship awards. [9]

504 Accommodation Plans
The Rehabilitation Act of 1973 (Rehabilitation Act) defines the an "individual with a disability" to include individuals who have a physical or mental impairment that substantially limits one or

[1] s. 1002.39, F.S.
[2] s. 1002.39(1), F.S. Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; an other health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.
[3] s. 1002.39(2), F.S. There are two exceptions to the requirement for prior year in attendance.
[4] s. 1002.395, F.S.
[5] s. 1002.38, F.S.
[6] s. 1002.39(3), F.S.
[7] The matrix document contains checklists of services in each of the five domains (curriculum and learning environment; social/emotional behavior; independent functioning; health care; and communication) and a special considerations section. The sum of these domain ratings and any special considerations points corresponds to one of the two cost factors.
[8] s. 1002.39(10)(a)4., F.S.
[9] DOE, *John M. McKay Scholarships for Students with Disabilities Program Quarterly Report* , November 2010. *See* https://www.floridaschoolchoice.org/Information/McKay/quarterly_reports/mckay_report_nov2010.pdf.

more major life activities of the individual; who have a record of such impairment; or who are regarded as having such an impairment.[10] Section 504 of the Rehabilitation Act specifies that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[11] The Rehabilitation Act provides individuals with disabilities the opportunity to participate in any activity receiving federal funding, including public education.[12]

A 504 Accommodation Plan is developed by a team of parents, teachers, and other staff members for a student identified as an individual with a disability under the Rehabilitation Act. The plan provides a description of the accommodations the school will provide to the student.[13] According to the DOE, students who have 504 plans do not have individual educational plans or matrixes.[14]

According to the DOE, there has been a 64 percent increase in the number of eligible section 504 students since the 2006-2007 school year: 2006-2007—32,610 students; 2007-2008—36,425 students; 2008-2009—44,582 students; and 2009-2010—51,069 students.[15] The DOE also notes that a student eligible for a section 504 plan does not require the level of instruction (specialized instruction) required for a student with IEPs. Section 504 plans identify accommodations that allow access to programs.

III. Effect of Proposed Changes:

A student with a disability would be eligible for a McKay Scholarship if he or she has a 504 accommodation plan. However, the student would be ineligible if his or her plan was for six months or less.

The parent of a student with a 504 accommodation plan would receive the same notification from a school district about available school choice options as is provided to a student with an IEP (i.e., by April 1 of each year). Parents would also be notified about available options within ten days after a 504 accommodation plan is issued.

The bill allows parents of a student with a 504 accommodation plan to enroll their children in a public school in an adjacent school district which has available space, if the school has a program with the services agreed to in the 504 accommodation plan. Parents would be responsible for transportation.

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[10] 29 U.S.C. § 705(20)(B), *incorporating* 42 U.S.C. § 12102 (1); 34 C.F.R. § 104.3(j).
[11] 29 U.S.C. § 794(a); *see also* 34 C.F.R. § 104.4.
[12] 34 C.F.R. § 104.2
[13] Florida Department of Education, *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, *See* www.fldoe.org/ese/pdf/504bro.pdf. Examples of such accommodations include: permission to self-administer diabetes medication, special dietary considerations for allergies, and assistance with carrying books. Florida Department of Education, Bureau of Exceptional Education & Student Services, *Section 504*.
[14] DOE, April 6, 2011, on file with the committee.
[15] *Id.*

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:

Additional students may be eligible for a McKay scholarship.

C. Government Sector Impact:

The DOE notes that Section 504, unlike IDEA, does not provide any additional federal funding assistance to state or schools.[16] Students eligible under Section 504 are funded at basic weight in the FEFP.

The scholarship amount for the student would be based on the program cost factor currently generated by the student under the FEFP. The amount of the scholarship for a student with a 504 accommodation plans would be equal to the amount of funding the school district currently receives for the student through the FEFP.

The bill has little or no state fiscal impact resulting from inclusion of "504" students in the McKay scholarship program. Currently, eligible "504" students are funded in the FEFP and will continue to be funded through the FEFP with no additional resources necessary for those students to take McKay scholarships. Students who receive specialized instructional services as part of the Voluntary Prekindergarten program and have a current IEP are already eligible for a McKay scholarship upon entry to Kindergarten. The inclusion of any of these students who may also have a 504 plan would not increase the number of students eligible for a McKay scholarship and therefore, would have no state fiscal impact. There would be a fiscal impact to school districts because current district students with 504 plan eligibility would leave the district and the Basic FEFP funds would follow.

[16] DOE, April 6, 2011, on file with the committee.

VI. Technical Deficiencies:

Students who receive specialized instructional services as part of the Voluntary Prekindergarten program (VPK) and have a current IEP are already eligible for a McKay scholarship upon entry to Kindergarten. It is not clear how the addition of the 504 plan criteria for the McKay eligibility of such students would have an effect, if they are already eligible by virtue of their eligibility under s. 1002.66, F.S. The DOE indicates that is not likely that these VPK students with an IEP will also have a 504 plan.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Education Pre-K – 12 on April 14, 2011:
The committee substitute:

- Deletes the provision allowing a student with a Tier I Response to Intervention plan to be eligible for a McKay Scholarship;
- Requires school districts to notify a parent of a student with a 504 accommodation plan about available school choice options;
- Allows parents of students with a 504 accommodation plan to enroll their children in a public school in an adjacent school district which has available space; and
- Revises the scholarship amount for an eligible student with a 504 accommodation plan.

B. Amendments:

None.

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 Budget Committee

BILL:	SB 1822
INTRODUCER:	Senator Benacquisto
SUBJECT:	School Choice
DATE:	March 24, 2011
REVISED:	3/24/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	**Favorable**
2.	Hamon	Meyer, C.	BC	**Pre-meeting**
3.				
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I. Summary:

The bill revises the eligibility criteria for participation in the Opportunity Scholarship Program public school choice option to allow parents of students in failing schools the opportunity to send their children to another public school that is performing satisfactorily. Under the bill, a failing public school is a school that has received a "D" or an "F" grade and is designated as a low performing school. The bill also:

- Allows a parent of a student in a failing school to enroll and transport him or her to a higher performing school in another school district with available space;
- Provides that any student who is assigned to a failing school is eligible for the public school option;
- Allows a student to continue to attend a higher performing public school feeder pattern within the district until high school graduation; and
- Repeals the Opportunity Scholarship Program private school option.

This bill substantially amends sections 1002.38, 1001.42, and 1002.20 of the Florida Statutes.

II. Present Situation:

Opportunity Scholarship Program

The Legislature created the Opportunity Scholarship Program (OSP) in 1999 as part of a broad education reform package known as the A+ Plan.[1] The program was designed to provide parents of students in failing schools the opportunity to send their children to another public school that

[1] ch. 99-398, L.O.F.

is performing satisfactorily or to an eligible private school. For purposes of the OSP, a failing school is a school that has received an "F" grade for two years in a four-year period.[2] The law permitted an eligible private school—non-sectarian or sectarian—to participate in the program if the school met the requirements set forth in statute.[3] Students who attended another public school or who received a scholarship could attend a private school through graduation, if the high school to which the student is assigned is a "D" or "F" school, or if the chosen private school educated students through the twelfth grade.[4]

Legal Challenge to the OSP – Bush v. Holmes

The State Constitution provides, in pertinent part, that "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.[5] Article IX, s. 1 of the State Constitution requires "[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools…"

On January 5, 2006, the Florida Supreme Court issued an opinion finding that the Opportunity Scholarship Program, which allowed a student attending certain failing public schools to attend a private school, sectarian or nonsectarian, chosen by the parent with the financial assistance of the state, violated Art. IX, s. 1(a) of the State Constitution, which mandates an education through a uniform system of free public schools.[6]

The Supreme Court's opinion invalidating the OSP provides that the ruling applied prospectively at the end of the 2005-2006 school year to avoid disruption of the students who were using the scholarships.[7] The opinion did not affect the public school choice provisions of the law.

Public School Participation

The parents of students in failing schools may send their child to another public school in the district that is performing satisfactorily, meaning not less than a "C" grade. In this instance, the district is responsible for transportation.[8] Alternatively, parents may send their child to a higher performing school in an adjacent school district that has space available.[9] The parents are responsible for transportation to the school. The receiving district reports the student for funding under the Florida Education Finance Program (FEFP).

A student may participate if he or she:

- Spent the prior school year in attendance at a failing public school;

[2] s. 1002.38(1), F.S.
[3] s. 1002.38(4), F.S., provides eligibility requirements.
[4] s. 1002.38(2)(b) and (3)(a), F.S.
[5] Art. I, s. 3, State Constitution.
[6] *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).
[7] *Id.* at 413.
[8] s. 1002.38(3)(a) and (e), F.S.
[9] s. 1002.38(3)(b), F.S.

- Was in attendance elsewhere in the public school system and has been assigned to a failing public school for the next school year; or
- Is entering kindergarten or first grade and has been assigned to a failing public school.

A student is eligible for the public school option until he or she graduates from high school.[10]

For 2005-2006, 1,688 students chose to participate in the public school choice aspect of the program.[11] The following reflects the number of schools that received an "F" grade for two years in a four-year period and the participation of students in the program for 2006-2007 through 2009-2010:[12]

OSP Participation in Public School Option

	2006-2007	2007-2008	2008-2009	2009-2010[13]
# Failing Schools	**11 in 5 districts**	**21 in 8 districts**	**23 in 11 districts**	**19 in 9 districts**
#OSP Students	**1,315**	**1,305**	**1,280**	**1,431**

For the 2010-2011 school year, 16,966 students in 24 failing schools in 14 districts were eligible for the OSP public school choice option.[14]

Differentiated Accountability

Differentiated accountability is the system used by Florida to meet conditions for participation in the federal Elementary and Secondary Education Act[15] that requires states to hold public schools and school districts accountable for making adequate yearly progress toward meeting state proficiency goals. Schools are categorized based upon the school's grade[16] and the level and rate of change in student performance in reading and mathematics, disaggregated into student subgroups.[17]

The law requires the Department of Education (DOE) to provide the most intensive intervention strategies to the lowest performing schools, which are defined as schools that:[18]

- Have received a grade of "F" in the most recent school year and in four of the last six years; or

[10] s. 1002.38(3)(a)2., F.S. *See also: Opportunity Scholarship Program Frequently Asked Questions*, DOE, available at http://www.floridaschoolchoice.org/Information/osp/faqs.asp.
[11] *See* http://www.floridaschoolchoice.org/Information/OSP/files/Fast_Facts_OSP.pdf.
[12] E-mail, DOE March 19, 2011, on file with the committee.
[13] There were approximately 5,600 students eligible in 2009-2010.
[14] E-mail, DOE, March 19, 2011, on file with the committee.
[15] 20 U.S.C. ss. 6301 et seq.
[16] s. 1008.34, F.S., requires school grades: "A," making excellent progress, "B," making above average progress, "C," making satisfactory progress, "D," making less than satisfactory progress, or "F," failing to make adequate progress.
[17] ch. 2009-144, codified in s. 1008.33, F.S. Six categories, beginning with the highest performing, comprise the differentiated accountability system: Schools Not Required to Participate in Differentiated Accountability Strategies, Prevent I, Correct I, Prevent II, Correct II, and Intervene. *See* Rule 6A-1.099811, F.A.C.
[18] s. 1008.33(4)(b), F.S.

- Are currently graded "D" or "F" and meet at least three of the following four criteria:
  - When compared to measurements taken five years previously, the percentage of students who are not proficient in reading has increased.
  - When compared to measurements taken five years previously, the percentage of students who are not proficient in mathematics has increased.
  - At least 65 percent of the school's students are not proficient in reading.
  - At least 65 percent of the school's students are not proficient in mathematics.

According to the Department of Education, in 2010, there were 949 schools in the lowest performing categories. Of the 21 schools in the Intervene category, 7 were "D" schools and 7 were "F" schools. Of the 928 schools in the Correct II category, 110 were "D" schools and 48 schools were "F" schools.

III. Effect of Proposed Changes:

The bill revises the definition of a failing school to mean a school that receives a "D" or an "F" grade and that is in one of the two lowest performing categories in one year. Under the bill, a parent may request a scholarship for a student to attend a higher performing public school. The term "scholarship" currently applies to the private school option.

A parent would be able to enroll his or her child in a higher performing school in another district with available space. If a parent chooses another district, the receiving district must accept the student and report him or her for funding. The parent is still responsible for transportation.

A student would have the opportunity to continue to attend a higher performing public school feeder pattern within the district until he or she graduates from high school. A feeder pattern generally refers to elementary, middle and high schools that share the same student populations. Under the bill, a student could remain in the feeder pattern of the school chosen under the OSP.

The bill repeals the provisions related to the OSP private school option to comport with existing case law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A parent who chooses to enroll his or her child in a higher performing school in another school district is responsible for providing transportation.

C. Government Sector Impact:

Under the revised criteria in the bill, 92,348 students in 123 additional schools would be eligible for the OSP public school choice option.[19] However, 114 of these schools are Title I schools with 83,358 students. Federal law currently requires designated Title I schools to provide students with the option of transferring to another public school that has made adequate yearly progress (AYP).[20] However, choice under the No Child Left Behind Act (NCLB) is limited to schools that meet AYP. Accordingly, this choice option under NCLB has limitations, in that there may be very few schools or no schools in the district that parents could choose.[21] Additionally, when a district's federal transportation funds are exhausted, the district is no longer required to provide transportation.[22] Consequently, there may be parents who would choose the OSP option. The number of students in these Title I schools who may wish to attend a higher performing public school under the provisions of the bill is unknown.

There are an additional nine schools with 8,990 students who are not eligible for school choice under the federal option, but who are eligible under the provisions of the bill.

The number of students who will attend a higher performing school within a district is unknown; however, because the bill expands the eligibility pool from 16,966 students in 2010-2011 to 92,348 students, it is likely that a greater number of students will want to participate. The district would be responsible for the student's transportation. Current law allows districts to use transportation categorical funds or public school choice incentive funds for this purpose.[23] However, state transportation categorical funds provide roughly 50 percent of school district transportation costs, with the balance of funds for transportation being provided from other operating costs, potentially affecting classroom or other services. With the potential for many additional students seeking to attend the public school choice option in the bill, districts will likely incur additional transportation

[19] E-mail, DOE, March 24, 2011, on file with the committee. While 171 schools meet the criteria in the bill, 48 are current OSP schools or charter schools.
[20] *See* 20 U.S.C. §. 6316(b)(1)(E) and 34 CFR 200.44. Under federal law, schools identified for improvement, corrective action, or restructuring must provide students with the option of transferring to another school that is making adequate yearly progress.
[21] E-mail, DOE, March 24, 2011, on file with the committee.
[22] *Id.* The DOE notes that school districts are provided a portion of their Title 1, Part A funds to be used to transport students to other schools. E-mail, DOE, March 24, 2011, on file with the committee.
[23] s. 1002.38(3)(e), F.S.

costs by either busing students who are not already receiving transportation services, restructuring bus routes for students who will not attend the school in their geographic attendance area, or transporting students over longer distances to the higher performing schools.

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.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2011	.	
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	.	
	.	

The Committee on Budget (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 1002.321, Florida Statutes, is created to read:

1002.321 Digital learning.—

(1) DIGITAL LEARNING NOW.—There is created the "Digital Learning Now Act."

(2) ELEMENTS OF HIGH-QUALITY DIGITAL LEARNING.—The Legislature finds that each student should have access to a high-quality digital learning environment that provides:

(a) Access to digital learning.

(b) Access to high-quality digital content and online courses.

(c) Education that is customized to the needs of the student using digital content.

(d) A means for the student to demonstrate competency in completed coursework.

(e) High-quality digital content, instructional materials, and online and blended learning courses.

(f) High-quality digital instruction and teachers.

(g) Content and instruction that are evaluated on the metric of student learning.

(h) The use of funding as an incentive for performance, options, and innovation.

(i) Infrastructure that supports digital learning.

(j) Online administration of state assessments.

(3) DIGITAL PREPARATION.—Each student must graduate from high school having taken at least one online course, as provided in s. 1003.428.

(4) CUSTOMIZED AND ACCELERATED LEARNING.—A school district must establish multiple opportunities for student participation in part-time and full-time kindergarten through grade 12 virtual instruction. Options include, but are not limited to:

(a) School district operated part-time or full-time virtual instruction programs under s. 1002.45(1)(b) for kindergarten through grade 12 students enrolled in the school district. A full-time program shall operate under its own Master School Identification Number.

(b) Florida Virtual School instructional services authorized under s. 1002.37.

(c) Blended learning instruction provided by charter schools authorized under s. 1002.33.

(d) Full-time virtual charter school instruction authorized under s. 1002.33.

(e) Courses delivered in the traditional school setting by personnel providing direct instruction through a virtual environment or though a blended virtual and physical environment pursuant to s. 1003.498.

(f) Virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state pursuant to s. 1003.498.

Section 2. Subsection (1), paragraph (a) of subsection (6), subsection (7), and paragraph (a) of subsection (20) of section 1002.33, Florida Statutes, are amended, and paragraph (f) is added to subsection (17) of that section, to read:

1002.33 Charter schools.—

(1) AUTHORIZATION.—Charter schools shall be part of the state's program of public education. All charter schools in Florida are public schools. A charter school may be formed by creating a new school or converting an existing public school to charter status. A charter school may operate a virtual charter school pursuant to s. 1002.45(1)(d) to provide full-time online instruction to eligible students, pursuant to s. 1002.455, in kindergarten through grade 12. A charter school must amend its charter or submit a new application pursuant to subsection (6) to become a virtual charter school. A virtual charter school is subject to the requirements of this section; however, virtual charter schools are exempt from subsections (18) and (19), subparagraphs (20)(a)2.-5. and paragraph (20)(c), and s.

1003.03. A public school may not use the term charter in its name unless it has been approved under this section.

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(a) A person or entity wishing to open a charter school shall prepare and submit an application on a model application form prepared by the Department of Education which:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.

2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.

3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.

4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny a charter if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research.

5. Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues

and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

6. Documents that the applicant has participated in the training required in subparagraph (f)2. A sponsor may require an applicant to provide additional information as an addendum to the charter school application described in this paragraph.

7. For the establishment of a virtual charter school, documents that the applicant has contracted with a provider of virtual instruction services pursuant to s. 1002.45(1)(d).

(7) CHARTER.—The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing board ~~body~~ of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school’s mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies

for reading must be consistent with the Sunshine State Standards and grounded in scientifically based reading research.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students of a blended learning course must be full-time students of the charter school and receive the online instruction in a classroom setting at the charter school. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active Florida state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

The district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1003.43.

6. A method for resolving conflicts between the governing board ~~body~~ of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school’s code of student conduct.

8. The ways by which the school will achieve a

racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been

made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 4 or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the district school board. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being

converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b)1. A charter may be renewed provided that a program review demonstrates that the criteria in paragraph (a) have been successfully accomplished and that none of the grounds for nonrenewal established by paragraph (8)(a) has been documented. In order to facilitate long-term financing for charter school construction, charter schools operating for a minimum of 3 years and demonstrating exemplary academic programming and fiscal

management are eligible for a 15-year charter renewal. Such long-term charter is subject to annual review and may be terminated during the term of the charter.

2. The 15-year charter renewal that may be granted pursuant to subparagraph 1. shall be granted to a charter school that has received a school grade of "A" or "B" pursuant to s. 1008.34 in 3 of the past 4 years and is not in a state of financial emergency or deficit position as defined by this section. Such long-term charter is subject to annual review and may be terminated during the term of the charter pursuant to subsection (8).

(c) A charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor or the charter school governing board and the approval of both parties to the agreement.

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(f) Funding for a virtual charter school shall be as provided in s. 1002.45(7).

(20) SERVICES.—

(a)1. A sponsor shall provide certain administrative and educational services to charter schools. These services shall include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services

under the federal lunch program, consistent with the needs of the charter school, are provided by the school district at the request of the charter school, that any funds due to the charter school under the federal lunch program be paid to the charter school as soon as the charter school begins serving food under the federal lunch program, and that the charter school is paid at the same time and in the same manner under the federal lunch program as other public schools serviced by the sponsor or the school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to student information systems that are used by public schools in the district in which the charter school is located. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public school student report cards, and student performance measures, shall be provided by the sponsor to a charter school in the same manner provided to other public schools in the district.

2. A total administrative fee for the provision of such services shall be calculated based upon up to 5 percent of the available funds defined in paragraph (17)(b) for all students. However, a sponsor may only withhold up to a 5-percent administrative fee for enrollment for up to and including 250 students. For charter schools with a population of 251 or more students, the difference between the total administrative fee calculation and the amount of the administrative fee withheld may only be used for capital outlay purposes specified in s.

1013.62(2).

3. In addition, a sponsor may withhold only up to a 5-percent administrative fee for enrollment for up to and including 500 students within a system of charter schools which meets all of the following:

a. Includes both conversion charter schools and nonconversion charter schools;

b. Has all schools located in the same county;

c. Has a total enrollment exceeding the total enrollment of at least one school district in the state;

d. Has the same governing board; and

e. Does not contract with a for-profit service provider for management of school operations.

4. The difference between the total administrative fee calculation and the amount of the administrative fee withheld pursuant to subparagraph 3. may be used for instructional and administrative purposes as well as for capital outlay purposes specified in s. 1013.62(2).

5. Each charter school shall receive 100 percent of the funds awarded to that school pursuant to s. 1012.225. Sponsors shall not charge charter schools any additional fees or surcharges for administrative and educational services in addition to the maximum 5-percent administrative fee withheld pursuant to this paragraph.

6. The sponsor of a virtual charter school may withhold a fee of up to 5 percent. The funds shall be used to cover the cost of services provided under subparagraph (a)1. and for the school district's local instructional improvement system pursuant to s. 1006.281 or other technological tools that are

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required to access electronic and digital instructional materials.

Section 3. Paragraph (a) of subsection (3) of section 1002.37, Florida Statutes, is amended, and subsections (8), (9), (10), and (11) are added to that section, to read:

1002.37 The Florida Virtual School.—

(3) Funding for the Florida Virtual School shall be provided as follows:

(a)1. For a student in grades 9 through 12, a "full-time equivalent student" ~~for the Florida Virtual School~~ is one student who has successfully completed six full-credit courses ~~credits~~ that ~~shall~~ count toward the minimum number of credits required for high school graduation. A student who completes fewer ~~less~~ than six full-credit courses is ~~credits shall be~~ a fraction of a full-time equivalent student. Half-credit course completions shall be included in determining a full-time equivalent student. Credit completed by a student in excess of the minimum required for that student for high school graduation is not eligible for funding.

2. For a student in kindergarten through grade 8, a "full-time equivalent student" is one student who has successfully completed six courses or the prescribed level of content that counts toward promotion to the next grade. A student who completes fewer than six courses or the prescribed level of content shall be a fraction of a full-time equivalent student.

3. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be

adjusted after the student completes the end-of-course assessment. However, no adjustment shall be made for home education program students who choose not to take an end-of-course assessment.

For purposes of this paragraph, the calculation of "full-time equivalent student" shall be as prescribed in s. 1011.61(1)(c)1.b.(V).

(8)(a) The Florida Virtual School may provide full-time instruction for students in kindergarten through grade 12 and part-time instruction for students in grades 4 through 12. Part-time instruction for grades 4 and 5 may be provided only to public school students taking grade 6 through grade 8 courses.

(b) For students receiving part-time instruction in grades 4 and 5 and students receiving full-time instruction in kindergarten through grade 12 from the Florida Virtual School, the combined total of all FTE reported by both the school district and the Florida Virtual School may not exceed 1.0 FTE.

(9) Elementary school principals must notify all parents of students who score level 4 or level 5 on FCAT Reading or FCAT Mathematics of the option for the student to take accelerated courses through the Florida Virtual School.

(10)(a) Public school students receiving full-time instruction in kindergarten through grade 12 by the Florida Virtual School must take all statewide assessments required pursuant to s. 1008.22.

(b) Public school students receiving part-time instruction by the Florida Virtual School in courses requiring statewide end-of-course assessments must take all statewide end-of-course

assessments required pursuant to s. 1008.22(3)(c)2.

(c) All statewide assessments must be taken within the school district in which the student resides. School districts must provide the student with access to the district's testing facilities.

(11) The Florida Virtual School shall receive a school grade pursuant to s. 1008.34 for students receiving full-time instruction.

Section 4. Subsections (1), (2) and (3), paragraph (a) of subsection (4), subsections (5), (6), and (7), paragraphs (a) and (d) of subsection (8), and subsection (11) of section 1002.45, Florida Statutes, are amended to read:

1002.45 ~~School district~~ Virtual instruction programs.—

(1) PROGRAM.—

(a) For purposes of this section, the term:

1. "Approved provider" means a provider that is approved by the Department of Education under subsection (2), the Florida Virtual School, a franchise of the Florida Virtual School, or a community college.

2. "Virtual instruction program" means a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both~~, and in which a Florida-certified teacher under chapter 1012 is responsible for at least:~~

~~a. Fifty percent of the direct instruction to students in kindergarten through grade 5; or~~

~~b. Eighty percent of the direct instruction to students in grades 6 through 12~~.


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(b) ~~Beginning with the 2009-2010 school year,~~ Each school district shall provide all enrolled public school ~~eligible~~ students within its boundaries multiple opportunities for participation ~~the option of participating~~ in part-time and full-time ~~a~~ virtual instruction program options. Each school district must provide at least three virtual instruction options and provide parents with timely written notification of an open enrollment period for full-time students of at least 90 days that ends no later than 30 days prior to the first day of the school year. The purpose of the program is to make quality virtual instruction available to students using online and distance learning technology in the nontraditional classroom. A school district virtual instruction ~~The~~ program shall provide the following ~~be~~:

1. Full-time virtual instruction for students enrolled in kindergarten through grade 12.

2. ~~Full-time or~~ Part-time virtual instruction for students enrolled in grades 9 through 12 courses that are measured pursuant to subparagraph (8)(a)2.

3. Full-time or part-time virtual instruction for students ~~who are~~ enrolled in dropout prevention and academic intervention programs under s. 1003.53, Department of Juvenile Justice education programs under s. 1003.52, core-curricula courses to meet class size requirements under s. 1003.03, or community colleges under this section.

(c) To provide students with the option of participating in virtual instruction programs as required by paragraph (b), a school district may:

1. Contract with the Florida Virtual School or establish a

franchise of the Florida Virtual School for the provision of a program under paragraph (b). Using this option is subject to the requirements of this section and s. 1011.61(1)(c)1.b.(III) and (IV).

2. Contract with an approved provider under subsection (2) for the provision of a full-time program under subparagraph (b)1. or subparagraph (b)3. or a ~~full-time or~~ part-time program under subparagraph (b)2. or subparagraph (b)3.

3. Enter into an agreement with other ~~another~~ school districts ~~district~~ to allow the participation of its students in an approved virtual instruction program provided by the other school district. The agreement must indicate a process for the transfer of funds required by paragraph (7)(b).

4. Establish district operated part-time or full-time kindergarten through grade 12 virtual instruction programs under paragraph (b) for students enrolled in the school district. A full-time program shall operate under its own Master School Identification Number.

5. Enter into an agreement with a virtual charter school authorized by the school district pursuant to s. 1002.33.

Contracts under subparagraph 1. or subparagraph 2. may include multidistrict contractual arrangements that may be executed by a regional consortium for its member districts. A multidistrict contractual arrangement or an agreement under subparagraph 3. is not subject to s. 1001.42(4)(d) and does not require the participating school districts to be contiguous. These arrangements may be used to fulfill the requirements of paragraph (b).

(d) A virtual charter school may provide full-time virtual instruction for students in kindergarten through grade 12 if the virtual charter school has a charter approved pursuant to s. 1002.33 authorizing full-time virtual instruction. A virtual charter school may:

1. Contract with the Florida Virtual School.

2. Contract with an approved provider under subsection (2).

3. Enter into an ~~a joint~~ agreement with ~~the~~ school districts to allow the participation of its students ~~district in which it is located for the charter school's students to participate~~ in a ~~the school district's~~ virtual instruction program. The agreement must indicate a process for reporting of student enrollment and the transfer of funds required by paragraph (7)(f).

(e) Each school district shall:

1. Provide to the department by October 1, 2011, and by each October 1 thereafter, a copy of each contract and the amounts paid per unweighted full-time equivalent student for services procured pursuant to subparagraphs (c)1. and 2.

2. Expend the difference in funds provided for a student participating in the school district virtual instruction program pursuant to subsection (7) and the price paid for contracted services procured pursuant to subparagraphs (c)1. and 2. for the district's local instructional improvement system pursuant to s. 1006.281 or other technological tools that are required to access electronic and digital instructional materials.

3. At the end of each fiscal year, but no later than September 1, report to the department an itemized listing of the technological tools purchased with these funds.


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(2) PROVIDER QUALIFICATIONS.—

(a) The department shall annually publish online ~~provide school districts with~~ a list of providers approved to offer virtual instruction programs. To be approved by the department, a provider must document that it:

1. Is nonsectarian in its programs, admission policies, employment practices, and operations;

2. Complies with the antidiscrimination provisions of s. 1000.05;

3. Locates an administrative office or offices in this state, requires its administrative staff to be state residents, requires all instructional staff to be Florida-certified teachers under chapter 1012, and conducts background screenings for all employees or contracted personnel, as required by s. 1012.32, using state and national criminal history records;

4. Possesses prior, successful experience offering online courses to elementary, middle, or high school students as demonstrated by quantified student learning gains in each subject area and grade level provided for consideration as an instructional program option;

5. Is accredited by a regional accrediting association as defined by State Board of Education rule; ~~the Southern Association of Colleges and Schools Council on Accreditation and School Improvement, the North Central Association Commission on Accreditation and School Improvement, the Middle States Association of Colleges and Schools Commission on Elementary Schools and Commission on Secondary Schools, the New England Association of Schools and Colleges, the Northwest Association of Accredited Schools, the Western Association of Schools and~~

~~Colleges, or the Commission on International and Trans-Regional Accreditation; and~~

6. Ensures instructional and curricular quality through a detailed curriculum and student performance accountability plan that addresses every subject and grade level it intends to provide through contract with the school district, including:

a. Courses and programs that meet the standards of the International Association for K-12 Online Learning and the Southern Regional Education Board.

b. Instructional content and services that align with, and measure student attainment of, student proficiency in the Next Generation Sunshine State Standards.

c. Mechanisms that determine and ensure that a student has satisfied requirements for grade level promotion and high school graduation with a standard diploma, as appropriate;

7. Publishes for the general public, in accordance with disclosure requirements adopted in rule by the State Board of Education, as part of its application as a provider and in all contracts negotiated pursuant to this section:

a. Information and data about the curriculum of each full-time and part-time program.

b. School policies and procedures.

c. Certification status and physical location of all administrative and instructional personnel.

d. Hours and times of availability of instructional personnel.

e. Student-teacher ratios.

f. Student completion and promotion rates.

g. Student, educator, and school performance accountability


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outcomes; and

8.~~6.~~ If the provider is a community college, employs instructors who meet the certification requirements for instructional staff under chapter 1012.

(b) An approved provider shall retain its approved status for a period of 3 years after the date of the department's approval under paragraph (a) as long as the provider continues to comply with all requirements of this section. However, each provider approved by the department for the 2011-2012 school year must reapply for approval to provide a part-time program for students in grades 9 through 12.

(3) ~~SCHOOL DISTRICT~~ VIRTUAL INSTRUCTION PROGRAM REQUIREMENTS.—Each ~~school district~~ virtual instruction program under this section must:

(a) Align virtual course curriculum and course content to the Sunshine State Standards under s. 1003.41.

(b) Offer instruction that is designed to enable a student to gain proficiency in each virtually delivered course of study.

(c) Provide each student enrolled in the program with all the necessary instructional materials.

(d) Provide~~, when appropriate,~~ each full-time student enrolled in the program who qualifies for free or reduced-price school lunches under the National School Lunch Act or is on the direct certification list and who does not have a computer or Internet access in his or her home with:

1. All equipment necessary for participants in the school district virtual instruction program, including, but not limited to, a computer, computer monitor, and printer, if a printer is necessary to participate in the program; and


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2. Access to or reimbursement for all Internet services necessary for online delivery of instruction.

(e) Not require tuition or student registration fees.

(4) CONTRACT REQUIREMENTS.—Each contract with an approved provider must at minimum:

(a) Set forth a detailed curriculum plan that illustrates how students will be provided services and be measured for attainment of ~~to attain~~ proficiency in the Next Generation Sunshine State Standards for each grade level and subject.

(5) STUDENT ELIGIBILITY.—A student may enroll in a virtual instruction program provided by the school district or by a virtual charter school operated in the district in which he or she resides if the student meets eligibility requirements for virtual instruction pursuant to s. 1002.455. ~~at least one of the following conditions:~~

~~(a) The student has spent the prior school year in attendance at a public school in this state and was enrolled and reported by a public school district for funding during the preceding October and February for purposes of the Florida Education Finance Program surveys.~~

~~(b) The student is a dependent child of a member of the United States Armed Forces who was transferred within the last 12 months to this state from another state or from a foreign country pursuant to the parent's permanent change of station orders.~~

~~(c) The student was enrolled during the prior school year in a school district virtual instruction program under this section or a K-8 Virtual School Program under s. 1002.415.~~

~~(d) The student has a sibling who is currently enrolled in~~

~~a school district virtual instruction program and that sibling was enrolled in such program at the end of the prior school year.~~

(6) STUDENT PARTICIPATION REQUIREMENTS.—Each student enrolled in a ~~school district~~ virtual instruction program or virtual charter school must:

(a) Comply with the compulsory attendance requirements of s. 1003.21. Student attendance must be verified by the school district.

(b) Take state assessment tests within the school district in which such student resides, which must provide the student with access to the district's testing facilities.

(7) VIRTUAL INSTRUCTION PROGRAM AND VIRTUAL CHARTER SCHOOL FUNDING.—

(a) Students enrolled in a virtual instruction program or a virtual charter school shall be funded through the Florida Education Finance Program as provided in the General Appropriations Act. However, such funds may not be provided for the purpose of fulfilling the class size requirements in ss. 1003.03 and 1011.685.

(b) For purposes of a ~~school district~~ virtual instruction program or a virtual charter school, "full-time equivalent student" has the same meaning as provided in s. 1011.61(1)(c)1.b.(III) or (IV).

(c) A "full-time equivalent student" for a student enrolled part-time in a grade 6 through 12 program has the same meaning as provided in s. 1011.61(1)(c)1.b.(IV).

(d) A student may not be reported as more than 1.0 full-time equivalent student in any given school year.

(e) The reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(f) ~~(b)~~ The school district in which the student resides shall report full-time equivalent students for a ~~the school district~~ virtual instruction program or a virtual charter school to the department in a manner prescribed by the department, and funding shall be provided through the Florida Education Finance Program. Funds received by the school district of residence for a student in a virtual instruction program provided by another school district under this section shall be transferred to the school district providing the virtual instruction program.

(g) ~~(c)~~ A community college provider may not report students who are served in a school district virtual instruction program for funding under the Community College Program Fund.

(8) ASSESSMENT AND ACCOUNTABILITY.—

(a) Each approved provider contracted under this section must:

1. Participate in the statewide assessment program under s. 1008.22 and in the state's education performance accountability system under s. 1008.31.

2. Receive a school grade under s. 1008.34 or a school improvement rating under s. 1008.341, as applicable. The school grade or school improvement rating received by each approved provider shall be based upon the aggregated assessment scores of all students served by the provider statewide. The department shall publish the school grade or school improvement rating received by each approved provider on its Internet website. The

department shall develop an evaluation method for providers of part-time programs which includes the percentage of students making learning gains, the percentage of students successfully passing any required end-of-course assessment, the percentage of students taking Advanced Placement examinations, and the percentage of students scoring 3 or higher on an Advanced Placement examination.

(d) An approved provider's contract must be terminated if the provider receives a school grade of "D" or "F" under s. 1008.34 or a school improvement rating of "Declining" under s. 1008.341 for 2 years during any consecutive 4-year period or has violated any qualification requirement pursuant to subsection (2). A provider that has a contract terminated under this paragraph may not be an approved provider for a period of at least 1 year after the date upon which the contract was terminated and until the department determines that the provider is in compliance with subsection (2) and has corrected each cause of the provider's low performance.

(11) RULES.—The State Board of Education shall adopt rules necessary to administer this section, including rules that prescribe disclosure requirements under subsection (2) and school district reporting requirements under subsection (7).

Section 5. Section 1002.455, Florida Statutes, is created to read:

1002.455 Student eligibility for K-12 virtual instruction.—

(1) A student may enroll in virtual instruction in the school district in which he or she resides if the student meets at least one of the following conditions:

(a) The student has spent the prior school year in

attendance at a public school in the state and was enrolled and reported by a public school district for funding during October and February for purposes of the Florida Education Finance Program surveys;

(b) The student is a dependent child of a member of the United States Armed Forces who was transferred within the last 12 months to this state from another state or from a foreign country pursuant to the parent's permanent change of station orders;

(c) The student was enrolled during the prior school year in a virtual instruction program under s. 1002.45 or a K-8 Virtual School Program under s. 1002.415;

(d) The student has a sibling who is currently enrolled in a school district virtual instruction program and that sibling was enrolled in such program at the end of the prior school year; or

(e) The student is eligible to enter kindergarten or first grade.

(2) The virtual instruction options for which this eligibility section applies include:

(a) School district operated part-time or full-time kindergarten through grade 12 virtual instruction programs under s. 1002.45(1)(b) for students enrolled in the school district.

(b) Full-time virtual charter school instruction authorized under s. 1002.33.

(c) Courses delivered in the traditional school setting by personnel providing direct instruction through a virtual environment or though a blended virtual and physical environment pursuant to s. 1003.498 and as authorized pursuant to s.

1002.321(4)(f).

(d) Virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state pursuant to s. 1003.498.

Section 6. Paragraph (c) is added to subsection (2) of section 1003.428, Florida Statutes, to read:

1003.428 General requirements for high school graduation; revised.—

(2) The 24 credits may be earned through applied, integrated, and combined courses approved by the Department of Education. The 24 credits shall be distributed as follows:

(c) Beginning with students entering grade 9 in the 2011-2012 school year, at least one course within the 24 credits required in this subsection must be completed through online learning. However, an online course taken during grades 6 through 8 fulfills this requirement. This requirement shall be met through an online course offered by the Florida Virtual School, an online course offered by the high school, or an online dual enrollment course offered pursuant to a district interinstitutional articulation agreement pursuant to s. 1007.235. A student who is enrolled in a full-time or part-time virtual instruction program under s. 1002.45 meets this requirement.

Section 7. Section 1003.498, Florida Statutes, is created to read:

1003.498 School district virtual course offerings.—

(1) School districts may deliver courses in the traditional school setting by personnel certified pursuant to s. 1012.55 who provide direct instruction through a virtual environment or

though a blended virtual and physical environment.

(2) School districts may offer virtual courses for students enrolled in the school district. These courses must be identified in the course code directory. Students who meet the eligibility requirements of s. 1002.455 may participate in these virtual course offerings.

(a) Any eligible student who is enrolled in a public school district may register and enroll in an online course offered by his or her school district.

(b) Any eligible student who is enrolled in a public school district may register and enroll in an online course offered by any other district in the state, except as limited by the following:

1. A student may not enroll in courses offered through virtual instruction programs provided pursuant to s. 1002.45.

2. A student may not enroll in a virtual course offered by another school district if:

a. The course is offered online by the school district in which the student resides; or

b. The course is offered in the school in which the student is enrolled. However, a student may enroll in an online course offered by another school district if the school in which the student is enrolled offers the course but the student is unable to schedule the course in his or her school.

3. The district in which the student completes the course shall report the student’s completion in that course for funding pursuant to s. 1011.61(1)(c)b.(VI) and the home district shall not report the student for funding for that course.


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For purposes of this paragraph, the combined total of all school district reported FTE may not be reported as more than 1.0 full-time equivalent student in any given school year. The Department of Education shall establish procedures to enable interdistrict coordination for the delivery and funding of this online option.

Section 8. Paragraph (g) of subsection (3) of section 1008.22, Florida Statutes, is amended to read:

1008.22 Student assessment program for public schools.—

(3) STATEWIDE ASSESSMENT PROGRAM.—The commissioner shall design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs. The commissioner may enter into contracts for the continued administration of the assessment, testing, and evaluation programs authorized and funded by the Legislature. Contracts may be initiated in 1 fiscal year and continue into the next and may be paid from the appropriations of either or both fiscal years. The commissioner is authorized to negotiate for the sale or lease of tests, scoring protocols, test scoring services, and related materials developed pursuant to law. Pursuant to the statewide assessment program, the commissioner shall:

(g) Beginning with the 2014-2015 school year, all statewide end-of-course assessments shall be administered online. ~~Study the cost and student achievement impact of secondary end-of-course assessments, including web-based and performance formats, and report to the Legislature prior to implementation.~~

Section 9. Paragraph (c) of subsection (1) of section

1011.61, Florida Statutes, is amended to read:

1011.61 Definitions.—Notwithstanding the provisions of s. 1000.21, the following terms are defined as follows for the purposes of the Florida Education Finance Program:

(1) A "full-time equivalent student" in each program of the district is defined in terms of full-time students and part-time students as follows:

(c)1. A "full-time equivalent student" is:

a. A full-time student in any one of the programs listed in s. 1011.62(1)(c); or

b. A combination of full-time or part-time students in any one of the programs listed in s. 1011.62(1)(c) which is the equivalent of one full-time student based on the following calculations:

(I) A full-time student, except a postsecondary or adult student or a senior high school student enrolled in adult education when such courses are required for high school graduation, in a combination of programs listed in s. 1011.62(1)(c) shall be a fraction of a full-time equivalent membership in each special program equal to the number of net hours per school year for which he or she is a member, divided by the appropriate number of hours set forth in subparagraph (a)1. or subparagraph (a)2. The difference between that fraction or sum of fractions and the maximum value as set forth in subsection (4) for each full-time student is presumed to be the balance of the student's time not spent in such special education programs and shall be recorded as time in the appropriate basic program.

(II) A prekindergarten handicapped student shall meet the


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requirements specified for kindergarten students.

(III) A full-time equivalent student for students in kindergarten through grade 5 in a ~~school district~~ virtual instruction program under s. 1002.45 or a virtual charter school under s. 1002.33 shall consist of a student who has successfully completed a basic program listed in s. 1011.62(1)(c)1.a. or b., and who is promoted to a higher grade level.

(IV) A full-time equivalent student for students in grades 6 through 12 in a ~~school district~~ virtual instruction program under s. 1002.45(1)(b)1., ~~and~~ 2., or 3. or a virtual charter school under s. 1002.33 shall consist of six full credit completions in programs listed in s. 1011.62(1)(c)1.b. or c. and 3. Credit completions may ~~can~~ be a combination of full-credit courses or half-credit courses ~~either full credits or half credits~~. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(V) A Florida Virtual School full-time equivalent student shall consist of six full credit completions or the prescribed level of content that counts toward promotion to the next grade in the programs listed in s. 1011.62(1)(c)1.a. and b. for kindergarten ~~grades 6~~ through grade 8 and the programs listed in s. 1011.62(1)(c)1.c. for grades 9 through 12. Credit completions may ~~can~~ be a combination of full-credit courses or half-credit courses ~~either full credits or half credits~~. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the

reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(VI) Each successfully completed full-credit course earned through an online course delivered by a district other than the one in which the student resides shall be calculated as 1/6 FTE.

(VII) ~~(VI)~~ Each successfully completed credit earned under the alternative high school course credit requirements authorized in s. 1002.375, which is not reported as a portion of the 900 net hours of instruction pursuant to subparagraph (1)(a)1., shall be calculated as 1/6 FTE.

2. A student in membership in a program scheduled for more or less than 180 school days or the equivalent on an hourly basis as specified by rules of the State Board of Education is a fraction of a full-time equivalent membership equal to the number of instructional hours in membership divided by the appropriate number of hours set forth in subparagraph (a)1.; however, for the purposes of this subparagraph, membership in programs scheduled for more than 180 days is limited to students enrolled in juvenile justice education programs and the Florida Virtual School.

The department shall determine and implement an equitable method of equivalent funding for experimental schools and for schools operating under emergency conditions, which schools have been approved by the department to operate for less than the minimum school day.

Section 10. Section 1012.57, Florida Statutes, is amended

to read:

1012.57 Certification of adjunct educators.—

(1) Notwithstanding the provisions of ss. 1012.32, 1012.55, and 1012.56, or any other provision of law or rule to the contrary, district school boards shall adopt rules to allow for the issuance of an adjunct teaching certificate to any applicant who fulfills the requirements of s. 1012.56(2)(a)-(f) and (10) and who has expertise in the subject area to be taught. An applicant shall be considered to have expertise in the subject area to be taught if the applicant demonstrates sufficient subject area mastery through passage of a subject area test. The adjunct teaching certificate shall be used for part-time teaching positions.

(2) The Legislature intends that this section ~~intent of this provision is to~~ allow school districts to tap the wealth of talent and expertise represented in Florida's citizens who may wish to teach part-time in a Florida public school by permitting school districts to issue adjunct certificates to qualified applicants.

(3) Adjunct certificateholders should be used as a strategy to enhance the diversity of course offerings offered to all students. School districts may use the expertise of individuals in the state who wish to provide online instruction to students by issuing adjunct certificates to qualified applicants ~~reduce the teacher shortage; thus, adjunct certificateholders should supplement a school's instructional staff, not supplant it. Each school principal shall assign an experienced peer mentor to assist the adjunct teaching certificateholder during the certificateholder's first year of teaching, and an adjunct~~


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~~certificateholder may participate in a district's new teacher training program. District school boards shall provide the adjunct teaching certificateholder an orientation in classroom management prior to assigning the certificateholder to a school~~.

(4) Each adjunct teaching certificate is valid through the term of the annual contract between the educator and the school district. Additional annual certifications and annual contracts may be awarded by the district at the district's discretion but only ~~for 5 school years and is renewable~~ if the applicant is rated effective or highly effective under s. 1012.34 ~~has received satisfactory performance evaluations~~ during each year of teaching under adjunct teaching certification.

(5)~~(2)~~ Individuals who are certified and employed under this section shall have the same rights and protection of laws as teachers certified under s. 1012.56.

Section 11. By December 1, 2011, the Department of Education shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which identifies and explains the best methods and strategies by which the department can assist district school boards in acquiring digital learning at the most reasonable prices possible and provides a plan under which district school boards may voluntarily pool their bids for such purchases. The report shall identify criteria that will enable district school boards to differentiate between the level of service and pricing based upon factors such as the level of student support, the frequency of teacher-student communications, instructional accountability standards, and academic integrity. The report shall also include ways to increase student access to digital learning, including

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identification and analysis of the best methods and strategies for implementing part-time virtual education in kindergarten through grade 5.

Section 12. This act shall take effect July 1, 2011.

========== 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 digital learning; creating s. 1002.321, F.S.; creating the "Digital Learning Now Act"; providing legislative findings related to the elements to be included in high-quality digital learning; providing digital preparation requirements; providing for customized and accelerated learning; amending s. 1002.33, F.S.; authorizing the establishment of virtual charter schools; providing application requirements for establishment of a virtual charter school; authorizing a charter school to implement blended learning courses; providing funding for a virtual charter school; establishing administrative fees for a virtual charter school; amending s. 1002.37, F.S.; redefining the term "full-time equivalent student" as it applies to the Florida Virtual School; providing instruction, funding, assessment, and accountability requirements; amending s. 1002.45, F.S.; requiring school districts to provide all public school students the opportunity to

participate in virtual instruction programs; requiring school districts to provide full-time and part-time virtual instruction program options; authorizing a school district to enter into an agreement with a charter virtual school to provide virtual instruction to district students; authorizing virtual charter school contracts; providing additional provider qualifications relating to curriculum, student performance accountability, and disclosure; revising student eligibility requirements; providing funding and accountability requirements; creating s. 1002.455, F.S.; establishing student eligibility requirements for virtual instruction; amending s. 1003.428, F.S.; requiring at least one course required for high school graduation to be completed through online learning; creating s. 1003.498, F.S.; authorizing school districts to offer virtual courses and blended learning courses; amending s. 1008.22, F.S.; requiring all statewide end-of-course assessments to be administrated online by the 2014-2015 school year; amending s. 1011.61, F.S.; redefining the term "full-time equivalent student" for purposes of virtual instruction; amending s. 1012.57, F.S.; authorizing school districts to issue adjunct teaching certificates to individuals to provide online instruction; revising requirements for adjunct teaching certificateholders; providing for annual contracts; requiring the Department of Education to submit a report to the Governor and the Legislature

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relating to school district offering of, and student access to, digital learning; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1002.321, Florida Statutes, is created to read:

1002.321 Digital learning.—

(1) DIGITAL LEARNING NOW ACT.—There is created the Digital Learning Now Act.

(2) ELEMENTS OF HIGH-QUALITY DIGITAL LEARNING.—The Legislature finds that each student should have access to a high-quality digital learning environment that provides:

(a) Access to digital learning.

(b) Access to high-quality digital content and online courses.

(c) Education that is customized to the needs of the student using digital content.

(d) A means for the student to demonstrate competency in completed coursework.

(e) High-quality digital content, instructional materials, and online and blended learning courses.

(f) High-quality digital instruction and teachers.

(g) Content and instruction that are evaluated on the metric of student learning.

(h) The use of funding as an incentive for performance, options, and innovation.

(i) Infrastructure that supports digital learning.

(j) Online administration of state assessments.

(3) DIGITAL PREPARATION.—Each student must graduate from high school having taken at least one online course, as provided in s. 1003.428.

(4) CUSTOMIZED AND ACCELERATED LEARNING.—A school district must establish multiple opportunities for student participation in part-time and full-time kindergarten through grade 12 virtual instruction. Options include, but are not limited to:

(a) School district operated part-time or full-time virtual instruction programs under s. 1002.45(1)(b) for kindergarten through grade 12 students enrolled in the school district. A full-time program shall operate under its own Master School Identification Number.

(b) Florida Virtual School instructional services authorized under s. 1002.37.

(c) Blended learning instruction provided by charter schools authorized under s. 1002.33.

(d) Full-time virtual charter school instruction authorized under s. 1002.33.

(e) Courses delivered in the traditional school setting by personnel providing direct instruction through a virtual environment or though a blended virtual and physical environment pursuant to s. 1003.498.

(f) Virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state pursuant to s. 1003.498.

Section 2. Subsection (1), paragraph (a) of subsection (6), subsection (7), and paragraph (a) of subsection (20) of section 1002.33, Florida Statutes, are amended, and paragraph (f) is added to subsection (17) of that section, to read:

1002.33 Charter schools.—

(1) AUTHORIZATION.—Charter schools shall be part of the state's program of public education. All charter schools in Florida are public schools. A charter school may be formed by creating a new school or converting an existing public school to charter status. A charter school may operate a virtual charter school pursuant to s. 1002.45(1)(d) to provide full-time online instruction to eligible students, pursuant to s. 1002.455, in kindergarten through grade 12. A charter school must amend its charter or submit a new application pursuant to subsection (6) to become a virtual charter school. A virtual charter school is subject to the requirements of this section; however, a virtual charter school is exempt from subsections (18) and (19), subparagraphs (20)(a)2.-5., paragraph (20)(c), and s. 1003.03. A


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public school may not use the term charter in its name unless it has been approved under this section.

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(a) A person or entity wishing to open a charter school shall prepare and submit an application on a model application form prepared by the Department of Education which:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.

2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.

3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.

4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny a charter if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research.

5. Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues


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and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

6. Documents that the applicant has participated in the training required in subparagraph (f)2. A sponsor may require an applicant to provide additional information as an addendum to the charter school application described in this paragraph.

7. For the establishment of a virtual charter school, documents that the applicant has contracted with a provider of virtual instruction services pursuant to s. 1002.45(1)(d).

(7) CHARTER.—The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing board ~~body~~ of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school’s mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies

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for reading must be consistent with the Sunshine State Standards and grounded in scientifically based reading research.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-time students of the charter school and receive the online instruction in a classroom setting at the charter school. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

The district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1003.43.

6. A method for resolving conflicts between the governing board ~~body~~ of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school’s code of student conduct.

8. The ways by which the school will achieve a


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racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been


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made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 4 or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the district school board. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being


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converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b)1. A charter may be renewed provided that a program review demonstrates that the criteria in paragraph (a) have been successfully accomplished and that none of the grounds for nonrenewal established by paragraph (8)(a) has been documented. In order to facilitate long-term financing for charter school construction, charter schools operating for a minimum of 3 years and demonstrating exemplary academic programming and fiscal


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management are eligible for a 15-year charter renewal. Such long-term charter is subject to annual review and may be terminated during the term of the charter.

2. The 15-year charter renewal that may be granted pursuant to subparagraph 1. shall be granted to a charter school that has received a school grade of "A" or "B" pursuant to s. 1008.34 in 3 of the past 4 years and is not in a state of financial emergency or deficit position as defined by this section. Such long-term charter is subject to annual review and may be terminated during the term of the charter pursuant to subsection (8).

(c) A charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor or the charter school's ~~school~~ governing board and the approval of both parties to the agreement.

(d)1. Each charter school's governing board must appoint a representative to facilitate parental involvement, provide access to information, assist parents and others with questions and concerns, and resolve disputes. The representative must reside in the school district in which the charter school is located and may be a governing board member, charter school employee, or individual contracted to represent the governing board. If the governing board oversees multiple charter schools in the same school district, a single representative may be appointed to serve all such schools. The representative's contact information must be provided annually in writing to parents and posted prominently on the charter school's website if a website is maintained by the school. The sponsor may not require that governing board members of the charter school


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reside in the school district in which the charter school is located if the charter school complies with this paragraph.

2. Each charter school's governing board must hold at least two public meetings per school year in the school district. The meetings must be noticed, open, and accessible to the public, and attendees must be provided an opportunity to receive information and provide input regarding the charter school's operations. The appointed representative and charter school principal or director, or his or her equivalent, must be physically present at each meeting.

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(f) Funding for a virtual charter school shall be as provided in s. 1002.45(7).

(20) SERVICES.—

(a)1. A sponsor shall provide certain administrative and educational services to charter schools. These services shall include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the federal lunch program, consistent with the needs of the charter school, are provided by the school district at the request of the charter school, that any funds due to the charter school under the federal lunch program be paid to the charter school as soon as the charter school begins serving food under

the federal lunch program, and that the charter school is paid at the same time and in the same manner under the federal lunch program as other public schools serviced by the sponsor or the school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to student information systems that are used by public schools in the district in which the charter school is located. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public school student report cards, and student performance measures, shall be provided by the sponsor to a charter school in the same manner provided to other public schools in the district.

2. A total administrative fee for the provision of such services shall be calculated based upon up to 5 percent of the available funds defined in paragraph (17)(b) for all students. However, a sponsor may only withhold up to a 5-percent administrative fee for enrollment for up to and including 250 students. For charter schools with a population of 251 or more students, the difference between the total administrative fee calculation and the amount of the administrative fee withheld may only be used for capital outlay purposes specified in s. 1013.62(2).

3. In addition, a sponsor may withhold only up to a 5-percent administrative fee for enrollment for up to and including 500 students within a system of charter schools which meets all of the following:

a. Includes both conversion charter schools and nonconversion charter schools;

b. Has all schools located in the same county;

c. Has a total enrollment exceeding the total enrollment of at least one school district in the state;

d. Has the same governing board; and

e. Does not contract with a for-profit service provider for management of school operations.

4. The difference between the total administrative fee calculation and the amount of the administrative fee withheld pursuant to subparagraph 3. may be used for instructional and administrative purposes as well as for capital outlay purposes specified in s. 1013.62(2).

5. Each charter school shall receive 100 percent of the funds awarded to that school pursuant to s. 1012.225. Sponsors shall not charge charter schools any additional fees or surcharges for administrative and educational services in addition to the maximum 5-percent administrative fee withheld pursuant to this paragraph.

6. The sponsor of a virtual charter school may withhold a fee of up to 5 percent. The funds shall be used to cover the cost of services provided under subparagraph 1. and for the school district's local instructional improvement system pursuant to s. 1006.281 or other technological tools that are required to access electronic and digital instructional materials.

Section 3. Paragraph (a) of subsection (3) of section 1002.37, Florida Statutes, is amended, and subsections (8), (9), (10), and (11) are added to that section, to read:

1002.37 The Florida Virtual School.—

(3) Funding for the Florida Virtual School shall be provided as follows:

(a)1. For a student in grades 9 through 12, a "full-time equivalent student" ~~for the Florida Virtual School~~ is one student who has successfully completed six full-credit courses ~~credits~~ that ~~shall~~ count toward the minimum number of credits required for high school graduation. A student who completes fewer ~~less~~ than six full-credit courses is ~~credits shall be~~ a fraction of a full-time equivalent student. Half-credit course completions shall be included in determining a full-time equivalent student. Credit completed by a student in excess of the minimum required for that student for high school graduation is not eligible for funding.

2. For a student in kindergarten through grade 8, a "full-time equivalent student" is one student who has successfully completed six courses or the prescribed level of content that counts toward promotion to the next grade. A student who completes fewer than six courses or the prescribed level of content shall be a fraction of a full-time equivalent student.

3. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment. However, no adjustment shall be made for home education program students who choose not to take an end-of-course assessment.

For purposes of this paragraph, the calculation of "full-time equivalent student" shall be as prescribed in s. 1011.61(1)(c)1.b.(V).

(8)(a) The Florida Virtual School may provide full-time instruction for students in kindergarten through grade 12 and part-time instruction for students in grades 4 through 12. To receive full-time instruction in grades 2 through 5, a student must meet at least one of the eligibility criteria in s. 1002.455(2). Part-time instruction for grades 4 and 5 may be provided only to public school students taking grade 6 through grade 8 courses.

(b) For students receiving part-time instruction in grades 4 and 5 and students receiving full-time instruction in kindergarten through grade 12 from the Florida Virtual School, the combined total of all FTE reported by both the school district and the Florida Virtual School may not exceed 1.0 FTE.

(9) Each elementary school principal must notify the parent of each student who scores at Level 4 or Level 5 on FCAT Reading or FCAT Mathematics of the option for the student to take accelerated courses through the Florida Virtual School.

(10)(a) Public school students receiving full-time instruction in kindergarten through grade 12 by the Florida Virtual School must take all statewide assessments required pursuant to s. 1008.22.

(b) Public school students receiving part-time instruction by the Florida Virtual School in courses requiring statewide end-of-course assessments must take all statewide end-of-course assessments required pursuant to s. 1008.22(3)(c)2.

(c) All statewide assessments must be taken within the


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school district in which the student resides. A school district must provide the student with access to the district's testing facilities.

(11) The Florida Virtual School shall receive a school grade pursuant to s. 1008.34 for students receiving full-time instruction.

Section 4. Section 1002.45, Florida Statutes, is amended to read:

1002.45 ~~School district~~ Virtual instruction programs.—

(1) PROGRAM.—

(a) For purposes of this section, the term:

1. "Approved provider" means a provider that is approved by the Department of Education under subsection (2), the Florida Virtual School, a franchise of the Florida Virtual School, or a community college.

2. "Virtual instruction program" means a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both~~, and in which a Florida-certified teacher under chapter 1012 is responsible for at least:~~

~~a. Fifty percent of the direct instruction to students in kindergarten through grade 5; or~~

~~b. Eighty percent of the direct instruction to students in grades 6 through 12~~.

(b) ~~Beginning with the 2009-2010 school year,~~ Each school district that is eligible for the sparsity supplement pursuant to s. 1011.62(7) shall provide all enrolled public school ~~eligible~~ students within its boundaries the option of


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participating in part-time and full-time ~~a~~ virtual instruction programs. Each school district that is not eligible for the sparsity supplement shall provide at least three options for part-time and full-time virtual instruction. All school districts must provide parents with timely written notification of an open enrollment period for full-time students of at least 90 days that ends no later than 30 days prior to the first day of the school year ~~program~~. The purpose of the program is to make quality virtual instruction available to students using online and distance learning technology in the nontraditional classroom. A school district virtual instruction ~~The~~ program shall provide the following ~~be~~:

1. Full-time virtual instruction for students enrolled in kindergarten through grade 12.

2. ~~Full-time or~~ Part-time virtual instruction for students enrolled in grades 9 through 12 courses that are measured pursuant to subparagraph (8)(a)2.

3. Full-time or part-time virtual instruction for students ~~who are~~ enrolled in dropout prevention and academic intervention programs under s. 1003.53, Department of Juvenile Justice education programs under s. 1003.52, core-curricula courses to meet class size requirements under s. 1003.03, or community colleges under this section.

(c) To provide students with the option of participating in virtual instruction programs as required by paragraph (b), a school district may:

1. Contract with the Florida Virtual School or establish a franchise of the Florida Virtual School for the provision of a program under paragraph (b). Using this option is subject to the


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requirements of this section and s. 1011.61(1)(c)1.b.(III) and (IV).

2. Contract with an approved provider under subsection (2) for the provision of a full-time program under subparagraph (b)1. or subparagraph (b)3. or a ~~full-time or~~ part-time program under subparagraph (b)2. or subparagraph (b)3.

3. Enter into an agreement with other ~~another~~ school districts ~~district~~ to allow the participation of its students in an approved virtual instruction program provided by the other school district. The agreement must indicate a process for the transfer of funds required by paragraph (7)(f)~~(b)~~.

4. Establish school district operated part-time or full-time kindergarten through grade 12 virtual instruction programs under paragraph (b) for students enrolled in the school district. A full-time program shall operate under its own Master School Identification Number.

5. Enter into an agreement with a virtual charter school authorized by the school district under s. 1002.33.

Contracts under subparagraph 1. or subparagraph 2. may include multidistrict contractual arrangements that may be executed by a regional consortium for its member districts. A multidistrict contractual arrangement or an agreement under subparagraph 3. is not subject to s. 1001.42(4)(d) and does not require the participating school districts to be contiguous. These arrangements may be used to fulfill the requirements of paragraph (b).

(d) A virtual charter school may provide full-time virtual instruction for students in kindergarten through grade 12 if the


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virtual charter school has a charter approved pursuant to s. 1002.33 authorizing full-time virtual instruction. A virtual charter school may:

1. Contract with the Florida Virtual School.

2. Contract with an approved provider under subsection (2).

3. Enter into an ~~a joint~~ agreement with a ~~the~~ school district to allow the participation of ~~in which it is located for~~ the virtual charter school's students ~~to participate~~ in the school district's virtual instruction program. The agreement must indicate a process for reporting of student enrollment and the transfer of funds required by paragraph (7)(f).

(e) Each school district shall:

1. Provide to the department by October 1, 2011, and by each October 1 thereafter, a copy of each contract and the amounts paid per unweighted full-time equivalent student for services procured pursuant to subparagraphs (c)1. and 2.

2. Expend the difference in funds provided for a student participating in the school district virtual instruction program pursuant to subsection (7) and the price paid for contracted services procured pursuant to subparagraphs (c)1. and 2. for the district's local instructional improvement system pursuant to s. 1006.281 or other technological tools that are required to access electronic and digital instructional materials.

3. At the end of each fiscal year, but no later than September 1, report to the department an itemized list of the technological tools purchased with these funds.

(2) PROVIDER QUALIFICATIONS.—

(a) The department shall annually publish online ~~provide school districts with~~ a list of providers approved to offer

virtual instruction programs. To be approved by the department, a provider must document that it:

1. Is nonsectarian in its programs, admission policies, employment practices, and operations;

2. Complies with the antidiscrimination provisions of s. 1000.05;

3. Locates an administrative office or offices in this state, requires its administrative staff to be state residents, requires all instructional staff to be Florida-certified teachers under chapter 1012, and conducts background screenings for all employees or contracted personnel, as required by s. 1012.32, using state and national criminal history records;

4. Possesses prior, successful experience offering online courses to elementary, middle, or high school students as demonstrated by quantified student learning gains in each subject area and grade level provided for consideration as an instructional program option;

5. Is accredited by a regional accrediting association as defined by State Board of Education rule; ~~the Southern Association of Colleges and Schools Council on Accreditation and School Improvement, the North Central Association Commission on Accreditation and School Improvement, the Middle States Association of Colleges and Schools Commission on Elementary Schools and Commission on Secondary Schools, the New England Association of Schools and Colleges, the Northwest Association of Accredited Schools, the Western Association of Schools and Colleges, or the Commission on International and Trans-Regional Accreditation; and~~

6. Ensures instructional and curricular quality through a

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detailed curriculum and student performance accountability plan that addresses every subject and grade level it intends to provide through contract with the school district, including:

a. Courses and programs that meet the standards of the International Association for K-12 Online Learning and the Southern Regional Education Board.

b. Instructional content and services that align with, and measure student attainment of, student proficiency in the Next Generation Sunshine State Standards.

c. Mechanisms that determine and ensure that a student has satisfied requirements for grade level promotion and high school graduation with a standard diploma, as appropriate;

7. Publishes for the general public, in accordance with disclosure requirements adopted in rule by the State Board of Education, as part of its application as a provider and in all contracts negotiated pursuant to this section:

a. Information and data about the curriculum of each full-time and part-time program.

b. School policies and procedures.

c. Certification status and physical location of all administrative and instructional personnel.

d. Hours and times of availability of instructional personnel.

e. Student-teacher ratios.

f. Student completion and promotion rates.

g. Student, educator, and school performance accountability outcomes; and

8.~~6.~~ If the provider is a community college, employs instructors who meet the certification requirements for


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instructional staff under chapter 1012.

(b) An approved provider shall retain its approved status during the ~~for a period of~~ 3 school years after the date of the department's approval under paragraph (a) as long as the provider continues to comply with all requirements of this section. However, each provider approved by the department for the 2011-2012 school year must reapply for approval to provide a part-time program for students in grades 9 through 12.

(3) ~~SCHOOL DISTRICT~~ VIRTUAL INSTRUCTION PROGRAM REQUIREMENTS.—Each ~~school district~~ virtual instruction program under this section must:

(a) Align virtual course curriculum and course content to the Sunshine State Standards under s. 1003.41.

(b) Offer instruction that is designed to enable a student to gain proficiency in each virtually delivered course of study.

(c) Provide each student enrolled in the program with all the necessary instructional materials.

(d) Provide~~, when appropriate,~~ each full-time student enrolled in the program who qualifies for free or reduced-price school lunches under the National School Lunch Act, or who is on the direct certification list, and who does not have a computer or Internet access in his or her home with:

1. All equipment necessary for participants in the ~~school district~~ virtual instruction program, including, but not limited to, a computer, computer monitor, and printer, if a printer is necessary to participate in the program; and

2. Access to or reimbursement for all Internet services necessary for online delivery of instruction.

(e) Not require tuition or student registration fees.


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(4) CONTRACT REQUIREMENTS.—Each contract with an approved provider must at minimum:

(a) Set forth a detailed curriculum plan that illustrates how students will be provided services and be measured for attainment of ~~to attain~~ proficiency in the Next Generation Sunshine State Standards for each grade level and subject.

(b) Provide a method for determining that a student has satisfied the requirements for graduation in s. 1003.428, s. 1003.429, or s. 1003.43 if the contract is for the provision of a full-time virtual instruction program to students in grades 9 through 12.

(c) Specify a method for resolving conflicts among the parties.

(d) Specify authorized reasons for termination of the contract.

(e) Require the approved provider to be responsible for all debts of the ~~school district~~ virtual instruction program if the contract is not renewed or is terminated.

(f) Require the approved provider to comply with all requirements of this section.

(5) STUDENT ELIGIBILITY.—A student may enroll in a virtual instruction program provided by the school district or by a virtual charter school operated in the district in which he or she resides if the student meets eligibility requirements for virtual instruction pursuant to s. 1002.455. ~~at least one of the following conditions:~~

~~(a) The student has spent the prior school year in attendance at a public school in this state and was enrolled and reported by a public school district for funding during the~~


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~~preceding October and February for purposes of the Florida Education Finance Program surveys.~~

~~(b) The student is a dependent child of a member of the United States Armed Forces who was transferred within the last 12 months to this state from another state or from a foreign country pursuant to the parent's permanent change of station orders.~~

~~(c) The student was enrolled during the prior school year in a school district virtual instruction program under this section or a K-8 Virtual School Program under s. 1002.415.~~

~~(d) The student has a sibling who is currently enrolled in a school district virtual instruction program and that sibling was enrolled in such program at the end of the prior school year.~~

(6) STUDENT PARTICIPATION REQUIREMENTS.—Each student enrolled in a ~~school district~~ virtual instruction program or virtual charter school must:

(a) Comply with the compulsory attendance requirements of s. 1003.21. Student attendance must be verified by the school district.

(b) Take state assessment tests within the school district in which such student resides, which must provide the student with access to the district's testing facilities.

(7) VIRTUAL INSTRUCTION PROGRAM AND VIRTUAL CHARTER SCHOOL FUNDING.—

(a) Students enrolled in a virtual instruction program or a virtual charter school shall be funded through the Florida Education Finance Program as provided in the General Appropriations Act. However, such funds may not be provided for


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the purpose of fulfilling the class size requirements in ss. 1003.03 and 1011.685.

(b) For purposes of a ~~school district~~ virtual instruction program or a virtual charter school, "full-time equivalent student" has the same meaning as provided in s. 1011.61(1)(c)1.b.(III) or (IV).

(c) For a student enrolled part-time in a grades 6 through 12 program, a "full-time equivalent student" has the same meaning as provided in s. 1011.61(1)(c)1.b.(IV).

(d) A student may not be reported as more than 1.0 full-time equivalent student in any given school year.

(e) Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(f) ~~(b)~~ The school district in which the student resides shall report full-time equivalent students for a ~~the school district~~ virtual instruction program or a virtual charter school to the department in a manner prescribed by the department, and funding shall be provided through the Florida Education Finance Program. Funds received by the school district of residence for a student in a virtual instruction program provided by another school district under this section shall be transferred to the school district providing the virtual instruction program.

(g) ~~(c)~~ A community college provider may not report students who are served in a ~~school district~~ virtual instruction program for funding under the Community College Program Fund.

(8) ASSESSMENT AND ACCOUNTABILITY.—

(a) Each approved provider contracted under this section must:

1. Participate in the statewide assessment program under s. 1008.22 and in the state's education performance accountability system under s. 1008.31.

2. Receive a school grade under s. 1008.34 or a school improvement rating under s. 1008.341, as applicable. The school grade or school improvement rating received by each approved provider shall be based upon the aggregated assessment scores of all students served by the provider statewide. The department shall publish the school grade or school improvement rating received by each approved provider on its Internet website. The department shall develop an evaluation method for providers of part-time programs which includes the percentage of students making learning gains, the percentage of students successfully passing any required end-of-course assessment, the percentage of students taking Advanced Placement examinations, and the percentage of students scoring 3 or higher on an Advanced Placement examination.

(b) The performance of part-time students in grades 9 through 12 shall not be included for purposes of school grades or school improvement ratings under subparagraph (a)2.; however, their performance shall be included for school grading or school improvement rating purposes by the nonvirtual school providing the student's primary instruction.

(c) An approved provider that receives a school grade of "D" or "F" under s. 1008.34 or a school improvement rating of "Declining" under s. 1008.341 must file a school improvement

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plan with the department for consultation to determine the causes for low performance and to develop a plan for correction and improvement.

(d) An approved provider's contract must be terminated if the provider receives a school grade of "D" or "F" under s. 1008.34 or a school improvement rating of "Declining" under s. 1008.341 for 2 years during any consecutive 4-year period or has violated any qualification requirement pursuant to subsection (2). A provider that has a contract terminated under this paragraph may not be an approved provider for a period of at least 1 year after the date upon which the contract was terminated and until the department determines that the provider is in compliance with subsection (2) and has corrected each cause of the provider's low performance.

(9) EXCEPTIONS.—A provider of digital or online content or curriculum that is used to supplement the instruction of students who are not enrolled in a ~~school district~~ virtual instruction program under this section is not required to meet the requirements of this section.

(10) MARKETING.—Each school district shall provide information to parents and students about the parent's and student's right to participate in a ~~school district~~ virtual instruction program under this section and in courses offered by the Florida Virtual School under s. 1002.37.

(11) RULES.—The State Board of Education shall adopt rules necessary to administer this section, including rules that prescribe disclosure requirements under subsection (2) and school district reporting requirements under subsection (7).

Section 5. Section 1002.455, Florida Statutes, is created

to read:

1002.455 Student eligibility for K-12 virtual instruction.—

(1) A student may participate in virtual instruction in the school district in which he or she resides if the student meets the eligibility criteria in subsection (2).

(2) A student is eligible to participate in virtual instruction if:

(a) The student spent the prior school year in attendance at a public school in the state and was enrolled and reported by the school district for funding during October and February for purposes of the Florida Education Finance Program surveys;

(b) The student is a dependent child of a member of the United States Armed Forces who was transferred within the last 12 months to this state from another state or from a foreign country pursuant to a permanent change of station order;

(c) The student was enrolled during the prior school year in a virtual instruction program under s. 1002.45, the K-8 Virtual School Program under s. 1002.415, or a full-time Florida Virtual School program under s. 1002.37(8)(a);

(d) The student has a sibling who is currently enrolled in a virtual instruction program and the sibling was enrolled in that program at the end of the prior school year; or

(e) The student is eligible to enter kindergarten or first grade.

(3) The virtual instruction options for which this eligibility section applies include:

(a) School district operated part-time or full-time kindergarten through grade 12 virtual instruction programs under s. 1002.45(1)(b) for students enrolled in the school district.

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(b) Full-time virtual charter school instruction authorized under s. 1002.33.

(c) Courses delivered in the traditional school setting by personnel providing direct instruction through a virtual environment or though a blended virtual and physical environment pursuant to s. 1003.498 and as authorized pursuant to s. 1002.321(4)(e).

(d) Virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state pursuant to s. 1003.498.

Section 6. Paragraph (c) is added to subsection (2) of section 1003.428, Florida Statutes, to read:

1003.428 General requirements for high school graduation; revised.—

(2) The 24 credits may be earned through applied, integrated, and combined courses approved by the Department of Education. The 24 credits shall be distributed as follows:

(c) Beginning with students entering grade 9 in the 2011-2012 school year, at least one course within the 24 credits required in this subsection must be completed through online learning. However, an online course taken during grades 6 through 8 fulfills this requirement. This requirement shall be met through an online course offered by the Florida Virtual School, an online course offered by the high school, or an online dual enrollment course offered pursuant to a district interinstitutional articulation agreement pursuant to s. 1007.235. A student who is enrolled in a full-time or part-time virtual instruction program under s. 1002.45 meets this requirement.

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Section 7. Section 1003.498, Florida Statutes, is created to read:

1003.498 School district virtual course offerings.—

(1) School districts may deliver courses in the traditional school setting by personnel certified pursuant to s. 1012.55 who provide direct instruction through a virtual environment or though a blended virtual and physical environment.

(2) School districts may offer virtual courses for students enrolled in the school district. These courses must be identified in the course code directory. Students who meet the eligibility requirements of s. 1002.455 may participate in these virtual course offerings.

(a) Any eligible student who is enrolled in a school district may register and enroll in an online course offered by his or her school district.

(b) Any eligible student who is enrolled in a school district may register and enroll in an online course offered by any other school district in the state, except as limited by the following:

1. A student may not enroll in a course offered through a virtual instruction program provided pursuant to s. 1002.45.

2. A student may not enroll in a virtual course offered by another school district if:

a. The course is offered online by the school district in which the student resides; or

b. The course is offered in the school in which the student is enrolled. However, a student may enroll in an online course offered by another school district if the school in which the student is enrolled offers the course but the student is unable

to schedule the course in his or her school.

3. The school district in which the student completes the course shall report the student's completion of that course for funding pursuant to s. 1011.61(1)(c)b.(VI) and the home school district shall not report the student for funding for that course.

For purposes of this paragraph, the combined total of all school district reported FTE may not be reported as more than 1.0 full-time equivalent student in any given school year. The Department of Education shall establish procedures to enable interdistrict coordination for the delivery and funding of this online option.

Section 8. Paragraph (g) of subsection (3) of section 1008.22, Florida Statutes, is amended to read:

1008.22 Student assessment program for public schools.—

(3) STATEWIDE ASSESSMENT PROGRAM.—The commissioner shall design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs. The commissioner may enter into contracts for the continued administration of the assessment, testing, and evaluation programs authorized and funded by the Legislature. Contracts may be initiated in 1 fiscal year and continue into the next and may be paid from the appropriations of either or both fiscal years. The commissioner is authorized to negotiate for the sale or lease of tests, scoring protocols, test scoring services, and related materials developed pursuant to law. Pursuant to the


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statewide assessment program, the commissioner shall:

(g) Beginning with the 2014-2015 school year, all statewide end-of-course assessments shall be administered online. ~~Study the cost and student achievement impact of secondary end-of-course assessments, including web-based and performance formats, and report to the Legislature prior to implementation.~~

Section 9. Paragraph (c) of subsection (1) of section 1011.61, Florida Statutes, is amended to read:

1011.61 Definitions.—Notwithstanding the provisions of s. 1000.21, the following terms are defined as follows for the purposes of the Florida Education Finance Program:

(1) A "full-time equivalent student" in each program of the district is defined in terms of full-time students and part-time students as follows:

(c)1. A "full-time equivalent student" is:

a. A full-time student in any one of the programs listed in s. 1011.62(1)(c); or

b. A combination of full-time or part-time students in any one of the programs listed in s. 1011.62(1)(c) which is the equivalent of one full-time student based on the following calculations:

(I) A full-time student, except a postsecondary or adult student or a senior high school student enrolled in adult education when such courses are required for high school graduation, in a combination of programs listed in s. 1011.62(1)(c) shall be a fraction of a full-time equivalent membership in each special program equal to the number of net hours per school year for which he or she is a member, divided by the appropriate number of hours set forth in subparagraph

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(a)1. or subparagraph (a)2. The difference between that fraction or sum of fractions and the maximum value as set forth in subsection (4) for each full-time student is presumed to be the balance of the student's time not spent in such special education programs and shall be recorded as time in the appropriate basic program.

(II) A prekindergarten handicapped student shall meet the requirements specified for kindergarten students.

(III) A full-time equivalent student for students in kindergarten through grade 5 in a ~~school district~~ virtual instruction program under s. 1002.45 or a virtual charter school under s. 1002.33 shall consist of a student who has successfully completed a basic program listed in s. 1011.62(1)(c)1.a. or b., and who is promoted to a higher grade level.

(IV) A full-time equivalent student for students in grades 6 through 12 in a ~~school district~~ virtual instruction program under s. 1002.45(1)(b)1., ~~and~~ 2., or 3. or a virtual charter school under s. 1002.33 shall consist of six full credit completions in programs listed in s. 1011.62(1)(c)1.b. or c. and 3. Credit completions may ~~can~~ be a combination of full-credit courses or half-credit courses ~~either full credits or half credits~~. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(V) A Florida Virtual School full-time equivalent student shall consist of six full credit completions or the prescribed

level of content that counts toward promotion to the next grade in the programs listed in s. 1011.62(1)(c)1.a. and b. for kindergarten ~~grades 6~~ through grade 8 and the programs listed in s. 1011.62(1)(c)1.c. for grades 9 through 12. Credit completions may ~~can~~ be a combination of full-credit courses or half-credit courses ~~either full credits or half credits~~. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(VI) Each successfully completed full-credit course earned through an online course delivered by a district other than the one in which the student resides shall be calculated as 1/6 FTE.

(VII) ~~(VI)~~ Each successfully completed credit earned under the alternative high school course credit requirements authorized in s. 1002.375, which is not reported as a portion of the 900 net hours of instruction pursuant to subparagraph (1)(a)1., shall be calculated as 1/6 FTE.

2. A student in membership in a program scheduled for more or less than 180 school days or the equivalent on an hourly basis as specified by rules of the State Board of Education is a fraction of a full-time equivalent membership equal to the number of instructional hours in membership divided by the appropriate number of hours set forth in subparagraph (a)1.; however, for the purposes of this subparagraph, membership in programs scheduled for more than 180 days is limited to students enrolled in juvenile justice education programs and the Florida Virtual School.


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The department shall determine and implement an equitable method of equivalent funding for experimental schools and for schools operating under emergency conditions, which schools have been approved by the department to operate for less than the minimum school day.

Section 10. Section 1012.57, Florida Statutes, is amended to read:

1012.57 Certification of adjunct educators.—

(1) Notwithstanding the provisions of ss. 1012.32, 1012.55, and 1012.56, or any other provision of law or rule to the contrary, district school boards shall adopt rules to allow for the issuance of an adjunct teaching certificate to any applicant who fulfills the requirements of s. 1012.56(2)(a)-(f) and (10) and who has expertise in the subject area to be taught. An applicant shall be considered to have expertise in the subject area to be taught if the applicant demonstrates sufficient subject area mastery through passage of a subject area test. The adjunct teaching certificate shall be used for part-time teaching positions.

(2) The Legislature intends that this section ~~intent of this provision is to~~ allow school districts to tap the wealth of talent and expertise represented in Florida's citizens who may wish to teach part-time in a Florida public school by permitting school districts to issue adjunct certificates to qualified applicants.

(3) Adjunct certificateholders should be used as a strategy to enhance the diversity of course offerings offered to all students. School districts may use the expertise of individuals


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in the state who wish to provide online instruction to students by issuing adjunct certificates to qualified applicants ~~reduce the teacher shortage; thus, adjunct certificateholders should supplement a school's instructional staff, not supplant it. Each school principal shall assign an experienced peer mentor to assist the adjunct teaching certificateholder during the certificateholder's first year of teaching, and an adjunct certificateholder may participate in a district's new teacher training program. District school boards shall provide the adjunct teaching certificateholder an orientation in classroom management prior to assigning the certificateholder to a school~~.

(4) Each adjunct teaching certificate is valid through the term of the annual contract between the educator and the school district. An additional annual certification and an additional annual contract may be awarded by the district at the district's discretion but only ~~for 5 school years and is renewable~~ if the applicant is rated effective or highly effective under s. 1012.34 ~~has received satisfactory performance evaluations~~ during each year of teaching under adjunct teaching certification.

(5)~~(2)~~ Individuals who are certified and employed under this section shall have the same rights and protection of laws as teachers certified under s. 1012.56.

Section 11. Subsection (1) of section 1000.04, Florida Statutes, is amended to read:

1000.04 Components for the delivery of public education within the Florida K-20 education system.—Florida's K-20 education system provides for the delivery of public education through publicly supported and controlled K-12 schools, community colleges, state universities and other postsecondary


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educational institutions, other educational institutions, and other educational services as provided or authorized by the Constitution and laws of the state.

(1) PUBLIC K-12 SCHOOLS.—The public K-12 schools include charter schools and consist of kindergarten classes; elementary, middle, and high school grades and special classes; ~~school district~~ virtual instruction programs; workforce education; career centers; adult, part-time, and evening schools, courses, or classes, as authorized by law to be operated under the control of district school boards; and lab schools operated under the control of state universities.

Section 12. Paragraph (a) of subsection (6) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(6) EDUCATIONAL CHOICE.—

(a) *Public school choices.*—Parents of public school students may seek whatever public school choice options that are applicable to their students and are available to students in their school districts. These options may include controlled open enrollment, single-gender programs, lab schools, ~~school district~~ virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, advanced placement, dual enrollment, International Baccalaureate, International General Certificate


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of Secondary Education (pre-AICE), Advanced International Certificate of Education, early admissions, credit by examination or demonstration of competency, the New World School of the Arts, the Florida School for the Deaf and the Blind, and the Florida Virtual School. These options may also include the public school choice options of the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program.

Section 13. Paragraph (b) of subsection (3) of section 1003.03, Florida Statutes, is amended to read:

1003.03 Maximum class size.—

(3) IMPLEMENTATION OPTIONS.—District school boards must consider, but are not limited to, implementing the following items in order to meet the constitutional class size maximums described in subsection (1):

(b) Adopt policies to encourage students to take courses from the Florida Virtual School and other ~~school district~~ virtual instruction options under s. 1002.45 ~~programs~~.

Section 14. By December 1, 2011, the Department of Education shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which identifies and explains the best methods and strategies by which the department can assist district school boards in acquiring digital learning at the most reasonable prices possible and provides a plan under which district school boards may voluntarily pool their bids for such purchases. The report shall identify criteria that will enable district school boards to differentiate between the level of service and pricing based upon factors such as the level of student support, the frequency

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of teacher-student communications, instructional accountability standards, and academic integrity. The report shall also include ways to increase student access to digital learning, including identification and analysis of the best methods and strategies for implementing part-time virtual education in kindergarten through grade 5.

Section 15. This act shall take effect July 1, 2011.

========== 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 digital learning; creating s. 1002.321, F.S.; creating the Digital Learning Now Act; providing legislative findings related to the elements to be included in high-quality digital learning; providing digital preparation requirements; providing for customized and accelerated learning; amending s. 1002.33, F.S.; authorizing the establishment of virtual charter schools; providing application requirements for establishment of a virtual charter school; authorizing a charter school to implement blended learning courses; requiring each charter school governing board to appoint a representative and specifying duties; requiring each governing board to hold two public meetings per school year; providing funding for a virtual charter school; establishing administrative fees for a virtual charter school;


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amending s. 1002.37, F.S.; redefining the term "full-time equivalent student" as it applies to the Florida Virtual School; providing instruction, eligibility, funding, assessment, and accountability requirements; amending s. 1002.45, F.S.; revising the definition of the term "virtual instruction program"; revising school district requirements for providing virtual instruction programs; requiring full-time and part-time virtual instruction program options; authorizing a school district to enter into an agreement with a virtual charter school to provide virtual instruction to district students; authorizing virtual charter school contracts; providing additional provider qualifications relating to curriculum, student performance accountability, and disclosure; revising student eligibility requirements; providing funding and accountability requirements; creating s. 1002.455, F.S.; establishing student eligibility requirements for K-12 virtual instruction; amending s. 1003.428, F.S.; requiring at least one course required for high school graduation to be completed through online learning; creating s. 1003.498, F.S.; authorizing school districts to offer virtual courses and blended learning courses; amending s. 1008.22, F.S.; requiring all statewide end-of-course assessments to be administrated online beginning with the 2014-2015 school year; amending s. 1011.61, F.S.; redefining the term "full-time equivalent student" for purposes of virtual instruction; amending s. 1012.57, F.S.;


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authorizing school districts to issue adjunct teaching certificates to qualified applicants to provide online instruction; revising requirements for adjunct teaching certificateholders; providing for annual contracts; amending ss. 1000.04, 1002.20, and 1003.03, F.S.; conforming provisions to changes made by the act; requiring the Department of Education to submit a report to the Governor and the Legislature relating to school district offering of, and student access to, digital learning; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 762 and 763
insert:
(d) Receive consent from a student's parent or guardian before placing the student in an on-site virtual instruction course in the traditional classroom.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 89 - 90
and insert:
parents and students about student rights, to post

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certain information on the district's website, and to receive consent from a student's parent or guardian before placing the student in an on-site virtual instruction course in the traditional classroom;

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 Budget Committee

BILL:	SB 1620
INTRODUCER:	Senator Flores
SUBJECT:	Educational Instruction
DATE:	April 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	**Favorable**
2.	Hamon	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

The bill revises the current framework and funding for virtual instruction in Florida. The bill:

- Provides for the participation of statewide virtual providers, virtual charter schools, and blended-learning charter schools;
- Revises the role of school district virtual instruction programs;
- Authorizes the Florida Virtual School (FLVS) to provide full-time instruction and offer individual courses to students in kindergarten through grade five.
- Requires the online administration of all statewide assessments;
- Requires the Department of Education to develop an evaluation process for part-time virtual instruction providers;
- Revises the qualifications of instructional personnel; and
- Requires students entering the ninth grade in 2011-2012 and thereafter to take at least one online course in order to meet high school graduation requirements.

This bill substantially amends sections 163.3180, 1002.20, 1002.33, 1002.34, 1002.37, 1002.41, 1002.45, 1003.02, 1003.03, 1003.428, 1008.22, 1011.61, 1011.68, 1012.57, and 1013.62 and creates section 1003.07 of the Florida Statutes.

II. Present Situation:

Virtual Instruction

The Florida Virtual School (FLVS) offers individual course enrollments to all Florida students in grades six through twelve, including public school, private school, and home education

students.[1] School districts are required to provide students with access to enroll in courses available through the FLVS during or after the normal school day and through summer school enrollment.

Virtual education is also provided through school district virtual instruction programs (VIP).[2] Each school district is required to provide a full-time VIP program for students in kindergarten through grade twelve and a full-time or part-time virtual instruction program for students in grades nine through twelve enrolled in dropout prevention and academic intervention programs, Department of Juvenile Justice programs, core-curricula courses to meet class size requirements, or community colleges.[3]

For the 2009-2010 school year, less than one percent (21,176 full-time equivalent or FTE) of the total final FTE (2,629,327 FTE) were in virtual education. Of the 21,176 FTE in virtual education, 2,575 FTE were in the virtual instruction (VIP) program and 18,601 FTE were in the Florida Virtual School's traditional program and a safety net program (18,451 FTE and 150 FTE, respectively).[4]

Charter Schools

Charter schools are public schools formed through the creation of a new school or the conversion of an existing public school.[5] A charter, or the written contractual agreement between the sponsor and applicant, establishes the terms and conditions of operation.[6] Florida ranked third in the nation both in the number of charter schools and in charter school enrollment in 2009-2010, with more than 137,000 students enrolled in 410 charter schools in 43 districts.[7]

III. Effect of Proposed Changes:

Virtual Education Framework

Beginning with the 2009-2010 school year, each school district was required to establish its own virtual instruction program (VIP).[8] Each school district is now permitted to contract with the FLVS or one or more virtual instruction providers approved by the DOE; establish an FLVS franchise; or participate in multi-district agreements to provide virtual instruction services. In addition, districts may operate their own VIP program and may contract with the providers specified in law or other entities to provide segments of their program.[9] Multidistrict agreements may be executed by regional consortiums on behalf of their member districts.[10] Finally, a charter school may enter into a joint agreement with the school district in which it is located to have its students participate in the VIP program.

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[1] s. 1002.37, F.S.
[2] s. 1002.45(1)(a), F.S.
[3] s. 1002.45(1)(b)2., F.S.
[4] E-mail, DOE, January 12, 2011, on file with the committee.
[5] s. 1002.33(1), F.S.
[6] s. 1002.33(6)(h), F.S.
[7] DOE, August 2010. *See* https://www.floridaschoolchoice.org/information/charter_schools/files/fast_facts_charter_schools.pdf.
[8] ch. 2008-147, L.O.F.
[9] *See* DOE, *School District Virtual Instruction Program (2010-2011) Questions and Answers #9*, available at: http://www.fldoe.org/schools/virtual-schools/pdf/DistrictVIP-FAQ.pdf.
[10] s. 1002.45(1)(c), F.S.

Under the bill, a district would be permitted rather than required to offer a virtual instruction program. Districts would still be able to operate their own programs, enter into agreements with other districts, and contract with approved providers. Charter schools would be permitted to enter into a joint agreement with the school district for the charter school to be an approved provider.

Statewide providers approved by the DOE would offer full-time virtual education[11] to students in kindergarten through grade twelve and part-time virtual education to students in grades six through twelve.[12] Currently, approved providers may offer virtual instruction under contracts with districts. With the exception of the traditional FLVS program, current law does not permit an approved provider participating in the VIP program to independently provide virtual instruction.

Blended-learning Charter Schools

Existing charter schools are sponsored by a district school board or a state university, in which case the charter school was converted from a lab school to a charter lab school.[13] With the exception of the charter lab schools, district school boards review and approve charter school applications.[14] Sponsors are responsible for monitoring the charter school, reviewing revenues and expenditures, and ensuring innovation and consistency with state education goals, including the state accountability system.[15]

Under the bill, full-time virtual charter schools are subject to the same application process as are other charter schools, must contract with a statewide virtual provider, and may only serve their charter school students in the school district in which the charter is granted. They are not subject to the provisions related to facilities and transportation. However, it is unclear as to whether they are subject to other charter school provisions.

The bill also permits "blended-learning charter schools," which combine traditional classroom instruction with online offerings, to offer online instruction; however, the schools may only offer this instruction to their students.

Providers

Current providers that wish to participate in the VIP program must be approved by the DOE. Under the bill, providers that are approved for the 2011-2012 school year would continue to provide virtual instruction under the current requirements until the 2012-2013 school year. To be approved after that date, all providers must have courses that meet the standards of the International Association for K-12 Online Learning (iNACOL) or the Southern Regional Education Board (SREB) [16] and have the requisite curriculum plan and a method for determining

[11] The terms "virtual education" and "virtual instruction" are used interchangeably throughout the bill.
[12] Currently, part-time instruction is limited to students in grades nine through 12 in dropout prevention and academic intervention programs, core courses to meet class size requirements, or community colleges.
[13] s. 1002.33(5)(a), F.S. A community college may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education, pursuant to s. 1002.33(5)(b) 4., F.S.
[14] s. 1002.33(5)(b) and (6)(g), F.S.
[15] s. 1002.33(5)(b), F.S.
[16] *National Standards of Quality for Online Courses*, iNACOL, updated August 2010, and *Standards for Quality Online Courses*, SREB, November 2006. *See*

if a student has satisfied high school graduation requirements.[17] Providers are prohibited from charging tuition or student registration fees.

Assessments

The bill requires the online administration of all statewide assessments, including end-of-course assessments, beginning in the 2014-2015 school year. According to the DOE, Florida Assessments for Instruction in Reading (FAIR) is currently in a computer-based format.[18] Partnership for the Assessment of Readiness for College and Careers Consortium (PARCC) assessments will all be computer based.[19] There are some grade levels of the FCAT 2.0 in reading and mathematics that will be computer based. Additionally, end-of-course assessments in Algebra I, geometry, biology I, U.S. history, and civics will be computer-based.

Current law requires students enrolled in a VIP program to take state assessments within the school district in which the student resides.[20] Districts must provide the student with access to the district's testing facilities. Lines 672-676 and 747-751 expand that obligation to include students in statewide virtual programs and virtual charter schools. The DOE notes that these students would not be enrolled in the district, as is the case for the vast majority of students in the current virtual programs or schools.[21]

Funding

Under current law, funding is based on successful completion. In the Florida Education Finance Program (FEFP), the traditional FLVS funding is currently based on credit successfully completed. Credit completed by a student in excess of the minimum required for that student for high school graduation is not eligible for funding.[22] Six credits equal one full-time equivalent (FTE) student. A student who completes less than six credits is a fraction of an FTE student. Half-credit completions are included in determining an FTE student.[23]

District VIP programs are funded through the FEFP.[24] Students in full-time kindergarten through grade five programs are funded based on program completion and promotion to the next grade-level.[25] Full and part-time students in grades six through twelve are funded on a credit completion basis. Funding is only received if the course is successfully completed.[26] Six credits

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http://www.inacol.org/research/nationalstandards/NACOL%20Standards%20Quality%20Online%20Courses%202007.pdf. and http://publications.sreb.org/2006/06T05_Standards_quality_online_courses.pdf.

[17] Lines 546-547 require the DOE to approve providers. Lines 766-767 require the State Board of Education to do so.

[18] E-mail, DOE, April 1, 2011.

[19] The U.S. Department of Education awarded Race to the Top assessment funds to PARCC for the development of a K-12 assessment system aligned to the Common Core State Standards in English/language arts and mathematics. PARCC was awarded an additional grant to support the states participating in PARCC in successfully transitioning to Common Core State Standards and next generation assessments. Florida is part of the partnership. *See* http://www.fldoe.org/news/2010/2010_09_29.asp.

[20] s. 1002.45(6)(b), F.S.

[21] DOE draft analysis of SB 1620, April 1, 2011, on file with the committee.

[22] s.. 1002.37(3)(a), F.S.

[23] ss. 1002.37(3)(a) and 1011.61(1)(c)1.b.(V), F.S.

[24] s. 1002.45(7), F.S.

[25] s. 1011.61(1)(c)1.b.(III), F.S.

[26] A "successful completion" for students in grades K-5 is completion of a basic education program and promotion to a higher grade level. "Successful completion" for students in grades 6-12 is based on course credits earned for high school students or course completions with a passing grade for middle school students. *See* DOE, *School District Virtual Instruction*

equal one full-time equivalent (FTE) student. Half credit completions are included in determining an FTE student.[27] For the VIP program, districts may only earn one FTE per student, per regular school year and they are not eligible for summer school FTE funding.[28]

If a district contracts with a provider, FEFP funding flows to the district and the provider is paid by the district pursuant to the terms of the contract.[29] The district retains FEFP funds in excess of the negotiated contract price. Districts may use FEFP funds to provide equipment or Internet access to students under appropriate circumstances.[30]

The bill revises the manner in which virtual instruction is funded:

- All full-time virtual programs would be funded based on "seat time" (80 percent) and successful completions (10 percent per semester);
- All part-time virtual options (individual online courses) would be funded solely on performance (successful completions);
- The FLVS would serve and receive funding for students in grades kindergarten through five; and
- Statewide virtual education programs would receive funding directly through the state, similar to FLVS funding, and would not receive funding from local revenues.

If a student is required to earn a credit to generate funding, the virtual provider would presumably not receive funding for that student, unless he or she passes the required state assessment.

Additionally, students in full-time programs could not be reported for more than 1.0 FTE. Each successfully completed credit earned through an online course from a district other than the district in which the student resides would be calculated as 1/6 FTE.

Accountability

Current full-time private providers that participate in the VIP program receive a school grade or school improvement rating based upon the aggregated assessment scores of all students served by the provider statewide. [31] The performance of part-time students in grades nine through twelve are not included for purposes of school grades or school improvement ratings. Instead, their

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Program (2010-2011) Questions and Answers #37 and #38, available at: http://www.fldoe.org/schools/virtual-schools/pdf/DistrictVIP-FAQ.pdf.

[27] s. 1011.61(1)(c)1.b.(IV), F.S.

[28] DOE, Office of Funding and Financial Reporting, *FTE General Instructions* (2010-2011), available at: http://www.fldoe.org/fefp/pdf/1011FTEInstructions.pdf.

[29] DOE, *School District Virtual Instruction Program (2010-2011) Questions and Answers #51and 52*, available at: http://www.fldoe.org/schools/virtual-schools/pdf/DistrictVIP-FAQ.pdf. Pursuant to s. 1002.45(7)(c), F.S., community colleges may not count the student enrollment for Community College Program Funding.

[30] s. 1002.45(3)(d), F.S.

[31] s. 1002.45(8), F.S. This is the first year for school grades under the VIP program and not all of the FLVS franchises and approved providers received a school grade. Ten districts identified themselves as franchises that had full-time VIP students. For 2009-2010, only one franchise (Broward Virtual Education) received a school grade. According to the DOE, the other districts did not report enough full-year-enrolled eligible students with FCAT scores to meet the sample size criteria for a school grade. Four of the eight private providers received a school grade. *See Virtual Instruction Programs*, Senate Interim Report 2011-215, October 2010.

performance is included for school grading or school improvement rating purposes by the nonvirtual school providing the student's primary instruction.[32]

The bill requires the DOE to develop an evaluation process for part-time providers of virtual instruction, which must include the percentage of students making learning gains, successfully passing end-of-course assessments, and taking and scoring a three or higher on Advanced Placement course exams. It is unclear as to the reason for not including other exams, such as industry certification exams. The bill also permits the DOE to develop a standard of success for part-time providers and use school grades as a benchmark. There is no comparable provision in the bill for full-time providers to be assessed on the same criteria as part-time providers.

The DOE would disclose on its website information related to virtual schools, programs, and providers. Although the bill requires part-time providers to be evaluated on specific criteria, it does not require this information to be disclosed.

The grounds for terminating a full-time provider's contract are revised. Under current law, a provider's contract is terminated if the provider receives a school grade of "D" or "F" or a school improvement rating of "Declining" for two years in a four-year period. The bill provides that the contract is terminated if the provider receives a "D" or an "F", but adds an exception. The State Board of Education may extend the eligibility of a provider that receives a "D" for one year if a school improvement plan is submitted to the DOE. Presumably, the provider would be able to continue to operate under the current contract for an additional year. Otherwise, the period of disqualification would be two years rather than one year.

Instructional Personnel

School districts may currently issue adjunct certificates for part-time teaching positions, pursuant to district school board rules, to an applicant who meets specific requirements for state-certified instructional personnel and who has expertise in the subject area to be taught. [33] Adjunct certificates are valid for five years and are renewable.[34]

Under the bill, adjunct certificates would be used to enhance the diversity of course offerings rather than to reduce teacher shortages. The bill provides for legislative intent to issue certificates to individuals in other states, but does not explicitly require districts to do so. The validity period for the adjunct certificate would be the term of the contract between the district and the educator rather than five years.

Statewide virtual providers would be able to employ or contract with not only Florida-certified teachers, but also with those who hold a certificate in another state or who hold National Board Certification or American Board Certification. If the term "National Board Certification" means National Board for Professional Teaching Standards (NBPTS), it should be changed to reflect this reference. This provision does not contemplate allowing providers to employ or contract with an individual who demonstrates subject area expertise.

[32] *Id.*
[33] s. 1012.57(1), F.S. Applicants must meet the requirements in s. 1012.56(2)(a)-(f) and (10), F.S., and demonstrate sufficient subject area mastery through passage of a subject area test.
[34] *Id.*

The DOE notes that if other than a Florida-certified teacher is assigned as the teacher of record for a core academic subject, he or she will not meet federal Highly-Qualified Teacher requirements, which mandate that the teacher hold a Florida state-issued certificate.[35]

High School Graduation

Students entering the ninth grade in 2011-2012 and thereafter would be required to take at least one online course in order to meet high school graduation requirements. The requirement could be met if the student has taken an online course in grades six through eight or participates as a dually enrolled student in an online course offered by a postsecondary institution.[36]

Student Eligibility and Access

The FLVS currently offers virtual education for students in grades six through twelve.[37] The bill authorizes FLVS to directly offer virtual education in kindergarten through grade five. Current law requires that enrollment priority be given to students who need expanded access to courses in order to meet their educational goals, such as home education students, students in inner-city and rural high schools that do not have access to advanced courses, and students seeking accelerated access to a high school diploma.[38]

Currently, enrollment in a school district VIP program is open to any student residing in the district who meets at least one of the following criteria: attendance at a Florida public school during the prior year and was reported for funding during the October and February Florida Education Finance Program (FEFP) surveys; is the dependent child of a member of the military who transfers into Florida with his or her parent from another state or country within 12 months of seeking enrollment in a district virtual instruction program; was enrolled in a district VIP program during the prior school year; or has a sibling who is currently enrolled in the VIP program and that sibling was enrolled in the VIP program at the end of the prior school year.[39]

Under the bill, public, private and home school students would be eligible to participate in a part-time or full-time statewide virtual program. The bill permits students to enroll part-time in all virtual programs throughout the school year. Additionally, a uniform enrollment period is required.

Other

The bill codifies the elements of high quality digital learning (e.g., student access, customized learning, and high quality instruction), which were recommended by the Digital Learning Council.[40]

The bill directs the Office of Program Policy Analysis and Government Accountability or an independent research organization to evaluate the best methods of implementing part-time virtual education to students in kindergarten through grade five.

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[35] DOE draft analysis of SB 1620, April 1, 2011, on file with the committee. *See* 20 U.S.C. § 7801(23)(A).
[36] The bill limits the dual enrollment option to state colleges, as opposed to community colleges.
[37] ss. 1002.37 and 1011.61(1)(c)1.b.(V), F.S. FLVS refers to the grades 6–12 traditional supplemental model as its "classic" offering. *See* http://www.flvs.net/areas/aboutus/Documents/16%20page%20Legislative.pdf.
[38] s. 1002.37(1)(b), F.S.
[39] s. 1002.45(5), F.S.
[40] *Digital Learning Now!*, Foundation for Excellence in Education, December 1, 2010.

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:

A provider would no longer be required to have an administrative office and staff in Florida. The bill allows the DOE to charge each provider fees to cover the costs associated with the review of statewide providers and the content of courses offered by part-time providers.

C. Government Sector Impact:

The bill expands the current student eligibility for the VIP program and the new virtual options provided in the bill. Current law attempts to mitigate state costs by limiting the participation of those students who would not ordinarily attend public schools by requiring prior public school attendance (with limited other exemptions). Removing this provision may increase the number of public school students by allowing home education and private school students to participate in all virtual education options funded in the FEFP. In 2009-2010, there were 62,567 home school students and 313,291 private school students in Florida.[41] While the number of home school and private school students who may enroll in FEFP virtual programs is not known, if even a small percentage of these students enroll, the fiscal impact on the FEFP would be significant. For example, if only one percent of home school and private school students enroll in virtual program options in the FEFP, the fiscal impact would be approximately $19 million.

For 2010-11, 46.4% of the funding for the FEFP is generated through local property tax revenues. Under the bill, statewide virtual education programs would receive funding directly through the state, similar to FLVS funding, and would not receive funding from local revenues. This provision could have a significant impact on the amount of state

[41] DOE draft analysis, April 1, 2011, on file with the committee.

revenues needed to fund the FEFP since local revenue could not be used to partially fund these enrollments.

The expansion of FLVS courses to kindergarten through grade five students will have a potentially significant fiscal impact if these students take these courses in addition to their traditional school courses and earn more than one full-time-equivalent for funding in the Florida Education Finance Program.

Currently, full-time and part-time virtual instruction program FTE and FTE for FLVS are earned based on promotion to a higher grade or successful course completion. Students who are not promoted or who do not complete a virtual education course do not earn FTE or funding. Under the bill, full-time VIP students would earn FTE based on seat-time and a percentage of promotions or successful completions. This may result in a small increase in the number of students who would earn FTE and funding through the FEFP, but the fiscal impact should be insignificant.

Beginning with students entering grade nine in the 2011-2012 school year, the bill requires at least one course to be taken online. Under the bill, part-time enrollment in VIP programs would continue to be funded based on course completions. The DOE notes the impact on funding is not known,[42] but would probably minimal.

School districts report FTE for funding once per semester (October and February surveys). According to the DOE, the accommodation of quarterly funding would involve additional reporting or revised criteria to earn the seat-time funding for the virtual programs.[43] Additional reporting requirements would place an additional burden on traditional public schools and charter schools.[44]

The performance funding for the first semester is based on successful completion of the semester, while the performance funding for the second semester is based on successful completion of the full year. The DOE notes that this would preclude performance funding for a student who was enrolled the second semester only and successfully completes the second semester or is promoted.

Removing the cap on the number of FLVS credits that may be taken for high school graduation will probably have a minimal fiscal impact.

The bill authorizes FLVS to serve and receive funding for students in grades kindergarten through five. The number of students who would enroll in grades kindergarten through five through the FLVS is not known; however, if the students generate FTE for these courses in excess of the maximum district 1.0 FTE, the fiscal impact could be significant.

The bill requires the State Board of Education to establish a process to review and approve the content of each part-time course in grade levels six through twelve that is

[42] *Id.*
[43] *Id.*
[44] *Id.*

offered by a statewide provider of virtual education. According to the DOE, approving individual online courses is labor-intensive. The bill permits the DOE to charge fees to cover the cost of the review of content and the qualifications of statewide providers; however, it does not specify a range of fees that may be charged.

According to the DOE, the additional responsibilities for the DOE and the State Board and duties relating to the approval for individual online courses, an annual evaluation of all part-time options, and accountability for more online programs and providers will require additional resources.[45]

The bill prohibits school district virtual programs from continuing to receive class size funding. According to the DOE, this would make funding more consistent across virtual programs, but would decrease funding substantially for the district virtual programs.

Charter school sponsors could withhold an administrative fee of up to two percent to cover the cost of oversight for virtual charter schools. Based on the FLVS 2010-2011 per student funding amount of $5,186, sponsors would be allowed to withhold $104 in administrative fees per student.[46]

VI. Technical Deficiencies:

School districts are currently required to provide computers, related equipment, and Internet access when appropriate; however, providers are not required to do so.[47] If the intent of the bill is to subject both districts and providers to this requirement, the stricken words "when appropriate" on line 661 should be restored to current law to be consistent with lines 603. The word "participants" on line 607 should be changed to "students." There are several references in the bill to "core curricular standards" (see for example lines 650-652). It is unclear as to whether or not this refers to the common core standards for English/language arts and mathematics adopted by the State Board of Education on July 27, 2010. If so, the term "common core state standards" should be used. On lines 605 and 663, the bill refers to eligibility for free and reduced price lunch. For clarity, it should reference free or reduced-price school lunches under the National School Lunch Act. On lines 672-676, the requirements for districts to provide access to district testing facilities is redundant (see lines 747-751). Lines 839-854 repeat lines 816-831. On line 1404, the amended cross reference is incorrect.

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.

[45] *Id.*
[46] *Id.*
[47] s. 1002.45(3)(d), F.S.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with ballot and title amendments)

Delete lines 11 - 12
and insert:
That the following amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to

Between lines 88 and 89
insert:

ARTICLE XII

SCHEDULE

SECTION 32. Veterans disabled due to combat injury;

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homestead property tax discount.—The amendment to subsection (e) of Section 6 of Article VII relating to the homestead property tax discount for veterans who became disabled as the result of a combat injury shall take effect January 1, 2013.

====== B A L L O T S T A T E M E N T A M E N D M E N T ======
And the ballot statement is amended as follows:

Delete lines 91 - 97

and insert:

CONSTITUTIONAL AMENDMENT
ARTICLE VII, SECTION 6
ARTICLE XII, SECTION 32

VETERANS DISABLED DUE TO COMBAT INJURY; HOMESTEAD PROPERTY TAX DISCOUNT.—Proposing an amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution to expand the availability of the property discount on the homesteads of veterans who became disabled as the result of a combat injury to include those who were not Florida residents when they entered the military and schedule the amendment to take effect 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 2 - 7

and insert:

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution to expand the availability of the property tax discount on the

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homesteads of veterans who became disabled as the result of a combat injury to veterans who were not Florida residents when they entered the military and to provide an effective date.

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 Budget Committee

BILL:	SJR 592
INTRODUCER:	Senators Bennett and Sachs
SUBJECT:	Veteran's Property Tax Discount
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	**Favorable**
2.	Gizzi	Yeatman	CA	**Favorable**
3.	Babin	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

I. Summary:

Senate Joint Resolution (SJR) 592 proposes an amendment to Article VII, section 6 of the Florida Constitution, to allow partially or totally disabled veterans who were not Florida residents at the time of entering military service to qualify for the combat-related disabled veterans' ad valorem tax discount on homestead property.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

B.) Assessed Value

Section 4 also provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational

[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.

The "Save Our Homes" provision in Article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of three percent or the percent of change in the Consumer Price Index (CPI).[2] If there is a change in ownership, the property is assessed at its just value on the following January 1. The value of changes, additions, reductions or improvements to the homestead property is assessed as provided by general law. In 2008, Florida voters approved an additional amendment to article VII, section 4(d), of the Florida Constitution, to provide for the portability of the accrued "Save Our Homes" benefit. This amendment allows homestead property owners that relocate to a new homestead to transfer up to $500,000 of the "Save Our Homes" accrued benefit to the new homestead.

C.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[3]

Property Tax Exemptions

The Legislature may only grant property tax exemptions that are authorized in the constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[4]

A.) Homestead Exemption

Article VII, section 6 of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains thereon the permanent residence of the owner is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by schools.

B.) Additional Tax Exemptions

Article VII, section 3 of the Florida Constitution, provides additional tax exemptions for certain types of property. These exemptions include, but are not limited to:

- Exemptions for municipal property that is used for a municipal or public purpose;
- Exemptions for household goods and personal effects up to a certain amount specified by general law not less than one thousand dollars;
- Widows/widowers exemptions up to a certain amount specified in general law not less than $500;

[2] FLA. CONST. art. VII, s. 4(d).
[3] FLA. CONST. art. VII, ss. 3 and 6.
[4] *See Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). *See also, Archer v. Marshall*, 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

- Economic development exemptions created by county or municipal ordinance for new businesses and expansions of existing businesses;
- Historic preservation exemptions;
- $25,000 tax exemption for tangible personal property; and
- Exemptions for real property dedicated in perpetuity for conservation purposes.[5]

Property Tax Exemptions for Ex-Service Members

In recognition of their service and sacrifice for our country the State of Florida has granted a number of ad valorem tax exemptions for ex-service members.

A.) Total Ad Valorem Tax Exemption for Ex-Service Members
Section 196.081(1), F.S., provides that:

> Any real estate that is owned and used as a homestead by a veteran who was honorably discharged with a service-connected total and permanent disability and for whom a letter from the United States Government or United States Department of Veterans or its predecessor has been issued certifying that the veteran is totally and permanently disabled is exempt from taxation, [provided] the veteran is a permanent resident of the state on January 1 of the tax year for which exemption is being claimed or . . . on January 1 of the year the veteran died.

Section 196.091(1), F.S., further provides that:

> Any real estate used and owned as a homestead by an ex-service member who has been honorably discharged with a service-connected total disability and who has a certificate from the United States Government or United States Department of Veterans Affairs or its predecessor, or its successors, certifying that the ex-service member is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing and required to use a wheelchair for his or her transportation is exempt from taxation.

B.) $5,000 Ad Valorem Tax Exemption for Ex-Service Members
Section 196.24, F.S., provides a $5,000 property tax exemption to any ex-service member who is a bona fide resident of the state and who has a service-connected disability to a degree of 10 percent or more. This exemption also applies to the un-remarried surviving spouse of a disabled ex-service member who had been married to such ex-service member for at least 5 years on the date of the ex-service member's death.

C.) Combat Related Partial Ad Valorem Tax Exemption (Discount) for Ex-Service Members
Article VII, section 6(e) of the Florida Constitution, grants a discount on ad valorem taxes owed on homestead property for veterans who are 65 years or older and who are partially or totally disabled. In order to qualify for the discount, the veteran must submit proof of the veteran's disability percentage to the county property appraiser and must show that the:

[5] FLA. CONST. art. VII, s. 3(a)-(f).

- Disability was combat related;
- Veteran was a Florida resident at the time of entering the US military; and
- Veteran was honorably discharged.[6]

The ad valorem tax discount percentage shall be equal to the veteran's percentage of disability, as determined by the United States Department of Veterans Affairs.

In 2010, 1,206 veterans received the Disabled Veteran's Homestead Discount which amounted to a statewide property value discount of $28,749,630. During that time, the average individual discount in taxable value was $23,839.[7] The U. S. Department of Veterans Affairs indicates that there were 249,565 veterans in Florida receiving compensation for service-related conditions at the end of Fiscal Year 2010.[8]

The following table illustrates the number of veterans by percentage of assessed disability:

Number of Veterans in Florida Receiving Service-Connected Compensation by Percentage of Assessed Disability FY-2010

0%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
881	65,812	36,742	29,009	23,662	15,494	18,762	16,986	12,976	6,945	22,296

Source: Florida Department of Veterans' Affairs [9]

III. Effect of Proposed Changes:

SJR 592 proposes an amendment to Article VII, section 6 of the Florida Constitution, to allow totally or partially disabled veterans who were not Florida residents at the time of entering military service to qualify for the combat-related disabled veteran's ad valorem tax discount on homestead property.

The joint resolution also deletes an effective date reference in the section that would become outdated upon passage of the amendment.

This joint resolution provides no effective date for the constitutional amendment. In accordance with Article XI, section 5 of the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate.

[6] *See also* s. 196.082, F.S.
[7] Revenue Estimating Conference, *Disabled Veterans' Property Tax Discount SJR 592 & HJR 439* (March 11, 2011).
[8] Conversation with Florida Department of Veterans' Affairs (Response to information request by Senate Military Affairs, Space, and Domestic Security Committee) (Feb. 1, 2011).
[9] *Id.* (**Note:** The number of veterans in this population who were 65 years of age or older by percentage category, the number who were Florida residents at the time of entry into military service, and the number of veterans whose compensation is the result of combat are indeterminate at this time.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments
Section 1, Art. XI of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held for that purpose.

Section 5(d), Art. XI of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

Section 5(e), Art. XI of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If approved by the voters, this bill will allow partially or totally disabled veterans who were not Florida residents when they entered the military to qualify for the combat-related disabled veterans' ad valorem tax discount on homestead property.

B. Private Sector Impact:

If approved by the voters, veterans who were not Florida residents when they entered the military and who became partially or totally disabled as a result of combat injury will

qualify for the combat-related disabled veterans' ad valorem tax discount on homestead property.

C. Government Sector Impact:

Since this amendment requires voter approval, the Revenue Estimating Conference has adopted an indeterminate negative estimate for SJR 592. Should the electorate approve the proposal, the Revenue Estimating Conference estimates that the impact on taxes would be as follows:[10]

	FY 2013-14	FY 2014-15	FY 2015-16	RECURRING
School Tax Impact	-$1.1 million	-$2.3 million	-$3.6 million	-$3.6 million
Non-school Tax Impact	-$1.3 million	-$2.6 million	-$4.0 million	-$4.0 million
Total Impact	-$2.4 million	-$4.9 million	-$7.6 million	-$7.6 million

The Florida Department of Veterans' Affairs estimates the maximum number of veterans who may qualify for the benefit proposed in this bill to be approximately 74,000.[11]

If approved by the voters, the Florida Department of Revenue states that it would need to amend form DR-501DV to remove the current requirement of providing documentation of evidence of Florida residency at the time of entering military service and that it would need to create a new rule in Ch. 12D-7, Florida Administrative Code.[12]

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.[13] Costs for advertising vary depending upon the length of the amendment. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[10] Revenue Estimating Conference, *Disabled Veterans' Property Tax Discount SJR 592 & HJR 439* (March 11, 2011).
[11] Conversation with Jim Brodie, Legislative Director of Florida Department of Veterans' Affairs (March 15, 2011) (This estimate includes those veterans with a 10 percent to 90 percent disability rating. This estimate does not include veterans who are 100% disabled as those veterans are exempt from taxation pursuant to s. 196.081, F.S.).
[12] Florida Department of Revenue, *SJR 592 Fiscal Analysis,* 2 (Feb. 11, 2011) (on file with the Senate Committee on Community Affairs).
[13] FLA. CONST. art. XI, s. 5(d).

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.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Margolis) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 194.014, Florida Statutes, is created to read:

194.014 Partial payment of ad valorem taxes; proceedings before value adjustment board.—

(1)(a) A petitioner before the value adjustment board who challenges the assessed value of property must pay all of the non-ad valorem assessments and make a partial payment of at least 75 percent of the ad valorem taxes, less the applicable discount under s. 197.162, before the taxes become delinquent

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pursuant to s. 197.333.

(b)1. A petitioner before the value adjustment board who challenges the denial of a classification or exemption, or the assessment based on an argument that the property was not substantially complete as of January 1, must pay all of the non-ad valorem assessments and the amount of the tax which the taxpayer admits in good faith to be owing, less the applicable discount under s. 197.162, before the taxes become delinquent pursuant to s. 197.333.

2. If the value adjustment board determines that the amount of the tax that the taxpayer has admitted to be owing pursuant to this paragraph is grossly disproportionate to the amount of the tax found to be due and that the taxpayer's admission was not made in good faith, the tax collector shall collect a penalty at the rate of 10 percent of the deficiency per year from the date the taxes became delinquent pursuant to s. 197.333.

(c) The value adjustment board shall deny the petition by written decision by April 20 if the petitioner fails to make the payment required by this subsection. The clerk, upon issuance of the decision, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the department of the decision of the board.

(2) If the value adjustment board determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent pursuant to s. 197.333, until the unpaid amount is paid. If the value adjustment board determines that a refund is due, the overpaid

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amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent pursuant to s. 197.333, until a refund is paid. Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice issued pursuant to s. 197.322.

(3) This section does not apply to petitions for ad valorem tax deferrals pursuant to chapter 197.

Section 2. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.—

(2) In each case, except when a complaint is withdrawn by the petitioner, ~~or~~ is acknowledged as correct by the property appraiser, or is denied pursuant to s. 194.014(1)(c), the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days of the last day the board is in session under s. 194.032. The decision of the board shall contain findings of fact and conclusions of law and shall include reasons for upholding or overturning the determination of the property appraiser. When a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of the decisions, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the department of the decision of the board.

Section 3. Section 197.162, Florida Statutes, is amended to read:

197.162 Discounts; amount and time.—On all taxes assessed on the county tax rolls and collected by the county tax

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collector, discounts for early payment thereof shall be at the rate of 4 percent in the month of November or at any time within 30 days after the mailing of the original tax notice; 3 percent in the month of December; 2 percent in the following month of January; 1 percent in the following month of February; and zero percent in the following month of March or within 30 days prior to the date of delinquency if the date of delinquency is after April 1. When a taxpayer makes a request to have the original tax notice corrected, the discount rate for early payment applicable at the time the request for correction is made shall apply for 30 days after the mailing of the corrected tax notice. A discount shall apply at the rate of 4 percent for 30 days after the mailing of a tax notice resulting from the action of a value adjustment board <u>if the corrected tax notice is issued before the taxes become delinquent pursuant to s. 197.333</u>. Thereafter, the regular discount periods shall apply. For the purposes of this section, when a discount period ends on a Saturday, Sunday, or legal holiday, the discount period shall be extended to the next working day, if payment is delivered to a designated collection office of the tax collector.

Section 4. This act shall take effect July 1, 2011, and applies to petitions filed with value adjustment boards on or after July 1, 2011.

========== 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

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An act relating to value adjustment boards; creating s. 194.014, F.S.; requiring a petitioner challenging the assessed value of property before the value adjustment board to pay a specified percentage of the taxes by a certain date; requiring a petitioner challenging the denial of a classification or exemption, or the assessment on specified grounds, before the value adjustment board to pay the amount of tax which the taxpayer admits in good faith to be owing by a certain date; providing for a penalty if the taxpayer's payment is grossly disproportionate to the amount of tax found to be due and the taxpayer's admission was not made in good faith; requiring the board to deny the petition in writing by a certain date if the required amount of taxes is not timely paid; requiring the payment of interest on certain unpaid taxes; requiring the payment of interest on certain overpayments of taxes; providing that s. 194.014, F.S., does not apply to petitions for ad valorem deferrals pursuant to ch. 197, F.S.; amending s. 194.034, F.S.; conforming provisions to changes made by the act; amending s. 197.162, F.S.; revising a provision providing for a discount for ad valorem taxes paid within 30 days after the mailing of a corrected tax notice resulting from the action of a value adjustment if the corrected tax notice is issued before the taxes become delinquent; providing for application of the act; providing an effective date.

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 Budget Committee

BILL:	SB 880
INTRODUCER:	Senator Garcia
SUBJECT:	Value Adjustment Boards
DATE:	April 20, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Favorable**
2.	Babin	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

This bill requires a value adjustment board petitioner to pay all non-ad valorem assessments and make a partial payment of at least 75 percent of taxes due if the taxpayer's petition is still before the taxes become delinquent on April 1. The bill requires the value adjustment board to deny the petition if the required payment is not timely made, and the bill provides that if the value adjustment board determines that the petitioner owes taxes in excess of the amounts paid, that the unpaid amount shall accrue interest at 12 percent per year from April 1.

This bill also deletes current provisions in law that provide a 4 percent tax discount for taxes that are paid within 30 days after the mailing of a tax notice resulting from value adjustment board action.

This bill creates an undesignated section of law and substantially amends s. 197.162, of the Florida Statutes.

II. Present Situation:

Property Tax Assessments

Chapters 193-195, Florida Statutes, address property assessment procedures. Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a

willing buyer would pay a willing seller for the property in an arm's length transaction.[1] Property appraisers are required to utilize the factors outlined in s. 193.011, F.S., to determine the property's just valuation as of January 1 of each year.

The State Constitution provides exceptions to the just valuation requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.[2]

Article VII of the Florida Constitution, also limits the amount by which assessed value may increase in a given year for certain classes of property, and permits a number of tax exemptions. These exemptions include provisions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

The property appraiser's assessment roll must be completed and submitted to the executive director of the Department of Revenue for approval by July 1 of each year, unless good cause is shown for extension.[3] As provided by ch. 195, F.S., the Department of Revenue has general supervision of the assessment and valuation of the property. Taxpayers receive a Notice of Proposed Property Taxes (TRIM notice) in August of each year. This notice provides the taxable value of the property and the millage rate[4] necessary to fund each taxing authority's proposed budget based on the certified tax rolls submitted by the property appraiser.

Locally-elected governing boards prepare a tentative budget for operating expenses following certification of the tax rolls by the tax collector. The millage rate is then set based on the amount of revenue which needs to be raised in order to cover those expenses. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls. The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to end of said hearing.[5] The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original certification of value is more than 1 percent for municipalities, counties, school boards, and water management districts, or more than 3 percent for other taxing authorities.

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[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[2] Section 196.185, F.S.
[3] Section 193.1142, F.S.
[4] The millage rate is the rate at which the property is taxed and is set by county commissioners based on how much revenue is needed for operating expenses. *See* s. 200.069, F.S. *See also* Florida Department of Revenue website, *Local Government Property Tax Process*, available at http://dor.myflorida.com/dor/property/taxpayers/pdf/ptoinfographic.pdf (last visited on Nov. 3, 2010).
[5] Section 200.065, F.S.

Value Adjustment Board Hearings

Section 194.015, F.S., states that a value adjustment board (VAB) shall be created for each county composed of two members from the county governing board, one member from the school board and two citizen members. Section 194.035(1), F.S., requires counties with a population of more than 75,000, and allows counties with a population less than 75,000, to appoint special magistrates to take testimony and provide recommendations to the board.

The value adjustment board is required to meet no earlier than 30 and no later than 60 days after the mailing of assessment notices pursuant to s. 194.011, F.S. The value adjustment board shall meet for the following purposes:

- To hear petitions relating to assessments, pursuant to 194.011(3), F.S.;
- To hear complaints relating to homestead exemptions, pursuant to s. 196.151, F.S.;
- To hear appeals from tax exemptions that have been denied, or disputes pertaining to granted exemptions, filed pursuant to s. 196.011, F.S.; and
- To hear appeals concerning ad valorem tax deferrals and classifications.[6]

Chapter 194, F.S., provides taxpayers with the right to appeal a property appraiser's assessment, the denial of a classification, a tax exemption, or a tax deferral by filing a petition to the value adjustment board. Taxpayers must file assessment appeals within 25 days after the TRIM notice is mailed.[7] Tax exemption or classification appeals must be filed by the taxpayer within 30 days after the property appraiser mails a notice denying an application.[8] Appeals on denied tax deferrals must be filed within 20 days after the tax collector mails the denial.[9] A county value adjustment board may charge a taxpayer a nonrefundable fee up to $15 upon filing a petition.[10]

After filing a petition and at least 25 days prior to the hearing, the taxpayer receives notice of the date, time, and location of the hearing along with the property record card containing relevant information that was used in computing the taxpayer's current assessment.[11] Prior to the hearing, the taxpayer will be given the option to exchange evidence with the property appraiser; any information that is requested by the property appraiser and not provided by the taxpayer may not be used at the hearing.[12]

At the hearing, both the petitioner and the property appraiser may be represented by an attorney or agent and shall present testimony and other evidence.[13] The hearing shall be conducted in the manner prescribed by Department of Revenue rules, with the ability of either party to request that all witnesses be sworn in. Following the decision by the VAB, the property appraiser submits a revised certified tax roll to each taxing authority. If the taxpayer does not agree with

[6] Section 194.032(1)(a)1.-4., F.S.
[7] Section 194.011(3)(d), F.S.
[8] *Id.*
[9] Florida Department of Revenue website, *Petitions to the Value Adjustment Board* available online at http://dor.myflorida.com/dor/property/vab/pdf/vabguide.pdf (last visited on April 22, 2011).
[10] *See* 194.013, F.S. "However, this fee is $5 per parcel in cases where a petition includes multiple parcels with similar characteristics." *See* Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process*, Report No. 10-64 (Dec. 2010).
[11] Section 194.032(2), F.S.
[12] Section 194.034(1)(d), F.S.
[13] Section 194.032(1)(a), F.S.

the VAB's final decision, he or she may appeal the decision within 60 days to the circuit court pursuant to the provisions in s. 194.171(2), F.S.

2010 OPPAGA Report

In December 2010, the Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report discussing the increased time and costs associated with county value adjustment board procedures.[14] The report indicated that the number of petitions filed has increased significantly over the years, lengthening the value adjustment board process. These delays have created problems for both taxpayers awaiting tax refunds and local governments waiting to certify their tax rolls, which in some counties is taking up to two years. "Miami-Dade counties did not complete value adjustment board hearings for the 2008 tax year until 2010."[15] These delays can also create local government budget concerns for entities, such as school districts, waiting for funding.[16]

The report focused on four main areas that may have attributed to the substantial increase in the number of value adjustment board appeals:

- 2009 Legislation that eliminated the 'presumption of correctness' of property appraisers (prior to this the property appraiser had to overcome this burden of proof).
- Department administrative rule changes that allow petitioners to reschedule once for no cause, and allow the board to reschedule for good cause.
- Increasing no-shows by petitioners.
- More property owners are hiring property tax professionals to assist with their value adjustment board appeals.[17]

Counties that have a high volume of value adjustment board appeals have tried to combat the increased workload by "creating informal dispute resolution processes, establishing performance requirements in magistrate contracts, and using innovative scheduling techniques."[18]

Value adjustment board operating costs have also increased significantly in recent years. County officials report that the current $15 filing fee does not cover value adjustment board expenses. According to officials, filing fees only covered between 5.1% and 66.6% of board expenses in the 2009 tax year.[19] The report stated that VAB appeals can also have fiscal implications on local governments by reducing property values. In 2008, successful value adjustment board appeals reduced property values statewide by approximately $7.8 billion with a net property tax reduction of approximately $159 million (0.5 percent of total taxes levied).[20]

[14] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process,* Report No. 10-64 (Dec. 2010).
[15] *Id.* at 5.
[16] The report stated that "[a]s of November 2010, a number of school districts, including those in Miami-Dade, Duval, and Broward counties, were unable to recover $51.8 million in uncollected taxes for the Fiscal Year 2008-2009."
[17] *Id.* at 6-7.
[18] *Id.* at 8.
[19] *See id.* at 9.
[20] *Id.*

In response to these findings, OPPAGA recommended that the Legislature consider one of the following options should they choose to amend the value adjustment board process:

- Shorten the process;
- Address board costs and other fiscal implications; or
- Increase accountability in the process.[21]

Property Tax Discounts

Florida has provided a discount for early payment of property taxes since 1907. Pursuant to s. 197.162, F.S., when a taxpayer pays the full amount of their property tax bill by the end of November, they receive a 4 percent discount; by the end of December, a 3 percent discount; by the end of January, a 2 percent discount; and by the end of March, a 1 percent discount. Under current law, the initial 4 percent discount deadline is extended if the original tax notice is not mailed prior to November, and it also is extended if an adjustment is made by a value adjustment board or if a deferral application is granted. If the value adjustment board makes an adjustment, the 4 percent discount is offered for 30 days following the mailing of the new tax notice.

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law to require a petitioner before a value adjustment board that is challenging an assessment, denial of classification, or an exemption to pay all of the non-ad valorem assessments and to make a partial payment of at least 75 percent of the taxes due before April 1 of the year, less the applicable discount in s. 197.162, F.S. This section directs the value adjustment board to deny the petition if the required payment is not made by that date.

This section also provides that if the value adjustment board determines that the petitioner owes taxes in excess of the amounts paid, that the unpaid amount accrues interest at the rate of 12 percent per year from April 1.

Section 2 amends s. 197.162, F.S., to delete a current provision in law that provides a 4 percent discount for taxes paid within 30 days after the mailing of a tax notice resulting from value adjustment board action.

Section 3 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[21] *Id.* at 10.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

B. The Revenue Estimating Conference has estimated that the provisions of this bill will have an indeterminate positive effect on property tax collections. Private Sector Impact:

As a result of this bill, value adjustment board petitioners will be required to pay all non-ad valorem assessments and pay at least 75 percent of taxes due due if the taxpayer's petition is still pending before the value adjustment board on April 1.. Taxes owed in excess of the amounts paid by the taxpayer will accrue 12 percent interest per year from April 1.

In addition, tax payers will no longer receive a 4 percent tax discount for taxes that are paid within 30 days after mailing of a tax notice resulting from a value adjustment board action.

C. Government Sector Impact:

Value adjustment boards will be required to deny a petition to the board if the petitioner fails to timely pay the required amount of taxes as prescribed under this section.

As a result of this bill, the Florida Department of Revenue will need to make amendments to the following rules: Chapter 12D-13.002 and 13.005.[22]

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.

[22] Florida Department of Revenue, *Senate Bill 880 Fiscal Analysis*, at 3 (Feb. 28, 2011) (on file with the Senate Committee on Community Affairs).

B. Amendments:

None.

105316

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete line 78
and insert:
~~or exposures located in this state.~~ The tax must not exceed the tax rate where the risk or exposure is located.

Between lines 155 and 156
insert:
The tax must not exceed the tax rate where the risk or exposure is located.

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


105316

And the title is amended as follows:

Delete line 10

and insert:

gross premium under certain circumstances; providing a limit on the tax; amending s.

Delete line 29

and insert:

circumstances; providing a limit on the tax; requiring such insureds or self

507576

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 142 and 143
insert:

(6) The Legislature may, at its discretion, review any cooperative reciprocal agreement entered into by the Chief Financial Officer and the office with another state or group of states. If the Legislature determines that the cooperative reciprocal agreement is not in the best interest of the state, the Legislature shall instruct the Chief Financial Officer and the office to withdraw from the cooperative reciprocal agreement, pursuant to any notice provisions required by any such agreement.

507576

(7) Following the negotiation and execution of any cooperative reciprocal agreement entered into by the Department of Financial Services and the Office of Insurance Regulation with another state or group of states, the department shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2012. In addition to describing in detail the terms of any agreement entered into with another state or group of states pursuant to this section, the report must include, but need not be limited to:

(a) The actual and projected collections and allocation of nonadmitted insurance premium taxes for multistate risk of each state participating in the agreement;

(b) A detailed description of the administrative structure supporting any agreement, including any clearinghouse created by an agreement and the fees charged to support administration of the agreement;

(c) The insurance tax rates of any state participating in the agreement; and

(d) The status of any other cooperative reciprocal agreements established throughout the country, including a state-by-state listing of passed or pending legislation responding to changes made by the federal Nonadmitted and Reinsurance Reform Act of 2010.

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

And the title is amended as follows:

Delete line 24

and insert:

application; providing for legislative review of any cooperative reciprocal agreement entered into by the Chief Financial Officer and the office with another state or group of states; authorizing the Legislature to instruct the Chief Financial Officer and the office to withdraw from the cooperative reciprocal agreement if it determines that the agreement is not in the best interest of the state; providing for notice; requiring that the department submit a report to the Legislature; amending s. 626.938, F.S.; requiring

261954

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 142 and 143

insert:

(6) Following the negotiation and execution of any cooperative reciprocal agreement entered into by the Department of Financial Services and the Office of Insurance Regulation with another state or group of states, the department shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2012. In addition to describing in detail the terms of any agreement entered into with another state or group of states pursuant to this section, the report must include, but need not be limited


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to:

(a) The actual and projected collections and allocation of nonadmitted insurance premium taxes for multistate risk of each state participating in the agreement;

(b) A detailed description of the administrative structure supporting any agreement, including any clearinghouse created by an agreement, and the fees charged to support administration of the agreement;

(c) The insurance tax rates of any state participating in the agreement; and

(d) The status of any other cooperative reciprocal agreements established throughout the country, including a state-by-state listing of passed or pending legislation responding to changes made by the federal Nonadmitted and Reinsurance Reform Act of 2010.

(7) This section expires January 1, 2012, if by that date the Department of Financial Services and the Office of Insurance Regulation have not entered into any cooperative reciprocal agreement pursuant to this section.

(8) This section expires June 30, 2012, if any cooperative reciprocal agreement entered into by the Department of Financial Services and the Office of Insurance Regulation pursuant to this section as of January 1, 2012, is not ratified prior to June 30, 2012, by both houses of the Legislature by a majority vote of the members present. If the Legislature does not ratify the agreement, the Chief Financial Officer and the Office of Insurance Regulation shall withdraw from the agreement, pursuant to any notice provisions required by the agreement.

(9) Beginning in 2013, the Department of Financial

Services, in cooperation with the Office of Insurance Regulation and the Florida Surplus Lines Office, shall by January 1 of each year submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding any cooperative reciprocal agreement entered into with another state or group of states under this section. Each annual report must include, but need not be limited to, actual and projected collections and allocation of nonadmitted insurance premium taxes for multistate risk of each state participating in the agreement, administrative costs and fees of the agreement, the insurance tax rates of any state participating in the agreement, the status of any other cooperative reciprocal agreements established throughout the country, including a state-by-state listing of passed or pending legislation responding to changes made by the federal Nonadmitted and Reinsurance Reform Act of 2010, and a detailed discussion of any changes or proposed changes in the provisions of the agreement or the rules under which the agreement operates.

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

And the title is amended as follows:

Delete line 24

and insert:

application; requiring the Department of Financial services to report to the Legislature; providing criteria for the report; providing for future expiration of certain provisions if no cooperative reciprocal agreements are entered into; providing for future expiration or such provisions if a cooperative

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reciprocal agreement is not ratified by the Legislature; requiring the department, the office, and the Florida Surplus Lines Office to submit an annual report to the Governor and Legislature regarding any cooperative reciprocal agreement; providing criteria; amending s. 626.938, F.S.; requiring

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 Budget Committee

BILL:	CS/CS/SB 1816
INTRODUCER:	Budget Subcommittee on Finance and Tax, Banking and Insurance Committee and Senators Fasano and Richter
SUBJECT:	Surplus Lines Insurance
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Fournier	Diez-Arguelles	BFT	**Fav/CS**
3.	Fournier	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Surplus lines insurance is an alternative type of insurance coverage by which consumers can buy property-liability insurance from unauthorized (non-admitted) insurers when they are unable to purchase needed coverage from admitted insurers. The premiums charged for surplus lines coverages are subject to a 5 percent tax on premiums and a service fee of up to 0.3 percent. When a surplus lines policy covers risks over multiple states, Florida requires payment of the 5 percent surplus lines tax and the 0.3 percent service fee on the portion of the premium which is properly allocable to the risks or exposures located in this state.

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) was included within the Federal Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRRA (ss. 15 USC 8201-8206) limits regulatory authority over nonadmitted (surplus lines) insurance to the home state of the insured (policyholder). Under the NRRA, Florida will no longer have jurisdiction to collect taxes and fees on surplus lines policies that cover risks over Florida and other states unless Florida is the home state of the insured. This may result in significant loss of tax revenue. However, the NRRA authorizes states to enter into agreements with one another for home states

to collect taxes on multi-state risks and then allocate tax revenue to the state where the insured risks are located.

Senate Bill 1816 amends s. 626.932(3), F.S., to apply the surplus lines tax to the entire premium if the state is the home state of the insured as defined in the NRRA. The bill also authorizes the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) to enter into cooperative reciprocal agreements with other states to collect and allocate nonadmitted insurance taxes for multistate risks pursuant to the NRRA. Finally, the bill also provides that surplus lines agents, and insureds that do not use a surplus lines agent to procure coverage, have 45 days after the end of the calendar quarter to file an affidavit describing transactions handled during the last quarter and pay the required premium tax and fees.

This bill creates s.626.9362, F.S., and substantially amends the following sections of the Florida Statutes: 626.931, 626.932, 626.9325, and 626.938.

II. Present Situation:

Surplus Lines Insurance Coverage – Background

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR) pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,[1] are broadly regulated by the OIR under the Insurance Code as to reserves, surplus as to policyholders, solvency, rates and forms, market conduct, permissible investments, and affiliate relationships.[2] Authorized insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.[3]

Surplus lines insurers are regulated by the state, but do not have to obtain a COA and are not required to adhere to the other requirements mentioned above. Surplus lines insurance is an alternative type of insurance coverage by which consumers can buy property-liability insurance from unauthorized (non-admitted) insurers when they are unable to purchase the coverage they need from admitted insurers. Surplus lines insurance is coverage provided by a company that is not licensed in Florida, but is allowed to transact insurance in the state as an "eligible" insurer[4] under the surplus lines law (ss. 626.913-626.937, F.S.). Under this law, insurance may be purchased from a surplus lines carrier only if the necessary amount of coverage cannot be procured after a diligent effort to buy the coverage from authorized insurers.[5] Rates charged by a surplus lines carrier must not be lower than the rate applicable and in use by the majority of the

[1] An "authorized" or "admitted" insurer is one duly authorized by a COA to transact insurance in this state.
[2] The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[3] For example, Florida licensed direct writers of property and casualty insurance must be members of the Florida Insurance Guaranty Association, which handles the claims of insolvent insurers under part II of ch. 631, F.S., and insurers offering workers' compensation coverage in Florida must be members of the Florida Workers' Compensation Insurance Guaranty Association, which provides payment of covered claims for insurers that are declared insolvent under part V of ch. 631, F.S.
[4] An "eligible surplus lines insurer" as defined in s. 626.914(2), F.S., is an "unauthorized insurer" which has been made eligible by the Office of Insurance Regulation to issue insurance coverage under the surplus lines law.
[5] See s. 626.914(4), F.S. A "diligent effort" is defined as seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage being sought. The rejections must be documented.

authorized insurers writing similar coverages on similar risks in Florida.[6] Likewise, a surplus lines policy contract form must not be more favorable to the insured than the coverage or rate offered by the majority of authorized carriers.[7]

The surplus lines law contains specific financial and other requirements that unauthorized insurers must comply with in order to become eligible surplus lines insurers and obtain approval by the OIR. For example, a surplus lines insurer must maintain a surplus as to policyholders of not less than $15 million and have been licensed in its state or country of domicile for at least three years.[8]

Historically, surplus lines insurers have never been held subject to Florida's regulation of rates, forms, or other requirements under ch. 627, F.S., which governs admitted insurers.[9] This is true of the regulatory treatment of surplus lines insurers in other states across the country. The different regulatory treatment is due to the unique nature of surplus lines insurance -- it covers consumer needs arising from emerging technologies, new business practices, or changing legal environments which require a quick response that is often difficult for admitted insurers to provide, according to representatives of the Florida Surplus Lines Office.

Florida Surplus Lines Service Office and Surplus Lines Agents

In 1997, the Legislature created the Florida Surplus Lines Service Office (FSLSO), a non-profit association designed to act as a "self-regulating organization" to permit better access by consumers to approved surplus lines insurers.[10] The FSLSO is governed by a nine-person board of governors and is required to perform its functions under a plan of operation approved by the OIR. The FSLSO:

- Receives, records, and reviews all surplus lines insurance policies;
- Maintains records of policies;
- Prepares and delivers quarterly reports of each surplus agent's business to each agent;
- Collects and remits the surplus lines tax; and
- Performs other activities as specified by statute.

There are 1,215 licensed surplus lines agents in Florida that are authorized to handle the placement of insurance coverages with surplus lines insurers and are deemed to be members of the FSLSO. These agents are required to report and file with the FSLSO a copy of, or information on, each surplus lines insurance policy, including the name of the insured and insurer, the policy number and its effective date, the policy's expiration date, the type of coverage, the premium, and other information.

[6] Section 626.916(1)(b), F.S.
[7] Section 626.916(1)(c), F.S.
[8] Section 626.918, F.S.
[9] *See Affidavits In Support of Intervenor-Plaintiff Essex Insurance Company's Amended Motion for Summary Judgment* by Steve Parton, Office of Insurance Regulation, General Counsel, and Belinda Miller, Office of Insurance Regulation, Deputy Commissioner for Property and Casualty Insurance, filed in *Howard v. Choice Hotels International, Inc.*, Case No. CA06-680-55 (Fla. 7th Cir. Tr. Ct. 2008).
[10] Chapter 97-196, Laws of Fla. Section 626.921, F.S.

Surplus Lines Premium Tax and Other Fees

There are 172 surplus lines insurers writing insurance in Florida with over $4 billion in written premiums during 2009.[11] These premiums are subject to a premium receipts tax of 5 percent.[12] The surplus lines premium tax rate is more than double the rate for admitted carriers. Surplus lines premiums are also subject to a service fee of up to 0.3 percent, as determined by the FSLSO, of the total gross premium of each surplus lines policy for the cost of operation of the service office.[13] The surplus lines agent collects the tax and the service fee from the insured at the time of the delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance. Florida also applies the premium tax and the service fee to the gross premium of policies purchased from an unauthorized insurer when the insurance is not purchased from a Florida-authorized surplus lines insurer. In 2009, the FSLSO collected $180,784,308 in taxes and $3,673,838 in fees, which was lower than the prior two years. The FSLSO collected taxes totaling $194,670,864 in 2008 and $211,285,737 in 2007. Surplus lines premiums are also subject to assessments to fund the Florida Hurricane Catastrophe Fund[14] and the Citizens Property Insurance Corporation,[15] and the $2 or $4 per policy Emergency Management Surcharge on property insurance policies.[16]

A surplus lines policy often covers risks or exposures that are located in more than one state. For example, the policy might structures owned by a single entity located across multiple states. In this instance, the surplus lines tax is computed on the portion of the premium which is properly allocable to the risks or exposures located in this state. The FSLSO has promulgated different methods of determining the taxes and service fees payable to Florida for a multi-state risk. The tax for multi-state residential property is determined by calculating the premium for structures and other property permanently located in Florida. The surplus lines agent makes the calculation and remits the proper tax and fee payment for the portion of the risk based in Florida. Representatives from the FSLSO estimate that approximately 10 percent of surplus lines premium tax revenue is attributable to taxes on multi-state risks.

Nonadmitted and Reinsurance Reform Act of 2010

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) was included within the Dodd-Frank Wall Street Reform and Consumer Protection Act [H.R. 4173 (2010)]. The NRRA creates 15 USC 8201-8206, governing nonadmitted (surplus lines) insurance. The NRRA limits regulatory authority to the home state of the insured (policyholder). The insured's home state is the state in which the insured maintains its principal place of business or an individual's principal residence.

The NRRA allows only the home state of an insured to require premium tax payments (including fees and assessments) for nonadmitted insurance. However, the NRRA allows states to enter into a compact to allocate the premium taxes paid to the insured's home state to the various states

[11] Florida Surplus Lines Service Office.
[12] Section 626.932, F.S.
[13] Section 626.921(3)(f), F.S.
[14] Section 215.555(6)(b), F.S.
[15] Section 627.351(6)(b)3., F.S.
[16] Section 252.372, F.S.

where the risks are located. If the compact is enacted on or before June 15, 2011, the compact will apply to premium taxes that must be paid to states that are signatories to the compact. However, if the compact is enacted after that date, it will not be effective until January 1 of the first year after the compact is enacted.

The NRRA specifies that the placement of nonadmitted insurance is subject only to the statutory and regulatory requirements of the insured's home state.[17] Only the insured's home state may require the licensure of a surplus lines broker (agent) to sell, solicit or negotiate nonadmitted insurance with respect to that insured. Surplus lines policies purchased on risks located entirely in Florida will continue to be subject to Florida law. However, if the risk is located in multiple states, under the NRRA the home state has sole jurisdiction over all aspects of the insurance policy. For example, if a surplus lines policy is purchased on a risk covering multiple states, Florida will only have jurisdiction if Florida is the home state of the insured. If Florida lacks jurisdiction over the surplus lines policy, the state will not be able to collect premium taxes and fees on the Florida portion of the risk. Representatives from the Florida Surplus Lines Service Office indicate that Florida is likely to lose $22.1 millions in tax revenue under current law br.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.931(1), F.S., to allow surplus lines agents 45 days after the end of the calendar quarter to file an affidavit stating that the agent has submitted all of the agent's surplus lines transactions to the Florida Surplus Lines Service Office. Current law requires the affidavit to be filed on or before the end of the month after the end of the quarter.

Section 2. Amends s. 626.932(3), F.S., to specify that the surplus lines tax shall be computed on the gross premium when the surplus lines policy covers risks that are only partially in Florida and Florida is the home state as defined by the NRRA.

Section 3. Amends s. 626.9325, F.S., to allow surplus lines agents 45 days following each calendar quarter to pay to the Surplus Lines Service Office all service fees related to policies reported during the previous quarter. Current law requires monthly payments. The fee will be computed on the gross premium when the surplus lines policy covers risks that are only partially in Florida, and Florida is the home state as defined by the NRRA.

Section 4. Creates s. 626.9362, F.S., to authorize the Department of Financial Services and the OIR to enter into cooperative reciprocal agreements with other states to collect and allocate nonadmitted insurance taxes for multistate risks pursuant to the NRRA. The agreements are authorized to create a comprehensive system for reporting, collecting, and allocating these taxes. The agreement may:

- Create a clearinghouse to receive and disburse nonadmitted insurance taxes;
- Create reporting requirements;
- Determine the methods for collecting and forwarding taxes to the appropriate state;
- Develop a premium tax allocation formula for multi-state nonadmitted risks;

[17] The act does not preempt a state law restricting the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

- Provide for audits and exchanging information; and
- Facilitate the reasonable administration of the cooperative reciprocal agreement.
- Provide for a service fee of up to 0.3 percent of gross premium on transactions processed by the clearinghouse to fund the operations of the clearinghouse.

The reciprocal agreements must be implemented by the Florida Surplus Lines Service Office, which is authorized to collect the total tax imposed on a multi-state risk nonadmitted insurance premium. The OIR and the DFS are granted rulemaking authority to administer agreements reached with other states.

Section 5. Amends s. 626.938(3), F.S., to require that insureds that do not use a surplus lines agent to procure surplus lines coverage must pay the surplus lines premium tax and the service fee within 45 days following each calendar quarter in which the insurance was procured. Current law requires payment within 30 days after the insurance is procured. The section also specifies that the surplus lines tax paid by the insured shall be computed on the gross premium when the surplus lines policy covers risks that are only partially in Florida and Florida is the home state as defined by the NRRA.

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:

Statutory authorization to compact or enter reciprocal agreements with other states potentially implicates the “nondelegation doctrine.” Article III, Section 1 of the Florida Constitution states that "[t]he legislative power of the state shall be vested in a legislature of the State of Florida.” The Florida Supreme Court has held that this constitutional provision requires application of a "strict separation of powers doctrine...which `encompasses two fundamental prohibitions'." *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 763, 769 (Fla. 2005) (quoting *State v. Cotton*, 769 So.2d 345, 353 (Fla. 2000), and *Chiles*, 589 So.2d at 264). No branch of Government may delegate its constitutionally assigned powers to another branch. *Chiles*, 589 So.2d at 264.

The Legislature may constitutionally transfer subordinate functions to "permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions." *Microtel v. Fla. Pub. Serv. Comm'n*, 464 So.2d 1189,

1191 (Fla.1985) (citing *State, Dep't of Citrus v. Griffin*, 239 So.2d 577 (Fla.1970)). However, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law." *Sims v. State*, 754 So.2d 657, 668 (2000). Further, the nondelegation doctrine precludes the legislature from delegating its powers "absent ascertainable minimal standards and guidelines." *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985). When the Legislature delegates power to another body, it "must clearly announce adequate standards to guide ... in the execution of the powers delegated." *Martin, 916 So.2d at 770.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Under the provisions of the NRRA, after the expiration of a 330 day period that began on July 1, 2010, Florida will not have jurisdiction to collect taxes, assessments, and fees on surplus lines policies that cover multi-state risks unless Florida is the home state of the insured. This bill amends Florida Statutes to tax the gross premium if Florida is an insured's "home state" as defined in the NRRA. The impact of this provision is a $3.1 million increase in General Revenue, cash and recurring, according to the Revenue Estimating Conference.

The bill also authorizes the DFS and OIR to enter into a cooperative reciprocal agreement with other states to collect and allocate surplus lines insurance taxes for multi-state policies. The impact of this provision is positive but indeterminate to the General Revenue Fund.

As a result of the NRRA, assessment revenue from surplus lines premiums is expected to decrease by $7.5 to $17.5 million.[18] In order to make up for this loss in revenue, assessments on other premiums are expected to increase. This bill will mitigate the assessment revenue loss to the extent that surplus lines premiums remain subject to taxation and assessment by this state.

B. Private Sector Impact:

The creation of a uniform clearinghouse to collect information, taxes, and fees related to surplus lines insurance on multi-state risks will be less burdensome to surplus lines agents and entities purchasing such insurance. Currently, agents must file reports and pay taxes to multiple different states and perform calculations regarding the appropriate tax revenues due the various states.

To the extent that this bill keeps surplus lines premiums subject to assessment by this state, other Florida insurance policy holders will be spared an increase in assessments on their premiums.

[18] Florida Surplus Lines Service Office.

C. Government Sector Impact:

Representatives from the OIR state that implementation of the legislation can be absorbed within current resources of the office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Budget Subcommittee on Finance and Tax on April 13, 2011:

The CS allows the multistate agreement to provide for a service fee of up to 0.3 percent of gross premium on transactions processed by the clearinghouse to fund its operations.

CS by Banking and Insurance Committee on March 22, 2011:

The committee substitute corrects drafting errors to the bill.

B. Amendments:

None.


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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 758 - 791

and insert:

its election by August 1 of the calendar year prior to the year the election will go into effect, and such election applies to reports and contributions beginning the first quarter of the calendar year following the election. The notification must include:

(A) A list of each client company and its unemployment account number;

(B) A list of each client company's current and previous employees and their respective social security numbers for the

prior 3 state fiscal years; and

(C) All wage data and benefit charges for the prior 3 state fiscal years.

(III) The employee leasing company must, by approved electronic means, file a Florida Department of Revenue Employer's Quarterly Report (UCT-6) for each client company and pay all contributions.

(IV) For the purposes of calculating experience rates, the election is treated like a total or partial succession, depending on the percentage of employees leased. If the client company leases only a portion of its employees from the leasing company, the client company shall continue to report the nonleased employees under its tax rate based on the experience of the nonleased employees.

(V) A leasing company that elects to report and pay contributions under the client method is not required to submit quarterly Multiple Worksite Reports required by sub-subparagraphs c. and d.

(VI) Subsequent to electing to report and pay contributions under the client method, an employee leasing company may reverse the one-time election and report and pay contributions under the leasing company's tax identification number and contribution rate as provided in this subparagraph. The leasing company must notify the Agency for Workforce Innovation or its tax collection service provider of such reversal by August 1 of the calendar year prior to the year the reversal will go into effect, and such election applies to reports and contributions beginning the first quarter of the calendar year following the reversal. Subsequent to such reversal, the employee leasing company may


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not change its reporting method.

(VII) This sub-subparagraph applies to all employee leasing companies, including each leasing company that is a group member or group leader of an employee leasing company group licensed pursuant to chapter 468. The election or subsequent reversal is binding on all employee leasing companies and their related enterprises, subsidiaries, or other entities that share common ownership, management, or control with the leasing company. The election or subsequent reversal is also binding

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

And the title is amended as follows:

Between lines 44 and 45

insert:

providing for reversal of such one-time election;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 1083 and 1084
insert:

Section 14. Section 443.17161, Florida Statutes, is created to read:

443.17161 Authorized electronic access to employer information.—

(1) Notwithstanding any other provision of this chapter, the Agency for Workforce Innovation shall contract with one or more consumer-reporting agencies to provide users with secured electronic access to employer-provided information relating to the quarterly wages report submitted in accordance with the

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state's unemployment compensation law. The access is limited to the wage reports for the appropriate amount of time for the purpose the information is requested.

(2) Users must obtain consent in writing or by electronic signature from an applicant for credit, employment, or other permitted purposes. Any written or electronic signature consent from an applicant must be signed and must include the following:

(a) Specific notice that information concerning the applicant's wage and employment history will be released to a consumer-reporting agency;

(b) Notice that the release is made for the sole purpose of reviewing the specific application for credit, employment, or other permitted purpose made by the applicant;

(c) Notice that the files of the Agency for Workforce Innovation or its tax collection service provider containing information concerning wage and employment history which is submitted by the applicant or his or her employers may be accessed; and

(d) A listing of the parties authorized to receive the released information.

(3) Consumer-reporting agencies and users accessing information under this section must safeguard the confidentiality of the information. A consumer-reporting agency or user may use the information only to support a single transaction for the user to satisfy its standard underwriting or eligibility requirements or for those requirements imposed upon the user, and to satisfy the user's obligations under applicable state or federal laws, rules, or regulations.

(4) If a consumer-reporting agency or user violates this

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section, the Agency for Workforce Innovation shall, upon 30 days written notice to the consumer-reporting agency, terminate the contract established between the Agency for Workforce Innovation and the consumer-reporting agency or require the consumer-reporting agency to terminate the contract established between the consumer-reporting agency and the user under this section.

(5) The Agency for Workforce Innovation shall establish minimum audit, security, net-worth, and liability-insurance standards, technical requirements, and any other terms and conditions considered necessary in the discretion of the state agency to safeguard the confidentiality of the information released under this section and to otherwise serve the public interest. The Agency for Workforce Innovation shall also include, in coordination with any necessary state agencies, necessary audit procedures to ensure that these rules are followed.

(6) In contracting with one or more consumer-reporting agencies under this section, any revenues generated by the contract must be used to pay the entire cost of providing access to the information. Further, in accordance with federal regulations, any additional revenues generated by the Agency for Workforce Innovation or the state under this section must be paid into the Administrative Trust Fund of the Agency for Workforce Innovation for the administration of the unemployment compensation system or be used as program income.

(7) The Agency for Workforce Innovation may not provide wage and employment history information to any consumer-reporting agency before the consumer-reporting agency or agencies under contract with the Agency for Workforce Innovation

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pay all development and other startup costs incurred by the state in connection with the design, installation, and administration of technological systems and procedures for the electronic-access program.

(8) The release of any information under this section must be for a purpose authorized by and in the manner permitted by the United States Department of Labor and any subsequent rules or regulations adopted by that department.

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

(a) "Consumer-reporting agency" has the same meaning as that set forth in the Federal Fair Credit Reporting Act, 15 U.S.C. s. 1681a.

(b) "Creditor" has the same meaning as that set forth in the Federal Fair Debt Collection Practices Act, 15 U.S.C. ss. 1692 et seq.

(c) "User" means a creditor, employer, or other entity with a permissible purpose that is allowed under the Federal Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq. to access the data contained in the wage reports though a consumer-reporting agency.

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

And the title is amended as follows:

Delete line 58

and insert:

rebuttable presumption; creating s. 443.17161, F.S.; requiring the Agency for Workforce Innovation to contract with one or more consumer-reporting agencies to provide creditors, employers, and other entities


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with a permissible purpose with secured electronic access to employer-provided information relating to the quarterly wages reports; providing conditions; requiring consent from the applicant for credit, employment, or other permitted purpose; prescribing information that must be included in the written consent; providing for confidentiality; limiting use of the information released; providing for termination of contracts under certain circumstances; requiring the agency to establish minimum audit, security, net worth, and liability insurance standards and other requirements it considers necessary; providing that any revenues generated from a contract with a consumer reporting agency must be used to pay the entire cost of providing access to the information; providing that any additional revenues generated must be paid into the Administrative Trust Fund of the Agency for Workforce Innovation or used for program purposes; providing restrictions on the release of information under the act; defining the terms "consumer-reporting agency," "creditor," and "user"; providing that the act

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Joyner) recommended the following:

Senate Amendment

Delete lines 297 - 299

and insert:

reasonable individual to cease working, attributable to ~~or which consists of~~ the individual's illness or disability requiring separation from his or her work, or attributable to domestic violence, as defined in s. 741.28, and verified by reasonable and confidential documentation that causes the individual to reasonably believe that continued employment will jeopardize the individual's safety and the safety of a member of his or her immediate family. Any other disqualification may

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 Budget Committee

BILL:	CS/CS/SB 728
INTRODUCER:	Judiciary Committee, Commerce and Tourism Committee, and Senators Detert and Gaetz
SUBJECT:	Unemployment Compensation
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	**Fav/CS**
2.	Maclure	Maclure	JU	**Fav/CS**
3.	Babin	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Florida's unemployment rate for January 2009 was 8.7 percent, and by January 2010 it was 12 percent. The latest unemployment rate reported, for March 2011, was 11.1 percent, which represents 1.03 million Floridians out of work.[1] Due to the duration of high unemployment, the Unemployment Compensation Trust Fund became insolvent in August 2009 and has continued to borrow funds from the federal government since that time.

Committee Substitute (CS) for CS/SB 728 (the bill) amends the unemployment compensation statutes to revise benefit eligibility criteria and unemployment tax provisions.

The bill changes qualifying requirements by:

- Requiring claimants to participate in an initial skills review using an online education or training program, like Florida Ready to Work, as part of reporting for benefits;

[1] Florida Agency for Workforce Innovation Press Release, dated April 15, 2011, which can be found at http://www.floridajobs.org/publications/news_rel/LMS%20Release04-15-11.pdf.

- Requiring claimants to make a systematic and sustained effort to find work, and to contact at least five prospective employers each week or report in person to a One-Stop Career Center to meet with a representative for reemployment services each week;
- Redefining "suitable work" to require claimants to seek a job after 19 weeks of benefits which pays the minimum wage and is at least 120 percent of their weekly benefit amount;
- Requiring claimants to file continuing claims by Internet, rather than by phone or mail.

The bill changes the criteria by which claimants are disqualified from receiving benefits by:

- Changing the standard to show misconduct from "willful" (a high standard) to "conscious" (a lower standard);
- Adding a disqualification for "gross misconduct," which is defined by specific acts by an employee;
- Adding a disqualification for any weeks in which an individual receives severance pay from an employer;
- Expanding disqualification to include being fired for *all* crimes committed in connection with work (rather than only those punishable by imprisonment) and being fired for violating a criminal law which affects an employee's ability to do his or her job; and
- Adding a specific disqualification for individuals who are incarcerated or imprisoned.

The bill codifies the executive order extending the temporary state extended benefits program and amends the program to conform to new federal law.

The bill eliminates the payment of benefits by mail.

Related to unemployment taxes, the bill:

- Allows employers to continue to have the option to pay their taxes in installments over 2012, 2013, and 2014;
- Allows employee leasing companies to make a one-time decision to change from reporting leased employees under their company account to reporting the employees under their respective clients' accounts, an option that could result in lower taxes for those companies choosing to change; and
- Increases the number of employee leasing companies who may obtain tax information for their clients by filing a memorandum of understanding, instead of filing a power of attorney for each client, with the Department of Revenue.

The bill provides specific language to allow appeals of orders by the Unemployment Appeals Commission to be filed in district courts of appeal where the claimant resides or where the business was located. The bill also codifies certain agency rules related to the exclusion of evidence that is irrelevant or repetitious, and revises the admissibility of hearsay evidence to allow it to be used to establish a fact under certain circumstances. The bill limits the amount of overpayments that can be collected from a claimant when the Agency for Workforce Innovation does not issue a nonmonetary determination within 30 days of the filing of a new claim. The bill creates a rebuttable presumption that the date on a document mailed by AWI or DOR is the date that the document was mailed.

The bill revises the rule of construction and restores law as it existed in 2002, which provides that the chapter is to be liberally construed to accomplish its purpose to promote employment security.

The U.S. Department of Labor may find various provisions of this bill to be out of conformity with federal law. If the U.S. Department of Labor made such a finding, then it could result in a withholding of all administrative funding and a significant increase in employer's UC tax rates.

This bill amends the following sections of the Florida Statutes: 213.053, 443.031, 443.036, 443.091, 443.101, 443.111, 443.1115, 443.1216, 443.141, 443.151, and 443.171. This bill revives, readopts, and amends s. 443.1117, F.S.

II. Present Situation:

Unemployment Compensation Overview[2]

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.[3] The program is administered as a partnership of the federal government and the states.[4] 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).[5] 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.[6]

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.[7] The Agency for Workforce Innovation (AWI) is the current agency responsible for administering Florida's UC laws. AWI contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.[8]

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[2] For a comprehensive overview of Florida's unemployment compensation system, see Emerging Issues Related to Florida's Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009), at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-306cm.pdf (last visited 1/31/2011).

[3] USDOL, Employment and Training Administration (ETA), State Unemployment Insurance Benefits, available at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited 4/21/2011).

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

[5] FUTA is codified at 26 U.S.C. ss. 3301-3311.

[6] USDOL, ETA, Unemployment Insurance Tax Topic, available at http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited 4/21/2011).

[7] Chapter 18402, L.O.F.

[8] Section 443.1316, F.S.

Statutory Construction

Generally, states construe their unemployment statutes in favor of claimants. Courts have held that the unemployment laws are remedial in nature, and thus should be liberally and broadly construed.[9] Section 443.031, F.S., specifically states that ch. 443, F.S., "shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own."[10]

For statutory construction purposes generally, remedial statutes are liberally construed. Remedial statutes are those that provide a remedy or improve or facilitate remedies already existing for the enforcement of rights and the redress of injuries. Florida courts have held that the unemployment statutes are "remedial, humanitarian legislation."

> "[A] statute enacted for the public benefit should be construed liberally in favor of the public even though it contains a penal provision. In this posture a reasonable construction should be applied giving full measure to every effort to effectuate the legislative intent."[11]

Unemployment benefits are available as a matter of right to unemployed workers who have demonstrated their attachment to the labor force by a specified amount of recent work and/or earnings in covered employment. The purpose of the unemployment program is to benefit those unemployed through no fault of their own.[12]

State Unemployment Compensation Benefits

A qualified claimant may receive UC benefits equal to 25 percent of wages, not to exceed $7,150 in a benefit year.[13] Benefits range from a minimum of $32 per week to a maximum weekly benefit amount of $275 for up to 26 weeks, depending on the claimant's length of prior employment and wages earned.[14]

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.

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[9] See J.W. Williams v. State of Florida, Department of Commerce, 260 So.2d 233 (1st DCA, 1972); and Williams v. Florida Industrial Commission, 135 So.2d 435 (3rd DCA, 1961). Other states do not specify how their statutes are to be construed; instead they rely upon the interpretation of their courts to make the determination.

[10] See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 1448 (2003), for a discussion of this section. Other states' laws contain a public purpose section, but this was removed from Florida Statutes in 2003, while preserving the standard for liberal construction.

[11] City of Miami Beach v. Berns, 245 So.2d 38, 40 (Fla. 1971).

[12] USDOL, ETA, State Unemployment Insurance Benefits.

[13] Section 443.111(5), F.S.

[14] Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday.

Determinations and Redeterminations

AWI issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.[15] Determinations and redeterminations are statements by the agency regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account. A party who believes a determination is inaccurate may request reconsideration within 20 days from the mailing date of the determination. The agency must review the information on which the request is based and issue a redetermination.

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee. Appeals referees in AWI's Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for unemployment compensation and the payment and collection of unemployment compensation taxes.[16]

A decision by an appeals referee can be appealed to the Unemployment Appeals Commission. The Unemployment Appeals Commission is administratively housed in AWI, but is a quasi-judicial administrative appellate body independent of AWI.[17] The commission is 100 percent federally funded and consists of a three member panel that is appointed by the Governor. It is the highest level for administrative review of contested unemployment cases decided by the Office of Appeals referees. The Unemployment Appeals Commission can affirm, reverse, or remand the referee's decision for further proceedings. A party to the appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.[18]

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 AWI that the individual:[19]

- Has filed a claim for benefits;
- Is registered to work and reports to the One-Stop Career Center;
- Is able to and available for work;
- 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 AWI.

Section 443.036(1) and (6), F.S., provide the meaning of the phrases "able to work" and "available for work," respectively, as:

[15] Section 443.151(3), F.S.
[16] Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S.
[17] Section 20.50(2)(d), F.S. "The Unemployment Appeals Commission, authorized by s. 443.012, F.S., is not subject to control, supervision, or direction by the Agency for Workforce Innovation in the performance of its powers and duties but shall receive any and all support and assistance from the agency that is required for the performance of its duties."
[18] Section 443.151(4)(c), (d), and (e), F.S.
[19] Section 443.091(1), F.S.

- "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.

Additionally, AWI has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work.[20]

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), 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.

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. AWI 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.[21]

AWI's website provides links to local, state, and national employment databases.[22] 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.[23] 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.[24] Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).[25]

[20] Rule 60BB-3.021, F.A.C.
[21] Rule 60BB-3.011(12), F.A.C.
[22] For example, on www.fluidnow.com, where individuals can claim their weeks online.
[23] AWI's Office of Workforce Services is responsible for providing One-Stop Program Support services to the Regional Workforce Boards. See s. 443.091(1)(b), F.S.
[24] Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and AWI. It provides job-matching and workforce resources. https://www.employflorida.com.
[25] 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

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;
- Failing to apply for available suitable work when directed by AWI or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;
- Receiving wages in lieu of notice or compensation for temporary total disability or permanent total disability under the workers' compensation law of any state with a limited exception;
- Involvement in an active labor dispute which is responsible for the individual's unemployment;
- Receiving unemployment compensation from another state;
- Making false or fraudulent representations in filing for benefits;
- Illegal immigration status;
- Receiving benefits from a retirement, pension, or annuity program with certain exceptions;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work;
- Loss of employment as a leased employee for an employee leasing company or as a temporary employee for a temporary help firm if the individual fails to contact the temporary help or employee-leasing firm for reassignment; 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.

As used in s. 443.101(1), F.S., the term "good cause" includes only that cause attributable to the employer or which consists of illness or disability of the individual requiring separation from work. An individual is not disqualified for voluntarily leaving temporary work to return immediately when called back to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6-calendar months or for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment 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.

In determining "suitable work," the agency is directed by statute to consider several factors, including:

- Duration of an individual's unemployment;
- Proposed wages for available work, except in the 26th week of unemployment, when suitable work is a job that pays minimum wage and is 120 percent of the individual's weekly benefit amount;
- The degree of risk involved to the individual's health, safety, and morals;
- The individual's physical fitness and prior training;
- The individual's experience and prior earnings;
- The individual's length of unemployment and prospects for securing local work in his or her customary occupation; and
- The distance of the available work from the individual's residence.[26]

Financing Unemployment Compensation

Unfortunately, due to the increasing unemployment rate in Florida, the Unemployment Compensation Trust Fund has been paying out more funds than it has been collecting. The trust fund fell into deficit in August 2009, and since that time the state has requested over $2.3 billion in federal advances in order to continue to fund unemployment compensation claims.[27]

The decline in the balance of the trust fund, poor economic conditions, decrease in the number of employers and employees, and increasing unemployment rates have led to large increases in employer UC tax rates. Some employers face greater increases because their experience rates have increased due to laid-off employees making UC claims credited against the employers' accounts.

State Unemployment Compensation Contributions

Florida sets its own taxable wage base and rate. The funds collected are paid into the UC Trust Fund, which is maintained at the U.S. Treasury.[28] The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.[29] Employers' state UC taxes are used solely to pay UC benefits to unemployed Floridians.

Currently, an employer pays taxes on the first $7,000 of an employee's wages.[30] An employer's initial state tax rate is 2.7 percent.[31] After an employer is subject to benefit charges for 8-calendar

[26] Section 443.101(2), F.S.
[27] As of April 20, 2011. See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 4/21/11).
[28] Section 443.191, F.S.
[29] Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. See s. 443.1312, F.S. The state and local governments are reimbursing employers. Most employers are contributory employers; DOR advised that based on the most recent data available (from January 1, 2011) there were 453,800 contributing employers and 3,256 reimbursing employers in Florida.
[30] In 2012, the taxable wage base increases to $8,500. See s. 3, ch. 2010-1, L.O.F.
[31] Section 443.131(2)(a), F.S.

quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 0.1 percent.[32] The adjustment in the tax rate is determined by calculating several factors.

Employer contributions are due in the month following the end of the quarter (April 30, July 31, October 31, and January 31). Most employers will have paid the $7,000 wage base to their employees in the first or second quarter of the year, making their total UC payments due early in the year.

In 2010, legislation was enacted that permitted employers to spread the payment of their quarterly state UC taxes in installments over the year.[33]

	Due April 30	Due July 31	Due October 31	Due December 31	Due January 31
1st Quarter Payment	¼	¼	¼	¼	-
2nd Quarter Payment	-	⅓	⅓	⅓	-
3rd Quarter Payment	-	-	½	½	-
4th Quarter Payment	-	-	-	-	Full

For example, the quarterly payment due for the first quarter of 2010 may be spread into four equal installments, payable in each remaining quarter in 2010 (due by April 30, July 31, October 31, and December 31). However, UC taxes due for the fourth quarters of 2010 and 2011 are due as normally incurred in order for Florida employers to retain their eligibility for the FUTA tax credit for their federal UC taxes. An employer may participate in the payment plan if the employer pays an administrative fee of up to $5 with the first installment payment. Interest and penalties do not accrue so long as the employer complies with the statutory provisions.

State Unemployment Compensation Contributions – Benefit Charges

In the unemployment tax calculation, the most significant factor in determining an employer's tax rate is the "benefit ratio."[34] This is the factor over which the employer has control. Often referred to as "experience rating," this factor takes into account an employer's experience with the UC Trust Fund by the impact of the employer's laid off workers on the trust fund. Employers who lay off the most workers are charged the highest tax rates. The purpose of experience rating under Florida's UC law is to ensure that employers with higher unemployment compensation costs pay a higher tax rate.

[32] Section 443.131(2)(b), F.S. Because of the definition of base period, at least 10 quarters must have elapsed before a new employer can be considered chargeable for 8 quarters of benefits. See also, s. 443.131(3)(d), F.S. An employer is only eligible for variation of the standard rate if its employment record was chargeable for benefits for 12 consecutive quarters ending on June 30 of the preceding calendar year. These employers are referred to as "rated employers."
[33] Section 4, ch. 2010-1, L.O.F. Section 443.141(1)(e), F.S.
[34] Section 443.131(3)(b), F.S.

When an individual receives unemployment compensation based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual $100 or more during the period of a claim is subject to being charged a proportionate share of the compensation paid to the individual. However, an employer can obtain relief from benefit charges by responding to notification of a claim with information concerning the reason for the individual's separation from work or refusal to work.[35] An employer will not obtain relief from the benefit charges for failure to respond to the notice of claim within 20 days.[36]

State Unemployment Compensation Contribution – Socialized Costs

Compensation that cannot be charged against any employer's account is recovered through "variable adjustment factors" that socialize the cost of this compensation among all contributory employers who had benefit experience during the previous 3 years. An employer's variable adjustment factor includes a portion of the following socialized costs, based upon the employer's experience rate: the non-charge ratio (benefits not attributable to any employer over the last 3 years; also called "overpayments"),[37] the excess payments ratio (that portion of benefit charges which exceed the maximum rate of 5.4 percent),[38] and the fund size factor (requires the trust fund maintain a certain balance, discussed below as "triggers").[39]

The "final adjustment factor" is another factor in determining an employer's tax rate. It is a constant factor that applies to every employer regardless of experience rating.[40] The "final adjustment factor" takes into account-socialized costs, described above. This factor is also applied to employers who have no benefit charges in the preceding 3 years; as a result, this factor determines the minimum rate for the year.[41]

State Unemployment Compensation Contribution – Trust Fund Triggers

Florida's tax calculation method, especially due to the benefit ratio, is closer to a "pay as you go" approach, in which taxes increase rapidly after a surge in benefit costs. Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. The effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when

[35] Section 443.131(3)(a), F.S.
[36] Section 443.151(3)(a), F.S. AWI is required to send notice to each employer who may be liable for benefits paid to an individual. Based upon information provided with filed claims for benefits and employer responses, if provided, AWI makes an initial determination on entitlement to benefits. An employer has an incentive to respond to AWI if the employer should not be liable for benefits; an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account. A claimant is not required to repay any overpayments due to the employer's failure to respond, so long as there is no fraud involved.
[37] For example, these socialized costs include overpayments.
[38] Employers who have an experience rating that, if translated to a tax rate, would exceed the maximum rate get a break and any costs of unemployment benefits that exceed that 5.4 percent maximum tax rate are socialized to all other employers.
[39] Section 443.131(3)(e), F.S. See also DOR, What employers need to know about Florida Unemployment Compensation Law: How Rates are Calculated, at http://dor.myflorida.com/dor/taxes/unemploy_comp_law.html#how (last visited 4/21/2011).
[40] If the combined factors exceed the maximum rate, the employer is assigned the maximum rate of 5.4 percent.
[41] DOR, What employers need to know about Florida Unemployment Compensation Law: How Rates are Calculated.

unemployment is low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.[42]

The basis for the adjustment factors is the level of the trust fund on September 30 of each calendar year compared to the taxable payrolls for the previous year. Each adjustment factor remains in effect until the balance of the trust fund rises above or falls below the respective trigger percentage.

State Unemployment Compensation Contribution – 2011 Rates and Forecasts

In 2010, the Legislature turned the trust fund triggers "off" to avoid a significant rate increase for employers.[43] However, taxes still significantly increased from 2010 to 2011. This was due to a large increase in socialized costs, mostly attributable to costs associated with employers whose tax rate does not generate enough money to pay for all the benefits charged to their accounts due to the statutory maximum rate (or "maximum cap").

The rates have been calculated for each Florida business that pays UC tax and approximately 25% of employers have begun paying based on these rates. The figures show that a business paying the minimum tax rate, which is the majority of Florida businesses (about 220,000), will see a tax rate increase from 0.36 percent to 1.03 percent. This means that a business that paid $25.20 per employee under the previous rate will pay $72.10 per employee in 2011. Those businesses at the maximum rate will still pay a per employee rate of $378 due to the maximum cap.

	2010 Taxes		**2011 Taxes**	
Minimum Rate	0.36%	$25.20	1.03%	$72.10
Maximum Rate	5.4%	$378	5.4%	$378

Further, due in part to the short term relief provided to employers by legislation passed in the 2010 Regular Session, employers will be faced with a significant jump in tax rates beginning in 2012. Other facts affecting employer taxes in 2012 include the calculation of the trust fund factor and the scheduled increase in the wage base to $8,500.[44]

[42] Emerging Issues Related to Florida's Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009). Currently, the negative adjustment factor is not available until January 1, 2015, and then not in any calendar year in which a federal advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

[43] Section 3, ch. 2010-1, L.O.F.

[44] Chapter 2009-99, L.O.F., increased the wage based to $8,500 beginning in 2010; ch. 2010-1, L.O.F., delayed this increased until 2012.

	2011 Taxes ($7,000 wage base + tax trigger off)		**2012 Taxes**[45] ($8,500 wage base + tax trigger on)		**2013 Taxes** ($8,500 wage base + tax trigger on)		**2014 Taxes** ($8,500 wage base + tax trigger on)	
Minimum Rate	1.03%	$72.10	2.43%	$206.55	2.07%	$175.95	1.73%	$147.05
Maximum Rate	5.4%	$378	5.4%	$459	5.4%	$459	5.4%	$459

In addition to the economic conditions which attributed to the increase in the contribution rate, the number of employers and employees has significantly decreased over the past year. Because there are fewer employers paying UC taxes on fewer employees to fund the UC Trust Fund, with the positive fund balance adjustment factor triggering "on" in 2012, existing employers will have to contribute more than they otherwise would have had to contribute in good economic times in order to reduce the current trust fund debt.

Federal Unemployment Compensation Contributions

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.2 percent on employees' annual wages.[46] If, however, a state program meets the federal requirements and has no delinquent federal loans, employers are eligible for up to a 5.4 percent tax credit, making the net federal tax rate 0.8 percent. Employers file an annual return with the Internal Revenue Service each January for taxes on the first $7,000 of each employee's annual wages during the previous year.

The USDOL provides AWI with administrative resource grants from the taxes collected from employers pursuant to FUTA. These grants are used to fund the operations of the state's UC program, including the processing of claims for benefits by AWI, state unemployment tax collections performed by DOR, appeals conducted by AWI and the Unemployment Appeals Commission, and related administrative functions.

Federal Advances

States may borrow money from the federal government through the USDOL to pay benefit claims whenever the state lacks funds to pay claims due in any month. Such loans are referred to as "advances." The state's trust fund balance must be zero in order to receive an advance.

Many states have experienced chronic problems with UC trust fund insolvency, causing them to borrow from the federal government to pay benefits and resulting in increased federal taxes to repay the loans (see below *Federal Advance – FUTA Credit Loss*). In response, these states have restricted eligibility to UC benefits to reduce benefit costs, thereby reducing the number of workers who are eligible to receive benefits and, consequently, jeopardizing the value of their

[45] Unemployment Compensation Trust Fund Forecast dated February 2011, by the Office of Economic and Demographic Research, on file with the Senate Commerce and Tourism Committee.

[46] The Federal Unemployment Tax Act (FUTA) is set to be reduced by 0.2 percent in June 2011 (considered a 0.2 percent surtax). 26 U.S.C. s. 3301 (2009). However, since the tax was increased to 6.2 percent in the mid-1980s, each year that the tax has been set to be reduced, Congress has enacted legislation that maintains the surtax.

UC programs as economic stabilizers.[47] In the current economic climate, states are increasingly requesting federal advances. Thirty-three states, including the Virgin Islands, currently have requested federal advances.[48] Six states have paid off their federal advances, including Texas, Tennessee, and Maryland.[49]

Prior to August 2009, Florida's UC Trust Fund had never become insolvent during the history of the tax trigger. In the aftermath of the 1973-1975 recession, the state anticipated the UC Trust Fund's reserves were insufficient to pay benefits. Consequently, the state twice borrowed funds from the federal government – $10 million in 1976 and $32 million in 1977. However, Florida's trust fund remained solvent and the loans were never drawn down. With the exceptions of 1976 and 1977, Florida had never sought a federal loan, making this state one of the few to avoid serious and chronic problems with trust fund insolvency.[50]

However, due to the current economic climate and increased demand on the UC Trust Fund, the trust fund fell into deficit in August 2009. AWI began the request process in July for an advance from the federal government in order to maintain the solvency of the trust fund. As of April 20, 2011, the state has requested over $2.3 billion in federal advances in order to continue to fund unemployment compensation claims.[51]

Advances are requested for 3-month periods at a time, prior to the quarter in which they are needed. The USDOL evaluates the state's request and sends a confirmation letter that provides the authorized amount that the state may borrow and the authorization period. The state may not borrow more funds than the authorized amount. The state will only draw down, or borrow, funds as needed to pay UC benefits.

Advance monies may only be used to pay UC benefits. For example, if an employer is due a credit for overpayment of UC taxes, the employer cannot be repaid until the trust fund is replenished with funds other than advance monies.

The state may make repayments of the principal amount of the advance voluntarily by notifying USDOL by letter of the amount and effective repayment date. Repayments are made on a last made, first repaid basis.

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[47] Vroman, Wayne, The Role of Unemployment Insurance as an Automatic Stabilizer During a Recession, The Urban Institute, IMPAQ International, LLC, and USDOL, ETA, July 2010, available at http://wdr.doleta.gov/research/FullText_Documents/ETAOP2010-10.pdf (last visited 2/1/2011).

[48] U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 4/21/2011).

[49] Some of these states only took out short term advances from USDOL. Other states took steps to increase their taxes to repay the federal advances. Texas issued bonds to repay their debt, and employers in that state will incur a new assessment in addition to state UC taxes to pay the debt service due on the bonds.

[50] Emerging Issues Related to Florida's Unemployment Compensation Program, The Florida Senate Committee on Commerce, Issue Brief 2010-306 (October 2009).

[51] See U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 4/21/2011).

Federal Advance – FUTA Credit Loss

After a state UC trust fund borrows from the USDOL, if the loan becomes delinquent, the federal tax credit for the state's employers is reduced until the loan is repaid (reduced by 0.3 percent for each year).[52] This serves as a sort of automatic loan repayment – the taxes collected due to the credit reduction go towards repayment of the principal amount of the state's advances. Thus, employers in states with insolvent trust funds are faced with multiple tax increases: increased state UC taxes to restore solvency of the state UC trust fund, and increased federal taxes to repay federal loans. In addition, any grants related to the costs of administration held in the UC trust fund do not earn interest.

It is anticipated that Florida employers will experience a partial loss of the federal UC tax credit for wages paid in 2011, due to the existence of an outstanding federal advance. The credit reduction continues and escalates until such time as the loan is fully repaid.[53] The Office of Economic and Demographic Research (EDR) estimated that the first repayment to the federal government through the loss of the federal credit will be $139.8 million in January 2012, $290.4 million in January 2013, and $451.8 million in January 2014, for a total of $882 million.[54] The forecast estimates that the federal advances will be completely repaid by April 2014.

States with outstanding loans may seek relief from the loss of the federal UC tax credit. If specific requirements are met, then a cap (or limit) on the credit reduction may be put in place. These requirements are:

- The state did not take any action in the prior year that would diminish the solvency of the state fund;
- The state did not take any action in the prior year that would decrease the state's unemployment tax effort;
- The average tax rate for the taxable year exceeds the 5-year average benefit cost rate; and
- The state's outstanding loan balance as of September 30 of the tax year is not greater than that for the third preceding September 30.[55]

Federal Advance – Interest

Federal advances accrue interest at an annual interest rate of up to 10 percent. Interest accrues on a federal fiscal year basis (October to September), and is due no later than September 30 each year. The interest rate charged is equal to the fourth calendar quarter yield on the Unemployment Trust Fund for the previous year, capped at 10 percent. The interest rate for 2011 is 4.0869 percent. Through December 2010, federal advances did not accrue interest due to a provision in the American Recovery and Reinvestment Act of 2009.

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[52] If a state has an outstanding loan balance on January 1 for 2 consecutive years, then the entire loan must be repaid before November 10 of the second year or the credit reduction will begin.
[53] USDOL Webinar on Title XII Advances, August 10, 2009 (slides on file with the Senate Commerce Committee).
[54] Unemployment Compensation Trust Fund Forecast dated February 2011, Office of Economic and Demographic Research, on file with the Senate Commerce and Tourism Committee.
[55] USDOL, Unemployment Compensation: Federal-State Partnership, page 7, available at http://ows.doleta.gov/unemploy/pdf/partnership.pdf (last visited 4/21/2011).

The interest due on advances cannot be paid from funds from the UC Trust Fund. In order to repay the interest, a state may make an appropriation from general revenue, issue bonds, or impose a surcharge on employers.[56] In 2010, the Legislature implemented legislation to pay interest on federal advances through an additional employer assessment.[57]

The Revenue Estimating Conference is charged with estimating the interest amount by December 1 of the year prior to the due date for the interest payment. DOR must make the assessment prior to February 1 of the year. The interest is due based upon a formula. To determine the additional rate for the assessment, the formula divides the estimated amount of interest owed by 95 percent of total wages paid by employers for the previous year ending June 30. To determine an employer's payment, the formula multiplies an employer's taxable wages by the additional rate. An employer has 5 months to pay the assessment, by June 30, and the assessment may not be paid by installment.

The first interest payment to the federal government will be due by September 30, 2011; the Governor or his designee directs DOR to make the interest payment. The Revenue Estimating Conference estimated a payment of $61.4 million due in 2011; calculated as a per employee rate, the assessment is about $9.51 per employee.[58]

The assessments are paid into the Audit and Warrant Clearing Trust Fund and may earn interest; any interest earned will be part of the balance available to pay the interest to the federal government. If the federal government postpones or forgives the interest due on the advances, the employer assessment is eliminated for that year. An assessment already paid will be credited to the employer's account in the UC Trust Fund.

States may apply to USDOL for deferrals of interest for loans in certain situations. These include:[59]

- Interest may be deferred, to December 31 of the following calendar year, for loans made in the last 5 months of the federal fiscal year (May-September). Interest accrues on the delayed interest payment.
- States with an average total unemployment rate (TUR) of 13.5 percent or greater for the most recent 12-month period for which data are available may delay payment of interest for a grace period not to exceed 9 months. Interest does not accrue on the delayed interest payment.
- States with an average insured unemployment rate (IUR) of 7.5 percent or greater during the first 6 months of the preceding calendar year may pay interest in four annual installments of 25 percent per year. Interest does not accrue on the deferred interest payments.

[56] The option of issuing bonds to repay the interest may be unavailable to Florida. See Art. VII, s. 11, Fla. Const.
[57] Section 443.131(5), F.S. Section 4, ch. 2010-1, L.O.F.
[58] Revenue Estimating Conference forecast from November 30, 2010, available at http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/index.cfm (last visited 4/21/2011).
[59] USDOL, Unemployment Compensation: Federal-State Partnership, page 8. Currently, Florida does not qualify for a deferral.

If the interest is not paid when due, the federal government will not certify the state program and can withhold all administrative funding. Additionally, employer tax rates would increase to the total federal tax of 6.2 percent because Florida employers would lose the entire FUTA tax credit (5.4 percent).[60]

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.[61] 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 did not affect the balance of Florida's UC Trust Fund.

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 2010, Congress extended the eligibility window for Emergency Unemployment Compensation (EUC) and for state extended benefits through January 4, 2012.

Florida already had an extended benefits program in statute,[62] 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). 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, when Congress extended this program in July 2010, because the Legislature was not in session, Governor Crist signed an executive order implementing the program.[63] On December 17, 2010, Governor Crist signed an additional executive order extending the program after the federal bill was signed into law.[64] However, the most recent extension put into law enacts a new "trigger" to keep the program "on" due to the continued high unemployment rates that many states are experiencing.

III. Effect of Proposed Changes:

Providers Representing Clients on Tax Matters

Section 1 amends s. 213.053(4), F.S., to allow payroll service providers (like employee leasing companies) to file a memorandum of understanding if they provide services for 100 or more employers.

Under current law, providers that represent clients on UC tax matters before DOR must file a power of attorney for each of their clients. If the provider provides services for at least 500

[60] Id. Because the state UC program would not be certified, there would be no state UC tax in this situation.
[61] 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.
[62] Section 443.1115, F.S.
[63] Executive Order No. 10-170.
[64] Executive Order No. 10-276.

clients, the law permits the provider to file a single memorandum of understanding with DOR in lieu of the 500 individual powers of attorney. For providers that have fewer than 500 clients, completing individual powers of attorney is very burdensome. This change would reduce the burden on providers and reduce administrative burdens on DOR.

Statutory Construction

Section 2 amends s. 443.031, F.S., by revising the rule of construction and restoring the statute as it existed in 2002, prior to a statutory re-write completed in 2003. The change eliminates the specific reference that provided that UC statutes were to be liberally construed in favor of a claimant and provides that the chapter is to be liberally construed to accomplish its purpose to promote employment security.

State Unemployment Compensation Benefit Eligibility

The bill makes several changes to UC benefit eligibility, including changing the qualifying criteria and circumstances that automatically disqualify claimants from receiving benefits.

Qualifying Criteria

Initial Skills Review

Section 4 amends s. 443.091(1), F.S., to amend the reporting requirement to require claimants to participate in an initial skills review. The administrator or operator of the online education or training program is required to report to AWI 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.

Section 3 amends s. 443.036, F.S., to create a new definition for "initial skills review." An initial skills review is an online education or training program, like Florida Ready to Work,[65] that is approved by AWI and designed to measure an individual's mastery of workplace skills.

Florida Ready to Work is an employee credentialing program that is funded by the state.[66] 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 3 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.

[65] Section 1004.99, F.S.
[66] Website available at http://floridareadytowork.com/ (last visited 4/21/2011).

Section 12 amends s. 443.151(2)(a), F.S., to require claimants to file initial and continuing claims by the Internet. By requiring claimants to file UC claims by the Internet, the initial skills review could be incorporated into the benefit application process. This would allow claimants to participate in the initial skills review at the time they file for benefits and engage in reemployment services.

Work Search Requirements

Section 4 of the bill also amends s. 443.091, F.S., to add specific work search requirements. Section 443.091(1)(d), F.S., is amended to specify that as part of being available for work, a claimant must be actively seeking work. A claimant is required to engage in a systematic and sustained effort to find work, including contacting at least five prospective employers each week. AWI may require a claimant to provide evidence of work search activities to the One-Stop Career Center as part of reemployment services. Additionally, the agency is directed to conduct random reviews of work search information provided by claimants.

For any week of benefits claimed, as an alternative to contacting five prospective employers, a claimant may report in person to a One-Stop Career Center to meet with a representative of the center to receive reemployment services. The One-Stop Career Center must keep a record of the services or information provided to the claimant and provide those records to AWI upon request.

The bill also amends the reporting requirements for claimants related to their activities in searching for work. Section 4 amends s. 443.091(1)(c), F.S., to specify that a claimant must report, at a minimum, the name, address, and telephone number of each prospective employer contacted as part of the claimant's search for work, or the date that the claimant reported to the One-Stop Career Center. Section 6 amends s. 443.111(1)(b), F.S., to require each claimant to attest that she or he has been seeking work and has contacted at least five prospective employers or reported in-person to a One-Stop Career Center for each week of unemployment claimed.

Section 12 amends s. 443.151(2)(a), F.S., to require claimants to file initial and continuing claims by the Internet. Claimants receiving temporary state extended benefits are required to meet heightened work search requirements, including the requirement to "furnish tangible evidence that she or he actively engaged in a systematic and sustained effort to find work."[67] These claimants are required to file their claims by mail or Internet. By imposing the same type of work search requirements on all claimants, restricting filing methods for continuing claims to the Internet will allow AWI to collect the work search evidence required by s. 443.091(1), F.S., as amended by the bill.

Suitable Work

An individual is required to search for "suitable work" to be eligible for benefits under current law. Additionally, if an individual is found to not be searching for suitable work, she or he may be disqualified for benefits. As it relates to the wages paid by suitable work, under current law, specifically for the 26th week of benefits, "suitable work" is defined as "a job that pays the

[67] Section 443.1115(3)(c)1.b., F.S.

minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing."[68]

Section 5 of the bill amends s. 443.101(2), F.S., (renumbered in the bill as s. 443.101(3),F.S.) to require that the wage criteria for suitable work applies after 19 weeks of benefits.

Amendments made in Section 5 of the bill do not change the other current law criteria that AWI considers when determining if work is suitable or not. These include the degree of risk to the individual's health, safety, and morals; the individual's physical fitness, prior training, experience, prior earnings, length of unemployment, and prospects for securing local work in his or her customary occupation; and the distance of available work from the individual's residence.

The bill also amends s. 443.036(6), F.S., in Section 3 to provide consistency throughout the chapter to use the term "suitable work."

Earned Income

Under s. 443.036, F.S., "earned income" means gross remuneration derived from work, professional service, or self-employment. It includes commissions, bonuses, back pay awards, and the cash value of all remuneration paid in a medium other than cash. Earned income does not include income derived from invested capital or ownership of property.

An individual who receives earned income in any week is considered to be partially unemployed and his or her weekly benefit amount is reduced by any earned income received that week if it is over a certain amount.[69]

Section 3 of the bill amends the definition of "earned income" to include back pay settlements, front pay, and front wages. This expands the types of income that would reduce the amount of benefits a claimant may receive.

In general, front pay, or front wages, is an equitable remedy applied in employment discrimination cases where a court determines that an individual cannot be placed back into the same employment.[70] "Back pay settlements are a common remedy for wage violations that consist of an order that the employer make up the difference between what the employee was paid and the amount he or she should have been paid."[71]

Disqualifications

Voluntarily Quitting

Under current law, an individual who voluntarily quits work without good cause attributable to his or her employer is disqualified from receiving UC benefits. Section 5 of the bill amends

[68] Section 443.101(2), F.S.
[69] Section 443.111(4)(b), F.S.
[70] Equal Opportunity Employment Commission, Front Pay, available at http://www.eeoc.gov/federal/digest/xi-7-4.cfm (last visited 4/21/2011).
[71] USDOL, ETA, Wages: Back Pay, available at http://www.dol.gov/dol/topic/wages/backpay.htm (last visited 4/21/2011).

s. 443.101(1)(a)1., F.S., to codify case law which states that "good cause" is that which would compel a reasonable individual to cease working.[72]

Misconduct

Section 3 amends s. 443.036(29), F.S., to change the definition of "misconduct."

Under current law, a claimant may be disqualified from receiving benefits for being fired for misconduct associated with work. The current law definition of "misconduct" requires showing:

- Willful or wanton disregard of an employer's interests and is found to be deliberate, or
- Careless or negligent behavior that manifests culpability, wrongful intent, or evil design or was intentional or substantial disregard.

The bill reduces the standard to show misconduct to behavior that is a "conscious" disregard of an employer's interests or that is careless or negligent behavior that manifests culpability, wrongful intent, or shows an intentional and substantial disregard of an employer's interests.[73] Further, behavior that is a "conscious" disregard may be a violation of reasonable standards that an employer has a right to expect, including those lawfully set forth in an employer's written rules of conduct.

USDOL may find this provision causes the state to be out of conformity with federal law.

Gross Misconduct

Section 5 amends 443.101, F.S., to create a new disqualification for benefits for specific acts of "gross misconduct" by an employee that led to her or his termination from work. Some of the specific acts included are:

- Willful or reckless damage to an employer's property that results in damage of more than $50;
- Theft of employer, customer, or invitee property;
- Violation of drug and alcohol policies, testing, or use of such substances while on the job or on duty;
- Assault or battery of another employee, customer, or invitee;
- Abuse of a patient, resident, disabled person, elderly person, or child in the employee's professional care;
- Insubordination (willful failure to comply with written employer rule or job description or reasonable order of a supervisor), provided that an employee receives at least one written warning before being terminated, unless the insubordination was severe;

[72] See e.g. Thomas v. Peoplease Corp., 877 So.2d 45(3rd DCA, 2004).

[73] The bill does not define "conscious disregard." One court characterized the term "conscious disregard of consequences" in a negligence context as being a middle ground between careless disregard of consequences (as in simple negligence) and "the more extreme 'wilful or wanton' disregard thereof (as in culpable or criminal negligence)." *Courtney v. Fla. Transformer, Inc.*, 549 So. 2d 1061, 1064 (Fla. 1st DCA 1989).

- Willful neglect of duty as described in a written employer rule or job description, provided that an employee receives at least one written warning before being terminated, unless the willful neglect was severe; and
- Failure to maintain a license, registration, or certification required by law for the employee to perform her or his job.

The disqualification for gross misconduct continues until an individual becomes reemployed and earns income of at least 17 times his or her weekly benefit amount that would have otherwise been available.

Severance Pay

Section 5 of the bill creates a disqualification in s. 443.101(3), F.S., (renumbered in the bill as s. 443.101(4), F.S.) for any week in which an individual receives severance pay. Severance pay is often granted to employees upon termination of employment, and is usually based on length of employment (matter of agreement between an employer and an employee). The bill provides for a calculation for the duration of disqualification, beginning from the date an individual separated from that employer.

Criminal Acts and Incarceration or Imprisonment

Currently, under s. 443.101(9), F.S., an individual who is terminated from employment for violation of a criminal law punishable by imprisonment (either by conviction or entrance of a plea of guilty or nolo contendere) in connection with work is disqualified for benefits. This includes a violation of a criminal law under any jurisdiction.

The bill amends this disqualification in Section 5 of the bill by expanding the disqualification to a violation of any criminal law, not just those punishable by imprisonment, and includes being fired for violating a crime which affects an employee's ability to do his or her job.

USDOL may find this provision causes the state to be out of conformity with federal law.

Further, Section 5 creates a new disqualification for each week that an individual is unavailable for work due to incarceration or imprisonment in s. 443.101(12), F.S.

State Unemployment Compensation Contributions

Quarterly Contributions – Installment Payments

As discussed in the Present Situation, employer contributions are due in the month following the end of the quarter (April 30, July 31, October 31, and January 31). Most employers will have paid the $7,000 wage base to their employees in the first or second quarter of the year, making their annual UC payment due early in the year. Under current law, for 2011, employers may choose to participate in an alternative payment plan for an administrative fee of up to $5 to participate.

Section 11 amends s. 443.141, F.S., to allow this option for UC taxes due in 2012, 2013, and 2014.

Temporary State Extended Benefits Program

In December, Congress extended the time that the federal government would fund 100 percent of state extended benefits for former private sector employers through January 4, 2012.[74] 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.

Section 8 revives, readopts, and amends s. 443.1117, F.S., to extend the duration of the temporary state extended benefits program. The section expired on April 5, 2010. When Congress extended the program in December 2010, Governor Crist signed Executive Order No. 10-276 extending the program. This bill codifies that executive order and revives the statute through January 4, 2012, in order for Floridians to be eligible for 100 percent federal funding for benefits for former private sector employees. Additionally, the bill conforms s. 443.1117, F.S., to federal law by putting into place the new "trigger" permitted.

This section is effective retroactive to December 17, 2010, and expires on January 4, 2012. The section contains an expiration date, because under the federal program, after January 4, 2012, any extended benefits paid will only be reimbursed by the federal government at a rate of 50 percent for former private sector employees making new claims. The bill sets a sunset date in enacting the program in order to take the best advantage of the program.

Section 9 clarifies that the temporary extended benefits will be available to unemployed Floridians who establish entitlement to extended benefits between December 17, 2010, and January 4, 2012.

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."[75] 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.

Section 10 amends s. 443.1216(1)(a), F.S., to allow the employee leasing company to report leased employees under the accounts of its clients for unemployment tax purposes only. The bill allows a one-time election to change an employee leasing company's reporting and contribution

[74] Pub. L. No. 111-312.
[75] Department of Business and Professional Regulation, definitions, available at http://www.myfloridalicense.com/dbpr/pro/emplo/codes.html (last visited 4/21/2011).

method. The leasing company is required to notify AWI or the tax collection service provider of such election and provide certain information. The election is binding on all clients of the leasing company, as well.

USDOL may find this provision causes the state to be out of conformity with federal law.

Appeals

Section 12 amends s. 443.151(4)(e), F.S., relating to appeals of decisions by the Unemployment Appeals Commission.

Generally, if an appellant files a notice of appeal with the commission, the commission files the appeal with the appropriate district court of appeal. The decision of where to file is based upon where the appeals referee was located and the decision was mailed.[76] An appeal must be filed within 30 days of the issuance of the commission's order.

The bill provides that appeals should be filed in the district court where the appellant is located: if claimant is appellant, then where the claimant resides; if business is the appellant, then where the business is located. If the claimant does not reside in Florida or the business is not located in Florida, then the appeal is filed where the order of the commission was issued.

Section 12 also amends s. 443.151(4)(b), F.S., to create a new subparagraph which codifies certain rules of AWI related to the exclusion of evidence that is irrelevant or repetitious,[77] and revises the admissibility of hearsay evidence to allow it to be used to establish a fact under certain circumstances.

Hearsay is generally disfavored in civil and criminal proceedings because of concerns about its reliability as secondhand information and the potential unfairness in not affording the party against whom it is offered an opportunity to question the declarant of the statements.[78] Thus, it is not immediately clear the extent to which courts will accept findings of fact in the administrative process if they are based on hearsay. The bill does specify that, in order for hearsay evidence to be used to support a finding of fact, there must be a reasonable opportunity for review of the evidence before the hearing, and the appeals referee must determine that the evidence is trustworthy and probative and that its admission serves the interests of justice.

Section 13 amends s. 443.171, F.S., to create a new subsection to create a rebuttable presumption that the date on a document mailed by AWI or its tax collection service provider (DOR) is considered the date the document was mailed, absent any evidence provided to the contrary.

Overpayments

Overpayments are UC benefits that cannot be charged against any employer's account. These costs are recovered through a non-charge factor that socializes the cost of the overpayments

[76] See Unemployment Appeals Commission, Appealing a UAC Order to a District Court of Appeal, available at http://www.uac.fl.gov/HowTo02.html (last visited 4/21/2011).
[77] 60BB-5.024, F.A.C.
[78] *See, e.g.*, Doersam v. Brescher, 468 So. 2d 427, 428 (Fla. 4th DCA 1985).

among all contributory employers who had benefit experience over the previous 3 years (discussed above in the Present Situation).

Section 12 amends s. 443.151(6), F.S., to create a provision which limits the amount of overpayments that AWI can attempt to collect from a claimant who receives benefits that she or he was not eligible to receive in a situation where notice of nonmonetary determination was not provided within 30 days of filing a new claim. The agency is limited to recollect of up to 5 weeks of benefits.

Payment of Benefits

Section 6 amends s. 443.111(1)(a), F.S., to eliminate the payment of benefits by mail. The bill provides, however, that individuals being paid by paper warrant on July 1, 2011, may continue to be paid in that manner until the expiration of the claim. Thus, under the bill, benefits may only be paid electronically, for example by direct deposit or the debit card program.

Other

Various sections of the bill also include changes correcting cross-references. Specifically, Section 7 amending s. 443.1115, F.S., is included for purposes of correcting a cross-reference.

Section 14 states that the Legislature finds that this act fulfills an important state interest.

Section 15 provides that this act shall take effect upon becoming law. Specifically, in the bill:

- Sections 3, 4, 5, 6, 7, 10, and 12 are effective July 1, 2011.
- Section 8 is effective upon becoming law and retroactive to December 17, 2010.

Other Potential Implications:

USDOL has broad oversight for the UC program, including determining whether a state law conforms to federal UC law and whether a state's administration of the UC program substantially complies with processes and procedures approved by USDOL. 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. When a state's UC law conforms to the requirements of the Social Security Act, the state is eligible to receive federal administrative grants to operate the state's UC program. When a state's UC law conforms to the requirements of the FUTA, employers in the state may receive a credit of up to 5.4 percent against the federal unemployment tax rate of 6.2 percent.

The Secretary of USDOL is responsible for determining if a state's UC law meets the requirements of federal law. Under FUTA, the secretary annually certifies the state's compliance with federal requirements and this certification ensures that employers in the state are eligible for the full credit against the federal unemployment tax.

USDOL may find various provisions of this CS to be out of conformity with federal law. If USDOL made such a finding, then it would not certify the state's UC program and could

withhold all administrative funding or cause the employer federal tax rates to increase to the total 6.2 percent because of loss of the entire FUTA tax credit.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Article VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

To the extent, this bill requires cities and counties to expend funds to pay state extended benefits for eligible former employees through the end of 2011, the provisions of Section 18(a), Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (see Section 14 of the bill) and one of the following relevant exceptions:

a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
c. The expenditure is required to comply with a law that applies to all persons "similarly situated," including state and local governments; or
d. The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

"Similarly situated" refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities. Because the bill would impact "all persons similarly situated," this exception appears to apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

On March 4, the Revenue Estimating Conference adopted the following consensus estimate for the fiscal impact of the committee substitute:

	State Trust			
	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash	FY 2014-15 Cash
UC Tax	(130.9)	(17.6)	(22.5)	32.9
Employer Interest Assessments	(1.7)	(7.4)	(7.2)	0
Installment Fees	.1	.1	.1	0

The conference estimated that, when analyzed together and compared to current law, the various changes to the unemployment compensation law made by the bill on balance will result in a reduction in unemployment tax revenues to the Unemployment Compensation Trust of approximately $131 million in fiscal year 2011-12. However, the conference estimated that by fiscal year 2014-15 there would be a net UC tax gain to the trust fund of approximately $33 million. The principal factor accounting for the reduction in the first fiscal year is the proposal to allow employers to continue to have the option to pay their taxes in installments over 2012, 2013, and 2014.

An employee leasing company is allowed, under the bill, to make a one-time election to change the way it reports for purposes of the UC tax, by reporting under the account of its clients. A company will likely decide to make this election only if it is financially advantageous to the company. However, while potentially lowering a leasing company's UC taxes, such election is likely to have some negative effect on the balance of the UC Trust Fund. By changing its reporting method, the taxes due to the UC Trust Fund are anticipated to be less than when the leasing company was reporting under its own tax account. Additionally such a change may result in an increase in socialized costs.

Because it is anticipated that the bill will reduce the amount of borrowing by the state from the federal government, the amount of interest paid by the state to the federal government will be reduced. In turn the assessments by the state against employers to recoup the interest payments will be reduced, resulting in an estimated reduction in the amount of interest due from employers of $1.7 million in fiscal year 2011-12 and more than $7 million in each of the two subsequent fiscal years.

The $5 administrative fee to participate in the installment payment program for UC taxes is a per-year fee. The amount of money generated from the fee depends on the number of businesses electing to participate. In 2010, out of 450,000 employers, about 10,342 elected to participate in this option (representing a total of $127 million in UC taxes).[79] However, due to the expected significant increases in the UC tax in future years, more employers may elect to participate in the installment option. The Revenue Estimating Conference estimated that $100,000 would be collected in administrative fees for each of the next three fiscal years, under the assumption that 10 percent of employers will participate in the installment payment program each year.

[79] Data from Department of Revenue, on file with the Senate Commerce and Tourism Committee.

B. Private Sector Impact:

Participation in the temporary state extended benefits program is expected to bring an estimated $650 million in additional benefits to Florida.[80] Payment of these benefits comes 100 percent from federal funds. There will be no cost to private employers and there will be no effect on their contribution rates. Benefits paid by public employers, non-profits, and other reimbursable employers are not covered by federal funds (see explanation below related to Government Sector Impact for impact on public employers).

Individuals applying for benefits may have to visit their local One-Stop Career Centers or other facilities that offer Internet access in order to apply for benefits. This will expose individuals to additional reemployment services available if they visit their local One-Stop Career Center.

Changes to the qualification and disqualification criteria for UC benefits may reduce the amount of benefits paid from the UC Trust Fund to unemployed individuals, which may reduce the amount of federal advances drawn down. Additionally, these changes may reduce the amount of federal emergency and federally funded temporary state extended benefits to such individuals.

C. Government Sector Impact:

To the extent that provisions of the bill impact the conformity of Florida's UC law with federal requirements, the federal funding provided to administer the UC program could be jeopardized.

The costs to implement the requirement to review that a claimant is actively seeking work will be proportionate to the extent of the verification services, which could be extensive. AWI has preliminarily estimated that the cost to implement this provision could be as much as $2.5 million, mostly due to the need to add additional positions to verify each claimant's information. Furthermore, because AWI has a limited amount of administrative resources from USDOL, allocation of funds to implement this requirement would reduce funds for other services. AWI indicated that computer programming that would be required as a result of changes made by the bill could be funded by currently available federal grants. However, the change made by the bill requiring that claims be filed over the Internet will result in reduced administrative costs to the agency of an amount undetermined at this time.

The Florida Ready to Work program was funded by $5.3 million in nonrecurring general revenue in FY 2010-11.[81] Increasing the use of the program may result in additional costs to the state. Currently, the Department of Education contracts with a private company to use its skills assessment, training, and credentialing program. State funding allows for a certain number of assessments and credentials under the contract. To the extent that another online education or training program must be developed, reviewed, approved,

[80] Estimate from the Agency for Workforce Innovation, on file with the Senate Commerce and Tourism Committee.
[81] See s. 2, ln. 111, ch. 2010-152, L.O.F.

and implemented to address non-English speaking claimants, there may be a fiscal impact to the state.

Additionally, currently to participate in the Florida Ready to Work program an individual must visit an assessment center in order to register with the program; not every county in Florida has an assessment center designated in it, and some assessment centers are not open to the public. Also, many regional workforce boards or One-Stop Career Centers are not Florida Ready to Work assessment centers. There may be additional costs incurred to create new assessment centers in counties or localities that do not currently have one, and to designate the regional workforce boards and One-Stop Centers as assessment centers in order to provide access to the program to UC claimants. The amount of such costs had not been determined at this time. To the extent that the initial skills review can be integrated into the process for applying for benefits, as the bill requires claims to be filed by the Internet, this may eliminate any potential costs of creating new assessment centers.

Related to the provisions of the bill that affect the tax, the Department of Revenue estimates the following costs to implement the employee leasing company reporting option: $234,540 in FY 2010-2011; and a recurring impact of $198,676.

The total cost in FY 2010-2011 includes:

- Related to the provisions which an employee leasing company to make a one-time election to change the way it reports:
  - $280 in nonrecurring costs for tax information publication printing and mailing;
  - $105,600 in nonrecurring costs to modify the SUNTAX system;
  - $113,152 in recurring and $15,508 in nonrecurring costs to hire 4 new revenue specialists III due to a predicted significant workload increase to process the reporting changes;
- DOR estimates that the necessary changes to modify the SUNTAX system to extend the installment payment program for UC taxes for 2012, 2013, and 2014 could be done in-house with existing resources.

The recurring cost of $198,676 is for the 4 new positions to process the employee leasing company elections.

The Unemployment Appeals Commission has indicated that the commission may incur increased costs due to changes made in the bill related to where appeals may be filed. Courts have held that the Unemployment Appeals Commission is prohibited from charging claimants for provision of a transcript or a copy of the record of the agency hearing in their unemployment cases, under s. 443.041(2)(a), F.S.[82] Thus, to the extent that appeals are filed in district courts of appeal that require or request a transcript automatically when a case is filed, the Unemployment Appeals Commission may incur additional costs. In 2010, the commission spent more than $51,000 to prepare transcripts for appeals filed in district courts of appeal. Also, to the extent that employees of the

[82] Gretz v. Florida Unemployment Appeals Commission, 572 So.2d 1384 (Fla. 1991).

commission are required to make personal appearances in court, the commission may incur additional expenses related to travel.

The commission also noted that, in cases in which appeals are initially filed with the commission and need to be forwarded to the appropriate district court of appeal, the commission may expend time to identify where the job separation occurred or the claimant's current address in order to determine the appropriate district court. Additionally, as a general proposition the commission noted that some of the revisions to qualifying requirements and disqualifying criteria under the bill (e.g., changes relating to misconduct) may result in an increase in the number of appeals, generating additional staff costs.

Eliminating payment of benefits by mail will result in administrative savings for AWI, in an amount undermined at this time.

Extended benefits for former state and local employees do not qualify for federal funding due to the fact that these entities are self-insured and the federal law does not allow for their participation in federal sharing. The temporary extended benefits for these former employees must be paid by the governmental entity. The extension enacted on December 17, 2010, is estimated to cost a total of $18.4 million, approximately $5.4 million from state funds and $13 million from local government funds.[83] In order to participate in federal sharing, the temporary state extended benefits program had to encompass unemployed individuals of both the private and public sectors.

VI. Technical Deficiencies:

The specific acts set forth in the definition of "gross misconduct," in Section 5 of the bill, do not include violation of an employer's written policy disallowing any drug use whatsoever, including the use of drugs while off the job or off duty. Further, while a disqualification for simple misconduct carries a penalty measured in weeks as well as an earnings requirement, disqualifications for gross misconduct only impose an earnings requirement.

The new disqualification for being unavailable for work due to incarceration or imprisonment raises due process concerns related to individuals who are incarcerated or imprisoned due to mistaken identity, for example.

VII. Related Issues:

Although this bill does not currently provide for a rate change, note that employers have already begun filing returns. On April 21, 2011, the Department of Revenue reported that 131,167 of 453,800 employer returns (29 percent) have already been filed using 2011 tax rates.[84] If rates are changed, the Department may be required to issue refunds.

[83] Estimates from the Agency for Workforce Innovation, on file with the Senate Commerce and Tourism Committee.
[84] Email from DOR, dated April 21, 2011, on file with the Budget Subcommittee on Finance and Tax.

VIII. Additional Information:

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

CS/CS by Judiciary on March 9, 2011:
The CS makes the following changes:

- Revises the statutory rule of construction and restores law as it existed in 2002, which provides that the chapter is to be liberally construed to accomplish its purpose to promote employment security;
- Adds an alternative to the requirement that a claimant contact five prospective employers each week, such that, for any week claimed, a claimant may report in-person to a One-Stop Career Center and meet with a center representative;
- Requires a claimant to report the date she or he reported to the One-Stop Career Center when claiming benefits;
- Removes the requirement for gross misconduct that the assault or battery be "criminal;"
- Makes an exception to the requirement that an employee who has committed insubordination or willful neglect must have received at least one written notice before the person can be disqualified from benefits when the action by the employee was severe;
- Eliminates payment of benefits through mail, but preserves electronic payments such as direct deposit and debit card;
- Clarifies that the one-time election allowed to an employee leasing company to change how it reports its leased employees applies only to unemployment taxes, and does not apply for any other purposes; and
- Eliminates duplicate reporting by a leasing company that makes the election to AWI or DOR.

CS by Commerce and Tourism on February 22, 2011:
Specifically the strike-all is different from the bill as filed in the following ways:

- Maximum Rate: The increase to the maximum rate is removed from the bill;
- Construction: In response to preliminary comments from the U.S. Department of Labor, removes the portion changing the construction of the chapter to neutrally construed;
- Earned Income: Includes back pay settlements, front pay, and front wages in the definition of earned income, and receipt of this income would reduce an individual's weekly benefit amount;
- Initial Skills Review: In response to preliminary comments from the U.S. Department of Labor, the CS:
  - Adds a definition of "initial skills review";
  - Requires participation in the "initial skills review" as part of the reporting requirements for benefits;
  - Allows for exceptions for individuals who are illiterate or have language barriers;

- Requires the workforce boards to use the initial skills reviews to develop a plan for referring individuals to training and employment opportunities;

- Actively Seeking Work/Work Search Requirements: The CS changes the provisions for actively seeing work to:
  - Require each claimant to report the name, address, and telephone number of each prospective employer contacted for each week of benefits claimed;
  - Require each claimant to contact at least five prospective employers;
  - Direct AWI to conduct random audits, to keep the estimated costs to the system at a reasonable level (including administrative dollars and personnel time to verify the information);
- Gross Misconduct: Specifies that for insubordination and willful neglect, that the employee has received at least one written warning from the employer;
- Suitable Work: Instead of creating new criteria, the bill now simply amends current law such that after 19 weeks of benefits, "suitable work" is work that pays minimum wage + 120% of the claimant's weekly benefit amount;
- Severance Pay: Specifies that the calculation is based upon the average wage that the individual received from the employer who paid the severance pay;
- Incarceration or Imprisonment: In response to preliminary comments from the U.S. Department of Labor, the bill is amended to disqualify an individual for any week in which the individual is unavailable for work due to incarceration or imprisonment;
- Employee Leasing Companies: In response to preliminary comments from the U.S. Department of Labor, and comments from DOR, the CS adds specificity:
  - Requires a reporting election be made by August 1, to allow DOR adequate time to process the election;
  - Requires specific information in the notification to DOR that the employee leasing company is going to change its reporting requirement, including:
    - A list of each client company and its unemployment account number;
    - A list of each client company's current and previous employees, and their respective social security numbers, for the prior 3-state fiscal years;
    - All wage data and benefit charges for the prior 3-state fiscal years;
  - Specifies that the election applies to all the employee leasing company's current and future clients;
  - Specifies that the employee leasing company has to remit the quarterly reports for each client and pay contributions by approved electronic means; and
  - Specifies that when a client leaves the employee leasing company, the client takes its wage and benefit history with it;
- Filing Claims: Requires claims to be filed by the Internet;
- Evidence: Codifies certain rules of AWI related to the exclusion of evidence that is irrelevant or repetitious, and revises the admissibility of hearsay evidence to allow it to be used to establish a fact under certain circumstances;
- Presumption of Mailing: Provides that the date on a document mailed by AWI or its tax collection service provider (DOR) is considered the date the document was mailed, absent any evidence provided to the contrary;
- Appeals: Simplifies the language related to appeals to specify that the appeal is filed in the district court where the appellant is located (if claimant is appellant, then where

the claimant resides; if business is the appellant, then where the business is located); and

- Effective Date: Changes the effective date of the bill to "upon becoming law," and specifies certain provisions to become effective July 1, 2011, to allow the agencies to implement them.

B. Amendments:

None.

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 Budget Committee

BILL:	SJR 2084
INTRODUCER:	Judiciary Committee
SUBJECT:	Repeal of Supreme Court Rule by General Law
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Boland/Maclure	Maclure	JU	**Favorable**
2.	Leadbeater	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

Currently under the State Constitution, the power to make rules of practice and procedure in all courts lies solely with the Supreme Court. The one caveat to that power is that the Legislature may, by a two-thirds vote of each house, enact general laws that repeal rules of court. This joint resolution proposes an amendment to the State Constitution to replace the provision requiring a "two-thirds vote of the membership of each house of the legislature" with one requiring a three-fifths vote to enact general laws repealing Supreme Court rules. Thus, the proposed amendment allows rules of court to be repealed by general law adopted by three-fifths of the membership of each house of the Legislature and further provides that the Supreme Court may not readopt a rule within three years after the rule has been repealed by general law.

The joint resolution amends Section 2, Article V of the Florida Constitution.

II. Present Situation:

Rules for Practice and Procedure

Section 2, Article V of the Florida Constitution provides that the Supreme Court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought.

Committees of The Florida Bar frequently draft, and propose to the Supreme Court, amendments to court rules of procedure. However, the Court has the sole power to adopt rules of the court for

the practice and procedure of law. A Florida statute states that when a rule is adopted by the Supreme Court concerning practice and procedure, and such rule conflicts with a statute, the rule supersedes the statutory provision.[1] Furthermore, the Florida Supreme Court has held that the Court has the exclusive power to create rules of practice and procedure and statutes that encroach on that power, if not merely incidental to substantive legislation, are unconstitutional under the notion of separation of powers.[2]

The Florida Supreme Court has defined substantive law as follows:

> Substantive law has been defined as that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer. It includes those rules and principles which fix and declare the primary rights of individuals with respect towards their persons and property.[3]

The Court has defined practice and procedure as follows:

> Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof.
>
> Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.[4]

Repeal of Court Rules by General Law

Section 2, Article V of the State Constitution articulates a check and balance on the Supreme Court's power to make rules of practice and procedure. Specifically, it provides that rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature. The provision is silent, however, on Supreme Court readoption of a rule repealed by general law.

Constitutional Amendments

Section 1, Article X of the State Constitution authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election

[1] Section 25.371, F.S.
[2] *Massey v. David*, 979 So. 2d 931, 937 (Fla. 2008).
[3] *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991) (internal citation omitted).
[4] *Allen v. Butterworth*, 756 So. 2d 52, 60 (Fla. 2000) (quoting *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65, 66 (Fla. 1972) (Adkins, J., concurring)).

held after the proposal has been filed with the Secretary of State's office, or at a special election held for that purpose. Section 5(e), Article XI of the State Constitution requires 60-percent voter approval for a constitutional amendment to take effect. An approved amendment will be effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.[5]

III. Effect of Proposed Changes:

The joint resolution proposes an amendment to Section 2, Article V of the Florida Constitution. The proposed amendment would replace the current constitutional requirement, that a general law repealing a rule of court must be enacted by a two-thirds vote of the membership of each house of the Legislature, with a requirement that a general law repealing a rule of court must be enacted by a three-fifths vote of the membership of each house of the Legislature. Furthermore, the proposed amendment adds a provision to the end of Article V, subsection 2(a) of the state constitution which would prohibit the Supreme Court from readopting a rule within three years after the rule has been repealed by general law.

The joint resolution provides four different ballot summaries. The first ballot summary directs that it will be placed on the ballot, and each subsequent ballot summary provides that it will be placed on the ballot in the event that a court declares the preceding ballot summary defective and the decision of the court is not reversed. This feature appears to have the effect of allowing the proposed amendment to survive up to three successful challenges to the amendment for a defective ballot summary.

An effective date for the amendment is not specified. Therefore, the amendment, if approved by the voters, will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.

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.

[5] FLA. CONST. art. XI, s. 5(e).

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the joint resolution is passed by the Legislature, the Department of State will bear the costs associated with twice publishing the proposed amendment and notice of the date of the election at which it will be submitted to electors in one newspaper of general circulation in each county in which a newspaper is published.[6] The department estimates that the cost for publication of a proposed constitutional amendment is $106.14 per word.

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.

[6] FLA. CONST. art. XI, s. 5(d).

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment to Amendment (849726) (with title amendment)

Delete lines 5 - 208
and insert:

Section 1. Section 215.444, Florida Statutes, is amended to read:

215.444 Investment Advisory Council.—

(1) There is created a six-member Investment Advisory Council to review the investments made by the staff of the Board of Administration and to make recommendations to the board regarding investment policy, strategy, and procedures. Beginning


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February 1, 2011, the membership of the council shall be expanded to nine members. Beginning July 1, 2011, council membership shall be reduced by not refilling council positions as the terms of the members expire until council membership consists of six members. The council shall meet with staff of the board at least once each quarter and shall provide a quarterly report directly to the Board of Trustees of the State Board of Administration at a meeting of the board.

(2) The members of the council shall be appointed by the board as a resource to the Board of Trustees of the State Board of Administration and shall be subject to confirmation by the Senate. These individuals shall possess special knowledge, experience, and familiarity with portfolio management, institutional investments, and fiduciary responsibilities. Members shall be appointed for 4-year terms. A vacancy shall be filled for the remainder of the unexpired term. The council shall annually elect a chair and a vice chair from its membership. A member may not be elected to consecutive terms as chair or vice chair.

(3) The council members must undergo regular fiduciary training as required by the board and must complete an annual conflict disclosure statement. In carrying out their duties, council members must make recommendations consistent with the fiduciary standards applicable to the board.

(4) The council may create subcommittees as necessary to carry out its duties and responsibilities.

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

And the title is amended as follows:

Delete lines 214 - 249

and insert:

amending s. 215.444, F.S.; reducing the number of members on the Investment Advisory Council; amending s. 215.4755, F.S.; correcting

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 Budget Committee

BILL:	SB 1182
INTRODUCER:	Senator Ring
SUBJECT:	State Board of Administration
DATE:	April 20, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	**Fav/1 amendment**
2.	Leadbeater	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill amends s. 215.44(1), F.S., to specify that the State Board of Administration does not need a trust agreement with a governmental entity to invest their assets in the Local Government Surplus Funds Trust Fund; these entities will instead be required to complete enrollment materials provided by the board. The bill clarifies that any investments done through a trust agreement are not restricted by the list of authorized investments. The bill also corrects cross references, and changes terminology used in certification and disclosure provisions.

This bill amends the following sections of the Florida Statutes: 215.44 and 215.4755.

II. Present Situation:

The State Board of Administration

The State Board of Administration (SBA) is comprised of the Governor, Chief Financial Officer and Attorney General.[1] The SBA manages thirty-six separate statutory investment portfolios, the

[1] Section 16, art. IX, Constitution of 1885, and continued by s. 9, art. IX, State Constitution, as revised in 1968 and subsequently amended.

largest one of which is the multi-employer Florida Retirement System. The SBA must invest and reinvest available funds of the System Trust Fund in accordance with the specified statutory provisions.[2] The System Trust Fund is the trust fund established by statute in the State Treasury for the purpose of holding and investing the contributions paid by members and employers and paying the benefits to which members or their beneficiaries may become entitled.[3] Other trust funds may be established in the State Treasury to administer the System Trust Fund. In making investments for the System Trust Fund the board may not make any investments not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement.[4]

The SBA also manages investments on behalf of the Hurricane Catastrophe Fund, the Florida Lottery, the Pre-Paid College Fund, its own separately constituted Division of Bond Finance, and pooled money market funds for local governments (Florida Prime), among others. Assets under management as of November 30, 2010, totaled $145.6 billion.

The Trustees and agency investment personnel are named fiduciaries for the management of funds under their control. As such, they must adhere to the duties of prudence, loyalty, sole and exclusive benefit in the discharge of their responsibilities. The SBA also houses a statutory Investment Advisory Council whose purpose is to provide the staff and Trustees with non-fiduciary advice on trends and conditions in the institutional investment marketplace. The SBA participates with its peer plans in a number of institutional investor organizations on matters affecting national and international finance.

Section 215.47, F.S., specifies the types of investments authorized for use by the SBA. Section 215.477, F.S., specifying the certification and disclosure requirements for investment advisors and managers, was created by House Bill 1307 in the 2010 Regular Session.[5]

III. Effect of Proposed Changes:

Section 1 amends s. 215.44(1), F.S., to specify that the State Board of Administration does not need a trust agreement with a governmental entity to invest their assets in the Local Government Surplus Funds Trust Fund created in s. 218.405, F.S. These entities will be required to complete enrollment materials provided by the board, which simplifies the investment process. The bill also amends subsection (3) to clarify that any investments done through a trust agreement are not restricted by the list provided in s. 215.47, F.S.

Section 2 amends s. 215.4755, F.S., to correct cross-references, replace the word "individual" with "employee at a broker-dealer firm," and deletes "perceived" from the types of conflicts of interest that must be disclosed, leaving "actual or potential" conflicts.

The bill takes effect July 1, 2011.

[2] Section 121.151, F.S.
[3] Section 121.021(36), F.S.
[4] Section 215.475(1), F.S.
[5] Section 11 of Chapter 2010-180, L.O.F.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

Barcode 849726 by Governmental Oversight and Accountability on April 5, 2011:
The amendment requires:

- The board to set salaries consistent with fiduciary duty, and requires a compensation study to be conducted;

- Setting minimum position requirements and compensation for the executive director position;
- The quarterly report to be presented to the Investment Committee;
- A investment committee consisting of seven members, instead of six, and specifies the appointment schedule and qualifications; and,
- The investment committee to approve investment policy statements.

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/05/2011	.	
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The Committee on Governmental Oversight and Accountability (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 18 - 59
and insert:
Section 1. Subsections (1), (2) and (3) of section 215.44, Florida Statutes, are amended to read:
215.44 Board of Administration; powers and duties in relation to investment of trust funds.—
(1) Except when otherwise specifically provided by the State Constitution and subject to any limitations of the trust agreement relating to a trust fund, the Board of Administration, sometimes referred to in this chapter as "board" or "Trustees of

the State Board of Administration," composed of the Governor as chair, the Chief Financial Officer, and the Attorney General, shall invest all the funds in the System Trust Fund, as defined in s. 121.021(36), and all other funds specifically required by law to be invested by the board pursuant to ss. 215.44-215.53 to the fullest extent that is consistent with the cash requirements, trust agreement, and investment objectives of the fund. Notwithstanding any other law to the contrary, the State Board of Administration may invest any funds of any state agency, any state university or college, any unit of local government, or any direct-support organization thereof pursuant to the terms of a trust agreement with the head of the state agency or the governing body of the state university or college, unit of local government, or direct-support organization thereof, ~~or pursuant to the enrollment requirements stated in s. 218.407,~~ and may invest such funds in the Local Government Surplus Funds Trust Fund created by s. 218.405, without a trust agreement, upon completion of enrollment materials provided by the board. The board shall approve the undertaking of investments subject to a trust agreement before execution of such trust agreement by the State Board of Administration. The funds and the earnings therefrom are exempt from the service charge imposed by s. 215.20. As used in this subsection, the term "state agency" has the same meaning as that provided in s. 216.011, and the terms "governing body" and "unit of local government" have the same meaning as that provided in s. 218.403.

(2)(a) The board shall have the power to make purchases, sales, exchanges, investments, and reinvestments for and on

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behalf of the funds referred to in subsection (1), and it shall be the duty of the board to see that moneys invested under the provisions of ss. 215.44-215.53 are at all times handled in the best interests of the state.

(b) In exercising investment authority pursuant to s. 215.47, the board may retain investment advisers or managers, or both, external to in-house staff, to assist the board in carrying out the power specified in paragraph (a).

(c) The board shall create an audit committee to assist the board in fulfilling its oversight responsibilities. The committee shall consist of three members appointed by the board. Members shall be appointed for 4-year terms. A vacancy shall be filled for the remainder of the unexpired term. The committee shall annually elect a chair and vice chair from its membership. A member may not be elected to consecutive terms as chair or vice chair. Persons appointed to the audit committee must have relevant knowledge and expertise as determined by the board. The audit committee shall serve as an independent and objective party to monitor processes for financial reporting, internal controls and risk assessment, audit processes, and compliance with laws, rules, and regulations. The audit committee shall direct the efforts of the board's independent external auditors and the board's internal audit staff. The committee shall periodically, but at least ~~not less than~~ quarterly, report to the board and the executive director of the board.

(d) The board shall produce a set of financial statements for the Florida Retirement System on an annual basis, which shall be reported to the Legislature and audited by a commercial independent third-party audit firm under the direction of the

audit committee.

(e) Pursuant to s. 110.205, the board shall establish and maintain the salaries and benefits of its officers and employees in a manner consistent with the board's fiduciary responsibility to recruit and retain highly qualified and effective key personnel. At least every 5 years, the Investment Committee shall cause a total compensation study to be conducted by a private consulting firm having expertise in salary and benefits administration of institutional investment entities. The study shall be designed to determine competitive salary ranges, other compensation, and benefits for positions within the board based on comparable public-sector peer investment entities. The committee shall present the total compensation study, along with its recommendations, to the board. The recommendations are subject to review and ratification or reversal by the board. The board may delegate to the executive director the authority and duty to set staff salaries within the ranges approved by the board.

(f) ~~(e)~~ The board shall meet at least quarterly and shall receive reports from the audit committee, the investment committee ~~advisory committee~~, ~~the inspector general, the general counsel,~~ the executive director, and such other persons or entities as the board may require about the financial status, operations, and investment activities of the board.

(3) Notwithstanding any law to the contrary, all investments made by the State Board of Administration pursuant to ss. 215.44-215.53 shall be subject to the restrictions and limitations contained in s. 215.47, except that investments made by the board under a trust agreement pursuant to subsection (1)

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are subject only to the restrictions and limitations contained in that trust agreement.

Section 2. Section 215.441, Florida Statutes, is amended to read:

215.441 Board of Administration; appointment of executive director.—The appointment of the executive director of the State Board of Administration is ~~shall be~~ subject to ~~the~~ approval by a majority vote of the Board of Trustees of the State Board of Administration, and the Governor must vote on the prevailing side. Such appointment must be reaffirmed in the same manner by the board of trustees on an annual basis.

(1) Before appointing the executive director, the board shall appoint a search committee to develop minimum position requirements, review applications, and make recommendations to the board with regard to qualified applicants for the position. At a minimum, the search committee shall consist of at least three members of the Investment Committee.

(2) The executive director shall, at a minimum, possess substantial experience, knowledge, and expertise in the oversight of investment portfolios and must meet any other requirements determined by the board to be necessary to the overall management and investment of funds.

(3) The compensation for the executive director shall be determined by the board, consistent with s. 215.44(2)(d).

Section 3. Subsection (1) of section 215.442, Florida Statutes, is amended to read:

215.442 Executive director; reporting requirements; public meeting.—

(1) Beginning October 2007 and quarterly thereafter, the


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executive director shall present to the Board of Trustees and the Investment Committee of the State Board of Administration a quarterly report to include the following:

(a) The name of each equity in which the State Board of Administration has invested for the quarter.

(b) The industry category of each equity.

Section 4. Section 215.444, Florida Statutes, is amended to read:

215.444 Investment Committee ~~Advisory Council~~.—

(1) ~~There is created~~ A seven-member ~~six-member~~ Investment Committee ~~Advisory Council~~ is created to review the investments made by the staff of the Board of Administration and to make recommendations to the board regarding investment policy, strategy, and procedures.

(2) Beginning February 1, 2011, the membership of the committee ~~council~~ shall be expanded to nine members. Beginning July 1, 2011, board membership shall be reduced by not refilling board positions as the terms of the members expire until board membership consists of seven members. Thereafter, each trustee shall appoint one member and one member shall be appointed by a unanimous vote of the trustees. Members shall be appointed for 4-year terms. A vacancy shall be filled for the remainder of the unexpired term. The committee shall annually elect a chair and a vice chair from its membership. A member may not be elected to consecutive terms as chair or vice chair. ~~The council shall meet with staff of the board at least once each quarter and shall provide a quarterly report directly to the Board of Trustees of the State Board of Administration at a meeting of the board.~~

~~(2) The members of the council shall be appointed by the~~


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~~board as a resource to the Board of Trustees of the State Board of Administration and shall be subject to confirmation by the Senate.~~

(3) In order to be appointed, an individual must ~~These individuals shall~~ possess special knowledge, experience, and familiarity with portfolio management, institutional investments, and fiduciary responsibilities, have been in a position that oversaw $1 billion in assets, and may have had extensive experience in managing or overseeing investment portfolios or conducting research in any two or more of the following areas: domestic equities, international equities, fixed-income securities, cash management, marketable and nonmarketable alternative investments, or real estate. ~~Members shall be appointed for 4-year terms. A vacancy shall be filled for the remainder of the unexpired term. The council shall annually elect a chair and a vice chair from its membership. A member may not be elected to consecutive terms as chair or vice chair.~~

(4) ~~(3)~~ The committee ~~council~~ members must undergo regular fiduciary training as required by the board and must complete an annual conflict disclosure statement. In carrying out their duties, ~~council~~ members must make recommendations consistent with the fiduciary standards applicable to the board.

(5) In addition to the duties in subsection (1), the committee shall approve the investment policy statements of the board, participate in the selection process regarding an executive director, obtain periodic compensation studies and provide recommendations thereon, meet quarterly to review the investment performance of funds, and perform any other duties as

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determined by the board. The committee shall meet with board staff at least once each quarter and provide a quarterly report directly to the board at a meeting of the board.

(6) The committee shall approve the investment policy statements of the board as provided in ss. 215.475, 121.4501(14), 215.5601(4)(a), and 218.409(2)(d), participate in the selection process regarding an executive director, obtain periodic compensation studies and provide recommendations thereon, meet at least quarterly to review the investment performance of funds, and perform any other duties as determined by the board. Decisions of the committee may be overturned only by a unanimous vote of the board. The committee shall meet with board staff at least once each quarter and provide a quarterly report directly to the board at a meeting of the board.

(7) ~~(4)~~ The committee ~~council~~ may create subcommittees as necessary to carry out its duties and responsibilities and may direct the executive director to enter into contracts with independent compensation consultants.

(8) In carrying out the provisions of this subsection, a member of the committee is an officer, employee, or agent of the state for purposes of the state's waiver of sovereign immunity as provided in s. 768.28.

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

And the title is amended as follows:

Delete lines 3 - 10

and insert:

amending s. 215.44, F.S.; authorizing the board to invest the assets of a governmental entity in the


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Local Government Surplus Funds Trust Fund without a trust agreement with that governmental entity; requiring the board to establish and maintain the salaries of its officers and employees in a manner consistent with its fiduciary duties; requiring that the Investment Committee initiate a study at specified intervals to evaluate compensation; requiring that the committee present the results of such study to the board; authorizing the board to delegate certain authority and duties relating to salaries to the executive director; revising the entities that submit reports to the board; providing that certain investments made by the board under a trust agreement are subject only to the restrictions and limitations contained in the trust agreement; amending s. 215.441, F.S.; providing for the creation, operation, and membership of a search committee for the purpose of selecting the executive director; providing requirements for the appointment as executive director; providing for the determination of the executive director’s compensation; amending s. 215.442, F.S.; requiring that the executive director present certain information quarterly to the Investment Committee; amending s. 215.444, F.S.; reducing the number of committee members and providing for the appointment of such members; expanding prerequisites for membership on the committee; providing additional duties of the committee; authorizing the committee to create subcommittees and


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direct the executive director to enter into certain contracts; providing that a committee member is an officer, employee, or agent of the state for the purpose of sovereign immunity; amending s. 215.4755, F.S.; correcting

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment

Delete lines 21 - 22
and insert:
WHEREAS, in the 8 months between May 1, 2010, and December 31, 2010, the national debt grew by more than $1 trillion, and as of April 1,

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 Budget Committee

BILL:	SCR 4
INTRODUCER:	President Haridopolos
SUBJECT:	Balanced Federal Budget
DATE:	April 12, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Diez-Arguelles	Meyer, C.	BC	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Through this concurrent resolution, the Legislature calls upon Congress to convene a constitutional convention under article V of the U.S. Constitution for the purpose of proposing amendments to the Constitution to achieve and maintain a balanced federal budget. The concurrent resolution specifies that it is revoked and withdrawn, nullified, and superseded if it is used for the purpose of calling or conducting a convention to amend the U.S. Constitution for any other purpose.

II. Present Situation:[1]

Conventions as Method of Proposing Amendments to U.S. Constitution

The Constitution of the United States prescribes two methods for proposing amendments to the document. Under the first method, Congress – upon the agreement of two-thirds of both houses – may propose an amendment itself. Under the second, Congress – upon application from legislatures in two-thirds of the states – "shall call a Convention for proposing Amendments."[2]

[1] The Present Situation section of this analysis relies in large part on the Bill Analysis and Fiscal Impact Statement prepared by the staff of the Senate Judiciary Committee for Senate Concurrent Resolution 10 (Reg. Sess. 2010)

[2] U.S. CONST. art. V. By comparison, the Florida Constitution provides the following methods for proposing amendments to the document: by joint resolution agreed to by three-fifths of the membership of each house of the Legislature (FLA. CONST. art. XI, s. 1); by constitutional revision commission (FLA. CONST. art. XI, s. 2); by citizen initiative (FLA. CONST. art. XI, s. 3); by a constitutional convention to consider revision to the entire document called by the people of the state (FLA. CONST. art. XI, s. 4); and by a taxation and budget reform commission (FLA. CONST. art. XI, s. 6). Regardless of the method by which an amendment to the Florida Constitution is proposed, the amendment must be approved by at least 60 percent of the electors voting on the measure (FLA. CONST. art. XI, s. 5(e)).

Under either method, Congress is authorized to specify whether the amendment must be ratified by the legislatures of three-fourths of the states or by conventions in three-fourths of the states.[3]

Legal scholarship notes that the convention method for proposing amendments to the U.S. Constitution emerged as a compromise among "Founding Fathers" who disagreed on the respective roles of Congress and the states in proposing amendments to the document. Although some participants in the Philadelphia Convention of 1787 argued that Congress' concurrence should not be required to amend the Constitution, others argued that Congress should have the power to propose amendments, and the states' role should be restricted to ratification.[4] The language ultimately agreed upon, and which became article V of the U.S. Constitution, states:

> *The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.*

Despite the fact that over time states have made at least 400 convention applications to Congress on a variety of topics,[5] the constitutional convention method of proposing amendments has never been fully employed and, as authors have noted, occupies some unknown legal territory. Some of the legal questions surrounding the method relate to whether Congress has discretion to call a convention once 34 states make application; whether the scope of a convention may be limited to certain subject matters and by whom; and how applications from the states are to be tallied – "separately by subject matter or cumulatively, regardless of their subject matter."[6]

Over time, some states have rescinded applications, in part amid concerns that the scope of a constitutional convention could extend to subjects beyond the subject proposed in a given state's application. For example, in 2003 the Arizona Legislature adopted a concurrent resolution that "repeals, rescinds, cancels, renders null and void and supersedes any and all existing applications to the Congress … for a constitutional convention … for any purpose, whether limited or general."[7] Article V of the U.S. Constitution is silent on the legal effect of a state's decision to rescind a previously submitted application.

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[3] U.S. CONST. art. V.
[4] James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L. & PUB. POL'Y 1005, 1006-07 (2007).
[5] *Id*. at 1005. The author cites this figure as of 1993.
[6] *Id.*
[7] Senate Concurrent Resolution 1022, State of Arizona, Senate, Forty-sixth Legislature (First Reg. Sess. 2003) (copy on file with the Florida Senate Committee on Judiciary). The concurrent resolution notes that "certain persons or states have called for a constitutional convention on issues that may be directly in opposition to the will of the people of this state." *Id.*

Calls for a Constitutional Convention on a Balanced Federal Budget

One of the country's most significant movements toward activation of the constitutional convention method of proposing an amendment to the U.S. Constitution occurred starting in the mid-1970s, when eventually 32 states adopted measures, of varying forms, urging Congress to convene a constitutional convention to address federal budget deficits.[8] Depending upon the manner of tallying applications, that count was two short of the 34 state applications necessary under article V of the U.S. Constitution.

Florida's 1976 Convention Application

Florida participated in that movement, when in 1976 the Legislature adopted Senate Memorial 234. Through that memorial, the Legislature made "application to the Congress of the United States … to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."[9]

That same year, the Legislature adopted House Memorial 2801, through which the Legislature also made application to Congress for a convention to consider an amendment to the U.S. Constitution requiring a balanced federal budget. Unlike Senate Memorial 234, House Memorial 2801 prescribed the precise language of the proposed constitutional amendment. Among other provisions, the proposed amendment stated:

> *[T]he Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues of the United States for such fiscal year. … There shall be no increase in the national debt, and the existing debt, as it exists on the date which this amendment is ratified, shall be repaid during the one hundred-year period following the date of such ratification.*

The proposed constitutional language also authorized Congress to suspend the requirement for a balanced budget in times of national emergency, as identified by a concurrent resolution of three-fourths of the membership of the U.S. Senate and the U.S. House of Representatives.

House Memorial 2801 further specified that "the purview of any convention called by the Congress pursuant to this resolution [shall] be strictly limited to the consideration" of a balanced-budget amendment. In addition, the Legislature resolved that the 1976 application for a constitutional convention "constitutes a continuing application … until such time as two-thirds of the Legislatures of the several states have made similar application, and the convention herein applied for is convened."[10]

[8] E. Donald Elliott, *Constitutional Conventions and the Deficit*, 1985 DUKE L.J. 1077, 1078 (1985).
[9] Senate Memorial 234 (Reg. Sess. 1976).
[10] House Memorial 2801 (Reg. Sess. 1976).

Florida's 1988 Request to Congress

In 1988, the Legislature adopted a measure urging congressional action related to the federal budget deficit. Adopted by both chambers, Senate Memorial 302, rather than making application for a constitutional convention, urged Congress to use its own power to propose an amendment to the U.S. Constitution requiring the federal budget to be in balance except under specified emergencies.

The memorial specified that it superseded "all previous memorials applying to the Congress of the United States to call a convention to propose an amendment to the Constitution of the United States to require a balanced federal budget," including the two memorials passed in 1976. The 1988 memorial further specified that the previous memorials were "revoked and withdrawn."[11]

Florida's 2010 Application to Congress

In 2010, the Legislature again adopted a measure making application to Congress for a constitutional convention. Senate Concurrent Resolution 10 asked Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States "to achieve and maintain a balance budget," and "to control the ability of the Congress and the various federal executive agencies to require states to expend funds." Like previous requests to Congress, the concurrent resolution stated that it superseded all previous memorials applying to Congress to call a constitutional convention.[12]

State Balanced-Budget Requirements

Although it noted that there is not agreement on what is meant by a "balanced budget," the National Conference of State Legislatures reported in 2004 that 49 states "have at least a limited statutory or constitutional requirement of a balanced budget."[13] Florida's requirement is prescribed in article VII, section 1 of the Florida Constitution. The constitution requires that "[p]rovision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period."[14] Among other elements, the implementing statute, s. 216.221, F.S., provides that all appropriations shall be maximum appropriations, based on the collection of sufficient revenue. In addition, "[i]t is the duty of the Governor, as chief budget officer, to ensure that revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund."[15]

Section 215.98, F.S., provides that the "Legislature shall not authorize the issuance of additional state tax-supported debt if such authorization would cause the designated benchmark debt ratio

[11] Senate Memorial 302 (Reg. Sess. 1988).
[12] Senate Concurrent Resolution 10 (Reg. Sess. 2010).
[13] Nat'l Conference of State Legislatures, *State Balanced Budget Requirements: Provisions and Practice* (updated 2004), http://www.ncsl.org/IssuesResearch/BudgetTax/StateBalancedBudgetRequirementsProvisionsand/tabid/12651/Default.aspx (last visited Mar. 7, 2010).
[14] FLA. CONST. art VII, s. 1(d).
[15] Section 216.221(1), F.S.

of debt service to revenues available to pay debt service to exceed 7 percent unless" it finds that the additional debt is necessary to address a critical state emergency.[16]

Federal Budget Deficit and National Debt

The Congressional Budget Office (CBO) estimates that the federal budget deficit will be approximately $1.5 trillion for fiscal year 2011, assuming current law and policies remain unchanged.[17] According to the CBO:

> *The resulting federal budget deficit of nearly $1.5 trillion projected for this year will equal 9.8 percent of GDP, a share that is nearly 1 percentage point higher than the shortfall recorded last year and almost equal to the deficit posted in 2009, which at 10.0 percent of GDP was the highest in nearly 65 years.*[18]

The CBO projects deficits ranging from $600 to $800 billion per year over the 2012-2021 period.[19]

In turn, the deficits will cause federal debt held by the public to increase significantly. As of April 12, 2011, the federal government's Total Public Debt Outstanding is estimated to be $14.3 trillion. Of this amount, $9.7 trillion is debt held by the public and $4.6 trillion is debt held by government trust funds.[20] For comparison purposes, on April 12, 2001, ten years ago, Total Public Debt Outstanding was estimated to be $5.8 trillion.[21] Finally, during a recent 8-month period, from May 1, 2010 to December 31, 2010, Total Public Debt Outstanding grew by more than $1 trillion.[22]

III. Effect of Proposed Changes:

Through this concurrent resolution, the Legislature makes application to the Congress of the United States to call a convention under article V of the U.S. Constitution for the sole purpose of proposing an amendment to the Constitution to achieve and maintain a balanced budget.

The concurrent resolution does not contain specific constitutional language; however, it proposes achieving and maintaining a balanced federal budget by, among other things:

(1) Requiring that total outlays not exceed total receipts for any fiscal year;

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[16] Section 215.98(1), F.S.
[17] Congressional Budget Office, Congress of the United States, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021, Summary* (Jan. 2011), http://www.cbo.gov/ftpdocs/120xx/doc12039/SummaryforWeb.pdf
[18] *Id.*
[19] *Id.*
[20] TreasuryDirect, *The Debt to the Penny and Who Holds It*, http://www.treasurydirect.gov/NP/BPDLogin?application=np (last visited April 14, 2011). TreasuryDirect is a financial services website through which a person may purchase and redeem securities directly from the U.S. Department of the Treasury in paperless electronic form. TreasuryDirect is a service of the U.S. Department of the Treasury Bureau of the Public Debt. See TreasuryDirect, *About TreasuryDirect*, http://www.treasurydirect.gov/about.htm (last visited April 14, 2011).
[21] *Id.*
[22] *Id.*

(2) Requiring the setting of a fiscal year total outlay limit;

(3) Prohibiting increases in taxes or other revenue sources;

(4) Providing that, for reasons other than war or military conflict, the limits of this amendment may be waived by law for any fiscal year if approved by at least two-thirds of both houses of Congress;

(5) Allowing for provisions of the amendment to take effect within specified time periods;

(6) Providing for the waiver of the provisions of the amendment for any fiscal year in which a declaration of war is in effect or the United States is engaged in military conflict that causes an imminent and serious military threat to national security; and

(7) Allowing for congressional enforcement.

The concurrent resolution specifies that it supersedes all previous memorials and concurrent resolutions applying to Congress for a constitutional convention for the purpose of proposing a balanced budget amendment to the U.S. Constitution, including the memorials and concurrent resolutions adopted in 1976, 1988, and 2010. The concurrent resolution provides that the previous memorials and resolutions are "revoked and withdrawn, nullified, and superseded to the same effect as if they had never been passed."

In addition, the concurrent resolution specifies that it is similarly revoked and withdrawn, nullified, and superseded if it is used for the purpose of calling or conducting a convention to amend the U.S. Constitution for any purpose other than requiring a balanced federal budget. Under the Senate rules, a concurrent resolution must be read twice, passed by both houses of the Legislature, and signed by the presiding officers.[23]

Other Potential Implications:

Unlike Florida, which has a constitutional requirement for raising sufficient revenue to defray the expenses of the state in each fiscal year, the U.S. Constitution does not contain a requirement for a balanced federal budget. Amending the U.S. Constitution to require a balanced federal budget would represent a fundamental change in federal fiscal policy and practice and would undoubtedly affect decisions ranging from the nature and quantity of government expenditures to the sources and level of revenue generation. The potential implications for government at all levels and for private citizens and businesses are difficult to quantify but likely to be significant.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[23] The Florida Senate, *Manual for Drafting Legislation*, 129 (6th ed. 2009); *see also* Rule 4.13, *Rules and Manual of the Senate of the State of Florida, Senator Mike Haridopolos, President, 2010-2012.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This concurrent resolution makes an application to Congress under article V of the U.S. Constitution for a convention to propose amendments to the Constitution requiring a balanced federal budget. See the "Present Situation" section of this bill analysis for a discussion of the convention as a method of proposing amendments to the Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The concurrent resolution itself does not directly affect the private sector fiscally. However, to the extent applications from the states to Congress for a constitutional convention ultimately result in amendments to the U.S. Constitution requiring a balanced federal budget, the private sector may be affected by budgetary and economic changes stemming from the constitutional changes.

C. Government Sector Impact:

The concurrent resolution itself does not directly affect state government or local governments fiscally. However, to the extent applications from the states to Congress for a constitutional convention ultimately result in amendments to the U.S. Constitution requiring a balanced federal budget, the government sector may be affected by budgetary and economic changes stemming from the constitutional changes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Senate Concurrent Resolution 1558 has also been filed during the 2011 Regular Session. That resolution makes application to Congress for a convention to propose the following amendment to the U.S. Constitution:

Any provision of law or regulation of the United States may be repealed by the several states, and such repeal shall be effective when the

legislatures of two-thirds of the several states approve resolutions for this purpose that particularly describe the same provision or provisions of law or regulation to be repealed.

The resolution also states that "the State of Florida reserves its right to add future amendments as the Legislature deems warranted to this application."

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.

405692

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete line 67

and insert:

equipment. Each utility shall purchase the excess electrical output at a price determined by the commission to be fair and reasonable for rooftop solar electrical output and the price deemed prudent for purposes of cost recovery. A utility may recover all prudently incurred costs of purchasing excess rooftop or other on-site solar electrical output under the environmental cost-recovery clause provisions of s. 366.8255. The electric utility in whose service area a

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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 5
and insert:
equipment within its service area; requiring each utility to purchase excess electrical output at a price determined by the commission to be fair and reasonable and the price is deemed prudent for the purpose of cost recovery; providing for recovery of all prudently incurred costs by a utility under the environmental cost-recovery clause; amending s. 366.82,

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 219 - 221

and insert:

resources other than solar energy. If a provider opts to develop renewable energy pursuant to this subsection, at least 20 percent of the total capacity for which a provider is permitted to recover costs in any calendar year under this subsection must be purchased renewable energy from a generating facility located in the state.

Between lines 325 and 326

875378

insert:

(k) Each provider shall purchase renewable energy pursuant to a standard form contract for the purchase of renewable energy from different types of renewable energy facilities located in the state.

1. The price paid for renewable energy purchased through a standard form contract shall be expressed in a levelized, or constant, price per kilowatt hour for the term of the contract. The price shall be fair and reasonable as determined by the commission and is deemed prudent for the purposes of cost recovery.

2. The commission shall set the terms and conditions of the standard form contract before such contract may be issued.

3. The commission shall set the term of a minimum of 20 years and a maximum of 30 years for the standard form contract.

========== 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:

reports; requiring each provider to purchase renewable energy pursuant to a standard form contract; providing conditions; requiring the commission to set the terms and conditions of the standard for contract; providing criteria; creating s. 366.95, F.S.; providing for the

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Alexander) recommended the following:

Senate Amendment

Delete lines 232 - 271
and insert:
(c) A provider may file a petition with the commission for approval of cost recovery after the completion of construction of a new renewable energy project, the completion of the conversion of an existing facility to renewable energy production, or the completion of a purchase of renewable energy.
(d)1. As part of the cost-recovery proceedings, the provider must report to the commission the construction costs, the in-service costs, the operating and maintenance costs, the hourly energy production of the renewable energy project, and

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any other information deemed relevant by the commission. The commission shall review all information, determine whether the costs meet the requirements of this subsection and whether they were reasonably and prudently incurred, and approve the recovery of costs meeting these criteria, which may be recovered under the environmental cost-recovery clause provisions of s. 366.8255.

2. The commission must allow full cost recovery over the entire useful life of the Florida renewable energy resource of the revenue requirements using traditional declining balance amortization of all reasonable and prudently incurred costs, including, but not limited to, the following:

a. The siting, licensing, engineering, design, permitting, construction, operation, and maintenance of a renewable energy facility and associated transmission facilities by the provider. For purposes of this paragraph, the term "cost" includes, but is not limited to, all capital investments, including rate of return, and any applicable taxes and all expenses, including operation and maintenance expense;

b. The costs associated with the purchase of capacity and energy from new renewable energy resources; and

c. The costs for conversion of an existing fossil fuel generating plant to a renewable energy facility, including the costs of retirement of the fossil fuel generation plant.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Alexander) recommended the following:

Senate Amendment

Delete lines 272 - 277

and insert:

(e) The average cost per kilowatt hour of producing or purchasing renewable energy in any calendar year may not be greater than the producer's average retail rate per kilowatt hour.

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 Budget Committee

BILL:	CS/SB 2078
INTRODUCER:	Communications, Energy, and Public Utilities Committee
SUBJECT:	Energy
DATE:	April 19, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Fav/CS**
2.	Betta/Pigott	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill contains provisions relating to renewable energy, energy conservation, and economic development. In the short term, it allows an investor-owned utility to recover the costs of renewable energy projects. If a utility chooses to do so, at least twenty-five percent of the total renewable energy capacity must be from renewable energy resources other than solar energy. Total costs for a utility in any calendar year cannot exceed two percent of the utility's total revenue from retail sales of electricity for the calendar year 2010. Each utility receiving cost recovery must annually report on the costs and benefits of the projects, including the number of jobs created.

For the long term, the bill establishes a process for creating a state energy resources plan which will incorporate renewable energy into the existing planning process and electricity generation fleet in a strategic and economical way.

The bill requires each public utility to conduct a free energy audit of the business structures of each commercial customer within its service territory. The bill requires the Department of Management Services (DMS) to develop and implement a prioritized list of buildings on which to perform energy audits and economical, energy-saving retrofits.

Finally, the bill transfers the Florida Energy and Climate Commission by a type two transfer to the new Florida Energy Office which is statutorily created as an independent office within the Department of Environmental Protection (DEP). The office is to be headed by a director appointed by the Governor and confirmed by the Senate. The office is established to be the principle economic development organization for the state on matters relating to renewable, alternative, or clean energy.

The bill provides an effective date of July 1, 2011.

This bill amends the following sections of the Florida Statutes: 366.02, 366.82, 255.252, 366.92, and 377.6015.

The bill creates section 366.95, Florida Statutes.

II. Present Situation:

Renewable energy, pricing, and cost recovery

Currently, electricity produced by use of renewable energy technology costs more than that produced by traditional means. Any additional value renewable energy has over that produced by traditional means is due to a societal benefit of having electricity produced by use of renewable energy instead of the traditional fuels and technologies. The current statutory statements relating to societal benefits of renewable energy are:

- The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.[1]
- It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.[2]

The statutes on retail pricing of electricity require that rates be "fair and reasonable" for customers, or ratepayers,[3] and "just, reasonable, and compensatory" as to the utility.[4] As a result, when a statute requires that a utility purchase electricity from a non-utility and pass the costs on to its customers,[5] the purchase is at the purchasing utility's "full avoided costs," defined as "the

[1] s. 366.91(1), F.S.
[2] s. 366.92(1), F.S.
[3] s. 366.03, F.S.
[4] s. 366.041, F.S.
[5] ss. 366.051 and 366.91(3), F.S.

incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase . . . such utility would generate itself or purchase from another source."[6] Thus, the renewable energy is purchased at the purchasing utility's cost to produce the energy using traditional means, with no regard for any value of any societal benefit the renewable energy may have.

Subsection 366.92(3), F.S., requires the Public Service Commission (PSC) to adopt rules for a renewable portfolio standard (RPS) requiring each provider[7] to supply renewable energy to its customers either by producing it, by purchasing renewable energy itself, or by purchasing renewable energy credits.[8] The rule is not to be implemented until ratified by the Legislature. The commission was required to, and did, present a draft rule for legislative consideration by February 1, 2009. The Legislature did not ratify the rule. A bill modeled on the rule, 2009 SB 1154, passed the Senate but died in the House.

Subsection 366.92(4), F.S., provides that, in order to demonstrate the feasibility and viability of clean energy systems, the commission must provide for full cost recovery of all reasonable and prudent costs incurred for investor-owned utility (IOU) renewable energy projects meeting specified criteria, up to a total of 110 megawatts statewide. To obtain cost recovery, the projects must be zero greenhouse gas emitting at the point of generation, the provider must have secured necessary land, zoning permits, and transmission rights within the state, and the provider must file for cost recovery no later than July 1, 2009. The costs are to be deemed reasonable and prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility. The provider must report to the commission as part of the cost-recovery proceedings the construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy project, and any other information deemed relevant by the commission. This authorization resulted in three solar projects by Florida Power and Light: a 25 megawatt solar photovoltaic project in Desoto County; a 75 megawatt solar thermal project co-located with an existing combined-cycle power plant in Martin County; and a 10 megawatt solar photovoltaic project located at Kennedy Space Center.

Section 366.8255, F.S., provides for IOU recovery of costs of compliance with environmental laws or regulations through a recovery clause instead of base rates.

[6] Section 366.051, F.S. Section 366.051, F.S. requires such purchases to encourage conservation, sections 366.91 and 366.92 to encourage increased use of renewable energy.

[7] The term "provider" is defined in paragraph 366.92(2)b. as a "utility" as defined in s. 366.8255(1)(a), which in turn is defined as "any investor-owned electric utility (IOU) that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter."

[8] The term "renewable energy credit is defined in paragraph 366.93(2)(d) as "a product that represents the unbundled, separable, renewable attribute of renewable energy produced in Florida and is equivalent to 1 megawatt-hour of electricity generated by a source of renewable energy located in Florida." This credit is a method of separating-out and quantifying the value of the societal benefit, so that this value can be recovered separate from the sale of the electricity itself.

Energy conservation and audits

Section 366.82(11), F.S., provides that the PSC must require each utility[9] to offer, or to contract to offer, energy audits to its residential customers. The requirement need not be uniform, and may be based on such factors as level of usage, geographic location, or any other reasonable criterion, so long as all eligible customers are notified. The commission may extend this requirement to some or all commercial customers.

The commission is to set the charge for audits by rule, not to exceed the actual cost, and may describe by rule the general form and content of an audit. Each IOU is to estimate its costs and revenues for audits, conservation programs, and implementation of its plan for the immediately following 6-month period, and reasonable and prudent unreimbursed costs projected to be incurred may be added to the rates which would otherwise be charged by a utility upon approval by the PSC. Following each 6-month period, each utility must report to the PSC the actual results for that period, and the difference, if any, between actual and projected results must be taken into account in succeeding periods.

Section 255.252(5), F.S., enacted in 2008,[10] requires that each state agency occupying space within buildings owned or managed by the DMS identify and compile a list of projects determined to be suitable for a guaranteed energy, water, and wastewater performance savings contract pursuant to s. 489.145.[11] The list of projects compiled by each state agency must be submitted to the DMS by December 31, 2008, and must include all criteria used to determine suitability. The list of projects must be developed from the list of state-owned facilities more than 5,000 square feet in area and for which the state agency is responsible for paying the expenses of utilities and other operating expenses as they relate to energy use. In consultation with the head of each state agency, by July 1, 2009, the department must prioritize all projects deemed suitable by each state agency and must develop an energy-efficiency project schedule based on factors such as project magnitude, efficiency and effectiveness of energy conservation measures to be implemented, and other factors that may prove to be advantageous to pursue. The schedule must provide the deadline for guaranteed energy, water, and wastewater performance savings contract improvements to be made to the state-owned buildings.

Electricity system resource planning

Ten-year site plan

Section 186.801, F.S, requires each electric utility to submit to the Public Service Commission a 10-year site plan estimating its power-generating needs and the general location of its proposed power plant sites. The plan must be reviewed and submitted no less frequently than every 2 years.

[9] The term "utility" is defined, for purposes of the Florida Energy Efficiency and Conservation Act, ss. 366.80-366.85 and 403.519, to mean any entity of whatever form which provides electricity at retail to the public, specifically including municipalities and cooperatives but specifically excluding any municipality or cooperative whose annual sales as of July 1, 1993, to end-use customers were less than 2,000 gigawatt hours. s. 366.82(1)(a), F.S.

[10] Section 17 of chapter 2008-227, Laws of Florida.

[11] This statute provides a process by which an agency may enter into a contract with a third party that guarantees savings to the agency relating to either energy, water, or wastewater costs.

Within nine months after the receipt of the proposed plan, the commission must make a preliminary study of the plan, must consider the plan as a planning document, and must review:

- The need, including the need as determined by the commission, for electrical power in the area to be served.
- The effect on fuel diversity within the state.
- The anticipated environmental impact of each proposed electrical power plant site.
- Possible alternatives to the proposed plan.
- The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.
- The extent to which the plan is consistent with the state comprehensive plan.
- The plan with respect to the information of the state on energy availability and consumption.

Within this nine-month timeframe, the commission must classify the plan as either "suitable" or "unsuitable." It also may suggest alternatives to the plan.

All findings of the commission must be made available to the DEP for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, constitutes an amendment to the 10-year site plan.

In order to enable it to carry out its duties under this section, the commission may, after hearing, establish a study fee not to exceed $1,000 for each proposed plan studied. The commission also may adopt rules governing the method of submitting, processing, and studying the 10-year plans.

Determination of need for a proposed power plant

Sections 403.501 through 403.518, F.S., known as the Florida Electrical Power Plant Siting Act, requires that anyone intending to site (that is to locate and, by implication, construct and operate) an electrical power plant do so pursuant to the procedures set forth in the act. Paragraph 403.503(14), F.S., defines the term "electrical power plant" to mean, in the relevant part, "any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act."

Section 403.519, F.S., requires that the PSC make a determination of need for any proposed electrical power plant. In making its determination, the PSC is to consider:

- The need for electric system reliability and integrity.
- The need for adequate electricity at a reasonable cost.

- The need for fuel diversity and supply reliability.
- Whether the proposed plant is the most cost-effective alternative available.
- Whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

The Florida Energy and Climate Commission and the Energy Office

Section 377.6015, F.S., creates the Florida Energy and Climate Commission (FECC) within the Executive Office of the Governor. The FECC consists of nine members, seven appointed by the Governor, one appointed by the Commissioner of Agriculture, and one appointed by the Chief Financial Officer. Each appointment is made from a list of three persons nominated by the Florida Public Service Commission Nominating Council. Members are appointed to 3-year terms. The Governor selects the chair. Appointments are subject to confirmation by the Senate during the next regular session after the vacancy occurs.

The chair may designate the following ex officio, nonvoting members to provide information and advice to the FECC at the request of the chair:

- The chair of the PSC, or his or her designee.
- The Public Counsel, or his or her designee.
- A representative of the Department of Agriculture and Consumer Services.
- A representative of the Department of Financial Services.
- A representative of the Department of Environmental Protection.
- A representative of the Department of Community Affairs.
- A representative of the Board of Governors of the State University System.
- A representative of the Department of Transportation.

Members must meet the following qualifications and restrictions:

- A member must be an expert in one or more of the following fields: energy, natural resource conservation, economics, engineering, finance, law, transportation and land use, consumer protection, state energy policy, or another field substantially related to the duties and functions of the FECC and the FECC must fairly represent these fields.
- Each member must, at the time of appointment and at each FECC meeting during his or her term of office, disclose:
- Whether he or she has any financial interest, other than ownership of shares in a mutual fund, in any business entity that, directly or indirectly, owns or controls, or is an affiliate or subsidiary of, any business entity that may be affected by the policy recommendations developed by the FECC.
- Whether he or she is employed by or is engaged in any business activity with any business entity that, directly or indirectly, owns or controls, or is an affiliate or subsidiary of, any business entity that may be affected by the policy recommendations developed by the FECC.

Members serve without compensation but are entitled to reimbursement for per diem and travel expenses. Meetings may be held in various locations around the state and at the call of the chair; however, the FECC must meet at least six times each year.

The FECC is authorized to:

- Employ staff and counsel as needed in the performance of its duties.
- Prosecute and defend legal actions in its own name.
- Form advisory groups consisting of members of the public to provide information on specific issues.

The FECC is required to:

- Administer the Florida Renewable Energy and Energy-Efficient Technologies Grants Program pursuant to s. 377.804 to assure a robust grant portfolio.
- Develop policy for requiring grantees to provide royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant.
- Administer the Florida Green Government Grants Act pursuant to s. 377.808 and set annual priorities for grants.
- Administer the information gathering and reporting functions pursuant to ss. 377.601-377.608.
- Administer petroleum planning and emergency contingency planning pursuant to ss. 377.701, 377.703, and 377.704.
- Represent Florida in the Southern States Energy Compact pursuant to ss. 377.71-377.712.
- Complete the annual assessment of the efficacy of Florida's Energy and Climate Change Action Plan, upon completion by the Governor's Action Team on Energy and Climate Change pursuant to the Governor's Executive Order 2007-128, and provides specific recommendations to the Governor and the Legislature each year to improve results.
- Administer the provisions of the Florida Energy and Climate Protection Act pursuant to ss. 377.801-377.806.
- Advocate for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions.
- Be a party in the proceedings to adopt goals and submit comments to the Public Service Commission pursuant to s. 366.82.
- Adopt rules pursuant to chapter 120 in order to implement all powers and duties described in this section.

Many of these functions were performed by the staff of "the state energy program" prior to the creation of the FECC. This program staff, typically referred to as the "energy office" currently staffs the FECC.[12]

III. Effect of Proposed Changes:

Section 1 amends s. 350.051, F.S., to codify the current law that an individual property owner can use rooftop solar equipment to produce electricity to reduce their own electric bill and can sell the excess to their utility, which is required to purchase the electricity at its full avoided cost, with purchases to be made subject to the PSC's net metering rule.

[12] Section 48, Chapter 2008-227, Laws of Florida.

Section 2 amends s. 366.82, F.S., to require each public utility to make a written offer to conduct a free energy audit of the business structures of each commercial customer within its service territory and provide each customer with a report of the energy savings options and of any available financial assistance prior to December 31, 2016. If a customer has been audited in the previous five years, this requirement is deemed satisfied.

Section 3 amends s. 255.252(5), F.S., to require that the DMS, beginning on July 1, 2011, and in consultation with the head of each state agency, develop a prioritized list of buildings on which to have an energy audit performed. The department is then to perform the energy saving retrofits in order of the anticipated shortest payback period.

Section 4 amends s. 366.92, F.S., to provide for IOU recovery of costs of renewable energy projects. An IOU has until July 1, 2016, to petition the PSC for recovery of costs to produce or purchase renewable energy. An IOU can build renewable energy resources, convert existing fossil fuel generation plants to a renewable energy resource, or purchase renewable energy. A provider must submit the proposed project to the same bid process as with any other generating facility.

If an IOU chooses to develop renewable energy, at least twenty-five percent of the total nameplate capacity for which a provider is permitted to recover costs in any calendar year must be produced or purchased from renewable energy resources other than solar energy. In the case of a purchase of non-solar renewable energy, the provider must purchase actual production from nameplate capacity of that amount.

Five percent of the total costs of solar generation for which a provider is permitted recovery in any calendar year under this subsection must be added to any amounts authorized for a provider's demand-side renewable energy system projects approved by the commission pursuant to s. 366.82, F.S. At least 50 percent of this incremental amount added to the provider's demand-side renewable energy system projects in any calendar year under this subsection must be made available by the provider for incentives for solar projects of up to 10 kilowatts.

The IOU cannot petition for cost recovery until completion of construction of a new renewable energy project, the completion of the conversion of an existing facility to renewable energy, or the completion of a purchase of renewable energy. Upon the filing of a petition for approval of cost recovery, the PSC must schedule a formal administrative hearing within 10 days of the date of the filing of the petition and vote on the petition within 90 days after the date the filing.

Costs are to be deemed to be prudent if the IOU used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate for the type of renewable energy facility and appropriate to the location of the facility. An IOU may recover all prudently incurred costs of renewable energy under the environmental cost recovery clause.

As part of the cost-recovery proceedings, the provider must report to the commission the construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy project, and any other information deemed relevant by the commission.

The PSC must allow full cost recovery over the entire useful life of the renewable energy resource of the revenue requirements utilizing traditional declining balance amortization of all reasonable and prudent costs, including but not limited to the following.

- For construction of a project, the siting, licensing, engineering, design, permitting, construction, operation, and maintenance of a renewable energy facility and associated transmission facilities by the IOU, with the term "cost" to include, but not be limited to, all capital investments including rate of return, and any applicable taxes and all expenses, including operation and maintenance expenses;
- For a purchase, the costs associated with the purchase of capacity and energy from new renewable energy resources;
- For a conversion, the costs of conversion of existing fossil fuel generating plants to a renewable energy facility, including the costs of retirement of the fossil fuel generation plant.

The cost of producing or purchasing renewable energy in any calendar year cannot exceed two percent of the investor-owned utility's total revenue from retail sales of electricity for the calendar year 2010. Additionally, all cost recovery must be limited to no greater than a 2 percent increase to the average monthly bill for each of the utility's ratepayers.

When a provider pays costs for purchased power above the provider's full avoided costs, the seller must surrender to the provider all renewable attributes of the energy being purchased by the provider. Any revenues or other economic benefit derived from any renewable energy credit, carbon credit, or other mechanism that attributes value to the production of renewable energy that is received by a provider relating to renewable energy or other carbon-neutral or carbon-free means of producing electricity must be shared with the provider's ratepayers, such that the ratepayers are credited with at least 90 percent of such revenues or of the value of such other economic benefit.

The bill provides a legislative finding of need for the renewable energy projects that is to serve in lieu of the statutorily required PSC determination of need and the related PSC report.

Each provider obtaining cost recovery under this subsection must, for the duration of the recovery period, file an annual report with the commission containing the information listed below and any other information the commission deems necessary. The commission must gather all such reports annually and file a report with the President of the Senate, the Speaker of the House, and the Governor no later than March 1 of each year. Each provider report must contain, at a minimum, the following.

- A description of the project, including a description of the technology used, the size of the project, and its location.
- A description and the amounts of the costs of construction, operation, and maintenance of the project.
- A description and the total number of the jobs created as a result of the project, including how long each job lasted.

- A description of the impact of the project on existing and planned generation and transmission facilities and on ratepayers, including how much production by traditional means was avoided, any planned traditional plants included in the ten-year site plan that were made unnecessary, any additional transmission that was necessary, a description of any impact on grid security and reliability, and a description of the price impact on ratepayers.

This section also deletes all existing provisions relating to the requirement that the PSC adopt an RPS rule.

Section 5 creates s. 366.95, F.S., to establish a process for creating a state energy resources plan. The bill makes legislative findings, including the following.

- Florida currently has a low proportion of renewable energy in production and that to increase this quickly would be costly to ratepayers.
- Each of the regulated utilities is different and each would be affected differently by a renewable energy requirement.
- As such, a mandate would be inappropriate, and instead the PSC is to develop a state energy resources plan as an expansion of its duties relating to the ten-year site plan requirements.

The bill requires the PSC to develop a state energy resources plan that forecasts the following.

- Demand for electricity.
- Energy supply requirements needed to satisfy this projected demand, including the amount of capacity needed to provide adequate reserve margins and capacity needed to ensure reliability.
- The ability of the existing energy supply sources and the existing transmission systems to satisfy this need together with those sources or systems reasonably certain to be available including planned additions, retirements, substantial planned outages, and any other expected changes in levels of generating and production capacity.
- Additional electric capacity or transmission systems needed to meet such energy supply requirements that will not be met by existing sources of supply and those reasonably certain to be available. The analysis should identify system constraints and possible supply-side and demand-side alternatives to redress such constraint. These alternatives are to include, but not be limited to, distributed generation, energy efficiency, and conservation measures.

The bill requires that the state energy resources plan:

- Identify and assess the costs, risks, benefits, and uncertainties of energy supply source alternatives, including demand-reducing measures, renewable energy resources, distributed generation technologies, cogeneration technologies, and other methods and technologies reasonably available for satisfying energy supply requirements.
- Identify and analyze emerging trends related to energy supply, price and demand.
- Identify potential future sites for biomass power plants and solar power plants.
- Identify potential future sites for transmission and distribution lines.
- Determine optimal percentages of fuels and technologies, both traditional and renewable, in the electric generation fleet for the next ten-year period.

- Determine the process and timeline for incorporating renewable energy resources into the generation fleet, and address redundancy of plants, both necessary and unnecessary, and retirement of unnecessary existing plants.
- Determine whether any changes should be made to capacity, including any additions or retirements, and if any additional transmission or distribution lines are necessary.

In determining whether any new renewable energy resources should be added into the generation fleet, the PSC is to consider the following.

- The societal benefits of renewable energy.
- The necessity of maintaining an adequate and reliable source for energy and capacity needs.
- The necessity of maintaining an adequate and reliable transmission and distribution grid.
- The necessity to maintain fuel mix and diversity and source reliability and to minimize price fluctuations.
- The necessity of minimizing overall price impacts to ratepayers.

Upon such a determination that renewable energy resources should be added, any public utility may obtain additional renewable energy resources by building a renewable energy facility, converting an existing fossil fuel facility to renewable energy, or purchasing renewable energy. All projects are subject to the same bid process as with any other generating facility. If the provider seeks to build the project, it must submit a bid to do so. The utility may recover all prudent costs in base rates. All determinations of prudency of costs are to be made giving consideration to the considerations and goals of this statute and of the state energy resources plan. All revenues from renewable energy credits or carbon credits are to be shared with ratepayers in a manner such that ratepayers receive a minimum of 90 percent of the revenue.

The Energy Office may be a party to all proceedings under this section, and the Department of Agriculture and Consumer Services may be a party in any proceeding relating to biomass plants on issues relating to proper siting for proximity to foodstocks, forestry management, or related matters.

The PSC must review the state energy resources plan biennially.

This bill is intended to streamline the PSC's current duties relating to reviewing each utility's ten-year site plans, making a determination of need for individual proposed power plants, and planning for adequacy and reliability of generation and transmission facilities into one, cohesive process, with a state-wide, long-term focus. The bill provides a process for determining whether to add new renewable energy resources, when to do so, what fuels and technologies to use, and who will carry out the project. The bill attempts to address issues relating to incorporating renewable energy resources into the existing generating and transmission resources, such as reliability of both energy supply and transmission, redundancy of generation or alternatively inadequate supply of energy, retirement of existing plants, and efficiency of the process and changes to minimize costs and rate impacts.

Section 6 transfers all of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority;

administrative rules; pending issues; and existing contracts of the Florida Energy and Climate Commission by a type two transfer, pursuant to s. 20.06(2), Florida Statutes, to the Florida Energy Office.

Section 7 renames s. 377.6015, F.S., from the Florida Energy and Climate Commission (FECC) to the Florida Energy Office (office) and provides for the creation of the Florida Energy Office within the DEP as a separate budget entity exempt from the provisions of s. 20.052, F.S. It also specifies that the office is not subject to control, supervision, or direction by the department in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters. The office is to be headed by a director appointed by the Governor and subject to confirmation by the Senate. In addition to performing the current duties of the FECC, the office will also be required to do the following:

- Act as the principal economic development organization for the state on matters relating to renewable, alternative, or clean energy.
- Market the state as a pro-business location for potential new energy-related investment, to create new energy-related businesses, and to retain and expand existing energy-related businesses. In doing so, it is to work with Enterprise Florida, Inc., Space Florida, and all other government entities at all levels, and also with all relevant private sector entities, necessary to facilitate the location of a business in this state by assisting those businesses in such matters as obtaining permits or licenses, determining appropriate tax laws and rules, and obtaining financing, incentives, grants, and other funding.
- Work with the Florida energy systems consortium, created in s. 1004.648, F.S., to coordinate and promote Florida research on energy and to recruit energy researchers to Florida. As part of this role, it is to serve as the clearinghouse for research information from universities and private sector entities which receive funding or other assistance from the state relating to their research project.

Section 8 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will have an indeterminate negative fiscal impact on public utility companies pertaining to free energy audits of business structures for commercial business customers which in turn will be passed along to rate payers.

PSC staff provided the following information relating to IOU full cost recovery.

Two percent of each company's 2010 revenues is as follows.

Company	2010 Revenues	Two Percent
FPL	$10,304,092,818	$206,081,856
Gulf	$1,375,520,256	$27,510,405
Progress	$5,024,457,963	$100,489,159
TECO	$2,138,997,853	$42,779,957
Total	$18,843,068,890	$376,861,377

If each company immediately invested the maximum amount in renewable energy projects, the results would be the following.

	2011	2012[3]	2013	2014	2015	2016
Solar MW[1]	569	571	576	581	598	613
Solar GWh[2]	997	1001	1009	1018	1048	1074
Biomass MW	212	216	225	235	277	319
Biomass GWh	1487	1511	1579	1645	1942	2239

[1] MW = megawatt of capacity

[2] GWh = gigawatt hours of actual production; 1 gigawatt-hour = 1,000 megawatt-hours = 1,000,000 kilowatt-hours

[3] The yearly numbers are cumulative, incremental totals, with only slight additions from one year to the next.

The costs are estimated to result in an average increase in a customer's monthly bill of 0.2 to 0.3 cents per kilowatt-hour, with 75 percent of the increase attributable to solar projects and 25 percent attributable to biomass. The result is summarized in the following table.

Company	Rate impact
FPL	.20
Gulf	.25
Progress	.28
TECO	.22
Total	.22

Multiplying the average rate impact by the average residential monthly usage of 1,200 kilowatt-hours, the average monthly rate impact would be $2.64 (.22 x 1,200 = 264 cents = $2.64). This is an average over the useful life of the project. The expense would be amortized, and the rate impact would be higher in early years and lower in later ones.

C. Government Sector Impact:

In order for the DMS to manage the energy audits and retrofits of all state buildings, additional resources would need to be provided. According to the department, existing resources are insufficient for this increased workload and the additional need is indeterminate. The DMS has sufficient resources to continue to conduct energy audits and retrofits for department-managed facilities. It is unclear whether all state buildings or DMS managed buildings will be impacted by this bill, see technical deficiencies below, and whether this would have a workload impact to the DMS.

Currently, the Florida Energy and Climate Commission (FECC) receive administrative support services through the Executive Office of the Governor. This bill transfers the FECC to the Florida Energy Office which is created within the DEP as a separate budget entity not subject to control, supervision, or direction by the DEP. Although the bill provides that the office shall have a sufficient number of professional and administrative personnel to carry out its responsibilities, it does not provide an appropriation for this purpose. Administrative support resources are necessary for the Florida Energy Office to operate as an independent office. The additional resources that would be needed are indeterminate at this time.

Based on information provided by the Public Service Commission, this bill has an indeterminate negative fiscal impact as it relates to the development of a state energy resource plan and will require additional staffing resources.

VI. Technical Deficiencies:

The bill directs the DMS to develop a prioritized list of buildings on which to have an energy audit performed and to proceed with retrofits in order to achieve energy savings. The language is unclear related to the audit and retrofit of all state-owned buildings or only the DMS managed buildings.

Also, the bill directs the DMS to "proceed" with the retrofits after the prioritized list is developed with no reference to the process outlined in s. 489.145, F.S., relating to guaranteed energy, water, and wastewater performance savings. It is unclear as to whether s. 489.145, F.S. applies to the direction to "proceed" with the retrofits.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Communications, Energy, and Public Utilities on April 4, 2011:
The committee substitute makes the following changes to the bill:

- Current law is codified that allows an individual property owner to use rooftop solar equipment to produce electricity to reduce their own electric bill and to sell the excess to their utility, which is required to purchase the electricity at its full avoided cost, with purchases to be made subject to the PSC's net metering rule.
- Five percent of the total costs of solar generation for which an IOU is permitted recovery in any calendar year must be added to any amounts authorized for the IOU's demand-side renewable energy system projects approved by the PSC for recovery under FEECA, with at least 50 percent of this incremental amount to be made available for incentives for solar projects of up to 10 kilowatts.
- Each IOU's cost recovery for renewable energy projects is limited to no greater than a 2 percent increase to the average monthly bill for each of the utility's ratepayers.
- The planning period for the state energy resources plan is reduced from twenty years to ten years.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 178
INTRODUCER:	Commerce and Tourism Committee, Banking and Insurance Committee, and Senator Oelrich
SUBJECT:	Commercial Insurance Rates
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	**Fav/CS**
2.	McCarthy	Cooper	CM	**Fav/CS**
3.	Frederick	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill amends the insurance "Rating Law," to expand the number of specified types of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2), F.S.[1] An insurer or rating organization that implements a rate change under this exemption must notify the Office of Insurance Regulation (OIR) of any changes to rates for these exempted types of insurance within 30 days after the effective date of the change. The bill removes the current requirement that for insurers, the 30 day notice must include the total premium written on the product during the immediately preceding year. The bill requires that actuarial data with regard to the rates must be maintained by the insurer or rating organization for two years. The bill removes the current specific requirement that: an insurer must keep underwriting files, premiums, losses, and expense statistics; a rating organization must keep loss and exposure statistics applicable to loss costs.

[1] The bill adds the following types of insurance to be exempt: general liability insurance, nonresidential property insurance, nonresidential multiperil insurance, and excess property insurance. The bill also specifies that the current statutory exemption for directors and officers, employment practices and management liability coverage is also to include fiduciary liability coverage.

The bill expands the commercial motor vehicle insurance coverage that is exempt from specified rate filing and review requirements. Currently, commercial motor vehicle insurance covering a fleet of 20 or more vehicles is exempt from: s. 627.0651(1), F.S., requiring certain rate filing information; s. 627.0651(2), F.S., requiring the OIR to review the rate filing; s. 627.0651(9), F.S., allowing the OIR to require information necessary to evaluate the filing; and s. 627.0645, F.S., requiring annual rate filings. The bill expands this exemption to apply to all commercial motor vehicle insurance, regardless of the size of the fleet being covered. An insurer or rating organization that implements a rate change under this exemption must notify the OIR of any changes to rates for these exempted types of insurance within 30 days after the effective date of the change. The bill removes the current requirement that for insurers, the 30 day notice must include the total premium written on the product during the immediately preceding year. The bill requires that actuarial data with regard to the rates must be maintained by the insurer or rating organization for two years. The bill removes the current specific requirement that: an insurer must keep underwriting files, premiums, losses, and expense statistics; a rating organization must keep loss and exposure statistics applicable to loss costs.

Proponents of the bill state that the types of insurance specified for exemption are those for which a competitive market exists and the insured will likely be a sophisticated purchaser. Although the bill exempts the specified lines from the filing and review requirements, these types of insurance coverages continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory.

This bill substantially amends sections 627.062 and 627.0651, Florida Statutes.

II. Present Situation:

Kinds of Insurance

The Florida Insurance Code specifies that insurance shall be classified into the following "kinds of insurance:"

- Life.
- Health.
- Property.
- Casualty.
- Surety.
- Marine.
- Title.

Certain insurance coverage may come within the definition of more than one kind of insurance, and the inclusion within the definition of one kind does not necessarily exclude coverage from being considered within the definition of another kind. In addition, kinds of insurance are classified into different "lines of insurance."[2] Each kind of insurance is defined in a separate

[2] Sections 624.601 through 624.6012, F.S.

section.[3] "Property insurance" is defined as insurance on real or personal property against loss from any hazard.[4] "Casualty insurance"[5] is defined as including the following types of insurance.

- Vehicle insurance -- covers damage to land vehicles, aircraft, or riding animal.
- Liability insurance -- covers legal liability.
- Workers' compensation.
- Burglary and theft.
- Personal property floater -- insurance on personal effects.
- Glass.
- Boiler and machinery -- insurance against liability and loss to property resulting from accidents or explosions of boilers, pipes, etc.
- Leakage and fire extinguishing equipment.
- Credit insurance.
- Credit property insurance -- coverage on personal property used as collateral.
- Malpractice.
- Animal.
- Elevator -- coverage for damage to property resulting from the maintenance or use of elevators.
- Entertainments -- coverage indemnifying the producer of motion pictures, television productions, sporting events, etc., for postponements or cancellations due to the death or illness of the principals.
- Failure to record documents.
- Failure to file personal property instruments.
- Debt cancellation.
- Miscellaneous.

"Surety insurance" is defined to include contract bonds, indemnity bonds, contract performance guarantee bonds, performance bonds for judicial proceedings, fidelity insurance, and residual value insurance.

OIR Line of Business Mapping

In addition to the statutory definitions, OIR has established a line of business mapping matrix which defines and describes all types and lines of property and casualty insurance products. The matrix categorizes each coverage by line of business code, line of business description, type of insurance, type of insurance description, sub-type of insurance category, and sub-type of insurance description.

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The rating requirements for property, casualty, and surety insurance are located in Part I of ch. 627, F.S.,[6] which is entitled the "Rating Law," and applies to all property, casualty, and

[3] Sections 624.602 through 624.608, F.S.
[4] Section 624.604, F.S.
[5] Section 624.605, F.S.
[6] Sections 627.011, F.S., through 627.381, F.S.

surety insurance. Section 627.062(1), F.S., specifies that the rates for all classes to which Part I applies "shall not be excessive, inadequate, or unfairly discriminatory."

Section 627.062(2)(a), F.S., describes the filing process and time frames that must be followed by all insurers subject to its provisions. Generally, insurers may choose to submit their rate to the OIR pursuant to either the "file and use" method or the "use and file" method. Under "file and use," the insurer submits to the OIR their proposed rate at least 90 days before the rate's effective date and shall not implement the rate until it is approved. Under "use and file," the insurer may implement the rate before filing for approval, but must then submit the filing within 30 days of the rate's effective date. If a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

For those insurers that file under 627.062(2)(a), F.S., the OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, saving, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, if applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.[7]

Section 627.062(f), F.S., provides that during its review process, the OIR can require an insurer to submit at the insurer's expense all information that the OIR deems necessary to evaluate the condition of the insurer and the reasonableness of the filing.

Types of Insurance Exempt from Filing and Review Requirements

The following types of insurance are exempt from the filing and review requirements of s. 627.062(2)(a) and (f), F.S.

- Excess or umbrella.
- Surety and fidelity.
- Boiler and machinery and leakage and fire-extinguishing equipment.
- Errors and omissions.
- Directors and officers, employment practices and management liability.

[7] Section 627.062(2)(b), F.S.

- Intellectual property and patent infringement liability.
- Advertising injury and Internet liability.
- Property risks rated under a highly protected risks rating plan.
- Any other commercial lines categories of insurance or commercial lines risks that the OIR determines should not be subject to the filing and review requirements of paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to filing and review requirements of paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the OIR.[8]

These types of insurance coverages continue to be subject to s. 627.062(1), F.S., which requires that rates shall not be excessive, inadequate, or unfairly discriminatory.

An insurer or rating organization which is exempt under this provision must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include the following.

- The name of the insurer or rating organization.
- The type of insurance.
- The total premium written during the immediately preceding year for that type of insurance (for notice filed by an insurer).
- Loss costs during the immediately preceding year for that type of insurance (for notice filed by a rating organization).
- The average statewide percentage change in rates or loss costs.

Underwriting files, premiums, losses, and expense statistics must be maintained by the insurer and are subject to inspection by the OIR. Loss and exposure statistics must be maintained by the rating organization and are subject to inspection by the OIR. The OIR may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rates.

Motor Vehicle Insurance Rate Setting

Section 627.062(2)(k)3., F.S., exempts motor vehicle insurance and workers' compensation and employer's liability insurance from the requirements of s. 627.062(2), F.S.

Motor vehicle insurance is subject to the rate setting standards established in s. 627.06501, F.S., through s. 627.06535, F.S. Section 627.0651, F.S., establishes the rate filing requirements for motor vehicle insurers and establishes the standards for determining whether a rate is excessive, inadequate, or unfairly discriminatory. Those standards are almost identical to those in s. 627.062, F.S., with the notable addition of the cost of motor repairs as a factor, and the omission of projected hurricane losses.

[8] Section 627.062(3)(d), F.S.

Section 627.0651(14), F.S., provides that commercial motor vehicle insurance covering a fleet of 20 or more self-propelled vehicles is exempt from the following specified rate filing and review requirements.

- Section 627.0651(1), F.S., which establishes the procedures required for automobile insurers to file rates, rating schedules and rating manuals.
- Section 627.0651(2), F.S., which specifies the factors the OIR must apply to determine whether an automobile insurer's rates are excessive, inadequate, or unfairly discriminatory.
- Section 627.0651(9), F.S., which allows the OIR to require information necessary to evaluate the filing.
- Section 627.0645, F.S., which requires annual rate filings.

Notwithstanding the exemption from the specified rate filing and review requirements, commercial motor vehicle insurance covering a fleet of 20 or more self-propelled vehicles may not be excessive, inadequate, or unfairly discriminatory.

An insurer or rating organization which is exempt under this provision must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include the following information.

- The name of the insurer or rating organization.
- The type of insurance.
- The total premium written during the immediately preceding year for that type of insurance (for notice filed by an insurer).
- Loss costs during the immediately preceding year for that type of insurance (for notice filed by a rating organization).
- The average statewide percentage change in rates or loss costs.

Underwriting files, premiums, losses, and expense statistics must be maintained by the insurer and are subject to inspection by the OIR. Loss and exposure statistics must be maintained by the rating organization and are subject to inspection by the OIR. The OIR may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rates.

III. Effect of Proposed Changes:

Section 1 amends s. 627.062, F.S., relating to the categories or kinds of insurance that are not subject to the filing and review requirements of s. 627.062(a) and (f), F.S. The bill expands and clarifies the list of categories that are not subject to the filing and review requirements, as follows.

- Current law identifies directors and officers, employment practices, and management liability as exempt from filing and review requirements. The bill specifies this exemption to also include fiduciary liability. The line of business mapping defines fiduciary liability coverage as "protection against the theft or misuse of funds for an entity involved in the management, investment and distribution of funds."

- The bill adds general liability to the list of exempted coverages. Liability insurance is defined in s. 624.605(1)(b), F.S.
- The bill adds nonresidential property to the list of exempted coverages, except for collateral protection insurance, as defined in s. 624.6085 F.S.
- The bill adds nonresidential multiperil to the list of exempted coverages. Nonresidential multiperil is specifically identified in the line of business mapping as a sub-category of commercial multi-peril.
- The bill adds excess property to the list of exempted coverages.
- The bill adds burglary and theft to the list of exempted coverages.

The bill removes the current requirement that for insurers, the 30 day notice must include the total premium written on the product during the immediately preceding year. The bill removes the current specific requirement that: an insurer must keep underwriting files, premiums, losses, and expense statistics; a rating organization must keep loss and exposure statistics applicable to loss costs. Instead, the bill requires that an insurer or a rating organization must keep "actuarial data" for 2 years after the effective date of the rate change.

The bill adds the provision that the office may require the insurer or rating organization pay the costs associated with an examination.

The bill also removes the current provision that the OIR may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rates.

Section 2 amends s. 627.0651, F.S., relating to the rate filing and review requirements for motor vehicle insurance. Current law provides an exemption from specified rate filing and review requirements for commercial motor vehicle insurance covering a fleet of 20 or more self-propelled vehicles. The bill expands that exemption to all commercial motor vehicle insurance, regardless of the size of the fleet being insured.

The bill removes the current requirement that for insurers, the 30 day notice must include the total premium written on the product during the immediately preceding year. The bill removes the current specific requirement that: an insurer must keep underwriting files, premiums, losses, and expense statistics; a rating organization must keep loss and exposure statistics applicable to loss costs. Instead, the bill requires that an insurer or a rating organization must keep "actuarial data" for two years after the effective date of the rate change.

The bill adds the provision that the office may require the insurer or rating organization pay the costs associated with an examination.

The bill also removes the current provision that the OIR may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rates.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will allow insurers that sell the types of coverage that are being exempted from certain provisions of ss. 627.062(2), F.S., and 627.0651, F.S., to make pricing changes on a more expedited basis and avoid some of the expense incurred in a full rate review process.

C. Government Sector Impact:

The bill relieves the specified types of insurance from filing and review requirements; however, those products must still meet the requirement that rates shall not be excessive, inadequate or unfairly discriminatory. The OIR will no longer be required to review rate filings for the types of insurance that are being exempted from that requirement. The OIR reports that many of the rate filings that will no longer be required under the bill are currently being filed as part of a larger comprehensive filing (e.g., product review, form review) that will likely continue to require OIR review.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Commerce and Tourism on March 16, 2011:
The bill clarifies that commercial lines insurance for *burglary and theft* is exempt from these rate filing and review requirements and clarifies that the category of nonresidential property exempted from the rate filing and review does not include *nonresidential property for which collateral protection insurance has been purchased by the creditor*.

This bill authorizes OIR to require the insurer – or rating organization, if applicable – pay the costs associated with an examination of data related to rates for risks and changes to loss cost for risks.

CS by Banking and Insurance on February 7, 2011:
The bill reverted to current law on the exemption for errors and omissions by deleting a reference to professional liability. The bill also reverted to current law on the exemption for management liability by removing the original bill's reference to "other."

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Between lines 117 and 118
insert:

Section 2. Subsection (1) of section 775.089, Florida Statutes, is amended to read:

775.089 Restitution.—

(1)(a) In addition to any punishment, the court shall order the defendant to make restitution to the victim for:

1. Damage or loss caused directly or indirectly by the defendant’s offense; and

2. Damage or loss related to the defendant’s criminal

episode,

unless it finds clear and compelling reasons not to order such restitution. Restitution may be monetary or nonmonetary restitution. The court shall make the payment of restitution a condition of probation in accordance with s. 948.03. An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960. Payment of an award by the Crimes Compensation Trust Fund shall create an order of restitution to the Crimes Compensation Trust Fund, unless specifically waived in accordance with subparagraph (b)1.

(b)1. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in this section, it shall state on the record in detail the reasons therefor.

2. An order of restitution entered as part of a plea agreement is as definitive and binding as any other order of restitution, and a statement to such effect must be made part of the plea agreement. A plea agreement may contain provisions that order restitution relating to criminal offenses committed by the defendant to which the defendant did not specifically enter a plea.

(c) The term “victim” as used in this section and in any provision of law relating to restitution means each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode, and also includes the

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victim's estate if the victim is deceased, ~~and~~ the victim's next of kin if the victim is deceased as a result of the offense, and the victim's trade association if the victim has granted the trade association written authorization to represent the victim's interests in criminal proceedings and to collect restitution on the victim's behalf.

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

And the title is amended as follows:

Delete line 17

and insert:

Act; amending s. 775.089, F.S.; redefining the term "victim" for purposes of court-ordered restitution; providing an effective date.

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 Budget Committee

BILL:	CS/SB 1884
INTRODUCER:	Commerce and Tourism Committee and Senator Gaetz
SUBJECT:	Consumer Protection
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	**Fav/CS**
2.	Blizzard	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill prohibits a post-transaction third-party seller from charging a consumer for a good or service sold over the Internet unless specific disclosures are made and the seller receives the informed consent of the consumer. It also requires a post-transaction third-party seller to provide a simple mechanism for a consumer to cancel a purchase of a good or service and stop any recurring charges. Finally, it prohibits an initial merchant from disclosing a consumer's

"…credit card, debit card, bank account, or other account number or other billing information to a post-transaction third-party seller for use in an internet-based sale of any good or service from that post-transaction third-party seller."

This bill is very similar to recently enacted federal law, enacted to counter "negative option marketing," which refers to a category of commercial transactions in which sellers interpret a customer's failure to take an affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services.

By including these same protections in our statutes, Florida has jurisdiction to enforce the consumer protections provided in the act under state law.

This bill creates an undesignated section of law in the Florida Statutes.

II. Present Situation:

Florida Law

Currently Florida law does not specifically address unfair and deceptive practices with respect to internet sales practices.

Federal Law

Congress, based on the findings below, passed S. 3386: Restore Online Shoppers' Confidence Act (act) in late 2010. [1] Congress found:

> The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation. Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business. An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy. The committee showed that, in exchange for ''bounties'' and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit card and debit card numbers, with third party sellers through a process known as ''data pass.'' These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want. Third party sellers offered membership clubs to consumers as they were in the process of completing their initial transactions on hundreds of websites. These third party ''post transaction'' offers were designed to make consumers think the offers were part of the initial purchase, rather than a new transaction with a new seller. Third party sellers charged millions of consumers for membership clubs without ever obtaining consumers' billing information, including their credit or debit card information, directly from the consumers. Because third party sellers acquired consumers' billing information from the initial merchant through ''data pass,'' millions of consumers were unaware they had been enrolled in membership clubs. The use of a ''data pass'' process defied consumers' expectations that they could only be charged for a good or a service if they submitted their billing information, including their complete credit or debit card numbers. Third party sellers

[1] Public Law No: 111-345.

> used a free trial period to enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. This use of ''free-to-pay conversion'' and ''negative option'' sales took advantage of consumers' expectations that they would have an opportunity to accept or reject the membership club offer at the end of the trial period.[2]

The act provides three important protections for online consumers. First, it makes it unlawful for a post-transaction third-party seller, defined as a seller who markets goods and services online through an initial merchant after a consumer has initiated a transaction, to charge a consumer for any good or service sold in an online transaction, unless:

- The seller clearly discloses to the consumer all the material terms of the transaction.
- The seller has obtained the consumer's consent before charging their credit card, bank account, or other financial account. Importantly, as a part of that consent, such sellers must obtain directly from the consumer the full financial account number to be charged.

Second, it would make it unlawful for any online seller to transfer a consumer's financial account number to a third party seller.

Finally, the act makes it unlawful for a seller to charge a consumer for any good or service with a negative option feature in an online transaction, unless:

- The seller clearly discloses to the consumer all the material terms of the transaction.
- The seller has obtained the consumer's consent before charging their credit card, bank account, or other financial account.
- The seller provides a simple way for the consumer to stop charges.[3]

Violations of the act and its regulations are treated as unfair or deceptive acts or practices. The Federal Trade Commission (FTC) is charged with enforcement of the act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq) were incorporated into and made part of this act. The act allows the attorney general of a state, or other authorized state officer, alleging a violation of the act or any regulation issued under the act to bring an action on behalf of the residents of the state in any United States district court for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code, to obtain appropriate injunctive relief. However, the state must provide notice to the FTC and a copy of the complaint immediately upon instituting an action. The act allows the FTC to intervene in the actions filed by the attorney general.

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[2] S. 3386(2).

[3] Statement by FTC Chairman Jon Leibowitz Regarding House and Senate Passage of Legislation to Combat Deceptive Online Sales Tactics http://www.ftc.gov/opa/2010/12/negoption.shtm (last visited April 7, 2011).

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law in the Florida Statutes, to prohibit a post-transaction third-party seller from charging a consumer for a good or service sold over the Internet unless specific disclosures are made and the seller receives the informed consent of the consumer. It also requires a post-transaction third-party seller to provide a simple mechanism for a consumer to cancel a purchase of a good or service and stop any recurring charges. Finally, it prohibits an initial merchant from disclosing a consumer's:

> "…credit card, debit card, bank account, or other account number or other billing information to a post-transaction third-party seller for use in an internet-based sale of any good or service from that post-transaction third-party seller."

The bill creates the following definitions:

- "Initial merchant" means a person who has obtained a consumer's billing information directly from the consumer through an internet transaction initiated by the consumer.
- "Post-transaction third-party seller" means a person who sells, or offers for sale, any good or service on the Internet and solicits the purchase of such good or service over the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant. The term does not include the initial merchant, a subsidiary or corporate affiliate of the initial merchant, or a successor of the initial merchant.

A post-transaction third-party seller may not charge or attempt to charge any consumer's credit card, debit card, bank account, or other account for any good or service sold in a transaction effected on the Internet unless:

- Before obtaining the consumer's billing information, the post-transaction third-party seller has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including:
  - A description of the good or service being offered.
  - The fact that the post-transaction third-party seller is not affiliated with the initial merchant, which must include disclosure of the name of the post-transaction third-party seller in a manner that clearly differentiates the post-transaction third-party seller from the initial merchant.
  - The cost of the good or service.
  - How and when charges will be imposed by the post-transaction third-party seller.
- The post-transaction third-party seller has received the express informed consent for the charges from the consumer whose credit card, debit card, bank account, or other account will be charged by:
  - Obtaining from the consumer the full account number of the account to be charged or other account information necessary to complete the transaction and the consumer's name and address and a means to contact the consumer.
  - Requiring the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box that clearly and conspicuously indicates the consumer's consent to be charged the amount disclosed.

- Sending a written notice to the consumer confirming a transaction by first-class U.S. mail or e-mail before processing the consumer's credit card, or otherwise charging the consumer, or shortly thereafter. Such notice must clearly and conspicuously disclose the following:
  - The good or service purchased.
  - The amount that the consumer will be charged.
  - The timing and frequency of charges.
  - A short and plain statement disclosing the post-transaction third-party seller's cancellation and refund policy.
  - A telephone number, mailing address, internet address, and e-mail address where the post-transaction third-party seller can be contacted.
  - The name or brand name of the initial merchant, if known.
  - The name or brand name of the post-transaction third-party seller.
  - That the post-transaction third-party seller is an unaffiliated and separate entity from the initial merchant.
  - That the consumer is being charged by the post-transaction third-party seller for a transaction that is separate from the consumer's transaction with the initial merchant.
- If the written notice is sent by e-mail, the only words appearing in the subject line shall be "Notice that ...(name or brand name of post-transaction third-party seller... is charging your ...(type of account)...."
- An initial merchant may not disclose a consumer's credit card number, debit card number, bank account number, or other account number, or disclose other consumer billing information, to a post-transaction third-party seller.
- A post-transaction third-party seller may not:
  - Charge a consumer without providing a simple mechanism for the consumer to cancel the good or service, and stop charges, within a reasonable time after delivery of the written notice confirming the transaction; or
  - Change its vendor code, or otherwise materially change the way the post-transaction third-party seller is identified on the consumer's account, more than once per year, unless the post-transaction third-party seller provides the consumer with written notice of the change.

A person who violates this section commits an unfair and deceptive trade practice under Part II of ch. 501, F.S., and is subject to any remedies or penalties available for a violation of that part.

By including in the statutes the same protections provided in federal law, Florida has jurisdiction to enforce these consumer protections in state courts.

Section 2 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This will create additional cost for the post-transaction third-party seller in that they will now have to provide notice and acquire additional information directly from the consumer.

The bill should create a more consumer friendly internet experience for Florida residents knowing that the initial merchant cannot simply transfer their information to a post-transaction third-party seller.

C. Government Sector Impact:

To the extent that the Attorney General or state attorneys decide to pursue enforcement of the provisions of the bill, there will be a corresponding impact on our court system. At this time, it is not possible to estimate how many actions either entity will pursue or the resources that will be expended relating to the enforcement provisions in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Commerce and Tourism on April 12, 2011:
The CS differs from the bill as filed in the following ways:

- The CS clarifies the definition of a post-transaction third-party seller; and

- Removes a 20 day written notice required to be sent by the post-transaction third-party seller to the consumer before charging the consumer's credit card, debit card, bank account, or other account.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 414
INTRODUCER:	Health Regulation Committee and Senator Oelrich
SUBJECT:	Prostate Cancer Awareness Program
DATE:	March 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/CS**
2.	Bryant	Hamon	BHI	**Favorable**
3.	Hamon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The committee substitute (CS) for SB 414 modifies the purpose of the Prostate Cancer Awareness Program (Program), housed within the Department of Health (DOH), to include: promoting prostate cancer awareness; communicating the advantages of early detection; reporting of recent progress in prostate cancer research and availability of clinical trials; minimizing health disparities; communicating best-practice principles to physicians treating prostate cancer patients; and establishing a communication platform for patients and their advocates.

The CS authorizes the University of Florida Prostate Disease Center (UFPDC) to work with other agencies, organizations, and institutions to implement the Program. The CS directs the UFPDC to establish and lead a UFPDC Prostate Cancer Advisory Council (Advisory Council), which replaces the prostate cancer advisory committee. The CS provides for the appointment of members to the Advisory Council, the term-limits of the members, meeting requirements, and the duties of the Advisory Council.

This CS substantially amends s. 381.911, F.S.

II. Present Situation:

Prostate Cancer

The prostate is a gland in the male reproductive system. Cancer of the prostate is a disease in which cancer cells are found in the prostate. The prostate produces and stores a fluid that is a component of semen and is located in the pelvis, under the bladder and in front of the rectum. The prostate surrounds part of the urethra, the tube that empties urine from the bladder. Because of the prostate's location, the flow of urine can be slowed or stopped if the prostate grows too large. Symptoms of prostate cancer may include: weak or interrupted flow of urine, frequent urination, trouble urinating, pain or burning during urination, blood in the urine or semen, or a pain in the back, hip, or pelvis that does not go away.[1]

Four tests are used to detect prostate cancer in the absence of symptoms. One is the digital rectal exam, in which a doctor feels the prostate through the rectum to find hard or lumpy areas. Another is a blood test used to detect a substance made by the prostate called prostate-specific antigen (PSA). However, an elevated PSA is not always a sign of prostate cancer. Also, a transrectal ultrasound may be performed by a doctor using a finger-size probe to examine the prostate through the rectum. Finally, a doctor may perform a biopsy by removing cells or tissues so they can be viewed under a microscope by a pathologist. The pathologist will examine the biopsy sample to check for cancer cells and determine the Gleason score. The Gleason score ranges from 2-10 and describes how likely it is that a tumor will spread. The lower the number, the less likely the tumor is to spread.[2] All diagnoses of prostate cancer must be confirmed by a biopsy. Together, these tests can detect many silent prostate cancers. Due to the widespread implementation of PSA testing in the United States, approximately 90 percent of all prostate cancers are diagnosed at an early stage.[3]

Treatment of prostate cancer corresponds with the stage of the disease and how far the cancer has progressed. Early prostate cancer, stage I and II, is localized. Stage III and IV prostate cancer extends outside the prostate gland.[4]

Localized prostate cancer is generally treated by:

- Radical prostatectomy, a surgical procedure to remove the entire prostate gland and nearby tissues;
- Radiation therapy involving the delivery of radiation energy to the prostate; and
- Active surveillance (watchful waiting).[5]

Except for skin cancer, cancer of the prostate is the most common malignancy in American men and is the second leading cause of cancer deaths among men in the United States after lung

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[1] National Cancer Institute, *Prostate Cancer Treatment*, November 5, 2010, available at http://www.cancer.gov/cancertopics/pdq/treatment/prostate/patient/allpages (Last visited on February 2, 2011).
[2] *Id.*
[3] National Cancer Institute, *Early Prostate Cancer: Questions and Answers*, available at http://www.doh.state.fl.us/Family/menshealth/prostatecancerqa.pdf (Last visited on February 2, 2011).
[4] *Supra* fn. 1.
[5] *Supra* fn. 3.

cancer.[6] More than 70 percent of all clinically diagnosed prostate cancers occur in men over age 65.[7] Risk factors associated with prostate cancer include older age, a family history of the disease, black race, and dietary factors.[8] In 2007, there were 223,307 men in the United States who developed prostate cancer, and 29,093 men in the United States died from prostate cancer.[9] In Florida in 2006, there were 14,043 new prostate cancer cases diagnosed among males in Florida, and 2,079 males died of prostate cancer.[10] The incidence rate of prostate cancer in Florida in 2006 was 48 percent higher among black men than white men.[11]

Prostate Cancer Screening Recommendations

In its most recent prostate cancer screening recommendations, the United States Preventive Services Task Force (USPSTF) concluded that it is indeterminate whether it is beneficial for men under the age of 75 to be screened for prostate cancer and that for men over the age of 75 there is moderate to high certainty that the harms of screening for prostate cancer outweigh the benefits.[12] The USPSTF found convincing evidence that treatment for prostate cancer detected by screening causes moderate to substantial harms, such as erectile dysfunction, urinary incontinence, bowel dysfunction, and death. These harms are especially important because some men with prostate cancer who are treated would never have developed symptoms related to cancer during their lifetime. The USPSTF suggests that a clinician should not order a PSA test without first discussing with the patient the potential but uncertain benefits and known harms of prostate cancer screening and treatment.[13]

The American Cancer Society (ACS) recommends that men have a chance to make an informed decision with their health care provider about whether to be screened for prostate cancer. The prostate cancer screening decision should be made after getting information about the uncertainties, risks, and potential benefits of prostate cancer screening.[14] The ACS recommends that men thinking about prostate cancer screening should make informed decisions based on available information, discussion with their doctors, and their own views on the benefits and side effects of screening and treatment.

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[6] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *United States Cancer Statistics (USCS)*, 2007, available at http://apps.nccd.cdc.gov/uscs/toptencancers.aspx (Last visited on February 2, 2011). *See also* fn. 3.
[7] *Supra* fn. 3.
[8] Florida Department of Health, Bureau of Epidemiology, *Prostate Cancer in Florida 2006*, available at http://www.doh.state.fl.us/disease_ctrl/epi/cancer/Prostate_06.pdf (Last visited on February 2, 2011).
[9] Centers for Disease Control and Prevention, *Prostate Cancer, Fast Facts*, available at http://www.cdc.gov/cancer/prostate/basic_info/fast_facts.htm (Last visited on February 2, 2011).
[10] *Supra* fn. 8.
[11] *Id.*
[12] U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, U.S. Preventive Services Task Force, *Screening for Prostate Cancer, Clinical Summary of U.S. Preventive Services Task Force Recommendation*, August 2008, available at http://www.uspreventiveservicestaskforce.org/uspstf08/prostate/prostatesum.htm (Last visited February 2, 2011).
[13] *Id.*
[14] American Cancer Society, *Prostate Cancer: Early Detection*, available at http://www.cancer.org/cancer/prostatecancer/moreinformation/prostatecancerearlydetection/prostate-cancer-early-detection-acs-recommendations (Last visited on February 2, 2011).

The Department of Health

Section 20.43, F.S., creates the DOH. The DOH is responsible for the state's public health system, which is designed to promote, protect, and improve the health of all people in the state. The mission of the state's public health system is to foster the conditions in which people can be healthy, by assessing state and community health needs and priorities through data collection, epidemiologic studies, and community participation; by developing comprehensive public health policies and objectives aimed at improving the health status of people in the state; and by ensuring essential health care and an environment which enhances the health of the individual and the community.[15] The State Surgeon General is the State Health Officer and the head of the DOH.

The primary focus of the DOH's Men's Health Initiative, located within the Adult and Community Health Unit of the Division of Family Health Services, is to increase awareness about men's health issues and educate men and their families about the importance of screening and early detection in preventing and treating disease among men and boys.[16] The Men's Health Initiative provides prostate cancer awareness, screening, and risk factor information.

Prostate Cancer Awareness Program

In 2004, the Legislature created the Program within the DOH.[17] To the extent that funds are made available, the Program is charged with implementing the recommendations of the January 2000 Florida Prostate Cancer Task Force and to provide for statewide outreach and health education activities to ensure men are aware of and appropriately seek medical counseling for prostate cancer as an early detection health care measure.[18] The DOH is required to coordinate its Program with the efforts of the Florida Public Health Institute, Inc. (Institute).[19]

The Prostate Cancer Advisory Committee (Committee) is created under s. 381.911, F.S., to assist the DOH and the Institute in implementing the Program. The State Surgeon General is responsible for appointing the following advisory committee members:

- Three persons from prostate cancer survivor groups or cancer-related advocacy groups;
- Three persons who are scientists or clinicians from public universities or research organizations; and
- Three persons who are engaged in the practice of a cancer-related medical specialty from health organizations committed to cancer research and control.

[15] Section 381.001, F.S.
[16] The Department of Health, *Men's Health Initiative*, available at http://www.doh.state.fl.us/family/menshealth/index.html (Last visited on February 2, 2011).
[17] Section 14, ch. 2004-2, L.O.F.
[18] Section 381.911, F.S.
[19] The Florida Public Health Institute, acting as a neutral convener, works with various local, state and national leaders to develop public-private partnerships that provide recommendations and solutions to health-related matters for the citizens of the state of Florida and the national community. Its mission is to "…advance the knowledge and practice of public health to promote, protect and improve the health of all." The Institute advances improvements in health through community education; health advocacy; health workforce training; and assessment, research and evaluation. *See* Florida Public Health Institute, *FPHI History*, available at http://www.flphi.org/ABOUTUS/FPHIHistory/tabid/164/Default.aspx (Last visited on February 4, 2011).

In 2004, the Legislature provided funding for the DOH for prostate cancer education and the DOH convened a meeting of the Committee.[20] No additional funds have been appropriated for the Program and the Committee has not met since 2004.

The Comprehensive Cancer Control Program

The Comprehensive Cancer Control Program, housed under the Bureau of Chronic Disease Prevention and Health Promotion in the DOH, is funded through a cooperative agreement with the Centers for Disease Control and Prevention. The program focuses on colorectal, lung, ovarian, prostate, and skin cancers. The main objective of the cooperative agreement is to reduce the cancer burden through a collaborative effort with public and private partners throughout Florida. This is accomplished by working with the existing governor-appointed Cancer Control Research Advisory Board (C-CRAB) and a myriad of statewide cancer stakeholders including the National Cancer Institute's Cancer Information Services, the American Cancer Society, and Florida Comprehensive Cancer Control Initiative, among others.[21]

University of Florida Prostate Disease Center

The UFPDC was established in 2009 within the University of Florida's Urology Department. The UFPDC is an inter-disciplinary, statewide research and education center that facilitates the development of state-of-the-art diagnostic tools and advanced treatment methods for prostate disease. It investigates prostate disease on a preclinical and clinical level, pushing forth new medical knowledge, setting new benchmarks for standards of care and advancing new principles for future biomedical training. The UFPDC uses the expertise of scientists and clinicians in urology, cellular and molecular biology, physics, immunology, pharmacology, socio-behavioral sciences, functional genomics, nursing, radiation oncology, medical oncology, cancer endocrinology, and epidemiology to improve the lives of those diagnosed with prostate cancer.[22]

Cancer Control and Research Act

The Cancer Control and Research Act (the Act) is created in s. 1004.435, F.S. The Florida Cancer Control and Research Advisory Council (C-CRAB) is established within the Act to advise the Board of Governors, the State Surgeon General, and the Legislature on cancer control and research in this state.[23] The C-CRAB is housed at, and administratively supported by the H. Lee Moffitt Cancer Center and Research Institute, but operates as an independent group.[24] The C-CRAB consists of 34 members, who meet at least twice a year.[25] The C-CRAB annually approves the Florida Cancer Plan, which is a program for cancer control and research. Additional responsibilities of the C-CRAB include:

[20] Ch. 2004-268, Laws of Florida.
[21] Florida Department of Health, *Florida Cancer Plan*, available at http://www.doh.state.fl.us/family/cancer/plan/ (Last visited on February 3, 2011).
[22] University of Florida, Department of Urology, *News and Events*, available at http://urology.ufl.edu/news_events.php (Last visited on February 3, 2011).
[23] Section 1004.435(4)(h), F.S.
[24] Cancer Control Research Advisory Council, *2010 Annual Report*. A copy of the report is on file with the Senate Health Regulation Committee.
[25] *Id.*

- Recommending to the State Surgeon General a plan for the care and treatment of persons suffering from cancer and standard requirements for cancer units in hospitals and clinics in Florida;
- Recommending grant and contract awards for the planning, establishment, or implementation of programs in cancer control or prevention, cancer education and training, and cancer research;
- If funded by the Legislature, providing written summaries that are easily understood by the average adult patient, informing actual and high-risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of the medically viable treatment alternatives available to them and explaining the relative advantages, disadvantages, and risks associated therewith;
- Implementing an educational program for the prevention of cancer and its early detection and treatment;
- Advising the Board of Governors and the State Surgeon General on methods of enforcing and implementing laws concerning cancer control, research, and education; and
- Recommending to the Board of Governors or the State Surgeon General rulemaking needed to enable the C-CRAB to perform its duties.

Statewide Cancer Registry

Section 385.202, F.S., requires each hospital or other licensed facility to report to the DOH information that indicates diagnosis, stage of disease, medical history, laboratory data, tissue diagnosis, and radiation, surgical, or other methods of diagnosis or treatment for each cancer diagnosed or treated by that facility. The DOH, or a medical organization pursuant to a contract with the DOH, is required to maintain and make available for research such information in a statewide cancer registry.

Information in the statewide cancer registry that discloses or could lead to the disclosure of the identity of any person whose condition or treatment has been reported and studied is confidential and exempt from Florida's public records laws. However, such information may be disclosed with the consent of the affected person; if such information is to be used for epidemiologic investigation and monitoring; or if the information is used by any other governmental agency or contractual designee for medical or scientific research.

Advisory Councils

Section 20.03(7), F.S., defines "advisory council" to mean "an advisory body created by specific statutory enactment and appointed to a function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives." Section 20.052, F.S., establishes requirements for advisory bodies created by a specific statutory enactment. An advisory body may not be created unless:

- It meets a statutorily defined purpose;
- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;
- Its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms; and

- Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

III. Effect of Proposed Changes:

The CS amends s. 381.911, F.S., to modify the purpose of the Prostate Cancer Awareness Program (Program). The Program's purpose under the CS is to promote prostate cancer awareness; communicate the advantages of early detection; report of recent progress in prostate cancer research and the availability of clinical trials; minimize health disparities; communicate best-practice principles to physicians treating prostate cancer patients; and establish a communication platform for patients and their advocates.

The CS authorizes the University of Florida Prostate Disease Center (UFPDC) to implement the Program by working with other agencies, organizations, and institutions to create a systematic approach to increase community education and public awareness about prostate cancer.

The CS repeals responsibilities of the Florida Public Health Institute to participate in implementation of the Program.

The CS repeals the Prostate Cancer Advisory Committee, whose members were appointed by the State Surgeon General and establishes a UFPDC Prostate Cancer Advisory Council (Advisory Council). The Advisory Council is created to develop and implement strategies to improve outreach and education about prostate cancer.

The CS specifies that the Executive Director of the UFPDC shall appoint, in consultation with the DOH's Comprehensive Cancer Control Program and the State Surgeon General, a geographically and institutionally diverse advisory council. The Advisory Council is to consist of two persons from prostate cancer survivor groups or other cancer-related advocacy groups; four persons, including two physicians, a scientist, and the Executive Director of the University of Florida Prostate Disease Center or a designee; and three persons who are engaged in cancer-related medical specialty practice. Advisory Council members are to serve 4-year terms, but the initial members will have staggered terms. The Advisory Council is to meet annually and at the call of the Executive Director or by a majority vote of the members.

The duties of the Advisory Council include:

- Presenting prostate-cancer-related policy recommendations to the DOH and other governmental entities;
- Verifying the accuracy of prostate cancer information disseminated to the public;
- Developing effective communication channels among all private and public entities in the state involved in prostate cancer education, research, treatment, and patient advocacy;
- Planning, developing, and implementing activities designed to heighten awareness and educate residents of the state, especially those in underserved areas, regarding the importance of prostate cancer awareness;
- Disseminating information about recent progress in prostate cancer research and the availability of clinical trials;
- Minimizing health disparities through outreach and education;

- Communicating best-practices principles to physicians involved in the care of patients with prostate cancer;
- Establishing a communication platform for patients and their advocates;
- Soliciting grants and funding to conduct an annual prostate cancer symposium; and
- Submitting and presenting an annual report to the Governor, Legislature, and State Surgeon General by January 15, 2012, and each year thereafter, to recommend legislative changes to decrease the incidence of prostate cancer, decrease disparities among persons diagnosed with prostate cancer, and promote increased community education and awareness of prostate cancer.

The effective date of the CS is July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Physicians may adopt best-practices recommended by the Advisory Council, which may include additional prostate cancer screenings of patients.

C. Government Sector Impact:

The CS removes the requirement that members of the advisory council be reimbursed for per diem and travel. There will be costs associated with disseminating prostate cancer awareness information to the general public and communicating best practices principles to physicians. However, these costs will vary by the communication method used such as existing websites and can be shared by all of the participating agencies, organizations, and institutions which will spread any incremental cost among several entities. The

advisory council is required to solicit grants or philanthropic funding to conduct an annual prostate cancer symposium.

VI. Technical Deficiencies:

None.

VII. Related Issues:

VIII. Additional Information:

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

CS by Health Regulation on February 8, 2011:
The CS differs from the bill in that it:

- Replaces the task force with an advisory council.
- Deletes a redundant reference to the Florida Cancer Control Program.
- Deletes the requirements for the task force to develop and maintain a prostate cancer registry and tissue bank.
- Makes a technical correction in the "whereas" clause.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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. .

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the resolving clause and insert:

That the following amendment to Section 8 of Article V and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 8. Eligibility.—No person shall be eligible for

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office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless the person is, and has been for the preceding eight ~~five~~ years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of county court judge unless the person is, and has been for the preceding eight ~~five~~ years, a member of the bar of Florida. Unless otherwise provided by general law, a person shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

ARTICLE

SCHEDULE XII

SECTION 32. Qualifications of circuit and county court judges.—The amendment to Section 8 of Article V changing the qualifications of circuit judges and county court judges shall take effect January 9, 2013. The amendment does not affect any judge in office on the effective date of the amendment. Any judge qualified to hold office and in office on January 8, 2013, may remain in office and seek reelection to that office regardless of whether the judge has been a member of the bar of Florida for the previous eight years.

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BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 8

ARTICLE XII, SECTION 32

INCREASING THE QUALIFICATIONS FOR THE OFFICES OF CIRCUIT COURT AND COUNTY COURT JUDGES.—The State Constitution currently prohibits a person from serving as a circuit court judge unless the person is, and has been for the proceeding 5 years, a member of The Florida Bar. This same prohibition applies to county court judges, except in counties having a population of 40,000 or fewer, where a person need only be a member in good standing of The Florida Bar. This proposed amendment increases to 8 years the period of time that a person must be a member of The Florida Bar before serving as a circuit court judge or a county court judge in any county, to take effect January 1, 2013. The increased qualifications do not apply to county court or circuit court judges qualified to hold office and in office on January 8, 2013, or to persons seeking to be elected to the office of county court or circuit court judge during the November 2012 general election or any special election held prior to such general election.

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

And the title is amended as follows:

Delete everything before the resolving clause and insert:

Senate Joint Resolution

A joint resolution proposing an amendment to Section 8

of Article V and the creation of Section 32 of Article XII of the State Constitution to increase the period of time that a person must be a member of The Florida Bar before becoming eligible for the office of circuit court or county court judge, to provide an effective date, and to provide that judges qualified to hold office and in office on that effective date may remain in office and run for reelection, notwithstanding the increase.

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 Budget Committee

BILL:	CS/SJR 140
INTRODUCER:	Judiciary Committee and Senator Ring
SUBJECT:	Eligibility of Justices and Judges
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	**Fav/CS**
2.	Hendon	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Senate Joint Resolution 140 proposes an amendment to the Florida Constitution modifying the eligibility of justices and judges to hold judicial offices. More specifically, the joint resolution increases the age after which a justice or judge may no longer serve in a judicial office to seventy-five years of age rather than seventy years of age.

The joint resolution also provides that circuit court and county court judges must be members of The Florida Bar for the preceding 10 years, rather than 5 years. However, in counties having a population of 40,000 or fewer, a person continues to be eligible to serve as a county court judge if he or she is a member in good standing of The Florida Bar. The increased requirements do not apply to county court or circuit court judges in office on January 8, 2013, or to those seeking to be elected in the 2012 election.

This joint resolution amends article 5, sections 8 and 20, of the Florida Constitution.

II. Present Situation:

Judicial Eligibility Requirements Generally

Most state constitutions and general laws prescribe eligibility requirements to serve as a judicial officer, including residence, age, and legal experience. Some states have no mandatory retirement age for judges, while other states' age limitation provisions range from 70 to 75 years of age. In some states, the judicial eligibility requirements may vary depending on the court on which the judge serves, and a judge may be required to meet more stringent requirements if he or she is serving on an appellate court.[1] For example, in New Mexico, a trial court judge must have six years of active legal practice in New Mexico, while an appellate judge must have 10 years of legal practice in New Mexico or be a current state judge.[2] In other states, the same legal experience is required for both trial and appellate judges.[3] A few states only require that the judge be a member of or licensed with the state bar.[4]

Florida Eligibility Requirements for Judicial Office

Circuit Court Judges

Florida has no minimal age requirement for circuit judges, but does preclude a judge from serving after attaining 70 years of age.[5] The Florida Constitution requires that a judge must be an elector of the state and reside in the territorial jurisdiction of the court.[6] With regard to legal experience, a person is eligible for the office of circuit court judge only if he or she is a member of The Florida Bar for the preceding five years.[7] The constitutional requirement for eligibility relating to bar membership refers to eligibility at the time of assuming office and not at the time of qualification or election to office.[8]

County Court Judges

Identical to circuit court judges, there is no minimal age requirement for county court judges, and county court judges are precluded from serving after attaining 70 years of age.[9] The county court judge must also be an elector of the state and reside in the territorial jurisdiction of the court.[10] The Florida Constitution provides that, unless otherwise provided by general law, a person is eligible for the office of county court judge only if he or she is a member of The Florida Bar and

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[1] G. Alan Tarr, *Symposium on Rethinking Judicial Selection: A Critical Appraisal of Appointive Selection for State Court Judges*, 34 FORDHAM URB. L.J. 291, 308 (Jan. 2007).
[2] N. M. CONST. art. VI, ss. 8 and 14.
[3] California, Hawaii, Idaho, and New York, among other states, all require 10 years of membership in the state bar or active practice for both trial and appellate judges. CAL. CONST. art. VI, s. 15; HAW. CONST. art. VI, s. 3; IDAHO CODE s. 1-2404 (2); N.Y. CONST. art. VI, s. 20.
[4] Alabama requires that a judge be a "licensed" attorney. ALA. CONST. art. VI, amend. 328, s. 6.07. Missouri and Pennsylvania require that the judge be a member of the state bar. MO. CONST. art. V, s. 21; PA. CONST. art. V, s. 12.
[5] FLA. CONST. art. V, s. 8.
[6] *Id.*
[7] *Id*.
[8] *In re Advisory Opinion to the Governor*, 192 So. 2d 757 (Fla. 1966).
[9] FLA. CONST. art. V, s. 8.
[10] *Id.*

has been for the preceding five years.[11] The Florida Constitution also provides that, unless otherwise provided by general law, in counties having populations of 40,000 or fewer, a person is eligible for election or appointment to the office of county court judge if he or she is a member in good standing of The Florida Bar.[12]

The Legislature has prescribed certain eligibility requirements for county court judges. Under Florida law, a county court judge is eligible to seek reelection even if he or she is not a member in good standing of The Florida Bar if, on the first day of the qualification period for election to such office, the judge is actively serving in the office and is not under suspension or disqualification.[13] As a result, a non-attorney county court judge is qualified to seek office under the statute and is qualified to serve on temporary assignment in any county without regard to population where he or she is actively serving in office on the first day of the qualification period for reelection.[14] The Honorable Woodrow W. Hatcher and Honorable Hugh Blair, county court judges for Jackson County and Madison County respectively, are currently the only non-attorney county judges in Florida.

Any county judge who is not a member of the bar in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a law-training program approved by the Supreme Court for the training of county court judges who are not members of The Florida Bar is entitled to serve as a county court judge in any county encompassed in the circuit in which the judge has been elected or retained in a retention vote.[15]

Article V Task Force

A legislatively created task force – the Article V Task Force – examined judicial eligibility requirements in preparation for the 1997-98 Constitution Revision Commission.[16] The task force recommended an increase in the experience level for circuit and county judges, to 10 years from 5 years of membership in the bar of Florida. The Florida Bar supported this recommendation from 1994 through 1998, with support for allowing membership in another state bar to count toward 5 of the 10 years of requisite experience. Currently, this issue has not been brought before the full Board of Governors of The Florida Bar and the bar has no position on this issue.[17]

Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[18]Any such proposal must be submitted to

[11] *Id*.
[12] *Id*.
[13] Section 34.021(2), F.S.
[14] *Damron, In and For Citrus County v. Wehausen*, 435 So. 2d 416 (Fla. 5th DCA 1983).
[15] Section 34.021(4), F.S.
[16] The task force was created by the Florida Legislature in ch

. 94-138, Laws of Fla., to review the judicial article of the Constitution.
[17] Correspondence with The Florida Bar (Jan. 4, 2011) (on file with the Senate Committee on Judiciary).
[18] FLA. CONST. art. XI, s. 1.

the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.[19] If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.[20]

III. Effect of Proposed Changes:

Age-Eligibility Requirement

Senate Joint Resolution 140 proposes an amendment to section 8, article V, of the State Constitution to increase the age at which a justice or judge may no longer serve in a judicial office. Under the joint resolution, a justice or judge may no longer serve after attaining the age of seventy-five rather than seventy. However, a judge who has attained the age of seventy-five years of age may continue to serve upon temporary assignment or to complete a judicial term.

Although constitutional amendments are generally applied prospectively, unless expressly stated otherwise,[21] it may be unclear under the proposed amendment whether a justice or judge currently holding a judicial office would be allowed to continue to serve until the age of seventy-five. Moreover, the new provisions addressing the application of the bar-membership requirements (discussed below) added in the Schedule to Article V may create additional confusion as to whether the new age limitation applies to justices and judges currently holding office. The Legislature could consider amending the Schedule to Article V to clarify whether it intends for the new age limitation to apply to current justices and judges.

Bar-Membership Requirement

The joint resolution also increases the period of time that a person must be a member of The Florida Bar before becoming eligible for the offices of circuit court or county court judge. The resolution, if adopted by the voters, would increase the number of years a person must be a bar member before serving as a circuit court or county court judge to 10 years from 5 years. This change would make the circuit and county court judicial requirements the same as the requirements for District Court of Appeal judges and Supreme Court justices.

The resolution preserves the current provision allowing a member of The Florida Bar to serve as a county court judge regardless of the number of years of membership in a county having a population of 40,000 or fewer.

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[19] FLA. CONST. art. XI, s. 5(a).
[20] FLA. CONST. art. XI, s. 5(e).
[21] *In re Advisory Opinion to the Governor-Terms of County Court Judges*, 750 So. 2d 610 (Fla.1999) (advising that constitutional amendments are given prospective effect only, unless the text of the amendment or the ballot statement clearly indicates otherwise).

The joint resolution amends the Schedule to Article V to provide that the changes to section 8 increasing the period of time that a person must be a member of The Florida Bar before becoming eligible for the offices of circuit court or county court judge will take effect on January 9, 2013, the day after a judge would take office after being elected in the 2012 General Election. The joint resolution specifies that the amendment does not affect any judge in office on the effective date of the amendment. Any judge eligible to hold office and in office on January 8, 2013, will remain in office and be eligible to seek reelection in the future regardless of whether the judge has been a member of The Florida Bar for the previous 10 years. As a result, the increased bar-membership eligibility requirements do not apply to county or circuit court judges in office on January 8, 2013, or to persons seeking to be elected to the office of county court or circuit court judge during the election in which the joint resolution is adopted.

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:

In order for the Legislature to submit SJR 140 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.[22] If SJR 140 is agreed to by the Legislature, it will be submitted to the voters at the next general election held more than 90 days after the amendment is filed with the Department of State.[23] As such, SJR 140 would be submitted to the voters at the 2012 General Election. In order for SJR 140 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.[24]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[22] FLA. CONST. art. XI, s. 1.
[23] FLA. CONST. art. XI, s. 5(a).
[24] FLA. CONST. art. XI, s. 5(e).

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) does not anticipate that the heightened bar-membership requirements for circuit and county court judges will impact the courts' workload. In addition, OSCA reports that the new bar-membership requirements will have no estimated fiscal impact on the judiciary.[25] It is unknown at this time how the increased age at which a justice or judge may no longer serve will impact the judiciary.

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.[26] Costs for advertising vary depending upon the length of the amendment. The average cost per word is $106.14.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on January 11, 2011:
The committee substitute:

- Increases the age after which a justice or judge may no longer serve in a judicial office to seventy-five years of age rather than seventy years of age;
- Restores the provision in the State Constitution that allows a person to be eligible to serve as a county court judge if he or she is a member in good standing of The Florida Bar in counties having a population of 40,000 or fewer;
- Provides that the proposed amendment will take effect on January 9, 2013;
- Specifies that the amendment does not affect any judge in office on the effective date of the amendment; and
- Provides that any judge eligible to hold office and in office on January 8, 2013, will remain in office and be eligible to seek reelection in the future regardless of whether the judge has been a member of The Florida Bar for the previous 10 years.

B. Amendments:

None.

[25] Office of the State Courts Administrator, *2011 Judicial Impact Statement – SJR 140* (Jan. 6, 2011).
[26] FLA. CONST. art. XI, s. 5(d).

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 Budget Committee

BILL:	SB 1886
INTRODUCER:	Senator Wise
SUBJECT:	Controlled Substances
DATE:	April 19, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/1 amendment**
2.	Sneed	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill schedules several psychoactive substances in Schedule I of Florida's controlled substance schedules. Currently, these substances are temporarily scheduled in Schedule I by emergency rule of the Florida Attorney General.

This bill substantially amends s. 893.03, F.S., and reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate the amendments to s. 893.03 in reference thereto.

II. Present Situation:

On January 26, 2011, the Florida Attorney General, by emergency rule, temporarily scheduled the following psychoactive substances:

- 3,4-Methylenedioxymethcathinone (Methylone).
- 3,4-Methylenedioxypyrovalerone (MDPV).
- 4-Methylmethcathinone (Mephedrone).
- 3-Methoxymethcathinone.

- 3-Fluoromethcathinone.
- 4-Fluoromethcathinone (Flephedrone).[1]

The effect of this emergency rule is that retailers and those in possession of these substances who do not comply with the rule may be subject to arrest and prosecution for offenses under ch. 893, F.S., relevant to Schedule I controlled substances. A Schedule I controlled substance is a substance that has a high potential for abuse and no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards.[2]

Some of these psychoactive substances have been identified as cathinones or cathinone derivatives of synthetic origin.[3] Most, if not all, of these substances have been sold over the Internet and at some head shops, convenience stores, discount tobacco outlets, gas stations, pawnshops, tattoo parlors, truck stops, and other locations.[4] They are typically sold as "bath salts," "plant food/plant growth regulators," and "research chemicals."[5] None of these substances has a currently accepted medical use in treatment in the United States.

In recent years, the abuse of these psychoactive substances has increased. Law enforcement and medical professionals indicated that the popularity of these substances increased due to the perception that they posed a seemingly safer alternative to illegal methods of getting "high" and could be easily obtained.[6]

The Office of Statewide Intelligence in the Florida Department of Law Enforcement (FDLE) has noted:

> [T]he Florida Department of Health has reported numerous health-related calls to both the Florida Poison Control Center (FPCC) and emergency rooms concerning the use of "bath salts." The FPCC has received several calls regarding exposure to this product with the majority of these calls being placed by individuals 16 to 30 years of age. As an example, during the weekend of January 21-22, 2011, a north Florida emergency room

[1] Notice of Emergency Rule, 2ER11-1 (effective January 26, 2011), Florida Administrative Weekly, vol. 37/06 (published February 11, 2011), https://www.flrules.org/gateway/ruleNo.asp?id=2ER11-1 (last accessed on March 24, 2011).
[2] s. 893.03(1), F.S.
[3] Cathinone is a Schedule I controlled substance under s. 893.03(1)(c)8., F.S. Cathinone is an alkaloid found in the shrub *Catha edulis* (khat) and is chemically similar to amphetamines and other substances. "Consideration of the cathinones" (March 2010), Advisory Council on the Misuse of Drugs, United Kingdom, http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary (last accessed on March 24, 2010). The "molecular architecture" of cathinone "can be altered to produces a series of different compounds which are closely structurally related to cathinone. Together these are known as 'cathinones' or 'cathinone derivatives'." *Id.* For example, the Advisory Council describes methylone as "the cathinone analogue of MDMA (ecstasy)" and mephedrone as a "cathinone derivative." *Id.* "Advisory Council report" is cited in further reference to this source.
[4] Advisory Council report and "Drug Alert Watch: Increasing abuse of bath salts" (December 17, 2010), National Drug Intelligence Center, United States Department of Justice, http://www.justice.gov/ndic/pubs43/43474/sw0007p.pdf (last accessed on March 24, 2011).
[5] Advisory Council report. According to the Advisory Council, "none of the cathinones has any recognized efficacy as a plant fertilizer nor would they suitably function as bath salts." *Id.*
[6] "'Bath Salts' Receive Emergency Drug Scheduling" (January 26, 2011), Florida Fusion Center, Florida Department of Law Enforcement, http://www.myfloridalicense.com/dbpr/abt/documents/FDLEBriefBathSaltsPublic.pdf (last accessed on March 24, 2011).

physician reported to FDLE an excess of six emergency related patients admitted due to both the ingestion and injection of "bath salts."[7]

The Office of Statewide Intelligence has also identified reported toxicity and side effects of these psychoactive substances:

"Bath salt" products are known to produce certain side effects, some of which are quite severe. The following is the list of milder, short-term side effects associated with consumption of this drug as reported by medical personnel:

- Increased heart rate
- Increased alertness and awareness
- Agitation
- Anxiety
- Diminished requirement for sleep
- Fits and delusions
- Lack of appetite
- Nosebleeds

More serious side effects associated with these drugs reportedly include:

- Muscle spasms
- Hallucinations
- Blood circulation problems, including increased blood pressure
- Aggression
- Kidney failure
- Severe paranoia
- Seizures
- Panic attacks
- Risk of renal failure
- Sharp increase in body temperature

In most extreme cases, powdered "bath salt" products have been linked to self-mutilation and drug induced deaths to include an increased risk of suicide.[8]

These psychoactive substances do not appear to be specifically scheduled at this time under federal law, but mephedrone and MDPV are listed by the United States Drug Enforcement

[7] *Id.* "Throughout the US, Poison Centers have been tracking calls about users hospitalized. In 2010, there were 291 calls. In January 2011 alone, there were 373 cases." "Synthetic chemicals known as Bath Salts or Plant Food" (footnote omitted), Florida Poison Control Center, Tampa, Florida, http://poisoncentertampa.org/resources/1/substances/Bath-salts-FPICT-flyer.pdf (last accessed on March 25, 2011).

[8] "'Bath Salts' Receive Emergency Drug Scheduling" (January 26, 2011), Florida Fusion Center, Florida Department of Law Enforcement, http://www.myfloridalicense.com/dbpr/abt/documents/FDLEBriefBathSaltsPublic.pdf (last accessed on March 24, 2011).

Administration (DEA) as "Drugs and Chemicals of Concern."[9] The DEA has indicated that mephedrone, one of these substances, "can be considered an analogue of methcathinone (schedule I substance) under the analogue provision of the CSA (Title 21 United States Code 813). Therefore, law enforcement cases involving mephedrone can be prosecuted under the Federal Analog Act of the CSA."[10] Scheduling information and other information provided by the DEA at its website do not indicate whether the other psychoactive substances may be covered by the Federal Analog Act.

III. Effect of Proposed Changes:

The bill amends s. 893.13(1)(c), F.S., to schedule several psychoactive substances in Schedule I of Florida's controlled substance schedule. Currently, these substances are temporarily scheduled in Schedule I by emergency rule of the Florida Attorney General. The substances scheduled are:

- 3,4-Methylenedioxymethcathinone (Methylone).
- 3,4-Methylenedioxypyrovalerone (MDPV).
- 4-Methylmethcathinone (Mephedrone).
- 3-Methoxymethcathinone.
- 3-Fluoromethcathinone.
- 4-Fluoromethcathinone (Flephedrone).

The description of the substances duplicates the description of the substances in the emergency rule.

The bill also reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate the amendments to s. 893.03, F.S., in reference thereto.

The effective date of the bill is July 1, 2011.

Other Potential Implications:

The psychoactive substances listed in the bill are currently scheduled by emergency rule of the Florida Attorney General pursuant to her emergency authority under s. 893.035(7), F.S. The effective date of the rule is January 26, 2011. Attorney General staff informed Senate professional staff that the rule will elapse on June 30, 2011. If the rule elapses and these substances are not scheduled by statute, possession, sale, distribution, etc., of these substances will not be a criminal offense under Florida law.

The FDLE provided the following suggestions to modify proposed scheduling language and the rationale for those changes:

[9] Drugs and Chemicals of Concern, Office of Diversion Control, U.S. Drug Enforcement Administration, http://www.deadiversion.usdoj.gov/drugs_concern/index.html (last accessed on March 24, 2010).
[10] "4-methylmethcathinone [Mephedrone, 4-MMC, meow meow, m-CAT, bounce, bubbles, mad cow]" (July 2010), Office of Diversion Control, U.S. Drug Enforcement Administration, http://www.deadiversion.usdoj.gov/drugs_concern/mephedrone.htm (last accessed on March 25, 2011).

Based on recommendations received from FDLE's drug chemists, FDLE suggests amending the current proposed substance list to match the following:

- 3,4-methylenedioxymethcathinone
- Methylmethcathinone
- Methylethcathinone
- Methoxymethcathinone
- Fluoromethcathinone
- 3,4-methylenedioxypyrovalerone (MDPV)

The key differences between the substances identified in the emergency scheduling and the new recommendation for final legislation is centered around dropping the listing of the specific isomers and recommending only controlling the parent drug compounds. This approach should allow for all isomers and salts of isomers of the parent drug compounds, as well as any new analogs that we come across, to be controlled based on the current language in 893.03, F.S., Schedule I. We also recommend dropping the abbreviated names in parentheses except for MDPV. The decision to leave MDPV listed as an acronym is due to MDMA being handled identically in the statutes, as this is a very common acronym used in the criminal justice community.

Additionally, the FDLE Crime Laboratories did share these suggestions to other law enforcement laboratories throughout Florida and did not receive any differing suggestions on how to best capture the broadest range of synthetic substances used in psychoactive "bath salts" products.[11]

An amendment traveling with the bill would make the changes to the chemical nomenclature suggested by the FDLE.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[11] Analysis of SB 1886, Florida Department of Law Enforcement (March 18, 2011) (on file with the Senate Criminal Justice Committee). "FDLE analysis" is cited in further reference to this source.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The FDLE states that the bill "should have little or no impact of the private sector. All of the proposed substances have been emergency scheduled as a Schedule I drug by Florida Attorney General Bondi as of January 26, 2011, with little-to-no reported impact to the private sector."[12]

C. Government Sector Impact:

The FDLE states that passage of the bill "would add additional chemical substances to Florida's controlled substances list. However, since the emergency scheduling of these proposed chemicals were enacted on January 26, 2011, FDLE's Crime Laboratory System is currently able to identify and has obtained standards of the proposed substances (with the exception of one) in one or more of the crime laboratories. Thus, the fiscal impact would be minimal."[13]

The FDLE also states that "[l]ocal agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a similar rise in submissions associated with the additions of the proposed chemical substances."[14]

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill would have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Several states, including Hawaii, Michigan, Louisiana, Kentucky, and North Dakota, have introduced legislation to ban the so-called "bath salts" products.[15]

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[12] FDLE analysis.
[13] *Id.*
[14] *Id.*
[15] "Message from the Director on 'Bath Salts' - Emerging and Dangerous Products," National Institute on Drug Abuse, http://www.nida.nih.gov/about/welcome/MessageBathSalts211.html (last accessed on March 24, 2011).

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:

Barcode 567276 by Criminal Justice on April 4, 2011:
Modifies chemical nomenclature of the psychoactive substances scheduled by the bill.

567276

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/04/2011	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment

Delete lines 94 - 99
and insert:
40. 3,4-Methylenedioxymethcathinone.
41. 3,4-Methylenedioxypyrovalerone (MDPV).
42. Methylmethcathinone.
43. Methoxymethcathinone.
44. Fluoromethcathinone.
45. Methylethcathinone.

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 Budget Committee

BILL:	CS/SB 1300
INTRODUCER:	Criminal Justice Committee and Senator Storms
SUBJECT:	Juvenile Civil Citation Programs
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.	O'Connor	Maclure	JU	**Favorable**
3.	Sadberry	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill requires juvenile civil citation programs or other similar diversion programs to be established at the local level. Currently, these local diversion programs are discretionary. The bill specifies that they may be operated by any number of entities, including law enforcement, the Department of Juvenile Justice (DJJ), a juvenile assessment center, the county or city, or an entity selected by the county or city. Unlike current law, only first-time juvenile misdemeanants will be eligible to participate in a civil citation program. Current law allows second-time juvenile misdemeanants to participate. The bill also provides that intervention services will be required during the civil citation program if a needs assessment determines such services are necessary.

Finally, the DJJ is required to encourage and assist with the implementation and improvement of civil citation programs or other similar diversion programs around the state. The DJJ must also develop guidelines for the civil citation program which include intervention services. The guidelines must be based on proven civil citation programs or other similar programs within Florida.

This bill substantially amends section 985.12, Florida Statutes.

II. Present Situation:

Statutory Requirements for Civil Citation Programs

Currently, juvenile civil citation programs provide an efficient and innovative alternative to the Department of Juvenile Justice's (DJJ) custody. They provide swift and appropriate consequences for youth who commit nonserious delinquent acts. A law enforcement officer is authorized to issue a civil citation to a youth who admits having committed a misdemeanor.[1]

The programs are discretionary under the authorizing statute. They exist at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved.[2] Civil citation programs require the youth to complete no more than 50 community service hours, and may require participation in intervention services appropriate to the identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.[3]

Upon issuance of a citation, the local law enforcement agencies are required to send a copy of the citation to the DJJ so that the department can enter the appropriate information into the Juvenile Justice Information System (JJIS).[4] A copy must also be sent by law enforcement to the sheriff, state attorney, the DJJ's intake office, the community service performance monitor, the youth's parent, and the victim.[5] At the time a civil citation is issued, the law enforcement officer must advise the youth that he or she has the option of refusing the civil citation and of being referred to the DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.[6]

The youth is required to report to a community service performance monitor within seven working days after the civil citation has been issued. The youth must also complete at least five community service hours per week. The monitor reports to the DJJ information regarding the youth's service hour completion and the expected completion date.[7] If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or commits a third or subsequent misdemeanor, the law enforcement officer must issue a report to the DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.[8]

[1] Section 985.12(1), F.S.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] Section 985.12(2), F.S.
[6] Section 985.12(5), F.S.
[7] Section 985.12(3), F.S.
[8] Section 985.12(4), F.S.

Input from Local Civil Citation Programs

Last summer, 21 local civil citation programs around the state received a questionnaire about their civil citation expungement procedures.[9] Out of that number, 18 responses were received.[10] One of these programs ended on June 30, 2010, because of inadequate funding.[11] Similarly, one of the three program recipients that did not complete the questionnaire also indicated that its program ended then for the same reason.[12] (Nine of the 21 civil citation programs were funded through the DJJ until the end of June when the 3-year grant funding stopped.[13]) Another of the program respondents indicated that its civil citation program was discontinued last year by choice, and instead, a local diversion program was developed in its place.[14]

About half of these programs are run through the local sheriff,[15] and the rest are run through the local DJJ or a youth services organization,[16] the state attorney,[17] or the city or court administrator.[18] Program lengths range anywhere from one month to six months, with a length of two or three months being the most typical.

Several programs specified the following misdemeanors as being "acceptable" for admission into their respective programs:[19]

- Petit theft;
- Criminal mischief;
- Trespassing;
- Simple assault/battery;
- Disruption of a school function;
- Disorderly conduct; and
- Breach of the peace.

Although program admission eligibility requirements varied from circuit to circuit, the majority of programs seemed consistent with their general requirements, including:[20]

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[9] *Senate Criminal Justice Committee Interim Report 2011-113* (October 2010), *available at* http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-113cj.pdf (last visited Mar. 25, 2011).

[10] The following judicial circuits have (or had) at least one such program: judicial circuit 1 (program ended June 2010); judicial circuit 2 (2 of 3 programs responded); judicial circuits 4, 5, and 6 (program ended but started a similar diversion program); judicial circuit 7 (2 of 3 programs responded); judicial circuit 8 (program ended June 2010); and judicial circuits 9, 11, 13, 16, 17, 18, 19, and 20.

[11] Judicial circuit 8.

[12] Judicial circuit 1.

[13] Judicial circuits 1, 4, 5, 8, 11, 13, 17, 19, and 20.

[14] Judicial circuit 6. The program is called "Juvenile Arrest Avoidance Program," and its purpose is to prevent first time juvenile misdemeanants in Pinellas County from having a juvenile record. Everything about the program is kept local, including the youth's record. (Palm Beach County also has a diversion program that is handled completely on the local level, according to the state attorney's office in the 15th judicial circuit.)

[15] Judicial circuits 2, 5, 7 (has several programs), 16, 17, and 20 (has a few programs).

[16] Judicial circuits 6, 9, 11 are DJJ operated and Circuits 1, 2, 13, and 18 are operated by a youth services organization.

[17] Judicial circuit 20.

[18] Judicial circuits 4 and 19.

[19] *Senate Criminal Justice Committee Interim Report 2011-113, supra* note 9.

[20] *Id.*

- Must not have a prior criminal history (some programs specify no prior felony arrests, but will allow one prior misdemeanor);
- Must be between 10 and 17 years of age (some programs do not specify a minimum age, but specify the maximum age to be 17 years);
- Must not have participated in a prior diversion program, including civil citation, or be on any form of court-ordered supervision;
- Must be a first-time misdemeanor offense (some programs require there be no restitution issues, or some specify that it must be a nonviolent misdemeanor);
- Must not have committed a domestic violence offense, traffic offense, sexual crime, hate crime, or malicious act of violence;
- Must be a resident of the applicable county; and
- Must have a written agreement among the youth, the victim, and the parents.

III. Effect of Proposed Changes:

This bill requires juvenile civil citation programs or other similar diversion programs to be established at the local level. Currently, these local diversion programs are discretionary. The bill specifies that they may be operated by any number of entities, including law enforcement, the Department of Juvenile Justice (DJJ), a juvenile assessment center, the county or city, or an entity selected by the county or city. However, the state attorney and local law enforcement agencies must be in agreement with the selected entity.

The bill deletes the county sheriff and the victim as entities that are required to receive a copy of the issued citation. The bill also provides that intervention services will be required during the civil citation program if a needs assessment determines that such services are necessary. Unlike current law, only first-time juvenile misdemeanants will be eligible to participate in a civil citation program. The statute currently allows second-time juvenile misdemeanants to participate.

Upon program completion, the agency operating the program must report the outcome to the DJJ. The bill also states that the issuance of a civil citation will not be considered a referral to the DJJ, meaning it will not initiate formal judicial processing. However, if the youth fails to comply, the juvenile probation officer must process the original delinquent act as a referral to the DJJ and send the report to the state attorney for review.

Finally, the DJJ is required to encourage and assist with the implementation and improvement of civil citation programs or other similar diversion programs around the state. The DJJ must also develop guidelines for the civil citation program which include intervention services. Furthermore, the guidelines must be based on proven civil citation programs or other similar programs in Florida.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expansion of juvenile civil citation programs or other similar diversion programs in Florida may result in more eligible youth benefiting from this diversion program, especially as it relates to future opportunities for employment since these youth will not have to deal with the obstacle of having an arrest record.

C. Government Sector Impact:

By requiring the local establishment of civil citation programs or other similar diversion programs, the bill may result in an indeterminate fiscal impact on those jurisdictions that do not have adequate diversion resources available.

On the other hand, to the extent that youth are increasingly diverted from the more costly juvenile justice system, the greater the potential cost savings will be to Florida.

According to the Office of the State Courts Administrator, the bill will have an indeterminate effect on judicial workload.[21]

VI. Technical Deficiencies:

None.

[21] Office of the State Courts Administrator, *Senate Bill 1300 Fiscal Analysis* (Mar. 4, 2011) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

This bill is one of the criminal and juvenile justice cost saving proposals recommended by Florida Tax Watch.[22]

VIII. Additional Information:

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

CS by Criminal Justice on March 22, 2011:
The committee substitute:

- Requires the DJJ to encourage and assist with the implementation and improvement of civil citation programs or other similar diversion programs around the state.
- Requires the DJJ to develop guidelines for the civil citation program which include intervention services.
- Requires the civil citation guidelines to be based on proven civil citation programs or other similar diversion programs within Florida.
- Provides that the state attorney and local law enforcement agencies must be in agreement with whatever entity is selected to operate the local civil citation or other similar diversion program.

B. Amendments:

None.

[22] Florida Tax Watch, *Cost-Savings Recommendations for the Criminal and Juvenile Justice System*, presented to the Senate Committee on Criminal Justice, January 11, 2011 (on file with the Senate Committee on Criminal Justice).

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 Budget Committee

BILL:	SB 1942
INTRODUCER:	Senator Bennett
SUBJECT:	Local Government Services
DATE:	March 30, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Favorable**
2.	Martin	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

This bill repeals a section of law created in 1999 that provides a process for counties and municipalities to develop and adopt plans to improve the efficiency, accountability and coordination of the delivery of local government services. Local governments may accomplish the same results by entering into interlocal agreements, and do not use the procedure provided in this law.

This bill repeals section 163.07 of the Florida Statutes.

II. Present Situation:

Section 163.07, F.S.

Section 163.07, F.S., was created by ch. 99-378, L.O.F., relating to community revitalization. This legislation outlines an optional process for counties and municipalities to develop and adopt a plan to improve the delivery of local government services. Specifically, it provides for the initiation of an efficiency and accountability process:

- by resolution adopted by a majority vote of the governing body of each of the counties involved;
- by resolutions adopted by a majority vote of the governing bodies of a majority of the municipalities within each county; or
- by a combination of resolutions adopted by a majority vote of the governing bodies of the municipality or combination of municipalities representing a majority of the municipal population of each county.

The resolution is required to create a commission which is responsible for developing the plan, and to specify the composition of the commission, which must include representatives of:

- county and municipal governments;
- any affected special districts; and
- any relevant local government agencies.

The resolution must include a proposed timetable for the development of the plan and specify the local government support and personnel services that will be made available to representatives developing the plan.

When a resolution is adopted, the designated representatives must develop a plan for the delivery of local government services. This plan must:

- designate the areawide and local government services that are the subject of the plan;
- describe the existing organization of these services and the means of financing the services, and create a reorganization of such services and the financing to meet the goals of the section;
- designate the local agency that should be responsible for the delivery of each service;
- designate the services that should be delivered regionally or countywide;
- provide means to reduce the cost of providing local services and enhance the accountability of service providers;
- include a multi-year capital outlay plan for infrastructure;
- describe any expansion of municipal boundaries that would further the goals of the section;
- meet the standards for annexation provided in ch. 171, F.S, for any area proposed to be annexed;
- prohibit any provisions for contraction of municipal boundaries or elimination of any municipality;
- provide specific procedures for modification or termination of the plan; and
- specify the effective date of the plan.

A plan must be approved by a majority vote of the governing body of each county involved and by a majority vote of the governing bodies of a majority of the municipalities in each county, and by a majority vote of the governing bodies of the municipality or municipalities that represent a majority of the municipal population of each county.

After approval by the county and municipal governing bodies, a plan must be submitted for referendum approval in a countywide election in each county involved. A plan does not take effect unless approved by a majority of the electors of each county who vote in the referendum, and also by a majority of the municipal electors of the municipalities that represent a majority of the municipal population of each county.

Interlocal Agreements

Local governments may accomplish the same results by entering into interlocal agreements pursuant to s.163.01, F.S., the "Florida Interlocal Cooperation Act of 1969." The stated purpose of that section is to enable local governmental units to make the most efficient use of their

powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities. Public agencies are thereby authorized to exercise jointly power, privilege or authority which such agencies share in common and which each can exercise separately. This joint exercise of power is made by contract in the form of an interlocal agreement which is filed with the clerk of the circuit court of each county where a party to the agreement is located. The entire process is perceived as straightforward and flexible.

III. Effect of Proposed Changes:

Section 1 repeals s. 163.07, F.S.

Section 2 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 1610
INTRODUCER:	Commerce and Tourism Committee and Senator Detert
SUBJECT:	State Minimum Wage
DATE:	April 13, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	**Fav/CS**
2.	Roberts	Roberts	GO	**Favorable**
3.	Martin	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The Agency for Workforce Innovation is required to annually calculate and publish the state minimum wage. CS/SB 1610 (the bill) provides greater specificity to the Agency for Workforce Innovation to calculate the state minimum wage.

This bill amends ss. 448.109 and 448.110, F.S.

II. Present Situation:

An amendment to Florida's Constitution took effect on May 2, 2005, which established the state minimum wage.[1] The Legislature enacted the Florida Minimum Wage Act in 2005 to implement the constitutional provisions.[2]

The Agency for Workforce Innovation (AWI) is required to annually calculate and publish the state minimum wage. Current law requires employers to pay employees a minimum wage at an hourly rate published by AWI for all hours worked in Florida. Only those individuals entitled to

[1] Section 24, Art. X, of the State Constitution.
[2] Chapter 2005-353, L.O.F.

receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations are eligible to receive the state minimum wage.

Minimum Wage Calculation

AWI must calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, AWI must use the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region.[3] Neither the statute nor the Constitution specifically addresses deflation in the computation of the minimum wage.

In interpreting the intent of the Legislature to calculate a state minimum wage, AWI computes the percentage change in the CPI for the 12 months prior to September 1 and multiplies it times the prior year's computed Adjusted Real Wage Rate. This provides the amount to be added to, or subtracted from, the previous year's computed Adjusted Real Wage Rate.

The higher of the previous year's state minimum wage, the Adjusted Real Wage Rate, or the Federal minimum wage rate[4] becomes the state minimum wage for the year. The state minimum wage takes effect on the following January 1, unless a new Federal minimum wage rate is issued and that rate is higher. For example, on July 24, 2009, the new Federal minimum wage rate of $7.25 became the new adjusted state minimum wage rate because it was higher than the state minimum wage rate at the time of $7.21.

AWI's method for calculating the state minimum wage rate is currently the subject of a lawsuit. Florida Legal Services and the National Employment Law Project recently filed the lawsuit on behalf of four individual workers and three organizations that represent low-wage employees.[5] The plaintiffs claim that AWI should not have accounted for the decrease in the CPI (deflation) in 2009 when calculating future years' minimum wages. The case is currently pending.

III. Effect of Proposed Changes:

This bill amends the state minimum wage statutes to provide greater specificity to AWI in its calculation of the state minimum wage. The bill clarifies that the state minimum wage cannot drop when there is deflation, but that AWI should account for deflation when computing future rates. Additionally, the bill clarifies the relationship between the Federal minimum wage and the state minimum wage.

Section 1 amends s. 448.109, F.S., to include a cross-reference.

Section 2 amends s. 448.110, F.S., to provide greater specificity to AWI as to how to calculate the state minimum wage. The bill specifies that the adjusted real wage rate is the only basis used to calculate the next year's adjusted real wage base. The adjusted real wage rate is calculated by first computing the rate of inflation by calculating the change in the CPI-W. Then this amount is multiplied against the previous year's adjusted real wage rate. The resulting amount is added or

[3] Section 448.110(4)(a), F.S.
[4] 29 U.S.C. 206. See 29 U.S.C. 218(a) , which permits a state minimum wage higher than the federal wage.
[5] Cadet, et. al. v. Florida Agency for Workforce Innovation, 37 2011 CA 000072 (2nd Cir. Fla., 2011).

subtracted from the previous year's adjusted real wage rate to result in the current year's adjusted real wage rate. This method allows for parity between the adjusted real wage rate and the cost of living.

The bill specifies that the higher of the adjusted real wage rate, the previous year's state minimum wage, and the Federal minimum wage is the new state minimum wage for the year.

The bill defines the terms "CPI-W," "adjusted real wage rate," and "Federal minimum wage rate" for purposes of the statute.

Section 3 provides an effective date of July 1, 2011.

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. This bill does not change the manner in which the state minimum wage is currently calculated.

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.)

Committee Substitute by Commerce and Tourism on April 12, 2011:
This committee substitute did not change the substance of the bill, but instead added specificity to the statute that describes the calculation of the minimum wage.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (16) is added to section 97.012, Florida Statutes, to read:

97.012 Secretary of State as chief election officer.—The Secretary of State is the chief election officer of the state, and it is his or her responsibility to:

(16) Provide written direction and opinions to the supervisors of elections on the performance of their official duties with respect to the Florida Election Code or rules

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adopted by the Department of State.

Section 2. Subsection (18) of section 97.021, Florida Statutes, is amended to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(18) "Minor political party" is any group as specified ~~defined~~ in s. 103.095 ~~this subsection~~ which on January 1 preceding a primary election does not have registered as members 5 percent of the total registered electors of the state. ~~Any group of citizens organized for the general purposes of electing to office qualified persons and determining public issues under the democratic processes of the United States may become a minor political party of this state by filing with the department a certificate showing the name of the organization, the names of its current officers, including the members of its executive committee, and a copy of its constitution or bylaws. It shall be the duty of the minor political party to notify the department of any changes in the filing certificate within 5 days of such changes.~~

Section 3. Section 97.025, Florida Statutes, is amended to read:

97.025 Election Code; copies thereof.—A pamphlet of a reprint of the Election Code, adequately indexed, shall be prepared by the Department of State. The pamphlet shall be made available ~~It shall have a sufficient number of these pamphlets printed so that one may be given, upon request,~~ to each candidate who qualifies with the department. The pamphlet shall be made available ~~A sufficient number may be sent~~ to each supervisor, prior to the first day of qualifying, so that ~~for~~

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~~distribution, upon request, to~~ each candidate who qualifies with the supervisor and ~~to~~ each clerk of elections have access to the pamphlet. The cost of making ~~printing~~ the pamphlets available shall be paid out of funds appropriated for conducting elections.

Section 4. Section 97.0575, Florida Statutes, is amended to read:

97.0575 Third-party voter registrations.—

(1) Before engaging in any voter registration activities, a third-party voter registration organization must register and provide to the division, in an electronic format, the following information:

(a) The names of the officers of the organization and the name and permanent address of the organization.

(b) The name and address of the organization's registered agent in the state.

(c) The names, permanent addresses, and temporary addresses, if any, of each registration agent registering persons to vote in this state on behalf of the organization.

(d) A sworn statement from each registration agent employed by or volunteering for the organization stating that the agent will obey all state laws and rules regarding the registration of voters. Such statement must be on a form containing notice of applicable penalties for false registration.

(2) The division or the supervisor of elections shall make voter registration forms available to third-party voter registration organizations. All such forms must contain information identifying the organization to which the forms are provided. The division shall maintain a database of all third-


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party voter registration organizations and the voter registration forms assigned to the third-party voter registration organization. Each supervisor of elections shall provide to the division information on voter registration forms assigned to and received from third-party voter registration organizations. The information must be provided in a format and at times as required by the division by rule. The division must update information on third-party voter registrations daily and make the information publicly available.

~~(1) Prior to engaging in any voter registration activities, a third-party voter registration organization shall name a registered agent in the state and submit to the division, in a form adopted by the division, the name of the registered agent and the name of those individuals responsible for the day-to-day operation of the third-party voter registration organization, including, if applicable, the names of the entity's board of directors, president, vice president, managing partner, or such other individuals engaged in similar duties or functions. On or before the 15th day after the end of each calendar quarter, each third-party voter registration organization shall submit to the division a report providing the date and location of any organized voter registration drives conducted by the organization in the prior calendar quarter.~~

~~(2) The failure to submit the information required by subsection (1) does not subject the third-party voter registration organization to any civil or criminal penalties for such failure, and the failure to submit such information is not a basis for denying such third-party voter registration organization with copies of voter registration application~~

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~~forms.~~

(3)(a) A third-party voter registration organization that collects voter registration applications serves as a fiduciary to the applicant, ensuring that any voter registration application entrusted to the ~~third-party voter registration~~ organization, irrespective of party affiliation, race, ethnicity, or gender, shall be promptly delivered to the division or the supervisor of elections within 48 hours after the applicant completes it or the next business day if the appropriate office is closed for that 48-hour period. If a voter registration application collected by any third-party voter registration organization is not promptly delivered to the division or supervisor of elections, the third-party voter registration organization is ~~shall be~~ liable for the following fines:

1.~~(a)~~ A fine in the amount of $50 for each application received by the division or the supervisor of elections more than 48 hours ~~10 days~~ after the applicant delivered the completed voter registration application to the third-party voter registration organization or any person, entity, or agent acting on its behalf or the next business day, if the office is closed. A fine in the amount of $250 for each application received if the third-party voter registration organization or person, entity, or agency acting on its behalf acted willfully.

2.~~(b)~~ A fine in the amount of $100 for each application collected by a third-party voter registration organization or any person, entity, or agent acting on its behalf, before ~~prior to~~ book closing for any given election for federal or state office and received by the division or the supervisor of


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elections after the book-closing ~~book closing~~ deadline for such election. A fine in the amount of $500 for each application received if the third-party registration organization or person, entity, or agency acting on its behalf acted willfully.

3.~~(c)~~ A fine in the amount of $500 for each application collected by a third-party voter registration organization or any person, entity, or agent acting on its behalf, which is not submitted to the division or supervisor of elections. A fine in the amount of $1,000 for any application not submitted if the third-party voter registration organization or person, entity, or agency acting on its behalf acted willfully.

The aggregate fine pursuant to this paragraph ~~subsection~~ which may be assessed against a third-party voter registration organization, including affiliate organizations, for violations committed in a calendar year is ~~shall be~~ $1,000.

(b) A showing by the ~~fines provided in this subsection shall be reduced by three-fourths in cases in which the~~ third-party voter registration organization that the failure to deliver the voter registration application within the required timeframe is based upon force majeure or impossibility of performance shall be an affirmative defense to a violation of this subsection ~~has complied with subsection (1)~~. The secretary may ~~shall~~ waive the fines described in this subsection upon a showing that the failure to deliver the voter registration application promptly is based upon force majeure or impossibility of performance.

(4) If the Secretary of State reasonably believes that a person has committed a violation of this section, the secretary

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may refer the matter to the Attorney General for enforcement. The Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.

(5) ~~(4)(a)~~ The division shall adopt by rule a form to elicit specific information concerning the facts and circumstances from a person who claims to have been registered to vote by a third-party voter registration organization but who does not appear as an active voter on the voter registration rolls. The division shall also adopt rules to ensure the integrity of the registration process, including rules requiring third-party voter registration organizations to account for all state and federal registration forms used by their registration agents. Such rules may require an organization to provide organization and form specific identification information on each form as determined by the department as needed to assist in the accounting of state and federal registration forms.

~~(b) The division may investigate any violation of this section. Civil fines shall be assessed by the division and enforced through any appropriate legal proceedings.~~

(6) ~~(5)~~ The date on which an applicant signs a voter registration application is presumed to be the date on which the third-party voter registration organization received or collected the voter registration application.

(7) The requirements of this section are retroactive for any third-party voter registration organization registered with the department on July 1, 2011, and must be complied with within

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90 days after the department provides notice to the third-party voter registration organization of the requirements contained in this section. Failure of the third-party voter registration organization to comply with the requirements within 90 days after receipt of the notice shall automatically result in the cancellation of the third-party voter registration organization's registration.

~~(6) The civil fines provided in this section are in addition to any applicable criminal penalties.~~

~~(7) Fines collected pursuant to this section shall be annually appropriated by the Legislature to the department for enforcement of this section and for voter education.~~

~~(8) The division may adopt rules to administer this section.~~

Section 5. Section 97.071, Florida Statutes, is amended to read:

97.071 Voter information card.—

(1) A voter information card shall be furnished by the supervisor to all registered voters residing in the supervisor's county. The card must contain:

(a) Voter's registration number.

(b) Date of registration.

(c) Full name.

(d) Party affiliation.

(e) Date of birth.

(f) Address of legal residence.

(g) Precinct number.

(h) Polling place address.

(i) ~~(h)~~ Name of supervisor and contact information of


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supervisor.

(j) ~~(i)~~ Other information deemed necessary by the supervisor.

(2) A voter may receive a replacement voter information card by providing a signed, written request for a replacement card to a voter registration official. Upon verification of registration, the supervisor shall issue the voter a duplicate card without charge.

(3) In the case of a change of name, address of legal residence, polling place address, or party affiliation, the supervisor shall issue the voter a new voter information card.

Section 6. The supervisor must meet the requirements of section 5 of this act for any elector who registers to vote or who is issued a new voter information card pursuant to s. 97.071(2) or (3), Florida Statutes, on or after August 1, 2012.

Section 7. Subsection (1) of section 97.073, Florida Statutes, is amended to read:

97.073 Disposition of voter registration applications; cancellation notice.—

(1) The supervisor must notify each applicant of the disposition of the applicant's voter registration application within 5 business days after voter registration information is entered into the statewide voter registration system. The notice must inform the applicant that the application has been approved, is incomplete, has been denied, or is a duplicate of a current registration. A voter information card sent to an applicant constitutes notice of approval of registration. If the application is incomplete, the supervisor must request that the applicant supply the missing information using a voter


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registration application signed by the applicant. A notice of denial must inform the applicant of the reason the application was denied.

Section 8. Subsections (1) and (2) of section 97.1031, Florida Statutes, are amended to read:

97.1031 Notice of change of residence, change of name, or change of party affiliation.—

(1)(a) When an elector changes his or her residence address, the elector must notify the supervisor of elections. Except as provided in paragraph (b), an address change must be submitted using a voter registration application.

(b) If the address change is within the state and notice is provided to the supervisor of elections of the county where the elector has moved, the elector may do so by:

1. Contacting the supervisor of elections via telephone or electronic means, in which case the elector must provide his or her date of birth; or

2. Submitting the change on a voter registration application or other signed written notice. ~~moves from the address named on that person's voter registration record to another address within the same county, the elector must provide notification of such move to the supervisor of elections of that county. The elector may provide the supervisor a signed, written notice or may notify the supervisor by telephone or electronic means. However, notification of such move other than by signed, written notice must include the elector's date of birth. An elector may also provide notification to other voter registration officials as provided in subsection (2). A voter information card reflecting the new information shall be issued~~

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~~to the elector as provided in subsection (3).~~

(2) When an elector ~~moves from the address named on that person's voter registration record to another address in a different county but within the state, the elector~~ seeks to change party affiliation, ~~or the name of an elector is changed by marriage or other legal process,~~ the elector shall notify his or her supervisor of elections or other ~~provide notice of such change to a~~ voter registration official by using a ~~voter registration application~~ signed written notice that contains the elector's date of birth or voter registration number ~~by the elector~~. When an elector changes his or her name by marriage or other legal process, the elector shall notify his or her supervisor of elections or other voter registration official by using a signed written notice that contains the elector's date of birth or voter's registration number. ~~A voter information card reflecting the new information shall be issued to the elector as provided in subsection (3).~~

Section 9. Subsections (3) and (6) of section 98.075, Florida Statutes, are amended to read:

98.075 Registration records maintenance activities; ineligibility determinations.—

(3) DECEASED PERSONS.—

(a)1. The department shall identify those registered voters who are deceased by comparing information ~~on the lists of deceased persons~~ received from either:

a. The Department of Health as provided in s. 98.093; or~~.~~

b. The United States Social Security Administration, including, but not limited to, any master death file or index compiled by the United States Social Security Administration.


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2. Within 7 days after ~~Upon~~ receipt of such information through the statewide voter registration system, the supervisor shall remove the name of the registered voter.

(b) The supervisor shall remove the name of a deceased registered voter from the statewide voter registration system upon receipt of a copy of a death certificate issued by a governmental agency authorized to issue death certificates.

(6) OTHER BASES FOR INELIGIBILITY.—If the department or supervisor receives information ~~other than~~ from ~~the~~ sources other than those identified in subsections (2)-(5) that a registered voter is ineligible because he or she is deceased, adjudicated a convicted felon without having had his or her civil rights restored, adjudicated mentally incapacitated without having had his or her voting rights restored, does not meet the age requirement pursuant to s. 97.041, is not a United States citizen, is a fictitious person, or has listed a residence that is not his or her legal residence, the supervisor must ~~shall~~ adhere to the procedures set forth in subsection (7) prior to the removal of a registered voter's name from the statewide voter registration system.

Section 10. Section 98.093, Florida Statutes, is amended to read:

98.093 Duty of officials to furnish information relating to ~~lists of~~ deceased persons, persons adjudicated mentally incapacitated, and persons convicted of a felony.—

(1) In order to identify ineligible registered voters and maintain ~~ensure the maintenance of~~ accurate and current voter registration records in the statewide voter registration system pursuant to procedures in s. 98.065 or s. 98.075, it is


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necessary for the department and supervisors of elections to receive or access certain information from state and federal officials and entities in the format prescribed. ~~The department and supervisors of elections shall use the information provided from the sources in subsection (2) to maintain the voter registration records.~~

(2) To the maximum extent feasible, state and local government agencies shall facilitate provision of information and access to data to the department, including, but not limited to, databases that contain reliable criminal records and records of deceased persons. State and local government agencies that provide such data shall do so without charge if the direct cost incurred by those agencies is not significant.

(a) The Department of Health shall furnish monthly to the department a list containing the name, address, date of birth, date of death, social security number, race, and sex of each deceased person 17 years of age or older.

(b) Each clerk of the circuit court shall furnish monthly to the department a list of those persons who have been adjudicated mentally incapacitated with respect to voting during the preceding calendar month, a list of those persons whose mental capacity with respect to voting has been restored during the preceding calendar month, and a list of those persons who have returned signed jury notices during the preceding months to the clerk of the circuit court indicating a change of address. Each list shall include the name, address, date of birth, race, sex, and, whichever is available, the Florida driver’s license number, Florida identification card number, or social security number of each such person.


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(c) Upon receipt of information from the United States Attorney, listing persons convicted of a felony in federal court, the department shall use such information to identify registered voters or applicants for voter registration who may be potentially ineligible based on information provided in accordance with s. 98.075.

(d) The Department of Law Enforcement shall identify those persons who have been convicted of a felony who appear in the voter registration records supplied by the statewide voter registration system, in a time and manner that enables the department to meet its obligations under state and federal law.

(e) The Florida Parole Commission ~~Board of Executive Clemency~~ shall furnish at least bimonthly ~~monthly~~ to the department data, including the identity ~~a list~~ of those persons granted clemency in the preceding month or any updates to prior records which have occurred in the preceding month. The data ~~list~~ shall contain the commission's ~~Board of Executive Clemency~~ case number and the person's~~,~~ name, address, date of birth, race, gender ~~sex~~, Florida driver's license number, Florida identification card number, or the last four digits of the social security number, if available, and references to record identifiers assigned by the Department of Corrections and the Department of Law Enforcement, a unique identifier of each clemency case, and the effective date of clemency of each person.

(f) The Department of Corrections shall identify those persons who have been convicted of a felony and committed to its custody or placed on community supervision. The information must be provided to the department at a time and in manner that

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enables the department to identify registered voters who are convicted felons and to meet its obligations under state and federal law. ~~furnish monthly to the department a list of those persons transferred to the Department of Corrections in the preceding month or any updates to prior records which have occurred in the preceding month. The list shall contain the name, address, date of birth, race, sex, social security number, Department of Corrections record identification number, and associated Department of Law Enforcement felony conviction record number of each person.~~

(g) The Department of Highway Safety and Motor Vehicles shall furnish monthly to the department a list of those persons whose names have been removed from the driver's license database because they have been licensed in another state. The list shall contain the name, address, date of birth, sex, social security number, and driver's license number of each such person.

(3) ~~Nothing in~~ This section does not ~~shall~~ limit or restrict the supervisor in his or her duty to remove the names of persons from the statewide voter registration system pursuant to s. 98.075(7) based upon information received from other sources.

Section 11. Effective July 1, 2012, subsections (1) and (2) of section 98.0981, Florida Statutes, are amended to read:

98.0981 Reports; voting history; statewide voter registration system information; precinct-level election results; book closing statistics.—

(1) VOTING HISTORY AND STATEWIDE VOTER REGISTRATION SYSTEM INFORMATION.—

(a) Within 30 ~~45~~ days after certification by the Elections

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Canvassing Commission of a presidential preference primary, special election, primary election, or ~~a~~ general election, supervisors of elections shall transmit to the department, in a uniform electronic format specified in paragraph (d) ~~by the department~~, completely updated voting history information for each qualified voter who voted.

(b) After receipt of the information in paragraph (a), the department shall prepare a report in electronic format which contains the following information, separately compiled for the primary and general election for all voters qualified to vote in either election:

1. The unique identifier assigned to each qualified voter within the statewide voter registration system;

2. All information provided by each qualified voter on his or her voter registration application pursuant to s. 97.052(2), except that which is confidential or exempt from public records requirements;

3. Each qualified voter's date of registration;

4. Each qualified voter's current state representative district, state senatorial district, and congressional district, assigned by the supervisor of elections;

5. Each qualified voter's current precinct; and

6. Voting history as transmitted under paragraph (a) to include whether the qualified voter voted at a precinct location, voted during the early voting period, voted by absentee ballot, attempted to vote by absentee ballot that was not counted, attempted to vote by provisional ballot that was not counted, or did not vote.

(c) Within 45 ~~60~~ days after certification by the Elections

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Canvassing Commission of a presidential preference primary, special election, primary election, or ~~a~~ general election, the department shall send to the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader a report in electronic format that includes all information set forth in paragraph (b).

(d) File specifications are as follows:

1. The file shall contain records designated by the categories below for all qualified voters who, regardless of the voter's county of residence or active or inactive registration status at the book closing for the corresponding election that the file is being created for:

a. Voted a regular ballot at a precinct location.

b. Voted at a precinct location using a provisional ballot that was subsequently counted.

c. Voted a regular ballot during the early voting period.

d. Voted during the early voting period using a provisional ballot that was subsequently counted.

e. Voted by absentee ballot.

f. Attempted to vote by absentee ballot, but the ballot was not counted.

g. Attempted to vote by provisional ballot, but the ballot was not counted in that election.

2. Each file shall be created or converted into a tab-delimited format.

3. File names shall adhere to the following convention:

a. Three-character county identifier as established by the department followed by an underscore.

b. Followed by four-character file type identifier of

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'VH03' followed by an underscore.

c. Followed by FVRS election ID followed by an underscore.

d. Followed by Date Created followed by an underscore.

e. Date format is YYYYMMDD.

f. Followed by Time Created - HHMMSS.

g. Followed by ".txt".

4. Each record shall contain the following columns: Record Identifier, FVRS Voter ID Number, FVRS Election ID Number, Vote Date, Vote History Code, Precinct, Congressional District, House District, Senate District, County Commission District, and School Board District.

(e) Each supervisor of elections shall reconcile, before submission, the aggregate total of ballots cast in each precinct as reported in the precinct-level election results to the aggregate total number of voters with voter history for the election for each district.

(f) Each supervisor of elections shall submit the results of the data reconciliation as described in paragraph (e) to the department in an electronic format and give a written explanation for any precincts where the reconciliation as described in paragraph (e) results in a discrepancy between the voter history and the election results.

(2)(a) PRECINCT-LEVEL ELECTION RESULTS.—Within 25 ~~45~~ days after the date of a presidential preference primary election, ~~a~~ special election, primary election, or ~~a~~ general election, the supervisors of elections shall collect and submit to the department precinct-level election results for the election in a uniform electronic format specified by paragraph (c) ~~the department~~. The precinct-level election results shall be


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compiled separately for the primary or special primary election that preceded the general or special general election, respectively. The results shall specifically include for each precinct the ~~aggregate~~ total of all ballots cast for each candidate or nominee to fill a national, state, county, or district office or proposed constitutional amendment, with subtotals for each candidate and ballot type. "All ballots cast" means ballots cast by voters who cast a ballot whether at a precinct location, by absentee ballot including overseas absentee ballots, during the early voting period, or by provisional ballot.

(b) The department shall make such information available on a searchable, sortable, and downloadable database via its website that also includes the file layout and codes. The database shall be searchable and sortable by county, precinct, and candidate. The database shall be downloadable in a tab-delimited format. The database shall be available for download county-by-county and also as a statewide file. Such report shall also be made available upon request.

(c) The files containing the precinct-level election results shall be created in accordance with the applicable file specification:

1. The precinct-level results file shall be created or converted into a tab-delimited text file.

2. The row immediately before the first data record shall contain the column names of the data elements that make up the data records. There shall be one header record followed by multiple data records.

3. The data records shall include the following columns:

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County Name, Election Number, Election Date, Unique Precinct Identifier, Precinct Polling Location, Total Registered Voters, Total Registered Republicans, Total Registered Democrats, Total Registered All Other Parties, Contest Name, Candidate/Retention/Issue Name, Candidate Ethnicity, Division of Elections Unique Candidate Identifying Number, Candidate Party, District, Undervote Total, Overvote Total, Write-in Total, and Vote Total.

Section 12. Subsection (5) of section 99.012, Florida Statutes, is amended to read:

99.012 Restrictions on individuals qualifying for public office.—

(5) A person may not be qualified as a candidate for an election or appear on the ballot unless the person complies with this section. ~~The name of any person who does not comply with this section may be removed from every ballot on which it appears when ordered by a circuit court upon the petition of an elector or the Department of State.~~

Section 13. Paragraphs (a) and (b) of subsection (1) of section 99.021, Florida Statutes, are amended, and subsection (3) is added to that section, to read:

99.021 Form of candidate oath.—

(1)(a)1. Each candidate, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to any office other than a judicial office as defined in chapter 105 or a federal office, shall take and subscribe to an oath or affirmation in writing. A ~~printed~~ copy of the oath or affirmation shall be made available ~~furnished~~ to the candidate by the officer before whom

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such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of....

Before me, an officer authorized to administer oaths, personally appeared ...(please print name as you wish it to appear on the ballot)..., to me well known, who, being sworn, says that he or she is a candidate for the office of ....; that he or she is a qualified elector of .... County, Florida; that he or she is qualified under the Constitution and the laws of Florida to hold the office to which he or she desires to be nominated or elected; ~~that he or she has taken the oath required by ss. 876.05-876.10, Florida Statutes;~~ that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; ~~and~~ that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes; and that he or she will support the Constitution of the United States and the Constitution of the State of Florida.

...(Signature of candidate)...
...(Address)...

Sworn to and subscribed before me this .... day of ....,
...(year)..., at .... County, Florida.
...(Signature and title of officer administering oath)...

2. Each candidate for federal office, whether a party


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candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to office shall take and subscribe to an oath or affirmation in writing. A ~~printed~~ copy of the oath or affirmation shall be made available ~~furnished~~ to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of ....

Before me, an officer authorized to administer oaths, personally appeared ...(please print name as you wish it to appear on the ballot)..., to me well known, who, being sworn, says that he or she is a candidate for the office of ....; that he or she is qualified under the Constitution and laws of the United States to hold the office to which he or she desires to be nominated or elected; ~~and~~ that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; and that he or she will support the Constitution of the United States.

...(Signature of candidate)...
...(Address)...

Sworn to and subscribed before me this .... day of ....,
...(year)..., at .... County, Florida.
...(Signature and title of officer administering oath)...

(b) In addition, any person seeking to qualify for


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nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.

2. That the person ~~is not a registered member of any other political party and~~ has not been a registered member of ~~candidate for nomination for~~ any other political party in the calendar year leading up to the general election ~~for a period of 6 months preceding the general election~~ for which the person seeks to qualify.

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(3) This section does not apply to a person who seeks to qualify for election pursuant to ss. 103.021 and 103.101.

Section 14. Subsections (5) and (7) of section 99.061, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(5) At the time of qualifying for office, each candidate for a constitutional office shall file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a), and a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. 112.3145.

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the

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end of the qualifying period:

1. A properly executed check drawn upon the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions ~~or, in lieu thereof, as applicable, the copy of the notice of obtaining ballot position~~ pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until~~,~~ the end of qualifying ~~notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays,~~ to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a) ~~duly acknowledged~~.

~~3. The loyalty oath required by s. 876.05, signed by the candidate and duly acknowledged.~~

3.~~4.~~ If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b).

4.~~5.~~ The completed form for the appointment of campaign


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treasurer and designation of campaign depository, as required by s. 106.021.

5.~~6.~~ The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

(b) If the filing officer receives qualifying papers during the qualifying period prescribed in this section which ~~that~~ do not include all items as required by paragraph (a) prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying.

(c) The filing officer performs a ministerial function in reviewing qualifying papers. In determining whether a candidate is qualified, the filing officer shall review the qualifying papers to determine whether all items required by paragraph (a) have been properly filed and whether each item is complete on its face, including whether items that must be verified have been properly verified pursuant to s. 92.525(1)(a). The filing officer may not determine whether the contents of the qualifying papers are accurate.

(11) The decision of the filing officer concerning whether a candidate is qualified is exempt from the provisions of chapter 120.

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Section 15. Subsection (2) of section 99.063, Florida Statutes, is amended to read:

99.063 Candidates for Governor and Lieutenant Governor.—

(2) No later than 5 p.m. of the 9th day following the primary election, each designated candidate for Lieutenant Governor shall file with the Department of State:

(a) The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a) ~~duly acknowledged~~.

~~(b) The loyalty oath required by s. 876.05, signed by the candidate and duly acknowledged.~~

(b) ~~(c)~~ If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b).

(c) ~~(d)~~ The full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution. A public officer who has filed the full and public disclosure with the Commission on Ethics prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

Section 16. Subsection (1) of section 99.092, Florida Statutes, is amended to read:

99.092 Qualifying fee of candidate; notification of Department of State.—

(1) Each person seeking to qualify for nomination or election to any office, except a person seeking to qualify by the petition process pursuant to s. 99.095 and except a person seeking to qualify as a write-in candidate, shall pay a


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qualifying fee, which shall consist of a filing fee and election assessment, to the officer with whom the person qualifies, and any party assessment levied, and shall attach the original or signed duplicate of the receipt for his or her party assessment or pay the same, in accordance with the provisions of s. 103.121, at the time of filing his or her other qualifying papers. The amount of the filing fee is 3 percent of the annual salary of the office. The amount of the election assessment is 1 percent of the annual salary of the office sought. The election assessment shall be ~~deposited into the Clearing Funds Trust Fund and~~ transferred to the Elections Commission Trust Fund ~~within the Department of Legal Affairs~~. The amount of the party assessment is 2 percent of the annual salary. The annual salary of the office for purposes of computing the filing fee, election assessment, and party assessment shall be computed by multiplying 12 times the monthly salary, excluding any special qualification pay, authorized for such office as of July 1 immediately preceding the first day of qualifying. No qualifying fee shall be returned to the candidate unless the candidate withdraws his or her candidacy before the last date to qualify. If a candidate dies prior to an election and has not withdrawn his or her candidacy before the last date to qualify, the candidate’s qualifying fee shall be returned to his or her designated beneficiary, and, if the filing fee or any portion thereof has been transferred to the political party of the candidate, the Secretary of State shall direct the party to return that portion to the designated beneficiary of the candidate.

Section 17. Subsection (1) of section 99.093, Florida

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Statutes, is amended to read:

99.093 Municipal candidates; election assessment.—

(1) Each person seeking to qualify for nomination or election to a municipal office shall pay, at the time of qualifying for office, an election assessment. The election assessment shall be an amount equal to 1 percent of the annual salary of the office sought. Within 30 days after the close of qualifying, the qualifying officer shall forward all assessments collected pursuant to this section to the Florida Elections Commission ~~Department of State~~ for deposit in ~~transfer to~~ the Elections Commission Trust Fund ~~within the Department of Legal Affairs~~.

Section 18. Paragraph (d) is added to subsection (2) of section 99.095, Florida Statutes, to read:

99.095 Petition process in lieu of a qualifying fee and party assessment.—

(2)

(d) In a year of apportionment, any candidate for county or district office seeking ballot position by the petition process may obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries. The candidate shall obtain at least the number of signatures equal to 1 percent of the total number of registered voters, as shown by a compilation by the department for the immediately preceding general election, divided by the total number of districts of the office involved.

Section 19. Subsections (1), (3), and (5) of section 99.097, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

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99.097 Verification of signatures on petitions.—

(1)(a) As determined by each supervisor, based upon local conditions, the checking of names on petitions may be based on the most inexpensive and administratively feasible of either of the following methods of verification:

1.~~(a)~~ A ~~name-by-name, signature-by-signature~~ check of each petition ~~the number of authorized signatures on the petitions~~; or

2.~~(b)~~ A check of a random sample, as provided by the Department of State, of ~~names and signatures on~~ the petitions. The sample must be such that a determination can be made as to whether or not the required number of signatures has ~~have~~ been obtained with a reliability of at least 99.5 percent.

(b) Rules and guidelines for ~~this method of~~ petition verification shall be adopted ~~promulgated~~ by the Department of State. Rules and guidelines for a random sample method of verification~~, which~~ may include a requirement that petitions bear an additional number of names and signatures, not to exceed 15 percent of the names and signatures otherwise required. If the petitions do not meet such criteria or if the petitions are prescribed by s. 100.371, ~~then~~ the use of the random sample method of verification is ~~method described in this paragraph shall~~ not ~~be~~ available to supervisors.

(3)(a) If all other requirements for the petition are met, a signature on a petition shall be verified and counted as valid for a registered voter if, after comparing the signature on the petition and the signature of the registered voter in the voter registration system, the supervisor is able to determine that the petition signer is the same as the registered voter, even if


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the name on the petition is not in substantially the same form as in the voter registration system. ~~A name on a petition, which name is not in substantially the same form as a name on the voter registration books, shall be counted as a valid signature if, after comparing the signature on the petition with the signature of the alleged signer as shown on the registration books, the supervisor determines that the person signing the petition and the person who registered to vote are one and the same.~~

(b) In any situation in which this code requires the form of the petition to be prescribed by the division, no signature shall be counted toward the number of signatures required unless it is on a petition form prescribed by the division.

(c) ~~(b)~~ If a voter signs a petition and lists an address other than the legal residence where the voter is registered, the supervisor shall treat the signature as if the voter had listed the address where the voter is registered.

(5) The results of a verification pursuant to subparagraph (1)(a)2. ~~paragraph (1)(b)~~ may be contested in the circuit court by the candidate; an announced opponent; a representative of a designated political committee; or a person, party, or other organization submitting the petition. The contestant shall file a complaint, together with the fees prescribed in chapter 28, with the clerk of the circuit court in the county in which the petition is certified or in Leon County if the petition covers more than one county within 10 days after midnight of the date the petition is certified; and the complaint shall set forth the grounds on which the contestant intends to establish his or her right to require a complete check of the petition ~~names and~~


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~~signatures~~ pursuant to subparagraph (1)(a)1. ~~paragraph (1)(a).~~ In the event the court orders a complete check of the petition and the result is not changed as to the success or lack of success of the petitioner in obtaining the requisite number of valid signatures, then such candidate, unless the candidate has filed the oath stating that he or she is unable to pay such charges; announced opponent; representative of a designated political committee; or party, person, or organization submitting the petition, unless such person or organization has filed the oath stating inability to pay such charges, shall pay to the supervisor of elections of each affected county for the complete check an amount calculated at the rate of 10 cents for each additional signature checked or the actual cost of checking such additional signatures, whichever is less.

(6)(a) If any person is paid to solicit signatures on a petition, an undue burden oath may not subsequently be filed in lieu of paying the fee to have signatures verified for that petition.

(b) If an undue burden oath has been filed and payment is subsequently made to any person to solicit signatures on a petition, the undue burden oath is no longer valid and a fee for all signatures previously submitted to the supervisor of elections and any that are submitted thereafter shall be paid by the candidate, person, or organization that submitted the undue burden oath. If contributions as defined in s. 106.011 are received, any monetary contributions must first be used to reimburse the supervisor of elections for any signature verification fees that were not paid because of the filing of an undue burden oath.


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Section 20. Section 100.061, Florida Statutes, is amended to read:

100.061 Primary election.—In each year in which a general election is held, a primary election for nomination of candidates of political parties shall be held on the Tuesday 12 ~~10~~ weeks prior to the general election. The candidate receiving the highest number of votes cast in each contest in the primary election shall be declared nominated for such office. If two or more candidates receive an equal and highest number of votes for the same office, such candidates shall draw lots to determine which candidate is nominated.

Section 21. Section 100.101, Florida Statutes, is amended to read:

100.101 Special elections and special primary elections.—~~Except as provided in s. 100.111(2),~~ A special election or special primary election shall be held in the following cases:

(1) If no person has been elected at a general election to fill an office which was required to be filled by election at such general election.

(2) If a vacancy occurs in the office of state senator or member of the state house of representatives.

(3) If it is necessary to elect presidential electors, by reason of the offices of President and Vice President both having become vacant.

(4) If a vacancy occurs in the office of member from Florida of the House of Representatives of Congress.

Section 22. Section 100.111, Florida Statutes, is amended to read:

100.111 Filling vacancy.—

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(1)(a) If any vacancy occurs in any office which is required to be filled pursuant to s. 1(f), Art. IV of the State Constitution and the remainder of the term of such office is 28 months or longer, then at the next general election a person shall be elected to fill the unexpired portion of such term, commencing on the first Tuesday after the first Monday following such general election.

(b) If such a vacancy occurs prior to the first day set by law for qualifying for election to office at such general election, any person seeking nomination or election to the unexpired portion of the term shall qualify within the time prescribed by law for qualifying for other offices to be filled by election at such general election.

(c) If such a vacancy occurs prior to the primary election but on or after the first day set by law for qualifying, the Secretary of State shall set dates for qualifying for the unexpired portion of the term of such office. Any person seeking nomination or election to the unexpired portion of the term shall qualify within the time set by the Secretary of State. If time does not permit party nominations to be made in conjunction with the primary election, the Governor may call a special primary election to select party nominees for the unexpired portion of such term.

~~(2)(a) If, in any state or county office required to be filled by election, a vacancy occurs during an election year by reason of the incumbent having qualified as a candidate for federal office pursuant to s. 99.061, no special election is required. Any person seeking nomination or election to the office so vacated shall qualify within the time prescribed by s.~~

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~~99.061 for qualifying for state or county offices to be filled by election.~~

~~(b) If such a vacancy occurs in an election year other than the one immediately preceding expiration of the present term, the Secretary of State shall notify the supervisor of elections in each county served by the office that a vacancy has been created. Such notice shall be provided to the supervisor of elections not later than the close of the first day set for qualifying for state or county office. The supervisor shall provide public notice of the vacancy in any manner the Secretary of State deems appropriate.~~

(2) ~~(3)~~ Whenever there is a vacancy for which a special election is required pursuant to s. 100.101, the Governor, after consultation with the Secretary of State, shall fix the dates of a special primary election and a special election. Nominees of political parties shall be chosen under the primary laws of this state in the special primary election to become candidates in the special election. Prior to setting the special election dates, the Governor shall consider any upcoming elections in the jurisdiction where the special election will be held. The dates fixed by the Governor shall be specific days certain and shall not be established by the happening of a condition or stated in the alternative. The dates fixed shall provide a minimum of 2 weeks between each election. In the event a vacancy occurs in the office of state senator or member of the House of Representatives when the Legislature is in regular legislative session, the minimum times prescribed by this subsection may be waived upon concurrence of the Governor, the Speaker of the House of Representatives, and the President of the Senate. If a


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vacancy occurs in the office of state senator and no session of the Legislature is scheduled to be held prior to the next general election, the Governor may fix the dates for the special primary election and for the special election to coincide with the dates of the primary election and general election. If a vacancy in office occurs in any district in the state Senate or House of Representatives or in any congressional district, and no session of the Legislature, or session of Congress if the vacancy is in a congressional district, is scheduled to be held during the unexpired portion of the term, the Governor is not required to call a special election to fill such vacancy.

(a) The dates for candidates to qualify in such special election or special primary election shall be fixed by the Department of State, and candidates shall qualify not later than noon of the last day so fixed. The dates fixed for qualifying shall allow a minimum of 14 days between the last day of qualifying and the special primary election.

(b) The filing of campaign expense statements by candidates in such special elections or special primaries and by committees making contributions or expenditures to influence the results of such special primaries or special elections shall be not later than such dates as shall be fixed by the Department of State, and in fixing such dates the Department of State shall take into consideration and be governed by the practical time limitations.

(c) The dates for a candidate to qualify by the petition process pursuant to s. 99.095 in such special primary or special election shall be fixed by the Department of State. In fixing such dates the Department of State shall take into consideration and be governed by the practical time limitations. Any candidate

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seeking to qualify by the petition process in a special primary election shall obtain 25 percent of the signatures required by s. 99.095.

(d) The qualifying fees and party assessments of such candidates as may qualify shall be the same as collected for the same office at the last previous primary for that office. The party assessment shall be paid to the appropriate executive committee of the political party to which the candidate belongs.

(e) Each county canvassing board shall make as speedy a return of the result of such special primary elections and special elections as time will permit, and the Elections Canvassing Commission likewise shall make as speedy a canvass and declaration of the nominees as time will permit.

(3) ~~(4)~~ (a) In the event that death, resignation, withdrawal, or removal~~, or any other cause or event~~ should cause a party to have a vacancy in nomination which leaves no candidate for an office from such party, the filing officer before whom the candidate qualified ~~Department of State~~ shall notify the chair of the ~~appropriate~~ state and~~, district, or~~ county political party executive committee of such party~~;~~ and:~~,~~

1. If the vacancy in nomination is for a statewide office, the state party chair shall, within 5 days, ~~the chair shall~~ call a meeting of his or her executive board ~~committee~~ to consider designation of a nominee to fill the vacancy.

2. If the vacancy in nomination is for the office of United States Representative, state senator, state representative, state attorney, or public defender, the state party chair shall notify the appropriate county chair or chairs and, within 5 days, the appropriate county chair or chairs shall call a


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meeting of the members of the executive committee in the affected county or counties to consider designation of a nominee to fill the vacancy.

3. If the vacancy in nomination is for a county office, the state party chair shall notify the appropriate county chair and, within 5 days, the appropriate county chair shall call a meeting of his or her executive committee to consider designation of a nominee to fill the vacancy.

The name of any person so designated shall be submitted to the filing officer before whom the candidate qualified ~~Department of State~~ within 7 days after notice to the chair in order that the person designated may have his or her name on the ballot of the ensuing general election. If the name of the new nominee is submitted after the certification of results of the preceding primary election, however, the ballots shall not be changed and the former party nominee's name will appear on the ballot. Any ballots cast for the former party nominee will be counted for the person designated by the political party to replace the former party nominee. If there is no opposition to the party nominee, the person designated by the political party to replace the former party nominee will be elected to office at the general election. ~~For purposes of this paragraph, the term "district political party executive committee" means the members of the state executive committee of a political party from those counties comprising the area involving a district office.~~

(b) When, under the circumstances set forth in the preceding paragraph, vacancies in nomination are required to be filled by committee nominations, such vacancies shall be filled


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by party rule. In any instance in which a nominee is selected by a committee to fill a vacancy in nomination, such nominee shall pay the same filing fee and take the same oath as the nominee would have taken had he or she regularly qualified for election to such office.

(c) Any person who, at the close of qualifying as prescribed in ss. 99.061 and 105.031, was qualified for nomination or election to or retention in a public office to be filled at the ensuing general election or who attempted to qualify and failed to qualify is prohibited from qualifying as a candidate to fill a vacancy in nomination for any other office to be filled at that general election, even if such person has withdrawn or been eliminated as a candidate for the original office sought. However, this paragraph does not apply to a candidate for the office of Lieutenant Governor who applies to fill a vacancy in nomination for the office of Governor on the same ticket or to a person who has withdrawn or been eliminated as a candidate and who is subsequently designated as a candidate for Lieutenant Governor under s. 99.063.

(4) A vacancy in nomination is not created if an order of a court that has become final determines that a nominee did not properly qualify or did not meet the necessary qualifications to hold the office for which he or she sought to qualify.

(5) In the event of unforeseeable circumstances not contemplated in these general election laws concerning the calling and holding of special primary elections and special elections resulting from court order or other unpredictable circumstances, the Department of State shall have the authority to provide for the conduct of orderly elections.

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Section 23. Subsections (1), (3), (6), (7), and (8) of section 100.371, Florida Statutes, are amended to read:

100.371 Initiatives; procedure for placement on ballot.—

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election, provided the initiative petition has been filed with the Secretary of State no later than February 1 of the year the general election is held. A petition shall be deemed to be filed with the Secretary of State upon the date the secretary determines that valid and verified petition forms have been signed by the constitutionally required number and distribution of electors under this code~~, subject to the right of revocation established in this section~~.

(3) An initiative petition form circulated for signature may not be bundled with or attached to any other petition. Each signature shall be dated when made and shall be valid for a period of 2 ~~4~~ years following such date, provided all other requirements of law are met. The sponsor shall submit signed and dated forms to the ~~appropriate~~ supervisor of elections for the county of residence listed by the person signing the form for verification of ~~as to~~ the number of ~~registered electors whose~~ valid signatures obtained ~~appear thereon~~. If a signature on a petition is from a registered voter in another county, the supervisor shall notify the petition sponsor of the misfiled petition. The supervisor shall promptly verify the signatures within 30 days after ~~of~~ receipt of the petition forms and payment of the fee required by s. 99.097. The supervisor shall promptly record, in the manner prescribed by the Secretary of State, the date each form is received by the supervisor, and the date the signature on the form is verified as valid. The

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supervisor may verify that the signature on a form is valid only if:

(a) The form contains the original signature of the purported elector.

(b) The purported elector has accurately recorded on the form the date on which he or she signed the form.

(c) The form ~~accurately~~ sets forth the purported elector's name, ~~street~~ address, city, county, and voter registration number or date of birth.

(d) The purported elector is, at the time he or she signs the form and at the time the form is verified, a duly qualified and registered elector ~~authorized to vote~~ in the state ~~county in which his or her signature is submitted~~.

The supervisor shall retain the signature forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee that ~~which~~ circulated the petition is no longer seeking to obtain ballot position.

~~(6)(a) An elector's signature on a petition form may be revoked within 150 days of the date on which he or she signed the petition form by submitting to the appropriate supervisor of elections a signed petition-revocation form.~~

~~(b) The petition-revocation form and the manner in which signatures are obtained, submitted, and verified shall be subject to the same relevant requirements and timeframes as the corresponding petition form and processes under this code and shall be approved by the Secretary of State before any signature~~

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~~on a petition-revocation form is obtained.~~

~~(c) In those circumstances in which a petition-revocation form for a corresponding initiative petition has not been submitted and approved, an elector may complete and submit a standard petition-revocation form directly to the supervisor of elections. All other requirements and processes apply for the submission and verification of the signatures as for initiative petitions.~~

~~(d) Supervisors of elections shall provide petition-revocation forms to the public at all main and branch offices.~~

~~(e) The petition-revocation form shall be filed with the supervisor of elections by February 1 preceding the next general election or, if the initiative amendment is not certified for ballot position in that election, by February 1 preceding the next successive general election. The supervisor of elections shall promptly verify the signature on the petition-revocation form and process such revocation upon payment, in advance, of a fee of 10 cents or the actual cost of verifying such signature, whichever is less. The supervisor shall promptly record each valid and verified signature on a petition-revocation form in the manner prescribed by the Secretary of State.~~

~~(f) The division shall adopt by rule the petition-revocation forms to be used under this subsection.~~

(6)~~(7)~~ The Department of State may adopt rules in accordance with s. 120.54 to carry out the provisions of subsections (1)-(5) ~~(1)-(6)~~.

(7)~~(8)~~ No provision of this code shall be deemed to prohibit a private person exercising lawful control over privately owned property, including property held open to the

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public for the purposes of a commercial enterprise, from excluding from such property persons seeking to engage in activity supporting or opposing initiative amendments.

Section 24. Effective July 1, 2012, subsections (3) and (4) of section 101.001, Florida Statutes, are amended to read:

101.001 Precincts and polling places; boundaries.—

(3)(a) Each supervisor of elections shall maintain a suitable map drawn to a scale no smaller than 3 miles to the inch and clearly delineating all major observable features such as roads, streams, and railway lines and showing the current geographical boundaries of each precinct, representative district, and senatorial district, and other type of district in the county subject to the elections process in this code.

(b) The supervisor shall provide to the department data on all precincts in the county associated with the most recent decennial census blocks within each precinct.

(c) The department shall maintain a searchable database that contains the precincts and the corresponding most recent decennial census blocks within the precincts for each county, including a historical file that allows the census blocks to be traced through the prior decade.

(d) ~~(b)~~ The supervisor of elections shall notify the Secretary of State in writing within 10 ~~30~~ days after any reorganization of precincts and shall furnish a copy of the map showing the current geographical boundaries and designation of each new precinct. However, if precincts are composed of whole census blocks, the supervisor may furnish, in lieu of a copy of the map, a list, in an electronic format prescribed by the Department of State, associating each census block in the county

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with its precinct.

(e) ~~(c)~~ Any precinct established or altered under the provisions of this section shall consist of areas bounded on all sides only by census block boundaries from the most recent United States Census. If the census block boundaries split or conflict with another political boundary listed below, the boundary listed below may be used:

~~1. Census block boundaries from the most recent United States Census;~~

1. ~~2.~~ Governmental unit boundaries reported in the most recent Boundary and Annexation Survey published by the United States Census Bureau;

2. ~~3.~~ Visible features that are readily distinguishable upon the ground, such as streets, railroads, tracks, streams, and lakes, and that are indicated upon current census maps, official Department of Transportation maps, official municipal maps, official county maps, or a combination of such maps;

3. ~~4.~~ Boundaries of public parks, public school grounds, or churches; or

4. ~~5.~~ Boundaries of counties, incorporated municipalities, or other political subdivisions that meet criteria established by the United States Census Bureau for block boundaries.

~~(d) Until July 1, 2012, a supervisor may apply for and obtain from the Secretary of State a waiver of the requirement in paragraph (c).~~

(4) (a) Within 10 days after there is any change in the division, number, or boundaries of the precincts, or the location of the polling places, the supervisor of elections shall make in writing an accurate description of any new or


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altered precincts, setting forth the boundary lines and shall identify the location of each new or altered polling place. A copy of the document describing such changes shall be posted at the supervisor's office.

(b) Any changes in the county precinct data shall be provided to the department within 10 days after a change.

(c) Precinct data shall include all precincts for which precinct-level election results and voting history results are reported.

Section 25. Subsection (1) of section 101.043, Florida Statutes, is amended to read:

101.043 Identification required at polls.—

(1) The precinct register, as prescribed in s. 98.461, shall be used at the polls for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present one of the following current and valid picture identifications:

(a) Florida driver's license.

(b) Florida identification card issued by the Department of Highway Safety and Motor Vehicles.

(c) United States passport.

(d) Debit or credit card.

(e) Military identification.

(f) Student identification.

(g) Retirement center identification.

(h) Neighborhood association identification.

(i) Public assistance identification.

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If the picture identification does not contain the signature of the elector ~~voter~~, an additional identification that provides the elector's ~~voter's~~ signature shall be required. The address appearing on the identification presented by the elector may not be used as the basis to confirm an elector's legal residence or otherwise challenge an elector's legal residence. The elector shall sign his or her name in the space provided on the precinct register or on an electronic device provided for recording the elector's ~~voter's~~ signature. The clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided on the precinct register or on an electronic device provided for that purpose and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.

Section 26. Section 101.045, Florida Statutes, is amended to read:

101.045 Electors must be registered in precinct; provisions for change of residence or name.—

(1) A ~~No~~ person is not ~~shall be~~ permitted to vote in any election precinct or district other than the one in which the person has his or her legal residence and in which the person is registered. However, a person temporarily residing outside the county shall be registered in the precinct in which the main office of the supervisor, as designated by the supervisor, is located when the person has no permanent address in the county and it is the person's intention to remain a resident of Florida and of the county in which he or she is registered to vote. Such persons who are registered in the precinct in which the main

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office of the supervisor, as designated by the supervisor, is located and who are residing outside the county with no permanent address in the county shall not be registered electors of a municipality and therefore shall not be permitted to vote in any municipal election.

(2)(a) An elector who moves from the precinct in which the elector is registered may be permitted to vote in the precinct to which he or she has moved his or her legal residence, if the change of residence is within the same county and the ~~provided such~~ elector completes an affirmation in substantially the following form:

Change of Legal Residence of Registered Voter

Under penalties for false swearing, I, ...(Name of voter)..., swear (or affirm) that the former address of my legal residence was ...(Address of legal residence)... in the municipality of ...., in .... County, Florida, and I was registered to vote in the .... precinct of .... County, Florida; that I have not voted in the precinct of my former registration in this election; that I now reside at ...(Address of legal residence)... in the Municipality of ...., in .... County, Florida, and am therefore eligible to vote in the .... precinct of .... County, Florida; and I further swear (or affirm) that I am otherwise legally registered and entitled to vote.

...(Signature of voter whose address of legal residence has changed)...

(b) An elector whose change of address is from outside the county may not change his or her legal residence at the polling place and vote a regular ballot; however, such elector is

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entitled to vote a provisional ballot.

(c) ~~(b)~~ An elector whose name changes because of marriage or other legal process may be permitted to vote, provided such elector completes an affirmation in substantially the following form:

Change of Name of Registered Voter

Under penalties for false swearing, I, ...(New name of voter)..., swear (or affirm) that my name has been changed because of marriage or other legal process. My former name and address of legal residence appear on the registration records of precinct .... as follows:

Name.....

Address.....

Municipality.....

County.....

Florida, Zip.....

My present name and address of legal residence are as follows:

Name.....

Address.....

Municipality.....

County.....

Florida, Zip.....

and I further swear (or affirm) that I am otherwise legally registered and entitled to vote.

...(Signature of voter whose name has changed)...

(d) ~~(c)~~ Instead of the affirmation contained in paragraph (a) or paragraph (c) ~~(b)~~, an elector may complete a voter registration application that indicates the change of name or

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change of address of legal residence.

(e) ~~(d)~~ Such affirmation or application, when completed and presented at the precinct in which such elector is entitled to vote, and upon verification of the elector's registration, shall entitle such elector to vote as provided in this subsection. If the elector's eligibility to vote cannot be determined, he or she shall be entitled to vote a provisional ballot, subject to the requirements and procedures in s. 101.048. Upon receipt of an affirmation or application certifying a change in address of legal residence or name, the supervisor shall as soon as practicable make the necessary changes in the statewide voter registration system to indicate the change in address of legal residence or name of such elector.

Section 27. Subsection (2) of section 101.131, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

101.131 Watchers at polls.—

(2) Each party, each political committee, and each candidate requesting to have poll watchers shall designate, in writing to the supervisors of elections, on a form prescribed by the division, before ~~prior to~~ noon of the second Tuesday preceding the election poll watchers for each polling room on election day. Designations of poll watchers for early voting areas shall be submitted in writing to the supervisor of elections, on a form prescribed by the division, before noon at least 14 days before early voting begins. The poll watchers for ~~each~~ polling rooms ~~room~~ shall be approved by the supervisor of elections on or before the Tuesday before the election. Poll watchers for early voting areas shall be approved by the

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supervisor of elections no later than 7 days before early voting begins. The supervisor shall furnish to each election board a list of the poll watchers designated and approved for such polling rooms ~~room~~ or early voting areas ~~area~~. Designation of poll watchers shall be made by the chair of the county executive committee of a political party, the chair of a political committee, or the candidate requesting to have poll watchers.

(4) All poll watchers shall be allowed to enter and watch polls in all polling rooms and early voting areas within the county in which they have been designated if the number of poll watchers at any particular polling place does not exceed the number provided in this section.

(5) The supervisor of elections shall provide to each designated poll watcher, no later than 7 days before early voting begins, a poll watcher identification badge that identifies the poll watcher by name. Each poll watcher must wear his or her identification badge while in the polling room or early voting area.

Section 28. Subsections (1), (2), and (3) of section 101.151, Florida Statutes, are amended to read:

101.151 Specifications for ballots.—

(1)(a) Marksense ballots shall be printed on paper of such thickness that the printing cannot be distinguished from the back and shall meet the specifications of the voting system that will be used to tabulate the ballots.

(b) Early voting sites may employ a ballot-on-demand production system to print individual marksense ballots, including provisional ballots, for eligible electors pursuant to s. 101.657. Ballot-on-demand technology may be used to produce

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marksense absentee and election-day ballots. ~~Not later than 30 days before an election, the Secretary of State may also authorize in writing the use of ballot-on-demand technology for the production of election-day ballots.~~

(2)(a) The ballot shall have the following office titles ~~headings~~ under which shall appear ~~the names of the offices and~~ the names of the candidates for the respective offices in the following order:

1. The office titles of ~~heading "~~President and Vice President~~"~~ and thereunder the names of the candidates for President and Vice President of the United States nominated by the political party that received the highest vote for Governor in the last general election of the Governor in this state. Then shall appear the names of other candidates for President and Vice President of the United States who have been properly nominated.

2. The office titles ~~Then shall follow the heading "Congressional" and thereunder the offices~~ of United States Senator and Representative in Congress.~~;~~

3. The office titles ~~then the heading "State" and thereunder the offices~~ of Governor and Lieutenant Governor~~;~~ ~~,~~ Attorney General~~;~~ ~~,~~ Chief Financial Officer~~;~~ ~~,~~ Commissioner of Agriculture~~;~~ ~~,~~ State Attorney, with the applicable judicial circuit; and Public Defender, with the applicable judicial circuit.

4. ~~together with the names of the candidates for each office and the title of the office which they seek; then the heading "Legislative" and thereunder~~ The office titles ~~offices~~ of State Senator and State Representative, with the applicable

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district for the office printed beneath.~~; then the heading "County" and thereunder~~

5. The office titles of Clerk of the Circuit Court, or Clerk of the Circuit Court and Comptroller (whichever is applicable and when authorized by law), Clerk of the County Court (when authorized by law), Sheriff, Property Appraiser, Tax Collector, District Superintendent of Schools, and Supervisor of Elections.

6. The office titles ~~Thereafter follows: members~~ of ~~the~~ Board of County Commissioners, with the applicable district printed beneath each office, and such other county and district offices as are involved in the election, in the order fixed by the Department of State, followed, in the year of their election, by "Party Offices," and thereunder the offices of state and county party executive committee members.

(b) In a general election, in addition to the names printed on the ballot, a blank space shall be provided under each ~~heading for an~~ office for which a write-in candidate has qualified. With respect to write-in candidates, if two or more candidates are seeking election to one office, only one blank space shall be provided.

(c) ~~(b)~~ When more than one candidate is nominated for office, the candidates for such office shall qualify and run in a group or district, and the group or district number shall be printed beneath the name of the office. Each nominee of a political party chosen in a primary shall appear on the general election ballot in the same numbered group or district as on the primary election ballot.

(d) ~~(c)~~ If in any election all the offices as set forth in

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paragraph (a) are not involved, those offices not to be filled shall be omitted and the remaining offices shall be arranged on the ballot in the order named.

(3)(a) The names of the candidates of the party that received the highest number of votes for Governor in the last election in which a Governor was elected shall be placed first ~~under the heading~~ for each office on the general election ballot, together with an appropriate abbreviation of the party name; the names of the candidates of the party that received the second highest vote for Governor shall be placed second ~~under the heading~~ for each office, together with an appropriate abbreviation of the party name.

(b) Minor political party candidates ~~and candidates with no party affiliation~~ shall have their names appear on the general election ballot following the names of recognized political parties, in the same order as they were qualified, ~~certified~~ followed by the names of candidates with no party affiliation, in the order as they were qualified.

Section 29. Subsection (2) of section 101.161, Florida Statutes, is amended to read:

101.161 Referenda; ballots.—

(2)(a) The substance and ballot title of a constitutional amendment proposed by initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to s. 120.54. The Department of State shall give each proposed constitutional amendment a designating number for convenient reference. This number designation shall appear on the ballot. Designating numbers shall be assigned in the order of filing or certification and in

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accordance with rules adopted by the Department of State. The Department of State shall furnish the designating number, the ballot title, and the substance of each amendment to the supervisor of elections of each county in which such amendment is to be voted on.

(b) Any action for a judicial determination that the ballot title or substance embodied in a joint resolution is inaccurate, misleading, or otherwise defective must be commenced within 30 days after the joint resolution is filed with the Secretary of State or at least 150 days before the election at which the amendment will appear on the ballot, whichever occurs later. The court, including any appellate court, shall accord the case priority over other pending cases and render a decision as expeditiously as possible. If the court determines that the ballot title or substance embodied in the joint resolution is defective and further appeals are declined, abandoned, or exhausted, the Attorney General shall promptly prepare a revised ballot title and substance that correct the deficiencies identified by the court, and the Department of State shall furnish a designating number and the revised ballot title and substance to the supervisors of elections for placement on the ballot. A defect in the ballot title or substance embodied in the joint resolution is not grounds to remove the proposed amendment from the ballot.

Section 30. Paragraph (a) of subsection (2) of section 101.5605, Florida Statutes, is amended to read:

101.5605 Examination and approval of equipment.—

(2)(a) Any person owning or interested in an electronic or electromechanical voting system may submit it to the Department


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of State for examination. The vote counting segment shall be certified after a satisfactory evaluation testing has been performed according to the standards adopted under s. 101.015(1) ~~electronic industry standards~~. This testing shall include, but is not limited to, testing of all software required for the voting system's operation; the ballot reader; the rote processor, especially in its logic and memory components; the digital printer; the fail-safe operations; the counting center environmental requirements; and the equipment reliability estimate. For the purpose of assisting in examining the system, the department shall employ or contract for services of at least one individual who is expert in one or more fields of data processing, mechanical engineering, and public administration and shall require from the individual a written report of his or her examination.

Section 31. Subsection (11) of section 101.5606, Florida Statutes, is amended to read

101.5606 Requirements for approval of systems.—No electronic or electromechanical voting system shall be approved by the Department of State unless it is so constructed that:

(11) It is capable of automatically producing precinct totals in printed~~, marked, or punched~~ form~~, or a combination thereof~~.

Section 32. Paragraph (a) of subsection (4) of section 101.5612, Florida Statutes, is amended to read:

101.5612 Testing of tabulating equipment.—

(4)(a)1. For electronic or electromechanical voting systems configured to include electronic or electromechanical tabulation devices which are distributed to the precincts, all or a sample


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of the devices to be used in the election shall be publicly tested. If a sample is to be tested, the sample shall consist of a random selection of at least 5 percent or 10 of the devices for an optical scan system ~~or 2 percent of the devices for a touchscreen system or 10 of the devices for either system, as applicable~~, whichever is greater. For touchscreen systems used for voters having a disability, a sample of at least 2 percent of the devices must be tested. The test shall be conducted by processing a group of ballots, causing the device to output results for the ballots processed, and comparing the output of results to the results expected for the ballots processed. The group of ballots shall be produced so as to record a predetermined number of valid votes for each candidate and on each measure and to include for each office one or more ballots which have activated voting positions in excess of the number allowed by law in order to test the ability of the tabulating device to reject such votes.

2. If any tested tabulating device is found to have an error in tabulation, it shall be deemed unsatisfactory. For each device deemed unsatisfactory, the canvassing board shall take steps to determine the cause of the error, shall attempt to identify and test other devices that could reasonably be expected to have the same error, and shall test a number of additional devices sufficient to determine that all devices are satisfactory. Upon deeming any device unsatisfactory, the canvassing board may require all devices to be tested or may declare that all devices are unsatisfactory.

3. If the operation or output of any tested tabulation device, such as spelling or the order of candidates on a report,

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is in error, such problem shall be reported to the canvassing board. The canvassing board shall then determine if the reported problem warrants its deeming the device unsatisfactory.

Section 33. Subsection (4) of section 101.5614, Florida Statutes, is amended to read:

101.5614 Canvass of returns.—

(4) ~~If ballot cards are used, and separate write-in ballots or envelopes for casting write-in votes are used, write-in ballots or the envelopes on which write-in ballots have been cast shall be serially numbered, starting with the number one, and the same number shall be placed on the ballot card of the voter. This process may be completed at either the precinct by the election board or at the central counting location.~~ For each ballot or ballot image ~~and ballot envelope~~ on which write-in votes have been cast, the canvassing board shall compare the write-in votes with the votes cast on the ballot ~~card~~; if the total number of votes for any office exceeds the number allowed by law, ~~a notation to that effect, specifying the office involved, shall be entered on the back of the ballot card or in a margin if voting areas are printed on both sides of the ballot card.~~ such votes shall not be counted. All valid votes shall be tallied by the canvassing board.

Section 34. Subsection (6) is added to section 101.591, Florida Statutes, to read:

101.591 Voting system audit.—

(6) If a manual recount is undertaken pursuant to s. 102.166, the canvassing board is not required to perform the audit provided for in this section.

Section 35. Paragraphs (a) and (b) of subsection (1) and

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subsections (3) and (4) of section 101.62, Florida Statutes, are amended to read:

101.62 Request for absentee ballots.—

(1)(a) The supervisor shall accept a request for an absentee ballot from an elector in person or in writing. One request shall be deemed sufficient to receive an absentee ballot for all elections through the end of the calendar year of the second ensuing ~~next~~ regularly scheduled general election, unless the elector or the elector's designee indicates at the time the request is made the elections for which the elector desires to receive an absentee ballot. Such request may be considered canceled when any first-class mail sent by the supervisor to the elector is returned as undeliverable.

(b) The supervisor may accept a written or telephonic request for an absentee ballot from the elector, or, if directly instructed by the elector, a member of the elector's immediate family, or the elector's legal guardian. For purposes of this section, the term "immediate family" has the same meaning as specified in paragraph (4)(c) ~~(4)(b)~~. The person making the request must disclose:

1. The name of the elector for whom the ballot is requested.

2. The elector's address.

3. The elector's date of birth.

4. The requester's name.

5. The requester's address.

6. The requester's driver's license number, if available.

7. The requester's relationship to the elector.

8. The requester's signature (written requests only).

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(3) For each request for an absentee ballot received, the supervisor shall record the date the request was made, the date the absentee ballot was delivered to the voter or the voter's designee or the date the absentee ballot was delivered to the post office or other carrier, the date the ballot was received by the supervisor, and such other information he or she may deem necessary. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than 8 a.m. ~~noon~~ of each day, including weekends, beginning 60 days before the primary until 15 days after the general election and shall be contemporaneously provided to the division. This information shall be confidential and exempt from the provisions of s. 119.07(1) and shall be made available to or reproduced only for the voter requesting the ballot, a canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees or registered committees of continuous existence, for political purposes only.

(4)(a) No later than 45 days before each presidential preference primary election, primary election, and general election, the supervisor of elections shall send an absentee ballot as provided in subparagraph (c)2. ~~(b)2~~. to each absent uniformed services voter and to each overseas voter who has requested an absentee ballot.

(b) The supervisor of elections shall mail an absentee ballot to each absent qualified voter, other than those listed in paragraph (a), who has requested such a ballot, between the

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35th and 28th days before the presidential preference primary election, primary election, and general election. Except as otherwise provided in subsection (2) and after the period described in this paragraph, the supervisor shall mail absentee ballots within 2 business days after receiving a request for such a ballot.

(c) ~~(b)~~ The supervisor shall provide an absentee ballot to each elector by whom a request for that ballot has been made by one of the following means:

1. By nonforwardable, return-if-undeliverable mail to the elector's current mailing address on file with the supervisor or~~, unless the elector specifies in the request that:~~

~~a. The elector is absent from the county and does not plan to return before the day of the election;~~

~~b. The elector is temporarily unable to occupy the residence because of hurricane, tornado, flood, fire, or other emergency or natural disaster; or~~

~~c. The elector is in a hospital, assisted living facility, nursing home, short-term medical or rehabilitation facility, or correctional facility,~~

~~in which case the supervisor shall mail the ballot by nonforwardable, return-if-undeliverable mail to~~ any other address the elector specifies in the request.

2. By forwardable mail, e-mail, or facsimile machine transmission to absent uniformed services voters and overseas voters. The absent uniformed services voter or overseas voter may designate in the absentee ballot request the preferred method of transmission. If the voter does not designate the


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method of transmission, the absentee ballot shall be mailed.

3. By personal delivery before 7 p.m. on election day to the elector, upon presentation of the identification required in s. 101.043.

4. By delivery to a designee on election day or up to 5 days prior to the day of an election. Any elector may designate in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two absentee ballots per election, other than the designee's own ballot, except that additional ballots may be picked up for members of the designee's immediate family. For purposes of this section, "immediate family" means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse. The designee shall provide to the supervisor the written authorization by the elector and a picture identification of the designee and must complete an affidavit. The designee shall state in the affidavit that the designee is authorized by the elector to pick up that ballot and shall indicate if the elector is a member of the designee's immediate family and, if so, the relationship. The department shall prescribe the form of the affidavit. If the supervisor is satisfied that the designee is authorized to pick up the ballot and that the signature of the elector on the written authorization matches the signature of the elector on file, the supervisor shall give the ballot to that designee for delivery to the elector.

Section 36. Section 101.65, Florida Statutes, is amended to read:

101.65 Instructions to absent electors.—The supervisor

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shall enclose with each absentee ballot separate printed instructions in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING BALLOT.

1. VERY IMPORTANT. In order to ensure that your absentee ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the day of the election.

2. Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

3. Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote for One" candidate and you vote for more than one candidate, your vote in that race will not be counted.

4. Place your marked ballot in the enclosed secrecy envelope.

5. Insert the secrecy envelope into the enclosed mailing envelope which is addressed to the supervisor.

6. Seal the mailing envelope and completely fill out the Voter's Certificate on the back of the mailing envelope.

7. VERY IMPORTANT. In order for your absentee ballot to be counted, you must sign your name on the line above (Voter's Signature). An absentee ballot will be considered illegal and not be counted if the signature on the voter's certificate does not match the signature on record. The signature on file at the start of the canvass of the absentee ballots is the signature that will be used to verify your signature on the voter's

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certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of the canvassing of absentee ballots, which occurs no earlier than the 15th day before election day.

8. VERY IMPORTANT. If you are an overseas voter, you must include the date you signed the Voter's Certificate on the line above (Date) or your ballot may not be counted.

9. Mail, deliver, or have delivered the completed mailing envelope. Be sure there is sufficient postage if mailed.

10. FELONY NOTICE. It is a felony under Florida law to accept any gift, payment, or gratuity in exchange for your vote for a candidate. It is also a felony under Florida law to vote in an election using a false identity or false address, or under any other circumstances making your ballot false or fraudulent.

Section 37. Subsection (1) of section 101.657, Florida Statutes, is amended to read:

101.657 Early voting.—

(1)(a) As a convenience to the voter, the supervisor of elections shall allow an elector to vote early in the main or branch office of the supervisor. The supervisor shall mark, code, indicate on, or otherwise track the voter's precinct for each early voted ballot. In order for a branch office to be used for early voting, it shall be a permanent facility of the supervisor and shall have been designated and used as such for at least 1 year prior to the election. The supervisor may also designate any city hall or permanent public library facility as early voting sites; however, if so designated, the sites must be


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geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, insofar as is practicable. The results or tabulation of votes cast during early voting may not be made before the close of the polls on election day. Results shall be reported by precinct.

(b) The supervisor shall designate each early voting site by no later than the 30th day prior to an election and shall designate an early voting area, as defined in s. 97.021, at each early voting site.

(c) All early voting sites in a county shall be open on the same days for the same amount of time and shall allow any person in line at the closing of an early voting site to vote.

(d) Early voting shall begin on the 7th ~~15th~~ day before an election which contains state or federal races and end on the 2nd day before the ~~an~~ election and~~.~~ ~~For purposes of a special election held pursuant to s. 100.101, early voting shall begin on the 8th day before an election and end on the 2nd day before an election. Early voting~~ shall be provided for 8 hours per weekday and 8 hours in the aggregate each weekend at each site during the applicable periods. The supervisor of elections may provide early voting for elections that are not held in conjunction with a state or federal election. However, the supervisor has the discretion to determine the hours of operation of early voting sites in those elections. ~~Early voting sites shall open no sooner than 7 a.m. and close no later than 7 p.m. on each applicable day.~~

(e) Notwithstanding the requirements of s. 100.3605, municipalities may provide early voting in municipal elections that are not held in conjunction with county or state elections.

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If a municipality provides early voting, it may designate as many sites as necessary and shall conduct its activities in accordance with the provisions of paragraphs (a)-(c). The supervisor is not required to conduct early voting if it is provided pursuant to this subsection.

(f) Notwithstanding the requirements of s. 189.405, special districts may provide early voting in any district election not held in conjunction with county or state elections. If a special district provides early voting, it may designate as many sites as necessary and shall conduct its activities in accordance with the provisions of paragraphs (a)-(c). The supervisor is not required to conduct early voting if it is provided pursuant to this subsection.

Section 38. Paragraph (a) of subsection (2) of section 101.68, Florida Statutes, is amended to read:

101.68 Canvassing of absentee ballot.—

(2)(a) The county canvassing board may begin the canvassing of absentee ballots at 7 a.m. on the 15th ~~sixth~~ day before the election, but not later than noon on the day following the election. In addition, for any county using electronic tabulating equipment, the processing of absentee ballots through such tabulating equipment may begin at 7 a.m. on the 15th ~~sixth~~ day before the election. However, notwithstanding any such authorization to begin canvassing or otherwise processing absentee ballots early, no result shall be released until after the closing of the polls in that county on election day. Any supervisor of elections, deputy supervisor of elections, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing

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of absentee ballots prior to the closing of the polls in that county on election day commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 39. Subsection (2) of section 101.6923, Florida Statutes, is amended to read:

101.6923 Special absentee ballot instructions for certain first-time voters.—

(2) A voter covered by this section shall be provided with printed instructions with his or her absentee ballot in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your absentee ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the date of the election.

2. Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

3. Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote for One" candidate and you vote for more than one, your vote in that race will not be counted.

4. Place your marked ballot in the enclosed secrecy envelope and seal the envelope.


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5. Insert the secrecy envelope into the enclosed envelope bearing the Voter's Certificate. Seal the envelope and completely fill out the Voter's Certificate on the back of the envelope.

a. You must sign your name on the line above (Voter's Signature).

b. If you are an overseas voter, you must include the date you signed the Voter's Certificate on the line above (Date) or your ballot may not be counted.

c. An absentee ballot will be considered illegal and will not be counted if the signature on the Voter's Certificate does not match the signature on record. The signature on file at the start of the canvass of the absentee ballots is the signature that will be used to verify your signature on the Voter's Certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of canvassing of absentee ballots, which occurs no earlier than the 15th day before election day.

6. Unless you meet one of the exemptions in Item 7., you must make a copy of one of the following forms of identification:

a. Identification which must include your name and photograph: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; or public assistance identification; or

b. Identification which shows your name and current

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residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter identification card).

7. The identification requirements of Item 6. do not apply if you meet one of the following requirements:

a. You are 65 years of age or older.

b. You have a temporary or permanent physical disability.

c. You are a member of a uniformed service on active duty who, by reason of such active duty, will be absent from the county on election day.

d. You are a member of the Merchant Marine who, by reason of service in the Merchant Marine, will be absent from the county on election day.

e. You are the spouse or dependent of a member referred to in paragraph c. or paragraph d. who, by reason of the active duty or service of the member, will be absent from the county on election day.

f. You are currently residing outside the United States.

8. Place the envelope bearing the Voter's Certificate into the mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. DO NOT PUT YOUR IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR BALLOT WILL NOT COUNT.

9. Mail, deliver, or have delivered the completed mailing envelope. Be sure there is sufficient postage if mailed.

10. FELONY NOTICE. It is a felony under Florida law to accept any gift, payment, or gratuity in exchange for your vote for a candidate. It is also a felony under Florida law to vote

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in an election using a false identity or false address, or under any other circumstances making your ballot false or fraudulent.

Section 40. Subsection (3) of section 101.75, Florida Statutes, is amended to read:

101.75 Municipal elections; change of dates for cause.—

(3) Notwithstanding any provision of local law or municipal charter, the governing body of a municipality may, by ordinance, move the date of any municipal election to a date concurrent with any statewide or countywide election. The dates for qualifying for the election moved by the passage of such ordinance shall be specifically provided for in the ordinance ~~and shall run for no less than 14 days~~. The term of office for any elected municipal official shall commence as provided by the relevant municipal charter or ordinance.

Section 41. Subsection (4) of section 102.141, Florida Statutes, is amended to read:

102.141 County canvassing board; duties.—

(4) The canvassing board shall report all early voting and all tabulated absentee results to the Department of State within 30 minutes after the polls close. Thereafter, the canvassing board shall report, with the exception of provisional ballot results, updated precinct election results to the department at least every 45 minutes until all results are completely reported. The supervisor of elections shall notify the department immediately of any circumstances that do not permit periodic updates as required. Results shall be submitted in a format prescribed by the department ~~submit by 11:59 p.m. on election night the preliminary returns it has received to the Department of State in a format provided by the department~~.

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Section 42. Subsection (4) of section 102.168, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

102.168 Contest of election.—

(4) The ~~county~~ canvassing board responsible for canvassing the election is an indispensable ~~and proper~~ party defendant in county and local elections.~~,~~ The Elections Canvassing Commission is an indispensable ~~and proper~~ party defendant in federal, state, and multicounty elections and in elections for justice of the Supreme Court, judge of a district court of appeal, and judge of a circuit court. ~~races; and~~ The successful candidate is an indispensable party to any action brought to contest the election or nomination of a candidate.

(8) In any contest that requires a review of the canvassing board's decision on the legality of an absentee ballot pursuant to s. 101.68 based upon a comparison of the signature on the voter's certificate and the signature of the elector in the registration records, the circuit court may not review or consider any evidence other than the signatures on the voter's certificate and the signature of the elector in the registration records. The court's review of such issue shall be to determine only if the canvassing board abused its discretion in making its decision.

Section 43. Subsection (4) of section 103.021, Florida Statutes, is amended to read:

103.021 Nomination for presidential electors.—Candidates for presidential electors shall be nominated in the following manner:

(4)(a) A minor political party that is affiliated with a

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national party holding a national convention to nominate candidates for President and Vice President of the United States may have the names of its candidates for President and Vice President of the United States printed on the general election ballot by filing with the Department of State a certificate naming the candidates for President and Vice President and listing the required number of persons to serve as electors. Notification to the Department of State under this subsection shall be made by September 1 of the year in which the election is held. When the Department of State has been so notified, it shall order the names of the candidates nominated by the minor political party to be included on the ballot and shall permit the required number of persons to be certified as electors in the same manner as other party candidates. As used in this section, the term "national party" means a political party that is registered with and recognized as a qualified national committee of a political party by the Federal Election Commission ~~established and admitted to the ballot in at least one state other than Florida~~.

(b) A minor political party that is not affiliated with a national party holding a national convention to nominate candidates for President and Vice President of the United States may have the names of its candidates for President and Vice President printed on the general election ballot if a petition is signed by a number of electors in each of one-half of the congressional districts of the state, and of the state as a whole, equal to 2 percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen ~~1~~

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~~percent of the registered electors of this state~~, as shown by the compilation by the Department of State ~~for the preceding general election~~. A separate petition from each county for which signatures are solicited shall be submitted to the supervisors of elections of the respective county no later than July 15 of each presidential election year. The supervisor shall check the names and, on or before the date of the primary election, shall certify the number shown as registered electors of the county. The supervisor shall be paid by the person requesting the certification the cost of checking the petitions as prescribed in s. 99.097. The supervisor shall then forward the certificate to the Department of State, which shall determine whether or not the percentage factor required in this section has been met. When the percentage factor required in this section has been met, the Department of State shall order the names of the candidates for whom the petition was circulated to be included on the ballot and shall permit the required number of persons to be certified as electors in the same manner as other party candidates.

Section 44. Section 103.095, Florida Statutes, is created to read:

103.095 Minor political parties.—

(1) Any group of citizens organized for the general purposes of electing to office qualified persons and determining public issues under the democratic processes of the United States may become a minor political party of this state by filing with the department a certificate showing the name of the organization, the names and addresses of its current officers, including the members of its executive committee, accompanied by

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a completed uniform statewide voter registration application as specified in s. 97.052 for each of its current officers and members of its executive committee which reflect their affiliation with the proposed minor political party, and a copy of its constitution, bylaws, and rules and regulations.

(2) All electors registered to vote in the minor political party in which he or she has so designated has a fundamental right to fully and meaningfully participate in the business and affairs of the minor political party without any monetary encumbrance. The constitution, bylaws, rules, regulations, or other equivalent documents must reflect this fundamental right and must provide for and contain reasonable provisions which at a minimum must prescribe procedures to: prescribe its membership, conduct its meetings according to generally accepted parliamentary practices, timely notify its members as to the time, date, and place of all of its meetings, timely publish notice on its public and functioning website as to the time, date, and place of all of its meetings, elect its officers, remove its officers, make party nominations when required by law, conduct campaigns for party nominees, raise and expend party funds, select delegates to its national convention, select presidential electors, and alter or amend all of its governing documents.

(3) The members of the executive committee must elect a chair, vice chair, secretary, and treasurer, all of whom shall be members of the minor political party and no member may hold more than one office, except that one person may hold the offices of secretary and treasurer.

(4) Upon approval of the minor political party's filing,

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the department shall process the voter registration applications submitted by the minor political party's officers and members of its executive committee. It shall be the duty of the minor political party to notify the department of any changes in the filing certificate within 5 days after such changes.

(5) The Division of Elections shall adopt rules to prescribe the manner in which political parties, including minor political parties, may have their filings with the Department of State canceled. Such rules shall, at a minimum, provide for:

(a) Notice, which must contain the facts and conduct that warrant the intended action, including, but not limited to, the failure to have any voters registered in the party, the failure to notify the department of replacement officers, and the failure to file campaign finance reports, the failure to adopt or file with the department all governing documents containing the provisions specified in subsection (2), and limited activity.

(b) Adequate opportunity to respond.

(c) Appeal of the decision to the Florida Elections Commission. Such appeals are exempt from the confidentiality provisions of s. 106.25.

(6) The requirements of this section are retroactive for any minor political party registered with the department on July 1, 2011, and must be complied with within 180 days after the department provides notice to the minor political party of the requirements contained in this section. Failure of the minor political party to comply with the requirements within 180 days after receipt of the notice shall automatically result in the cancellation of the minor political party's registration.

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Section 45. Subsections (1) and (2) of section 103.101, Florida Statutes, are amended to read:

103.101 Presidential preference primary.—

(1)(a) There shall be a Presidential Preference Primary Date Selection Committee composed of the Secretary of State, who shall be a nonvoting chair; three members, no more than two of whom may be from the same political party, appointed by the Governor; three members, no more than two of whom may be from the same political party, appointed by the Speaker of the House of Representatives; and three members, no more than two of whom may be from the same political party, appointed by the President of the Senate. No later than October 1 of the year preceding the presidential preference primary, the committee shall meet and set a date for the presidential preference primary. The date selected may be no earlier than the first Tuesday in January and no later than the first Tuesday in March in the year of the presidential preference primary. The presidential preference primary shall be held in each year the number of which is a multiple of four.

(b) Each political party other than a minor political party shall, on the date selected by the Presidential Preference Primary Date Selection Committee ~~last Tuesday in January~~ in each year the number of which is a multiple of 4, elect one person to be the candidate for nomination of such party for President of the United States or select delegates to the national nominating convention, as provided by party rule. Any party rule directing the vote of delegates at a national nominating convention shall reasonably reflect the results of the presidential preference primary, if one is held.


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(2) ~~(a) There shall be a Presidential Candidate Selection Committee composed of the Secretary of State, who shall be a nonvoting chair; the Speaker of the House of Representatives; the President of the Senate; the minority leader of each house of the Legislature; and the chair of each political party required to have a presidential preference primary under this section.~~

~~(b)~~ By October 31 of the year preceding the presidential preference primary, each political party shall submit to the Secretary of State a list of its presidential candidates to be placed on the presidential preference primary ballot or candidates entitled to have delegates appear on the presidential preference primary ballot. The Secretary of State shall prepare and publish a list of the names of the presidential candidates submitted not later than on the first Tuesday after the first Monday in November of the year preceding the presidential preference primary. ~~The Secretary of State shall submit such list of names of presidential candidates to the selection committee on the first Tuesday after the first Monday in November of the year preceding the presidential preference primary. Each person designated as a presidential candidate shall have his or her name appear, or have his or her delegates' names appear, on the presidential preference primary ballot unless all committee members of the same political party as the candidate agree to delete such candidate's name from the ballot.~~

~~(c) The selection committee shall meet in Tallahassee on the first Tuesday after the first Monday in November of the year preceding the presidential preference primary. The selection committee shall publicly announce and submit to the Department~~

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~~of State no later than 5 p.m. on the following day the names of presidential candidates who shall have their names appear, or who are entitled to have their delegates' names appear, on the presidential preference primary ballot.~~ The Department of State shall immediately notify each presidential candidate listed ~~designated~~ by the Secretary of State ~~committee~~. Such notification shall be in writing, by registered mail, with return receipt requested.

Section 46. Section 103.141, Florida Statutes, is amended to read:

103.141 Removal of county executive committee member for violation of oath.—

~~(1)~~ If ~~Where~~ the county executive committee by at least a two-thirds majority vote of the members of the committee, attending a meeting held after due notice has been given and at which meeting a quorum is present, determines an incumbent county executive committee member is ~~to be~~ guilty of an offense involving a violation of the member's oath of office, the ~~said~~ member ~~so violating his or her oath~~ shall be removed from office and the office shall be deemed vacant. ~~Provided,~~ However, if the county committee wrongfully removes a county committee member and the committee member ~~so~~ wrongfully removed files suit in the circuit court alleging his or her removal was wrongful and wins the ~~said~~ suit, the committee member shall be restored to office and the county committee shall pay the costs incurred by the wrongfully removed committee member in bringing the suit, including reasonable attorney's fees.

~~(2) Any officer, county committeeman, county committeewoman, precinct committeeman, precinct committeewoman,~~


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~~or member of a county executive committee may be removed from office pursuant to s. 103.161.~~

Section 47. Section 103.161, Florida Statutes, is repealed.

Section 48. Section 104.29, Florida Statutes, is amended to read:

104.29 Inspectors refusing to allow watchers while ballots are counted.—The inspectors or other election officials at the polling place shall, after the polls close ~~at all times while the ballots are being counted~~, allow as many as three persons near to them to see whether the ballots are being reconciled correctly. ~~read and called and the votes correctly tallied, and~~ Any official who denies this privilege or interferes therewith commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 49. Subsection (3), paragraph (b) of subsection (5), subsection (15), and paragraph (c) of subsection (16) of section 106.011, Florida Statutes, are amended to read:

106.011 Definitions.—As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(3) "Contribution" means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.

(b) A transfer of funds between political committees, between committees of continuous existence, between


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electioneering communications organizations, or between any combination of these groups.

(c) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.

Notwithstanding the foregoing meanings of "contribution," the term may ~~word shall~~ not be construed to include services, including, but not limited to, legal and accounting services, provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee~~. This definition shall not be construed to include~~ editorial endorsements.

(5)

(b) An expenditure for the purpose of expressly advocating the election or defeat of a candidate which is made by the national, state, or county executive committee of a political party, including any subordinate committee of a national, state, or county committee of a political party, or by any political committee or committee of continuous existence, or any other person, shall not be considered an independent expenditure if the committee or person:

1. Communicates with the candidate, the candidate's


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campaign, or an agent of the candidate acting on behalf of the candidate, including any pollster, media consultant, advertising agency, vendor, advisor, or staff member, concerning the preparation of, use of, or payment for, the specific expenditure or advertising campaign at issue; or

2. Makes a payment in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any general or particular understanding with the candidate, the candidate's campaign, a political committee supporting the candidate, or an agent of the candidate relating to the specific expenditure or advertising campaign at issue; or

3. Makes a payment for the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign material prepared by the candidate, the candidate's campaign, or an agent of the candidate, including any pollster, media consultant, advertising agency, vendor, advisor, or staff member; or

4. Makes a payment based on information about the candidate's plans, projects, or needs communicated to a member of the committee or person by the candidate or an agent of the candidate, provided the committee or person uses the information in any way, in whole or in part, either directly or indirectly, to design, prepare, or pay for the specific expenditure or advertising campaign at issue; or

5. After the last day of the qualifying period prescribed for the candidate ~~for statewide or legislative office~~, consults about the candidate's plans, projects, or needs in connection with the candidate's pursuit of election to office and the information is used in any way to plan, create, design, or


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prepare an independent expenditure or advertising campaign, with:

a. Any officer, director, employee, or agent of a national, state, or county executive committee of a political party that has made or intends to make expenditures in connection with or contributions to the candidate; or

b. Any person whose professional services have been retained by a national, state, or county executive committee of a political party that has made or intends to make expenditures in connection with or contributions to the candidate; or

6. After the last day of the qualifying period prescribed for the candidate ~~for statewide or legislative office~~, retains the professional services of any person also providing those services to the candidate in connection with the candidate's pursuit of election to office; or

7. Arranges, coordinates, or directs the expenditure, in any way, with the candidate or an agent of the candidate.

(15) "Unopposed candidate" means a candidate for nomination or election to an office who, after the last day on which any person, including a write-in candidate, may qualify, is without opposition in the election at which the office is to be filled or who is without such opposition after such date as a result of any primary election or of withdrawal by other candidates seeking the same office. A candidate is not an unopposed candidate if there is a vacancy to be filled under s. 100.111(3) ~~s. 100.111(4)~~, if there is a legal proceeding pending regarding the right to a ballot position for the office sought by the candidate, or if the candidate is seeking retention as a justice or judge.


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(16) "Candidate" means any person to whom any one or more of the following apply:

(c) Any person who receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office. However, this definition does not include any candidate for a political party executive committee. Expenditures related to potential candidate polls as provided in s. 106.17 are not contributions or expenditures for purposes of this subsection.

Section 50. Subsection (3) of section 106.021, Florida Statutes, is amended to read:

106.021 Campaign treasurers; deputies; primary and secondary depositories.—

(3) No contribution or expenditure, including contributions or expenditures of a candidate or of the candidate's family, shall be directly or indirectly made or received in furtherance of the candidacy of any person for nomination or election to political office in the state or on behalf of any political committee except through the duly appointed campaign treasurer of the candidate or political committee, subject to the following exceptions:

(a) Independent expenditures;

(b) Reimbursements to a candidate or any other individual for expenses incurred in connection with the campaign or activities of the political committee by a check drawn upon the campaign account and reported pursuant to s. 106.07(4). ~~After July 1, 2004,~~ The full name ~~and address~~ of each person to whom the candidate or other individual made payment for which

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reimbursement was made by check drawn upon the campaign account shall be reported pursuant to s. 106.07(4), together with the purpose of such payment;

(c) Expenditures made indirectly through a treasurer for goods or services, such as communications media placement or procurement services, campaign signs, insurance, or other expenditures that include multiple integral components as part of the expenditure and reported pursuant to s. 106.07(4)(a)13.; or

(d) Expenditures made directly by any political committee or political party regulated by chapter 103 for obtaining time, space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates, and any such expenditure shall not be considered a contribution or expenditure to or on behalf of any such candidates for the purposes of this chapter.

Section 51. Section 106.022, Florida Statutes, is amended to read:

106.022 Appointment of a registered agent; duties.—

(1) Each political committee, committee of continuous existence, or electioneering communications organization shall have and continuously maintain in this state a registered office and a registered agent and must file with the filing officer ~~division~~ a statement of appointment for the registered office and registered agent. The statement of appointment must:

(a) Provide the name of the registered agent and the street address and phone number for the registered office;

(b) Identify the entity for whom the registered agent serves;


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(c) Designate the address the registered agent wishes to use to receive mail;

(d) Include the entity's undertaking to inform the filing officer ~~division~~ of any change in such designated address;

(e) Provide for the registered agent's acceptance of the appointment, which must confirm that the registered agent is familiar with and accepts the obligations of the position as set forth in this section; and

(f) Contain the signature of the registered agent and the entity engaging the registered agent.

(2) An entity may change its appointment of registered agent and registered office under this section by executing a written statement of change and filing it with the filing officer. The statement must satisfy ~~that identifies the former registered agent and registered address and also satisfies~~ all of the requirements of subsection (1).

(3) A registered agent may resign his or her appointment as registered agent by executing a written statement of resignation and filing it with the filing officer ~~division~~. An entity without a registered agent may not make expenditures or accept contributions until it files a written statement of change as required in subsection (2).

Section 52. Subsection (1) of section 106.023, Florida Statutes, is amended to read:

106.023 Statement of candidate.—

(1) Each candidate must file a statement with the qualifying officer within 10 days after filing the appointment of campaign treasurer and designation of campaign depository, stating that the candidate has read and understands the

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requirements of this chapter. Such statement shall be provided by the filing officer and shall be in substantially the following form:

STATEMENT OF CANDIDATE

I, ..., candidate for the office of ...., have been provided access to ~~received,~~ read~~,~~ and understand the requirements of Chapter 106, Florida Statutes.

...(Signature of candidate)... ...(Date)...

Willful failure to file this form is a violation of ss. 106.19(1)(c) and 106.25(3), F.S.

Section 53. Paragraph (c) of subsection (1) of section 106.025, Florida Statutes, is amended to read:

106.025 Campaign fund raisers.—

(1)

(c) Any tickets or advertising for such a campaign fund raiser is exempt from the requirements of s. 106.143 ~~shall contain the following statement: "The purchase of a ticket for, or a contribution to, the campaign fund raiser is a contribution to the campaign of ...(name of the candidate for whose benefit the campaign fund raiser is held)...." Such tickets or advertising shall also comply with other provisions of this chapter relating to political advertising~~.

Section 54. Subsection (1) and paragraph (d) of subsection (3) of section 106.03, Florida Statutes, are amended to read:

106.03 Registration of political committees and

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electioneering communications organizations.—

(1)(a) Each political committee that receives ~~anticipates receiving~~ contributions or makes ~~making~~ expenditures during a calendar year in an aggregate amount exceeding $500 or that seeks ~~is seeking~~ the signatures of registered electors in support of an initiative shall file a statement of organization as provided in subsection (3) within 10 days after its organization ~~or, if later, within 10 days after the date on which it has information that causes the committee to anticipate that it will receive contributions or make expenditures in excess of $500~~. If a political committee is organized within 10 days of any election, it shall immediately file the statement of organization required by this section.

(b)1. Each group ~~electioneering communications organization that receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $5,000~~ shall file a statement of organization as an electioneering communications organization ~~provided in subparagraph 2. by expedited delivery within 24 hours after its organization or, if later,~~ within 24 hours after the date on which it ~~receives contributions or~~ makes expenditures for an electioneering communication in excess of $5,000, if such expenditures are made within the timeframes specified in s. 106.011(18)(a)2. If the group makes expenditures for an electioneering communication in excess of $5,000 before the timeframes specified in s. 106.011(18)(a)2., it shall file the statement of organization within 24 hours after the 30th day before a primary or special primary election, or within 24 hours after the 60th day before any other election, whichever is applicable.

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2. a. In a statewide, legislative, or multicounty election, an electioneering communications organization shall file a statement of organization with the Division of Elections.

b. In a countywide election or any election held on less than a countywide basis, except as described in sub-subparagraph c., an electioneering communications organization shall file a statement of organization with the supervisor of elections of the county in which the election is being held.

c. In a municipal election, an electioneering communications organization shall file a statement of organization with the officer before whom municipal candidates qualify.

d. Any electioneering communications organization that would be required to file a statement of organization in two or more locations ~~by reason of the organization's intention to support or oppose candidates at state or multicounty and local levels of government~~ need only file a statement of organization with the Division of Elections.

(3)

(d) Any political committee which would be required under this subsection to file a statement of organization in two or more locations ~~by reason of the committee's intention to support or oppose candidates or issues at state or multicounty and local levels of government~~ need file only with the Division of Elections.

Section 55. Subsection (4) of section 106.04, Florida Statutes, is amended, present subsections (7) and (8) of that section are amended and renumbered as subsections (8) and (9), respectively, and a new subsection (7) is added to that section,


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to read:

106.04 Committees of continuous existence.—

(4)(a) Each committee of continuous existence shall file an annual report with the Division of Elections during the month of January. Such annual reports shall contain the same information and shall be accompanied by the same materials as original applications filed pursuant to subsection (2). However, the charter or bylaws need not be filed if the annual report is accompanied by a sworn statement by the chair that no changes have been made to such charter or bylaws since the last filing.

(b)1. Each committee of continuous existence shall file regular reports with the Division of Elections at the same times and subject to the same filing conditions as are established by s. 106.07(1) and (2) for candidates' reports. In addition, when a special election is called to fill a vacancy in office, a committee of continuous existence that makes a contribution or expenditure to influence the results of such special election or the preceding special primary election must file campaign finance reports with the filing officer on the dates set by the Department of State pursuant to s. 100.111.

2. Any committee of continuous existence failing to so file a report with the Division of Elections or applicable filing officer pursuant to this paragraph on the designated due date shall be subject to a fine for late filing as provided by this section.

(c) All committees of continuous existence shall file their reports with the Division of Elections. Reports shall be filed in accordance with s. 106.0705 and shall contain the following information:


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1. The full name, address, and occupation of each person who has made one or more contributions, including contributions that represent the payment of membership dues, to the committee during the reporting period, together with the amounts and dates of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is $100 or less, the occupation of the contributor or principal type of business need not be listed. However, for any contributions that represent the payment of dues by members in a fixed amount aggregating no more than $250 per calendar year, pursuant to the schedule on file with the Division of Elections, only the aggregate amount of such contributions need be listed, together with the number of members paying such dues and the amount of the membership dues.

2. The name and address of each political committee or committee of continuous existence from which the reporting committee received, or the name and address of each political committee, committee of continuous existence, or political party to which it made, any transfer of funds, together with the amounts and dates of all transfers.

3. Any other receipt of funds not listed pursuant to subparagraph 1. or subparagraph 2., including the sources and amounts of all such funds.

4. The name and address of, and office sought by, each candidate to whom the committee has made a contribution during the reporting period, together with the amount and date of each contribution.

5. The full name and address of each person to whom


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expenditures have been made by or on behalf of the committee within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address, and office sought by, each candidate on whose behalf such expenditure was made.

6. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses has been made, including the full name and address of each entity to whom the person made payment for which reimbursement was made by check drawn upon the committee account, together with the amount and purpose of such payment.

7. Transaction information from each credit card purchase ~~statement that will be included in the next report following receipt thereof by the committee~~. Receipts for each credit card purchase shall be retained by the treasurer with the records for the committee account.

8. The total sum of expenditures made by the committee during the reporting period.

(d) The treasurer of each committee shall certify as to the correctness of each report and shall bear the responsibility for its accuracy and veracity. Any treasurer who willfully certifies to the correctness of a report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Any change in information previously submitted to the division shall be reported within 10 days following the change.

(8) ~~(7)~~ If a committee of continuous existence ceases to meet the criteria prescribed by subsection (1), the Division of

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Elections shall revoke its certification ~~until such time as the criteria are again met~~. The Division of Elections shall adopt ~~promulgate~~ rules to prescribe the manner in which the ~~such~~ certification of a committee of continuous existence shall be revoked. Such rules shall, at a minimum, provide for:

(a) Notice, which must ~~shall~~ contain the facts and conduct that warrant the intended action.

(b) Adequate opportunity to respond.

(c) Appeal of the decision to the Florida Elections Commission. Such appeals are ~~shall be~~ exempt from the confidentiality provisions of s. 106.25.

(9)~~(8)~~(a) Any committee of continuous existence failing to file a report on the designated due date is ~~shall be~~ subject to a fine. The fine shall be $50 per day for the first 3 days late and, thereafter, $500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding each primary and general election, including a special primary election and a special general election, the fine shall be $500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. The fine shall be assessed by the filing officer, and the moneys collected shall be deposited into:

1. ~~In~~ The General Revenue Fund, in the case of fines collected by the Division of Elections.

2. The general revenue fund of the political subdivision, in the case of fines collected by a county or municipal filing officer. No separate fine shall be assessed for failure to file

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a copy of any report required by this section.

(b) Upon determining that a report is late, the filing officer shall immediately notify the treasurer of the committee or the committee's registered agent as to the failure to file a report by the designated due date and that a fine is being assessed for each late day. Upon receipt of the report, the filing officer shall determine the amount of fine which is due and shall notify the treasurer of the committee. Notice is deemed complete upon proof of delivery of written notice to the mailing or street address on record with the filing officer. The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.

2. When the report is postmarked.

3. When the certificate of mailing is dated.

4. When the receipt from an established courier company is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made to the Florida Elections Commission pursuant to paragraph (c). An officer or member of a committee is ~~shall~~ not ~~be~~ personally liable for such fine.

(c) Any treasurer of a committee may appeal or dispute the fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is ~~shall be~~ entitled to a hearing before the Florida Elections Commission, which may ~~shall have the authority to~~ waive the fine in whole or in part. Any such request must ~~shall~~ be made within


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20 days after receipt of the notice of payment due. ~~In such case, the treasurer of~~ The committee shall file the appeal with ~~, within the 20-day period, notify the filing officer in writing of his or her intention to bring the matter before~~ the commission, with a copy provided to the filing officer.

(d) The filing officer shall notify the Florida Elections Commission of the repeated late filing by a committee of continuous existence, the failure of a committee of continuous existence to file a report after notice, or the failure to pay the fine imposed.

Section 56. Section 106.07, Florida Statutes, is amended to read:

106.07 Reports; certification and filing.—

(1) Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee. Except for the third calendar quarter immediately preceding a general election, reports shall be filed on the 10th day following the end of each calendar quarter from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar quarter occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day which is not a Saturday, Sunday, or legal holiday. Quarterly reports shall include all contributions received and expenditures made during the calendar quarter which have not otherwise been reported pursuant to this section.

(a) Except as provided in paragraph (b), ~~following the last day of qualifying for office,~~ the reports shall also be filed on


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the 32nd, 18th, and 4th days immediately preceding the primary and on the 46th, 32nd, 18th, and 4th days immediately preceding the election, for a candidate who is opposed in seeking nomination or election to any office, for a political committee, or for a committee of continuous existence.

(b) ~~Following the last day of qualifying for office,~~ Any statewide candidate who has requested to receive contributions pursuant to ~~from~~ the Florida Election Campaign Financing Act ~~Trust Fund~~ or any statewide candidate in a race with a candidate who has requested to receive contributions pursuant to ~~from~~ the act ~~trust fund~~ shall also file reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the primary election, and on the 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to the general election.

(c) Following the last day of qualifying for office, any unopposed candidate need only file a report within 90 days after the date such candidate became unopposed. Such report shall contain all previously unreported contributions and expenditures as required by this section and shall reflect disposition of funds as required by s. 106.141.

(d)1. When a special election is called to fill a vacancy in office, all political committees ~~and committees of continuous existence~~ making contributions or expenditures to influence the results of such special election or the preceding special primary election shall file campaign treasurers' reports with the filing officer on the dates set by the Department of State pursuant to s. 100.111.

2. When an election is called for an issue to appear on the ballot at a time when no candidates are scheduled to appear on

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the ballot, all political committees making contributions or expenditures in support of or in opposition to such issue shall file reports on the 18th and 4th days prior to such election.

(e) The filing officer shall provide each candidate with a schedule designating the beginning and end of reporting periods as well as the corresponding designated due dates.

(2)(a)1. All reports required of a candidate by this section shall be filed with the officer before whom the candidate is required by law to qualify. All candidates who file with the Department of State shall file their reports pursuant to s. 106.0705. Except as provided in s. 106.0705, reports shall be filed not later than 5 p.m. of the day designated; however, any report postmarked by the United States Postal Service no later than midnight of the day designated shall be deemed to have been filed in a timely manner. Any report received by the filing officer within 5 days after the designated due date that was delivered by the United States Postal Service shall be deemed timely filed unless it has a postmark that indicates that the report was mailed after the designated due date. A certificate of mailing obtained from and dated by the United States Postal Service at the time of mailing, or a receipt from an established courier company, which bears a date on or before the date on which the report is due, shall be proof of mailing in a timely manner. Reports shall contain information of all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Friday immediately preceding the election shall contain information of all previously unreported contributions received and expenditures made as of the day preceding that designated


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due date. All such reports shall be open to public inspection.

2. This subsection does not prohibit the governing body of a political subdivision, by ordinance or resolution, from imposing upon its own officers and candidates electronic filing requirements not in conflict with s. 106.0705. Expenditure of public funds for such purpose is deemed to be for a valid public purpose.

(b)1. Any report that ~~which~~ is deemed to be incomplete by the officer with whom the candidate qualifies shall be accepted on a conditional basis.~~, and~~ The campaign treasurer shall be notified by certified ~~registered~~ mail or by another method using a common carrier that provides a proof of delivery of the notice as to why the report is incomplete and within 7 ~~be given 3~~ days after ~~from~~ receipt of such notice must ~~to~~ file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice constitutes a violation of this chapter.

2. Notice is deemed complete upon proof of delivery of a written notice to the mailing or street address of the campaign treasurer or registered agent of record with the filing officer. ~~In lieu of the notice by registered mail as required in subparagraph 1., the qualifying officer may notify the campaign treasurer by telephone that the report is incomplete and request the information necessary to complete the report. If, however, such information is not received by the qualifying officer within 3 days after the telephone request therefor, notice shall be sent by registered mail as provided in subparagraph 1.~~

(3) Reports required of a political committee shall be


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filed with the agency or officer before whom such committee registers pursuant to s. 106.03(3) and shall be subject to the same filing conditions as established for candidates' reports. Incomplete reports by political committees shall be treated in the manner provided for incomplete reports by candidates in subsection (2).

(4)(a) Each report required by this section must ~~shall~~ contain:

1. The full name, address, and occupation, if any of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is $100 or less or is from a relative, as defined in s. 112.312, provided that the relationship is reported, the occupation of the contributor or the principal type of business need not be listed.

2. The name and address of each political committee from which the reporting committee or the candidate received, or to which the reporting committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers.

3. Each loan for campaign purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations, and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans.

4. A statement of each contribution, rebate, refund, or other receipt not otherwise listed under subparagraphs 1.

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through 3.

5. The total sums of all loans, in-kind contributions, and other receipts by or for such committee or candidate during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts.

6. The full name and address of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made. However, expenditures made from the petty cash fund provided by s. 106.12 need not be reported individually.

7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses as provided in s. 106.021(3) has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually. Receipts for reimbursement for authorized expenditures shall be retained by the treasurer along with the records for the campaign account.

8. The total amount withdrawn and the total amount spent for petty cash purposes pursuant to this chapter during the reporting period.

9. The total sum of expenditures made by such committee or candidate during the reporting period.

10. The amount and nature of debts and obligations owed by


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or to the committee or candidate, which relate to the conduct of any political campaign.

11. Transaction information for each credit card purchase. ~~A copy of each credit card statement which shall be included in the next report following receipt thereof by the candidate or political committee.~~ Receipts for each credit card purchase shall be retained by the treasurer with the records for the campaign account.

12. The amount and nature of any separate interest-bearing accounts or certificates of deposit and identification of the financial institution in which such accounts or certificates of deposit are located.

13. The primary purposes of an expenditure made indirectly through a campaign treasurer pursuant to s. 106.021(3) for goods and services such as communications media placement or procurement services, campaign signs, insurance, and other expenditures that include multiple components as part of the expenditure. The primary purpose of an expenditure shall be that purpose, including integral and directly related components, that comprises 80 percent of such expenditure.

(b) The filing officer shall make available to any candidate or committee a reporting form which the candidate or committee may use to indicate contributions received by the candidate or committee but returned to the contributor before deposit.

(5) The candidate and his or her campaign treasurer, in the case of a candidate, or the political committee chair and campaign treasurer of the committee, in the case of a political committee, shall certify as to the correctness of each report;


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and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee chair who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) ~~The campaign depository shall return all checks drawn on the account to the campaign treasurer who shall retain the records pursuant to s. 106.06.~~ The records maintained by the campaign depository with respect to any campaign account regulated by this chapter are ~~such account shall be~~ subject to inspection by an agent of the Division of Elections or the Florida Elections Commission at any time during normal banking hours, and such depository shall furnish certified copies of any of such records to the Division of Elections or Florida Elections Commission upon request.

(7) Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate, political committee, or committee of continuous existence has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate, political committee, or committee of continuous existence not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.


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(8)(a) Any candidate or political committee failing to file a report on the designated due date is ~~shall be~~ subject to a fine as provided in paragraph (b) for each late day, and, in the case of a candidate, such fine shall be paid only from personal funds of the candidate. The fine shall be assessed by the filing officer and the moneys collected shall be deposited:

1. In the General Revenue Fund, in the case of a candidate for state office or a political committee that registers with the Division of Elections; or

2. In the general revenue fund of the political subdivision, in the case of a candidate for an office of a political subdivision or a political committee that registers with an officer of a political subdivision.

No separate fine shall be assessed for failure to file a copy of any report required by this section.

(b) Upon determining that a report is late, the filing officer shall immediately notify the candidate or chair of the political committee as to the failure to file a report by the designated due date and that a fine is being assessed for each late day. The fine shall be $50 per day for the first 3 days late and, thereafter, $500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding each special primary election, special election, primary election, and general election, the fine shall be $500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by


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the late report. For reports required under s. 106.141(7), the fine is $50 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. Upon receipt of the report, the filing officer shall determine the amount of the fine which is due and shall notify the candidate or chair or registered agent of the political committee. The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.

2. When the report is postmarked.

3. When the certificate of mailing is dated.

4. When the receipt from an established courier company is dated.

5. When the electronic receipt issued pursuant to s. 106.0705 or other electronic filing system authorized in this section is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made to the Florida Elections Commission pursuant to paragraph (c). Notice is deemed complete upon proof of delivery of written notice to the mailing or street address on record with the filing officer. In the case of a candidate, such fine shall not be an allowable campaign expenditure and shall be paid only from personal funds of the candidate. An officer or member of a political committee shall not be personally liable for such fine.

(c) Any candidate or chair of a political committee may

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appeal or dispute the fine, based upon, but not limited to, unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the Florida Elections Commission, which shall have the authority to waive the fine in whole or in part. The Florida Elections Commission must consider the mitigating and aggravating circumstances contained in s. 106.265(1) when determining the amount of a fine, if any, to be waived. Any such request shall be made within 20 days after receipt of the notice of payment due. In such case, the candidate or chair of the political committee shall, within the 20-day period, notify the filing officer in writing of his or her intention to bring the matter before the commission.

(d) The appropriate filing officer shall notify the Florida Elections Commission of the repeated late filing by a candidate or political committee, the failure of a candidate or political committee to file a report after notice, or the failure to pay the fine imposed. The commission shall investigate only those alleged late filing violations specifically identified by the filing officer and as set forth in the notification. Any other alleged violations must be separately stated and reported by the division to the commission under s. 106.25(2).

(9) The Department of State may prescribe by rule the requirements for filing campaign treasurers' reports as set forth in this chapter.

Section 57. Subsections (8) and (9) of section 106.0703, Florida Statutes, are amended to read:

106.0703 Electioneering communications organizations; reporting requirements; certification and filing; penalties.—


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~~(8) An electioneering communications organization shall, within 2 days after receiving its initial password or secure sign-on from the Department of State allowing confidential access to the department's electronic campaign finance filing system, electronically file the periodic reports that would have been required pursuant to this section for reportable activities that occurred since the date of the last general election~~.

(8)~~(9)~~ Electioneering communications organizations shall not use credit cards.

Section 58. Paragraphs (a) and (c) of subsection (2) and subsections (3) and (7) of section 106.0705, Florida Statutes, are amended to read:

106.0705 Electronic filing of campaign treasurer's reports.—

(2)(a) Each individual ~~candidate~~ who is required to file reports with the division pursuant to s. 106.07 or s. 106.141 ~~with the division~~ must file such reports ~~with the division~~ by means of the division's electronic filing system.

(c) Each person or organization that is required to file reports with the division under s. 106.071 must file such reports ~~with the division~~ by means of the division's electronic filing system.

(3) Reports filed pursuant to this section shall be completed and filed through the electronic filing system not later than midnight of the day designated. Reports not filed by midnight of the day designated are late filed and are subject to the penalties under s. 106.04(9) ~~s. 106.04(8)~~, s. 106.07(8), s. 106.0703(7), or s. 106.29(3), as applicable.

~~(7) Notwithstanding anything in law to the contrary, any~~


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~~report required to have been filed under this section for the period ended March 31, 2005, shall be deemed to have been timely filed if the report is filed under this section on or before June 1, 2005.~~

Section 59. Subsections (3) and (6) of section 106.08, Florida Statutes, are amended to read:

106.08 Contributions; limitations on.—

(3)(a) Any contribution received by a candidate with opposition in an election or by the campaign treasurer or a deputy campaign treasurer of such a candidate on the day of that election or less than 5 days prior to the day of that election must be returned by him or her to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

(b) Except as otherwise provided in paragraph (c), any contribution received by a candidate or by the campaign treasurer or a deputy campaign treasurer of a candidate after the date at which the candidate withdraws his or her candidacy, or after the date the candidate is defeated, becomes unopposed, or is elected to office must be returned to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

~~(c) With respect to any campaign for an office in which an independent or minor party candidate has filed as required in s. 99.0955 or s. 99.096, but whose qualification is pending a determination by the Department of State or supervisor of elections as to whether or not the required number of petition signatures was obtained:~~

~~1. The department or supervisor shall, no later than 3 days~~

~~after that determination has been made, notify in writing all other candidates for that office of that determination.~~

~~2. Any contribution received by a candidate or the campaign treasurer or deputy campaign treasurer of a candidate after the candidate has been notified in writing by the department or supervisor that he or she has become unopposed as a result of an independent or minor party candidate failing to obtain the required number of petition signatures shall be returned to the person, political committee, or committee of continuous existence contributing it and shall not be used or expended by or on behalf of the candidate.~~

(6)(a) A political party may not accept any contribution that has been specifically designated for the partial or exclusive use of a particular candidate. Any contribution so designated must be returned to the contributor and may not be used or expended by or on behalf of the candidate.

(b)1. A political party may not accept any in-kind contribution that fails to provide a direct benefit to the political party. A "direct benefit" includes, but is not limited to, fundraising or furthering the objectives of the political party.

2.a. An in-kind contribution to a state political party may be accepted only by the chairperson of the state political party or by the chairperson's designee or designees whose names are on file with the division in a form acceptable to the division prior to the date of the written notice required in sub-subparagraph b. An in-kind contribution to a county political party may be accepted only by the chairperson of the county political party or by the county chairperson's designee or


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designees whose names are on file with the supervisor of elections of the respective county prior to the date of the written notice required in sub-subparagraph b.

b. A person making an in-kind contribution to a state political party or county political party must provide prior written notice of the contribution to a person described in sub-subparagraph a. The prior written notice must be signed and dated and may be provided by an electronic or facsimile message. However, prior written notice is not required for an in-kind contribution that consists of food and beverage in an aggregate amount not exceeding $1,500 which is consumed at a single sitting or event if such in-kind contribution is accepted in advance by a person specified in sub-subparagraph a.

c. A person described in sub-subparagraph a. may accept an in-kind contribution requiring prior written notice only in a writing that is ~~signed and~~ dated before the in-kind contribution is made. Failure to obtain the required written acceptance of an in-kind contribution to a state or county political party constitutes a refusal of the contribution.

d. A copy of each prior written acceptance required under sub-subparagraph c. must be filed ~~with the division~~ at the time the regular reports of contributions and expenditures required under s. 106.29 are filed by the state executive committee and county executive committee. A state executive committee and an affiliated party committee must file with the division. A county executive committee must file with the county's supervisor of elections.

e. An in-kind contribution may not be given to a state or county political party unless the in-kind contribution is made

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as provided in this subparagraph.

Section 60. Section 106.09, Florida Statutes, is amended to read:

106.09 Cash contributions and contribution by cashier's checks.—

(1)(a) A person may not make an aggregate ~~or accept a~~ cash contribution or contribution by means of a cashier's check to the same candidate or committee in excess of $50 per election.

(b) A person may not accept an aggregate cash contribution or contribution by means of a cashier's check from the same contributor in excess of $50 per election.

(2)(a) Any person who makes or accepts a contribution in ~~excess of $50 in~~ violation of subsection (1) ~~this section~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly and willfully makes or accepts a contribution in excess of $5,000 in violation of subsection (1) ~~this section~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 61. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 106.11, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

106.11 Expenses of and expenditures by candidates and political committees.—Each candidate and each political committee which designates a primary campaign depository pursuant to s. 106.021(1) shall make expenditures from funds on deposit in such primary campaign depository only in the following manner, with the exception of expenditures made from petty cash funds provided by s. 106.12:

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(1)

(b) The checks for such account shall contain, as a minimum, the following information:

1. The statement "~~Campaign Account of~~ ...(name of candidate or political committee)... Campaign Account."

2. The account number and the name of the bank.

3. The exact amount of the expenditure.

4. The signature of the campaign treasurer or deputy treasurer.

5. The exact purpose for which the expenditure is authorized.

6. The name of the payee.

(2)(a) For purposes of this section, debit cards are considered bank checks, if:

1. Debit cards are obtained from the same bank that has been designated as the candidate's or political committee's primary campaign depository.

2. Debit cards are issued in the name of the treasurer, deputy treasurer, or authorized user and state "~~Campaign Account of~~ ...(name of candidate or political committee)... Campaign Account."

3. No more than three debit cards are requested and issued.

~~4. Before a debit card is used, a list of all persons authorized to use the card is filed with the division.~~

~~5. All debit cards issued to a candidate's campaign or a political committee expire no later than midnight of the last day of the month of the general election.~~

4.~~6.~~ The person using the debit card does not receive cash as part of, or independent of, any transaction for goods or

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services.

5.~~7.~~ All receipts for debit card transactions contain:

a. The last four digits of the debit card number.

b. The exact amount of the expenditure.

c. The name of the payee.

d. The signature of the campaign treasurer, deputy treasurer, or authorized user.

e. The exact purpose for which the expenditure is authorized.

Any information required by this subparagraph but not included on the debit card transaction receipt may be handwritten on, or attached to, the receipt by the authorized user before submission to the treasurer.

(6) A candidate who makes a loan to his or her campaign and reports the loan as required by s. 106.07 may be reimbursed for the loan at any time the campaign account has sufficient funds to repay the loan and satisfy its other obligations.

Section 62. Subsection (4) of section 106.141, Florida Statutes, is amended to read:

106.141 Disposition of surplus funds by candidates.—

(4)(a) Except as provided in paragraph (b), any candidate required to dispose of funds pursuant to this section shall, at the option of the candidate, dispose of such funds by any of the following means, or any combination thereof:

1. Return pro rata to each contributor the funds that have not been spent or obligated.

2. Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the

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qualifications of s. 501(c)(3) of the Internal Revenue Code.

3. Give ~~not more than $10,000 of~~ the funds that have not been spent or obligated to the political party of which such candidate is a member~~, except that a candidate for the Florida Senate may give not more than $30,000 of such funds to the political party of which the candidate is a member~~.

4. Give the funds that have not been spent or obligated:

a. In the case of a candidate for state office, to the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the candidate; or

b. In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

(b) Any candidate required to dispose of funds pursuant to this section who has received contributions pursuant to ~~from~~ the Florida Election Campaign Financing Act ~~Trust Fund~~ shall, after all monetary commitments pursuant to s. 106.11(5)(b) and (c) have been met, return all surplus campaign funds to the General Revenue ~~Election Campaign Financing Trust~~ Fund.

Section 63. Subsection 106.143, Florida Statutes, is amended to read:

106.143 Political advertisements circulated prior to election; requirements.—

(1)(a) Any political advertisement that is paid for by a candidate, except a write-in candidate, and that is published, displayed, or circulated before, or on the day of, any election must prominently state:

1. "Political advertisement paid for and approved by

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...(name of candidate)..., ...(party affiliation)..., for ...(office sought)...”; or

2. “Paid by ...(name of candidate)..., ...(party affiliation)..., for ...(office sought)....”

(b) Any political advertisement that is paid for by a write-in candidate and that is published, displayed, or circulated before, or on the day of, any election must prominently state:

1. “Political advertisement paid for and approved by ...(name of candidate)..., write-in candidate, for ...(office sought)...”; or

2. “Paid by ...(name of candidate)..., write-in candidate, for ...(office sought)....”

(c) ~~(b)~~ Any other political advertisement published, displayed, or circulated before, or on the day of, any election must prominently:

1. Be marked “paid political advertisement” or with the abbreviation “pd. pol. adv.”

2. State the name and address of the persons paying for ~~sponsoring~~ the advertisement.

3. ~~a. (I)~~ State whether the advertisement and the cost of production is paid for or provided in kind by or at the expense of the entity publishing, displaying, broadcasting, or circulating the political advertisement.~~; or~~

~~(II) State who provided or paid for the advertisement and cost of production, if different from the source of sponsorship.~~

~~b. This subparagraph does not apply if the source of the sponsorship is patently clear from the content or format of the political advertisement.~~

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(d) ~~(c)~~ Any political advertisement made pursuant to s. 106.021(3)(d) must ~~be marked "paid political advertisement" or with the abbreviation "pd. pol. adv." and must~~ prominently state the name and address of the political committee or political party paying for the advertisement.~~, "Paid for and sponsored by ...(name of person paying for political advertisement).... Approved by ...(names of persons, party affiliation, and offices sought in the political advertisement)...."~~

(2) Political advertisements made as in-kind contributions from a political party must prominently state: "Paid political advertisement paid for by in-kind by ...(name of political party).... Approved by ...(name of person, party affiliation, and office sought in the political advertisement)...."

(3) ~~(2)~~ Any political advertisement of a candidate running for partisan office shall express the name of the political party of which the candidate is seeking nomination or is the nominee. If the candidate for partisan office is running as a candidate with no party affiliation, any political advertisement of the candidate must state that the candidate has no party affiliation. A candidate for nonpartisan office is prohibited from campaigning based on party affiliation.

(4) ~~(3)~~ It is unlawful for any candidate or person on behalf of a candidate to represent that any person or organization supports such candidate, unless the person or organization so represented has given specific approval in writing to the candidate to make such representation. However, this subsection does not apply to:

(a) Editorial endorsement by any newspaper, radio or television station, or other recognized news medium.

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(b) Publication by a party committee advocating the candidacy of its nominees.

(5) ~~(4)~~ (a) Any political advertisement not paid for by a candidate, including those paid for by a political party, other than an independent expenditure, offered ~~by or~~ on behalf of a candidate must be approved in advance by the candidate. Such political advertisement must expressly state that the content of the advertisement was approved by the candidate, unless the political advertisement is published, displayed, or circulated in compliance with subparagraph (1)(a)2., and must state who paid for the advertisement. The candidate shall provide a written statement of authorization to the newspaper, radio station, television station, or other medium for each such advertisement submitted for publication, display, broadcast, or other distribution.

(b) Any person who makes an independent expenditure for a political advertisement shall provide a written statement that no candidate has approved the advertisement to the newspaper, radio station, television station, or other medium for each such advertisement submitted for publication, display, broadcast, or other distribution. The advertisement must also contain a statement that no candidate has approved the advertisement.

~~(c) This subsection does not apply to campaign messages used by a candidate and his or her supporters if those messages are designed to be worn by a person.~~

(6) Political advertisements paid for by a political party or an affiliated party committee may use names and abbreviations as registered under s. 103.081 in the disclaimer.

(7) ~~(6)~~ This section does not apply to novelty items having


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a retail value of $10 or less which support, but do not oppose, a candidate or issue.

(8) ~~(7)~~ Any political advertisement which is published, displayed, or produced in a language other than English may provide the information required by this section in the language used in the advertisement.

(9) ~~(8)~~ This section does not apply to any campaign message or political advertisement used by a candidate and the candidate's supporters or by a political committee if the message or advertisement is:

(a) Designed to be worn by a person.

(b) Placed as a paid link on an Internet website, provided the message or advertisement is no more than 200 characters in length and the link directs the user to another Internet website that complies with subsection (1).

(c) Placed as a graphic or picture link where compliance with the requirements of this section is not reasonably practical due to the size of the graphic or picture link and the link directs the user to another Internet website that complies with subsection (1).

(d) Placed at no cost on an Internet website for which there is no cost to post content for public users.

(e) Placed or distributed on an unpaid profile or account which is available to the public without charge or on a social networking Internet website, as long as the source of the message or advertisement is patently clear from the content or format of the message or advertisement. A candidate or political committee may prominently display a statement indicating that the website or account is an official website or account of the

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candidate or political committee and is approved by the candidate or political committee. A website or account may not be marked as official without prior approval by the candidate or political committee.

(f) Distributed as a text message or other message via Short Message Service, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive it.

(g) Connected with or included in any software application or accompanying function, provided that the user signs up, opts in, downloads, or otherwise accesses the application from or through a website that complies with subsection (1).

(h) Sent by a third-party user from or through a campaign or committee's website, provided the website complies with subsection (1).

(i) Contained in or distributed through any other technology-related item, service, or device for which compliance with subsection (1) is not reasonably practical due to the size or nature of such item, service, or device as available, or the means of displaying the message or advertisement makes compliance with subsection (1) impracticable.

(10) ~~(9)~~ Any person who willfully violates any provision of this section is subject to the civil penalties prescribed in s. 106.265.

Section 64. Section 106.17, Florida Statutes, is amended to read:

106.17 Polls and surveys relating to candidacies.—Any candidate, political committee, committee of continuous existence, electioneering communication organization, or state

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or county executive committee of a political party may authorize or conduct a political poll, survey, index, or measurement of any kind relating to candidacy for public office so long as the candidate, political committee, committee of continuous existence, electioneering communication organization, or political party maintains complete jurisdiction over the poll in all its aspects. State and county executive committees of a political party or an affiliated party committee may authorize and conduct political polls for the purpose of determining the viability of potential candidates. Such poll results may be shared with potential candidates and expenditures incurred by state and county executive committees for potential candidate polls are not contributions to the potential candidates.

Section 65. Subsection (4) is added to section 106.19, Florida Statutes, to read:

106.19 Violations by candidates, persons connected with campaigns, and political committees.—

(4) Except as otherwise expressly stated, the failure by a candidate to comply with the requirements of this chapter has no effect upon whether the candidate has qualified for the office the candidate is seeking.

Section 66. Subsections (2) and (3), paragraph (i) of subsection (4), and subsection (5) of section 106.25, Florida Statutes, are amended to read:

106.25 Reports of alleged violations to Florida Elections Commission; disposition of findings.—

(2) The commission shall investigate all violations of this chapter and chapter 104, but only after having received either a sworn complaint or information reported to it under this

subsection by the Division of Elections. Such sworn complaint must be based upon personal information or information other than hearsay. Any person, other than the division, having information of any violation of this chapter or chapter 104 shall file a sworn complaint with the commission. The commission shall investigate only those alleged violations specifically contained within the sworn complaint. If any complainant fails to allege all violations that arise from the facts or allegations alleged in a complaint, the commission shall be barred from investigating a subsequent complaint from such complainant that is based upon such facts or allegations that were raised or could have been raised in the first complaint. If the complaint includes allegations of violations relating to expense items reimbursed by a candidate, committee, or organization to the campaign account before a sworn complaint is filed, the commission shall be barred from investigating such allegations. Such sworn complaint shall state whether a complaint of the same violation has been made to any state attorney. Within 5 days after receipt of a sworn complaint, the commission shall transmit a copy of the complaint to the alleged violator. The respondent shall have 14 days after receipt of the complaint to file an initial response, and the executive director may not determine the legal sufficiency of the complaint during that time period. If the executive director finds that the complaint is legally sufficient, the respondent shall be notified of such finding by letter, which sets forth the statutory provisions alleged to have been violated and the alleged factual basis that supports the finding. All sworn complaints alleging violations of the Florida Election Code over


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which the commission has jurisdiction shall be filed with the commission within 2 years after the alleged violations. The period of limitations is tolled on the day a sworn complaint is filed with the commission. The complainant may withdraw the sworn complaint at any time prior to a probable cause hearing if good cause is shown. Withdrawal shall be requested in writing, signed by the complainant, and witnessed by a notary public, stating the facts and circumstances constituting good cause. The executive director shall prepare a written recommendation regarding disposition of the request which shall be given to the commission together with the request. "Good cause" shall be determined based upon the legal sufficiency or insufficiency of the complaint to allege a violation and the reasons given by the complainant for wishing to withdraw the complaint. If withdrawal is permitted, the commission must close the investigation and the case. No further action may be taken. The complaint will become a public record at the time of withdrawal.

(3) For the purposes of commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this chapter or chapter 104. The commission may not by rule determine what constitutes willfulness or further define the term "willful" for purposes of this chapter or chapter 104. Willfulness is a determination of fact; however, at the request of the respondent at any time after probable cause is found, willfulness may be considered and determined in an informal hearing before the commission.

(4) The commission shall undertake a preliminary investigation to determine if the facts alleged in a sworn


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complaint or a matter initiated by the division constitute probable cause to believe that a violation has occurred.

(i)1. Upon a commission finding of probable cause, the counsel for the commission shall attempt to reach a consent agreement with the respondent. At any time, the commission may enter into a consent order with a respondent without requiring the respondent to admit to a violation of law within the jurisdiction of the commission.

2. A consent agreement is not binding upon either party unless and until it is signed by the respondent and by counsel for the commission upon approval by the commission.

3. Nothing herein shall be construed to prevent the commission from entering into a consent agreement with a respondent prior to a commission finding of probable cause if a respondent indicates in writing a desire to enter into negotiations directed towards reaching such a consent agreement. Any consent agreement reached under this subparagraph is subject to the provisions of subparagraph 2. and shall have the same force and effect as a consent agreement reached after the commission finding of probable cause.

In a case where probable cause is found, the commission shall make a preliminary determination to consider the matter or to refer the matter to the state attorney for the judicial circuit in which the alleged violation occurred. Notwithstanding any other provisions of this section, the commission may, at its discretion, dismiss any complaint at any stage of disposition if it determines that the public interest would not be served by proceeding further, in which case the commission shall issue a

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public report stating with particularity its reasons for the dismissal.

(5) ~~Unless~~ A person alleged by the Elections Commission to have committed a violation of this chapter or chapter 104 may elect, as a matter of right ~~elects~~, within 30 days after the date of the filing of the commission's allegations, to have a formal administrative ~~or informal~~ hearing conducted ~~before the commission, or elects to resolve the complaint by consent order, such person shall be entitled to a formal administrative hearing conducted~~ by an administrative law judge in the Division of Administrative Hearings. The administrative law judge in such proceedings shall enter a final order, which may include the imposition of civil penalties, subject to appeal as provided in s. 120.68. If the person does not elect to have a hearing by an administrative law judge and does not elect to resolve the complaint by a consent order, the person is entitled to a formal or informal hearing conducted before the commission.

Section 67. Subsection (1) of section 106.26, Florida Statutes, is amended to read:

106.26 Powers of commission; rights and responsibilities of parties; findings by commission.—

(1) The commission shall, pursuant to rules adopted and published in accordance with chapter 120, consider all sworn complaints filed with it and all matters reported to it by the Division of Elections. In order to carry out the responsibilities prescribed by this chapter, the commission is empowered to subpoena and bring before it, or its duly authorized representatives, any person in the state, or any person doing business in the state, or any person who has filed


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or is required to have filed any application, document, papers, or other information with an office or agency of this state or a political subdivision thereof and to require the production of any papers, books, or other records relevant to any investigation, including the records and accounts of any bank or trust company doing business in this state. Duly authorized representatives of the commission are empowered to administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before them concerning any relevant matter. Should any witness fail to respond to the lawful subpoena of the commission or, having responded, fail to answer all lawful inquiries or to turn over evidence that has been subpoenaed, the commission may file a complaint in the ~~before any~~ circuit court where the witness resides ~~of the state~~ setting up such failure on the part of the witness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of said complaint and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in the witness's possession which is lawfully demanded. The failure of any witness to comply with such order of the court shall constitute a direct and criminal contempt of court, and the court shall punish said witness accordingly. However, the refusal by a witness to answer inquiries or turn over evidence on the basis that such testimony or material will tend to incriminate such witness shall not be deemed refusal to comply with the provisions of this chapter. The sheriffs in the several counties shall make such service and execute all process or orders when required by the commission. Sheriffs shall be paid for these services by the commission as


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provided for in s. 30.231. Any person who is served with a subpoena to attend a hearing of the commission also shall be served with a general statement informing him or her of the subject matter of the commission's investigation or inquiry and a notice that he or she may be accompanied at the hearing by counsel of his or her own choosing.

Section 68. Subsections (1) through (4) of section 106.265, Florida Statutes, are amended and renumbered, and present subsection (5) of that section is renumbered as subsection (6), to read:

106.265 Civil penalties.—

(1) The commission or, in cases referred to the Division of Administrative Hearings pursuant to s. 106.25(5), the administrative law judge is authorized upon the finding of a violation of this chapter or chapter 104 to impose civil penalties in the form of fines not to exceed $1,000 per count, or, if applicable, to impose a civil penalty as provided in s. 104.271 or s. 106.19.

(2) In determining the amount of such civil penalties, the commission or administrative law judge shall consider, among other mitigating and aggravating circumstances:

(a) The gravity of the act or omission;

(b) Any previous history of similar acts or omissions;

(c) The appropriateness of such penalty to the financial resources of the person, political committee, committee of continuous existence, electioneering communications organization, or political party; and

(d) Whether the person, political committee, committee of continuous existence, electioneering communications

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organization, or political party has shown good faith in attempting to comply with the provisions of this chapter or chapter 104.

(3) ~~(2)~~ If any person, political committee, committee of continuous existence, electioneering communications organization, or political party fails or refuses to pay to the commission any civil penalties assessed pursuant to the provisions of this section, the commission shall be responsible for collecting the civil penalties resulting from such action.

(4) ~~(3)~~ Any civil penalty collected pursuant to the provisions of this section shall be deposited into the General Revenue Fund ~~Election Campaign Financing Trust Fund~~.

(5) ~~(4) Notwithstanding any other provisions of this chapter,~~ Any fine assessed pursuant to ~~the provisions of~~ this chapter shall~~, which fine is designated to be deposited or which would otherwise~~ be deposited into the General Revenue Fund ~~of the state, shall be deposited into the Election Campaign Financing Trust Fund~~.

Section 69. Subsection (1) and paragraph (b) of subsection (3) of section 106.29, Florida Statutes, are amended to read:

106.29 Reports by political parties; restrictions on contributions and expenditures; penalties.—

(1) The state executive committee and each county executive committee of each political party regulated by chapter 103 shall file regular reports of all contributions received and all expenditures made by such committee. In addition, when a special election is called to fill a vacancy in office, each state executive committee, each affiliated party committee, and each county executive committee making contributions or expenditures

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to influence the results of the special election or the preceding special primary election must file campaign treasurers' reports on the dates set by the Department of State pursuant to s. 100.111. Such reports shall contain the same information as do reports required of candidates by s. 106.07 and shall be filed on the 10th day following the end of each calendar quarter, except that, during the period from the last day for candidate qualifying until the general election, such reports shall be filed on the Friday immediately preceding each special primary election, special election, ~~both the~~ primary election, and ~~the~~ general election. In addition to the reports filed under this section, the state executive committee and each county executive committee shall file a copy of each prior written acceptance of an in-kind contribution given by the committee during the preceding calendar quarter as required under s. 106.08(6). Each state executive committee shall file ~~the original and one copy of~~ its reports with the Division of Elections. Each county executive committee shall file its reports with the supervisor of elections in the county in which such committee exists. Any state or county executive committee failing to file a report on the designated due date shall be subject to a fine as provided in subsection (3). No separate fine shall be assessed for failure to file a copy of any report required by this section.

(3)

(b) Upon determining that a report is late, the filing officer shall immediately notify the chair of the executive committee as to the failure to file a report by the designated due date and that a fine is being assessed for each late day.


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The fine shall be $1,000 for a state executive committee, and $50 for a county executive committee, per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, if an executive committee fails to file a report on the Friday immediately preceding the special election or general election, the fine shall be $10,000 per day for each day a state executive committee is late and $500 per day for each day a county executive committee is late. Upon receipt of the report, the filing officer shall determine the amount of the fine which is due and shall notify the chair. Notice is deemed complete upon proof of delivery of written notice to the mailing or street address on record with the filing officer. The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.

2. When the report is postmarked.

3. When the certificate of mailing is dated.

4. When the receipt from an established courier company is dated.

5. When the electronic receipt issued pursuant to s. 106.0705 is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made to the Florida Elections Commission pursuant to paragraph (c). An officer or member of an executive committee shall not be personally liable for such fine.

Section 70. Subsection (5) of section 106.35, Florida

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Statutes, is amended to read:

106.35 Distribution of funds.—

(5) The division shall adopt rules providing for the weekly reports and certification and distribution of funds pursuant thereto required by this section. Such rules shall, at a minimum, provide ~~for:~~

~~(a) Specifications for printed campaign treasurer's reports outlining the format for such reports, including size of paper, typeface, color of print, and placement of required information on the form.~~

~~(b)1.~~ specifications for electronically transmitted campaign treasurer's reports outlining communication parameters and protocol, data record formats, and provisions for ensuring security of data and transmission.

~~2. All electronically transmitted campaign treasurer's reports must also be filed in printed format. Printed format shall not include campaign treasurer's reports submitted by electronic facsimile transmission.~~

Section 71. Paragraph (b) of subsection (12) of section 112.312, Florida Statutes, is amended to read:

112.312 Definitions.—As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

(12)

(b) "Gift" does not include:

1. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization.

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2. Contributions or expenditures reported pursuant to chapter 106, contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.

3. An honorarium or an expense related to an honorarium event paid to a person or the person's spouse.

4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.

5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.

6. The use of a public facility or public property, made available by a governmental agency, for a public purpose.

7. Transportation provided to a public officer or employee by an agency in relation to officially approved governmental business.

8. Gifts provided directly or indirectly by a state, regional, or national organization which promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization or officials or staff of a governmental agency that is a member of that organization.

Section 72. Paragraph (d) of subsection (1) of section 112.3215, Florida Statutes, is amended to read:

112.3215 Lobbying before the executive branch or the

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Constitution Revision Commission; registration and reporting; investigation by commission.—

(1) For the purposes of this section:

(d) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106 or contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

Section 73. Subsection (1) of section 876.05, Florida Statutes, is amended to read:

876.05 Public employees; oath.—

(1) All persons who now or hereafter are employed by or who now or hereafter are on the payroll of the state, or any of its departments and agencies, subdivisions, counties, cities, school boards and districts of the free public school system of the state or counties, or institutions of higher learning, ~~and all candidates for public office,~~ except candidates for federal office, are required to take an oath before any person duly authorized to take acknowledgments of instruments for public record in the state in the following form:

I, ..., a citizen of the State of Florida and of the United States of America, and being employed by or an officer of

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.... and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida.

Section 74. Section 876.07, Florida Statutes, is repealed.

Section 75. 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 provisions of this act are severable.

Section 76. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

========== 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 elections; amending s. 97.012, F.S.; expanding the list of responsibilities of the Secretary of State when acting in his or her capacity as chief election officer; amending s. 97.021, F.S.; redefining the term "minor political party"; amending s. 97.025, F.S.; replacing a requirement for the Department of State to print copies of a pamphlet containing the Election Code with a requirement that the pamphlet be made available; amending s. 97.0575, F.S.; requiring that third-party voter registration

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organizations register with the Division of Elections and provide the division with certain information; requiring that the division or a supervisor of elections make voter registration forms available to third-party voter registration organizations; requiring that such forms contain certain information; requiring that the division maintain a database of certain information; requiring supervisors of elections to provide specified information to the division in a format and at times required by the division; requiring that such information be updated and made public daily at a specified time; requiring third-party voter registration organizations to deliver collected voter registration applications within a specified period; revising penalty provisions to conform; specifying grounds for an affirmative defense to a violation of timely submission requirements; providing for the referral of violations to the Attorney General; authorizing the Attorney General to initiate a civil action; providing that an action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order; requiring that the division adopt rules for specified purposes; providing for retroactive application of certain requirements applicable to third-party voter registration organizations; deleting provisions providing for fines to be in addition to criminal penalties; deleting provisions providing a continuing appropriation of the

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proceeds of fines; amending s. 97.071, F.S.; requiring that voter information cards contain the address of the polling place of the registered voter; requiring a supervisor of elections to issue a new voter information card to a voter upon a change in a voter's address of legal residence or a change in a voter's polling place address; providing instructions for implementation by the supervisors of elections; amending s. 97.073, F.S.; requiring a supervisor to notify an applicant within 5 business days regarding disposition of the voter registration applications; amending s. 97.1031, F.S.; revising the methods by which a person must update his or her voter registration due to a change of address; revising procedures for an elector to change his or her party affiliation; requiring an elector to notify the supervisor of elections when the elector changes his or her name; amending s. 98.075, F.S.; revising procedures for the removal of deceased persons and other potentially ineligible persons from the statewide voter registration system; amending s. 98.093, F.S.; revising requirements for the Department of Corrections to provide the Department of State with information relating to convicted felons; requiring the Florida Parole Commission to regularly furnish data to the Department of State relating to persons who have been granted clemency; amending s. 98.0981, F.S.; providing timeframes and formats for voting history information to be sent by the supervisors of

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elections to the department; providing timeframes and formats for voting history information to be sent by the department to the President of the Senate, the Speaker of the House of Representatives, and the respective minority leaders; requiring submission of precinct-level information in a certain format by a time certain; amending s. 99.012, F.S.; providing that a person may not be qualified as a candidate for an election or appear on the ballot unless the person complies with certain requirements; amending s. 99.021, F.S.; revising the candidate oath requirement for a person seeking to qualify for nomination or election or as a candidate of a political party; removing a requirement for the qualifying officer to provide a printed copy of the candidate oath; removing a requirement for taking the public employee oath; clarifying that candidates for Unites States President and Vice President need not subscribe certain oaths; correcting references for other oaths; amending s. 99.061, F.S.; revising the timeframe for a candidate to pay a qualifying fee under certain circumstances; requiring checks to be payable as prescribed by the filing officer; requiring signatures on certain oaths to be verified; removing a requirement for a public employee oath; requiring the filing of a verified notarized financial disclosure statement; clarifying the time for qualifying papers to be received; providing that the qualifying officer performs a ministerial duty only; exempting a decision by the


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qualifying officer from the Administrative Procedure Act; amending s. 99.063, F.S.; requiring a candidate's oath to be verified; deleting a requirement for a candidate to file a loyalty oath with the Department of State by a certain date; amending s. 99.092, F.S.; providing for the transfer of the election assessment to the Elections Commission Trust Fund; amending s. 99.093, F.S.; providing for the election assessments paid by a person seeking to qualify for a municipal office to be forwarded by the qualifying officer to the Florida Elections Commission; amending s. 99.095, F.S.; allowing a candidate to obtain the required number of signatures from any registered voter regardless of district boundaries in a year of apportionment; amending s. 99.097, F.S.; providing for the Department of State to adopt rules to verify petitions through random sampling; creating exceptions for certain petitions from the authorization to use random sampling to verify petitions; revising criteria that a supervisor of elections must use to determine whether a petition may be counted as valid; providing that an exemption from paying fees to verify petitions does not apply if a person has been paid to solicit signatures; providing that contributions received after the filing of an undue burden oath must first be used to pay fees for verifying petitions; amending s. 100.061, F.S.; increasing the time period between a primary election and a general election; amending s. 100.101, F.S.; conforming a provision to changes made

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by the act; amending s. 100.111, F.S.; deleting provisions relating to vacancies in a state or county office because an incumbent qualified as a candidate for federal office; providing for a filing officer, rather than the Department of State, to notify a political party that it may nominate a person for office if certain events cause the party to have a vacancy in nomination; revising provisions relating to the filling of a vacancy in a nomination; deleting a defined term; providing that a vacancy in nomination is not created as the result of certain court orders; amending s. 100.371, F.S.; deleting provisions relating to a right to revoke a signature on an initiative petition; reducing the time period for which a signed and dated initiative petition form is valid; requiring an initiative sponsor to submit an initiative form to the supervisor of elections for the county of residence of the person signing the form for verification; providing procedures for misfiled petitions; revising criteria for a supervisor of elections to verify a signature on an initiative petition form; deleting provisions relating to petition signature revocations; amending s. 101.001, F.S.; requiring the supervisors of elections to provide the department with precinct data including specified information; requiring the department to maintain a searchable database containing certain precinct and census block information; requiring supervisors of elections to notify the department of

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precinct changes within a specified time; deleting a waiver; amending s. 101.043, F.S.; replacing references to the word "voter" with "elector"; providing that the address on a elector's identification is not to be used to confirm or challenge an elector's legal residence; amending s. 101.045, F.S.; permitting a change of residence at the polling place for a person changing residence within a county; providing that a person whose change of address is from outside the county may not change his or her legal residence at the polling place or vote a regular ballot but may vote a provisional ballot; amending s. 101.131, F.S.; revising procedures for the designation of poll watchers; requiring that the Division of Elections prescribe a form for the designation of poll watchers; providing conditions under which poll watchers are authorized to enter polling areas and watch polls; requiring that a supervisor of elections provide identification to poll watchers by a specified period before early voting begins; requiring that poll watchers display such identification while in a polling place; amending s. 101.151, F.S.; authorizing the use of ballot-on-demand technology to produce election-day ballots; deleting a requirement that the use of such technology be authorized in writing by the Secretary of State; revising provisions relating to ballot headings and the order of candidates appearing on a ballot; amending s. 101.161, F.S.; specifying a time period to

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initiate an action to challenge an amendment to the State Constitution proposed by the Legislature; requiring the court, including an appellate court, to accord the case priority over other cases; requiring the Attorney General to revise a ballot title or ballot summary for an amendment proposed by the Legislature under certain circumstances; requiring the Department of State to furnish a designating number and the revised ballot title and substance to the supervisors of elections; providing that a defect in a ballot title or ballot summary in an amendment proposed by the Legislature is not grounds to remove the amendment from the ballot; amending s. 101.5605, F.S.; requiring an electromechanical voting system to satisfy the standards for certification adopted by rule of the Department of State; amending s. 101.5606, F.S.; deleting requirements for electromechanical voting systems to have the capability to produce precinct totals in marked or punched form; amending s. 101.5612, F.S.; revising the sample size of electromechanical voting systems that include the electronic or electromechanical tabulation devices to be tested; amending s. 101.5614, F.S.; deleting provisions relating to the use of ballot cards and write-in ballots or envelopes; amending s. 101.591, F.S.; removing the audit requirement by the canvassing board if a manual recount is undertaken; amending s. 101.62, F.S.; extending the validity of an absentee ballot request to include all elections to the end of


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the calendar year of the second ensuing regularly scheduled general election; revising the timeframe for supervisors to electronically update absentee ballot request information; specifying types of elections for which a supervisor of elections must send an absentee ballot to uniformed services voters and overseas voters; specifying a time period during which a supervisor of elections must begin mailing absentee ballots; removing requirements that an elector provide certain information when requesting an absentee ballot from the county supervisor of elections; amending s. 101.65, F.S.; revising the form of the instructions to absent electors; stating that an absentee ballot is considered illegal if the signature on the voter's certificate does not match the signature on record; providing instructions for updating a signature on a voter registration application; amending s. 101.657, F.S.; reducing the early voting period for elections with state or federal races; removing timetables with respect to early voting in special elections; removing restrictions with respect to daily hours of operation of early voting sites; authorizing a supervisor of elections to provide early voting for elections not held in conjunction with a state or federal election; amending s. 101.68, F.S.; extending the time for canvassing and processing absentee ballots to 15 days before the election; amending s. 101.6923, F.S.; revising the form of the special absentee ballot instructions for certain first-time voters; stating

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that an absentee ballot is considered illegal if the signature on the voter's certificate does not match the signature on record; providing instructions for updating a signature on a voter registration application; amending s. 101.75, F.S.; deleting a requirement for the dates of the qualifying period for certain municipal elections to run for no less than 14 days; amending s. 102.141, F.S.; requiring the canvassing board to report all early voting and all tabulated absentee results to the department by a time certain; requiring periodic updates; amending s. 102.168, F.S.; revising provisions specifying indispensable parties in a contest of an election; providing that in an election contest involving the review of a signature on an absentee ballot by a canvassing board, a circuit court may not review or consider evidence other than the signature on the voter's certificate and the elector's signatures in the registration records; providing for the reversal of the determination by the canvassing board if the court determines that the board abused its discretion; amending s. 103.021, F.S.; revising a definition; revising requirements for a minor political party to have candidates for President and Vice-President placed on the general election ballot; creating s. 103.095, F.S.; providing a procedure for the registration of a minor political party; requiring the Division of Elections to adopt rules to prescribe the manner in which political parties may have their


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filings cancelled; amending s. 103.101, F.S.; creating a Presidential Preference Primary Date Selection Committee; providing membership; requiring for the committee to meet by a date certain and to set a date for the presidential preference primary; amending s. 103.141, F.S.; revising procedures for the removal of an officer, county committeeman, county committeewoman, precinct committeeman, precinct committeewoman, or member of a county executive committee; repealing s. 103.161, F.S., which relates to the removal or suspension of officers or members of a state or county executive committee; amending s. 104.29, F.S.; revising provisions authorizing persons to view whether ballots are being correctly reconciled; amending s. 106.011, F.S.; revising the definitions of the terms "contribution," "independent expenditure," "unopposed candidate," and "candidate"; conforming a cross-reference to changes made by the act; amending s. 106.021, F.S.; deleting requirements to report the address of certain persons receiving a reimbursement by a check drawn on a campaign account; amending s. 106.022, F.S.; requiring a political committee, committee of continuous existence, or electioneering communications organization to file a statement of appointment with the filing officer rather than with the Division of Elections; authorizing an entity to change its appointment of registered agent or registered office by filing a written statement with the filing officer; requiring a


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registered agent who resigns to execute a written statement of resignation and file it with the filing officer; amending s. 106.023, F.S.; revising the form of the statement of candidate to require a candidate to acknowledge that he or she has been provided access to and understands the requirements of ch. 106, F.S.; amending s. 106.025, F.S.; exempting tickets or advertising for a campaign fundraiser from requirements of s. 106.143, F.S.; amending s. 106.03, F.S.; revising requirements for groups making expenditures for electioneering communications to file a statement of organization; amending s. 106.04, F.S.; transferring a requirement that certain committees of continuous existence file campaign finance reports in special elections; subjecting a committee of continuous existence that fails to file a report or to timely file a report with the Division of Elections or a county or municipal filing officer to a fine; requiring a committee of continuous existence to include transaction information from credit card purchases in a report filed with the Division of Elections; requiring a committee of continuous existence to report changes in information previously reported to the Division of Elections within 10 days after the change; requiring the Division of Elections to revoke the certification of a committee of continuous existence that fails to file or report certain information; requiring the division to adopt rules to prescribe the manner in which the

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certification is revoked; increasing the amount of a fine to be levied on a committee of continuous existence that fails to timely file certain reports; providing for the deposit of the proceeds of the fines; including the registered agent of a committee of continuous existence as a person whom the filing officer may notify that a report has not been filed; providing criteria for deeming delivery complete of a notice of fine; requiring a committee of continuous existence that appeals a fine to provide a copy of the appeal with the filing officer; amending s. 106.07, F.S.; creating an exception for reports due in the third calendar quarter immediately preceding a general election from a requirement that the campaign treasurer report contributions received and expenditures made on the 10th day following the end of each calendar quarter; revising reporting requirements for a statewide candidate who receives funding under the Florida Election Campaign Financing Act and candidates in a race with a candidate who has requested funding under that act; deleting a requirement for a committee of continuous existence to file a campaign treasurer's report relating to contributions or expenditures to influence the results of a special election; revising the methods by which a campaign treasurer may be notified of the determination that a report is incomplete to include certified mail and other methods using a common carrier that provides proof of delivery of the notice;


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extending the time the campaign treasurer has to file an addendum to the report after receipt of notice of why the report is incomplete; providing criteria for deeming delivery complete of a notice of incomplete report; deleting a provision allowing for notification by telephone of an incomplete report; revising the information that must be included in a report to include transaction information for credit card purchases; deleting a requirement for a campaign depository to return checks drawn on the account to the campaign treasurer; specifying the amount of a fine for the failure to timely file reports after a special primary election or special election; specifying that the registered agent of a political committee is a person whom a filing officer may notify of the amount of the fine for filing a late report; providing criteria for deeming delivery complete of a notice of late report and resulting fine; amending s. 106.0703, F.S.; deleting a requirement that an electioneering communications organization file electronically file certain periodic reports with the Department of State; amending s. 106.0705, F.S.; requiring certain individuals to electronically file certain reports with the Division of Elections; conforming a cross-reference to changes made by the act; deleting an obsolete provision; amending s. 106.08, F.S.; deleting a requirement for the Department of State to notify candidates as to whether an independent or minor party candidate has obtained

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the required number of petition signatures; deleting a requirement for certain unopposed candidates to return contributions; specifying the entities with which a political party's state executive committee and county executive committees and affiliated party committees must file a written acceptance of an in-kind contribution; amending s. 106.09, F.S.; specifying that the limitations on contributions by cash or cashier's check apply to the aggregate amount of contributions to a candidate or committee per election; amending s. 106.11, F.S.; revising the statement that must be contained on checks from a campaign account; deleting requirements relating to the use of debit cards; authorizing a campaign for a candidate to reimburse the candidate's loan to the campaign when the campaign account has sufficient funds; amending s. 106.141, F.S.; deleting a limit on the amount of surplus funds that a candidate may give to his or her political party; requiring candidates receiving public financing to return all surplus funds to the General Revenue Fund after paying certain monetary obligations and expenses; amending s. 106.143, F.S.; specifying disclosure statements that must be included in political advertisements paid for by a write-in candidate; revising the disclosure statements that must be included in certain political advertisements; clarifying the type of political advertisements that must be approved in advance by a candidate; deleting an exemption from the requirement


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to obtain a candidate's approval for messages designed to be worn; authorizing a disclaimer for paid political advertisements to contain certain registered names and abbreviations; amending s. 106.17, F.S.; providing that the cost of certain polls are not contributions to a candidate; amending s. 106.19, F.S.; providing that a candidate's failure to comply with ch. 106, F.S., has no effect on whether the candidate has qualified for office; amending s. 106.25, F.S.; authorizing a person who is the subject of a complaint filed with the Florida Elections Commission to file a response before the executive director of the commission determines whether the complaint is legally sufficient; prohibiting the commission from determining by rule what constitutes willfulness or defining the term "willful"; authorizing the commission to enter into consent orders without requiring the respondent to admit to a violation of law; authorizing an administrative law judge to impose civil penalties for violations of ch. 104 or ch. 106, F.S.; amending s. 106.26, F.S.; requiring the commission to enforce certain witness subpoenas in the circuit court where the witness resides; amending s. 106.265, F.S.; authorizing an administrative law judge to assess civil penalties upon a finding of a violation of the election code or campaign financing laws; providing for civil penalties to be assessed against an electioneering communications organization; removing reference to the

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expired Election Campaign Financing Trust Fund; directing that moneys from penalties and fines be deposited into the General Revenue Fund; amending s. 106.29, F.S.; requiring state and county executive committees and affiliated party committees that make contributions or expenditures to influence the results of a special election or special primary election to file campaign treasurer's reports; amending campaign finance reporting dates, to conform; deleting a requirement that each state executive committee file the original and one copy of its reports with the Division of Elections; revising the due date for filing a report; providing criteria for deeming delivery complete of a notice of fine; amending s. 106.35, F.S.; deleting a requirement that the Division of Election adopt rules relating to the format and filing of certain printed campaign treasurer's reports; amending s. 112.312, F.S.; excluding contributions or expenditures reported pursuant to federal election law from the definition of the term "gift"; amending s. 112.3215, F.S.; excluding contributions or expenditures reported pursuant to federal election law from the definition of the term "expenditure"; amending s. 876.05, F.S.; deleting a requirement for all candidates for public office to record an oath to support the Constitution of the United States and of the State of Florida; repealing s. 876.07, F.S., relating to a requirement that a person make an oath to support the Constitution of the

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United States and of the State of Florida in order to be qualified as a candidate for office; providing for severability of the act; providing effective dates.

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Margolis) recommended the following:

Senate Amendment to Amendment (480914) (with title amendment)

Delete line 1795

and insert:

(d) Early voting shall begin on the 15th day before an

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

And the title is amended as follows:

Delete lines 3946 - 3947

and insert:

F.S.; removing timetables with

700680

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Margolis) recommended the following:

Senate Amendment to Amendment (480914) (with title amendment)

Delete lines 1806 - 1808

and insert:

operation of early voting sites in those elections. Early voting sites shall open no sooner than 7 a.m. and close no later than 7 p.m. on each applicable day.

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

And the title is amended as follows:

Delete lines 3948 - 3950

and insert:

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respect to early voting in special elections;
authorizing a supervisor of

878514

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1712 - 1746

and insert:

Section 23. Section 101.043, Florida Statutes, is amended to read:

101.043 Identification required at polls.—

(1)(a) The precinct register, as prescribed in s. 98.461, shall be used at the polls for the purpose of identifying the elector at the polls before ~~prior to~~ allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present one of the following

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current and valid picture identifications:

1.~~(a)~~ Florida driver's license.

2.~~(b)~~ Florida identification card issued by the Department of Highway Safety and Motor Vehicles.

3.~~(c)~~ United States passport.

4.~~(d)~~ Debit or credit card.

5.~~(e)~~ Military identification.

6.~~(f)~~ Student identification.

7.~~(g)~~ Retirement center identification.

8.~~(h)~~ Neighborhood association identification.

9.~~(i)~~ Public assistance identification.

(b) If the picture identification does not contain the signature of the elector ~~voter~~, an additional identification that provides the elector's ~~voter's~~ signature shall be required. The address appearing on the identification presented by the elector may not be used as the basis to confirm an elector's legal residence or otherwise challenge an elector's legal residence. The elector shall sign his or her name in the space provided on the precinct register or on an electronic device provided for recording the elector's ~~voter's~~ signature. The clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided on the precinct register or on an electronic device provided for that purpose and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.

(c) Once a person has presented his or her voter identification card and picture identification to the clerk or inspector, the person may not be asked to provide additional

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information or recite his or her home address.

(2) If the elector fails to furnish the required identification, the elector shall be allowed to vote a provisional ballot. The canvassing board shall determine the validity of the ballot pursuant to s. 101.048(2).

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

And the title is amended as follows:

Delete lines 152 - 156

and insert:

petition signature revocations; amending s. 101.043, F.S.; replacing references to the word "voter" with "elector"; providing that the address on an elector's identification may not be used to confirm or challenge an elector's legal residence; prohibiting a clerk or inspector from requesting additional information from a person once the person has presented his or her voter identification card and picture identification; amending s.

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 Budget Committee

BILL:	CS/CS/SB 2086
INTRODUCER:	Committee on Rules and Subcommittee on Ethics and Elections
SUBJECT:	Elections
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox/Seay	Roberts	EE	**Fav/CS**
2.	Fox/Carlton	Phelps	RC	**Fav/CS**
3.	Martin	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 2086 is an omnibus elections bill consisting primarily of the Secretary of State's election administration and campaign finance packages, along with numerous other major changes to the Florida Election Code, including:

- Specifying the time period to initiate a challenge to an amendment proposed by the Legislature to the State Constitution, and directing the Attorney General to revise ballot language found to be defective by a court;
- Changing Florida's primary date from 10 weeks to 9 weeks before the general election;
- Reducing the early voting period from 14 days to 6 days;
- Substantially revising the requirements for third-party voter registration organizations;
- Reducing the shelf-life of an initiative petition signature from 4 years to 2 years;
- Allowing the Secretary of State to provide direction and opinions to supervisors of elections on the performance of their official duties with respect to the Florida Election Code or rules adopted by the Department of State;
- Requiring electors with name or address changes at the polls on election day to vote a provisional ballot;

- Establishing revised timeframes and specifying the format for supervisors of elections and the Department of State to submit information on voter history and precinct-level election results;
- Requiring supervisors of elections to include polling place addresses on voter information cards issued on or after August 1, 2012;
- Specifying that if a manual recount was conducted pursuant to s. 102.166, F.S., a manual audit of the voting system is not required;
- Allowing county canvassing boards to begin canvassing absentee ballots at 7 a.m. on the 15th day before the election;
- Requiring committees of continuous existence (CCEs) and political committees (PCs) who participate in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections;
- Increasing the penalty for CCEs that late-file their final campaign finance report due before a primary or general election for the first three days the report is late, from $50 per day to $500 per day (to conform to current law regarding PC and candidate filings);
- Requiring CCEs, candidates, and PCs to include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement;
- Creating an additional election violation for filing three campaign finance reports late in a two-year period; and,
- Allowing county candidates who are seeking to qualify by petition in an apportionment year to obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries.

The bill takes effect upon becoming law, except as otherwise provided.

This bill substantially amends ss. 97.012, 97.021, 97.025, 97.0575, 97.071, 97.073, 97.1031, 98.075, 98.093, 98.0981, 99.012, 99.021, 99.061, 99.063, 99.092, 99.093, 99.095, 99.097, 100.061, 100.111, 100.371, 101.043, 101.045, 101.131, 101.151,101.161, 101.5605, 101.5606, 101.5612, 101.5614, 101.591, 101.62, 101.65, 101.657, 101.68, 101.6923, 101.75, 102.168, 103.021, 103.095, 103.101, 103.141, 104.29, 106.011, 106.021, 106.022, 106.023, 106.025, 106.03, 106.04, 106.07, 106.0703, 106.0705, 106.08, 106.09, 106.11, 106.141, 106.143, 106.17, 106.18, 106.19, 106.25, 106.26, 106.265, 106.29, 106.35, and 876.05 of the Florida Statutes. The bill also repeals ss. 103.161 and 876.07 of the Florida Statutes, contains a severability clause, and creates an unnumbered section of Florida Statutes.

II. Present Situation:

Responsibilities of Secretary of State as Chief Election Officer

The Secretary of State is the chief election officer of the state and is statutorily given a variety of responsibilities. Those responsibilities include such things as obtaining and maintaining uniformity in the interpretation and implementation of the election laws; providing uniform standards for the proper and equitable implementation of the registration laws; providing technical assistance to the supervisors of elections on voter education, election personnel training

services, and voting systems; and creating and administering a statewide voter registration system as required by the Help America Vote Act of 2002.[1]

Minor Political Parties

Section 97.021(18), F.S., defines the term "minor political party" for purposes of Florida's Election Code. Currently, that paragraph also provides the procedure for becoming a minor political party and requires a minor political party to notify the Department of State when there are changes in the party's filing certificate.

Election Code Copies

The Department of State is required to prepare a pamphlet of a reprint of the Florida Election Code and to have sufficient copies so that one may be given to a candidate upon request.[2] The Department is also permitted to send a sufficient number of the pamphlets to each supervisor of elections prior to the first day of qualifying so that the Supervisor can provide a copy to each candidate who qualifies.[3] The costs of printing the pamphlets shall be paid out of funds appropriated for conducting elections.[4]

Voter Registration

A supervisor of elections is required to notify a person applying to become a registered voter of the disposition of his/her voter registration application.[5] The notice must inform the applicant that the application has been approved, is incomplete, has been denied, or is a duplicate of a current registration.[6] If the supervisor of elections sends a voter information card, that constitutes notice of approval of the application.[7] If an application is incomplete, the supervisor must request the applicant to submit the missing information using a signed voter registration application.[8] In the event that an application is denied, the supervisor is required to inform the applicant of the reason the application was denied. When a voter registration application indicates that the applicant was previously registered in another state, the Department is required to notify the registration official in the prior state that the applicant is now a registered voter in the State of Florida.[9]

An elector who moves within the same county is required to notify the supervisor of elections for that county.[10] The elector may notify the supervisor by a signed, written notice or by telephone or electronic means. If notice is provided by telephone or electronic means, the elector must also provide his or her date of birth. The supervisor is required to issue the elector a new voter information card as soon as practical to do so.

When an elector moves to a different county within Florida, changes party affiliation, or changes his or her name change by marriage or other legal process, the elector is required to provide

[1] For a complete listing of the Secretary's responsibilities, see section 97.012, F.S.
[2] Section 97.025, F.S.
[3] *Id.*
[4] *Id.*
[5] Section 97.073(1), F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Section 97.073(2), F.S.
[10] Section 97.1031(1), F.S.

notice via a voter registration application.[11] The voter registration official is required to send a new voter information card reflecting the new voter information. The voter registration official is required to make the necessary changes in the elector's records as soon as practical after receiving notice of a change of address of legal residence, name, or party affiliation.[12] The supervisor of elections is required to issue the new voter information card.

The Department is required to ensure the integrity of the current voter registration records.[13] The Department is required to look for voters who are registered more than once or applicants whose registration application would result in duplicate registrations.[14] In the event of a subsequent application submitted by a currently registered voter, the most recent application is deemed an update to the voter registration record. Section 98.075, F.S., also provides the procedures concerning registered voters who are deceased[15], adjudicated mentally incapacitated[16], convicted of a felony[17], or other enumerated bases of ineligibility.[18] That section also specifies the procedures for removal of registered voters from the list of current registered voters and requires certification of the registration records maintenance on a biennial basis.

In order to maintain accurate current voter registration roles, the Department must receive certain information pertaining to the eligibility of voters from certain governmental entities.[19] In light of that necessity, certain federal, state, and local governmental entities are authorized or required to provide information for maintenance of the current voter registration roles.[20]

Third-Party Voter Registration Groups

Currently, before engaging in any voter registration activities, a third-party voter registration organization must name a registered agent in the state and submit certain required information to the Division of Elections (Division).[21] On or before the 15th day of each calendar quarter, the organization must submit a report providing the date and location of any organized voter registration drives conducted in the prior calendar quarter. Penalties and fines are provided for specified acts of omission or commission.

Voter Information Cards

Currently, every supervisor of elections must furnish a voter information card to every registered voter in the supervisor's county. The card must contain the following information:

- Voter's registration number;
- Date of registration;
- Full name;

[11] Section 97.1031(2), F.S.
[12] Section 97.1031(3), F.S.
[13] Section 98.075(1), F.S.
[14] Section 98.075(2), F.S.
[15] Section 98.075(3), F.S.
[16] Section 98.075(4), F.S.
[17] Section 98.075(5), F.S.
[18] Section 98.075(6), F.S.
[19] Section 98.093(1), F.S.
[20] Section 98.093(2), F.S.
[21] See s. 97.0575, F.S.

- Party affiliation;
- Date of birth;
- Address of legal residence;
- Precinct number;
- Supervisor's name and contact information; and
- Any other information deemed necessary by the supervisor.[22]

Replacement cards are provided free of charge upon verification of the voter's registration, if the voter provides a signed written request for a replacement card.[23] The uniform statewide voter registration application may also be used to request a replacement card.[24] New cards are automatically issued when a voter's name, address, or party affiliation changes.[25]

A survey in 2010[26] indicated that 61 counties include the polling place address on the voter information card. The following six counties did not include the polling place address on the voter information card: Glades, Jefferson, Madison, Orange[27], Taylor and Volusia.

Voting History and Statewide Voter Registration System Information and Precinct-Level Information

The format of the voter history and precinct-level data is governed by Department rule. The timeframe for information sent to the Department of State by the supervisors of elections for both types of information is established in law. In turn, the requirement for the Department of State to forward information to the Legislature is provided in law.

Supervisors of elections are required to transmit to the Department of State updated voting history information for each qualified voter who voted within 45 days after a general election.[28] Within 60 days after a general election, the Department of State is required to transmit a report containing the updated voting history information to the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader.[29] Within 45 days after the date of a presidential preference primary, a special election, or a general election, supervisors of elections are required to collect and submit precinct-level election results to the Department of State.[30] The Department must make publicly available all required reports relating to voter history and precinct data.

[22] Section 97.071(1), F.S.
[23] Section 97.071(2), F.S.
[24] Section 97.052(1), F.S.
[25] Section 97.071(3), F.S.; *see also* s. 97.1031, F.S.
[26] Florida State Association of Supervisors of Elections, Unofficial Survey, *Voter Card with Polling Place Address*, (February 2010).
[27] While Orange County does not print the polling place address on the voter information cards, the polling place address is provided on the sample ballots that are mailed out prior to each election. The Orange County Supervisor of Elections office has explained that the office provides the polling place address on the sample ballot instead of the voter information card as the polling place varies for municipal elections and general elections. *See id.*
[28] Section 98.0981(1)(a), F.S.
[29] Section 98.0981(1)(c), F.S.
[30] Section 98.0981(2), F.S.

Candidate Qualifying

Partisan Races

Each candidate is required to take and subscribe to an oath or affirmation in writing.[31] In addition to the oath, a person seeking to qualify as a candidate for the nomination of a political party must affirm in writing the person's party affiliation, the fact that they're not a registered member of any other political party and have not been a candidate for nomination for any other political party within six months preceding the general election for which the person seeks to qualify, and that the person has paid the assessment levied against him/her, if any, by the executive committee of his/her party.[32]

Section 99.061, F.S., provides the method for qualifying for nomination or election to federal, state, county, or district office. That section also provides the time in which to qualify for those offices.

The Governor is required to designate a Lieutenant Governor candidate as a running mate by 5 p.m. on the ninth day after the primary election.[33] Then, no later than 5 p.m. on the ninth day after the primary election, the Lieutenant Governor candidate is required to submit the candidate's oath which must be "duly affirmed," the loyalty oath, a written statement of party affiliation, and the full and public disclosure of his or her financial interests pursuant to s. 8, Article II of the State Constitution.[34]

Any person who does not qualify for office by obtaining a sufficient number of verified petitions or as a write-in candidate is required to pay a qualifying fee at the time of qualifying.[35] The qualifying fee shall consist of a filing fee and an election assessment, the amounts of which are specified in statute. The election assessment must be deposited in the Clearing Funds Trust Fund and transferred to the Elections Commission Trust Fund within the Department of Legal Affairs.

Any person seeking to qualify for nomination or election to a municipal office shall pay an election assessment when they qualify.[36] Within 30 days after the close of the qualifying period, the qualifying officer shall forward all assessments collected to the Department of State for transfer to the Elections Commission Trust Fund within the Department of Legal Affairs.[37]

Petition Method

A prospective candidate may choose to qualify for an elected office by petition, in lieu of a qualifying fee or party assessment.[38] Candidates generally must obtain signatures equal to at least one percent of the total number of registered voters of the geographic area represented by the office sought.[39]

[31] Section 99.021(1)(a)1, F.S.
[32] Section 99.021(1)(b), F.S.
[33] Section 99.063(1), F.S.
[34] Section 99.063(2), F.S.
[35] Section 99.092(1), F.S.
[36] Section 99.093(1), F.S.
[37] Section 99.093(2), F.S.
[38] Section 99.095(1), F.S.
[39] Section 99.095(2)(a), F.S.

Following each decennial census, federal congressional districts and state legislative districts are reapportioned to reflect changes in population. In a year of apportionment, where district boundaries are subject to change, legislative candidates seeking to qualify by the petition method must obtain signatures of Florida registered voters equal to .33% of the ideal population for the office sought.[40] Counties must also reapportion, establishing new district lines for offices like county commissioner.[41] However, there is *no analogous provision* allowing local candidates seeking to qualify by petition to obtain signatures countywide.

In 2005, the legislature changed the law to allow candidates seeking to qualify by petition to begin collecting signatures *prior to* the year of the election.[42] As a result, local candidates have already begun collecting signatures from voters in the current district in which they seek to run. If the district lines change with reapportionment, however, there is a legitimate question as to whether signatures collected from persons who find themselves outside the *new* district boundaries will count toward the total number of required signatures.

Resign-to-Run

The resign-to-run law precludes persons from qualifying to run for more than one public office if the terms or any part thereof run concurrently; and, prohibits *officers* from qualifying to run for another state, district, county, or municipal public office if the terms or any parts thereof run concurrently without resigning the office he or she presently holds.[43] The name of any person who doesn't comply with the resign-to-run law may be removed from every ballot on which it appears when ordered by a circuit court upon petition of an elector or the Department.[44]

Primary Election Day

Florida's primary election is held 10 weeks before the general election.[45] This date corresponds to the week of August 27 for the 2012 election cycle, the same week that the Republican National Convention is scheduled to be held in Tampa. As recently as 2006, the primary was held 9 weeks before the general election on the Tuesday after Labor Day.[46]

Petition Signatures

A supervisor of elections is permitted to verify the names on petitions based on the least expensive and the most administratively feasible method of verification.[47] A candidate or the proponent of an issue is required to pay the supervisor of elections a 10-cent, per-signature fee in advance for the verification of petition signatures.[48] Candidates or individuals for whom this would pose a severe hardship may file an undue burden oath, in which case the candidate or persons sponsoring the initiative petition shall be relieved of the costs.[49]

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[40] Section 99.09651, F.S. The "ideal population" means the total population of the State based on the most recent decennial census divided by the number of districts to be voted (i.e., Florida Senate has 40 districts, Florida House has 120 districts).
[41] Art. VIII, s. 1(e), FLA. CONST.
[42] Ch. 2005-277, s. 14, LAWS OF FLA.
[43] Section 99.012 (2), (3), F.S.
[44] Section 99.012 (5), F.S.
[45] Section 100.061, F.S.
[46] See ch. 2007-30, s. 22, LAWS OF FLA. (changing the primary from 9 to 10 weeks before the general election).
[47] Section 99.097(1), F.S.
[48] Section 99.097(4), F.S.
[49] *Id.*

Provisional Ballots

Current law permits an elector who moves from one precinct, in which the elector is registered, to vote in the precinct to which he or she has moved his or her legal residence, provided that the elector completes an affirmation. The same is available to an elector who changes his or her name. Instead of an affirmation, the elector may fill out a voter registration form indicating the respective change. The information is presented at the precinct and the person may then vote a regular ballot, after it is determined that the person is registered. If eligibility to vote cannot be determined, the person is entitled to vote a provisional ballot. Upon receipt of an affirmation regarding address or name change, the supervisor of elections is required as soon as practicable to make the changes in the statewide voter registration system.[50]

Poll Watchers

A political party, political committee, and a candidate who requests to have poll watchers must designate in writing the watchers for each polling room prior to noon of the second Tuesday preceding the election. Designations for early voting must be in writing and received by the supervisor at least two weeks before early voting begins. Supervisors have one week in which to approve such designations. The supervisor must furnish a list of such designees and the polling room or early voting area for which they were approved to the election board. Each party, committee, and candidate may have one watcher for each polling room or early voting area at any one time during the election.[51]

Vacancies in Nomination

If a party has a vacancy in nomination caused by death, resignation, withdrawal, removal, or any other cause, leaving no candidate for an office from the party, the filing officer before whom the candidate qualified shall notify the state, district, or county political party executive committee.[52] Within 5 days, the chair shall call a meeting of his or her executive committee to consider designation of a nominee to fill the vacancy. That designee's name shall be provided to the Department of State within 7 days for inclusion on the ballot. If the name is submitted after certification of the primary election results, the ballots shall not be changed and the former nominee's name will appear on the general election ballot. Votes cast for the former candidate will be counted for the person replacing the former nominee. If there is no opposing candidate, the nominee will be elected to office at the general election. Any person who, at the close of qualifying, was qualified for nomination, election or retention to a public office to be filled at the next general election is prohibited from qualifying as a candidate to fill a vacancy in nomination for any other office to be filled at that general election, even if they have withdrawn or have been eliminated as a candidate for the original office sought.[53]

Initiative Petitions

Under s. 100.371, F.S., each signature is dated when made and is valid for a period of 4 years following the date. The sponsor must submit dated forms to the appropriate supervisor of elections for verification. The supervisor must verify the signature within 30 days of receipt of

[50] The National Voters Registration Act of 1993 (42 U.S.C. 1973gg-6(e)) provides direction for address changes at the polls. The federal law provides procedures for voters who go to the polls with address issues to enable them to vote a regular ballot, under certain circumstances. One method that is permitted is an oral or written affirmation of change of address.
[51] Section 101.131, F.S.
[52] Section 100.111(4)(a), F.S.
[53] Section 100.111(4)(c), F.S.

the petition forms and the payment of the fee required by s. 99.097, F.S. The supervisor can verify that a signature is valid only if it meets certain requirements. Signature forms must be retained for 1 year or until notified by the Division of Elections. The Florida Supreme Court has held that the initiative petition revocation procedure detailed in subsection (6) is unconstitutional.[54]

Challenge of Constitutional Amendments

Amendments can be removed from the ballot if the ballot title and summary fail to inform the voter, in clear and unambiguous language, of the chief purpose of the amendment.[55] This has been referred to by the courts as the "accuracy requirement."[56] All constitutional amendments are subject to this requirement, including amendments proposed by the Legislature.[57] In recent years, numerous constitutional amendments proposed by the Legislature have been removed from the ballot by Florida courts; the Florida Supreme Court removed three amendments adopted through legislative resolution from the 2010 general election ballot.[58]

If a court rules to remove an amendment from the ballot and the Legislature is not in session, there is no opportunity to correct a deficiency in the ballot title or ballot summary — absent calling a special session.

Photo I.D. at the Polls

An elector is required to produce one of several approved types of picture identification at the polls.[59] If the picture identification does not contain a signature, an additional identification with the voter's signature is required. If an elector fails to furnish the required identification, he or she must be permitted to vote using a provisional ballot.[60]

Ballot Specifications

Section 101.151, F.S., prescribes the specifications, including the type of paper and format, for ballots. That Section also prescribes the ballot position for specific offices and the requisite headings, such as "Congressional" and "State."

Voting Systems

Section 101.5605, F.S., requires that voting systems used in the state be certified by the Department of State, and that the vote counting segment of such systems meet electronic industry standards.

Section 101.5606, F.S., establishes the requirements for the approval of voting systems, which includes an antiquated requirement that the system be able to produce precinct totals in marked or punched form.

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[54] *Browning v. Florida Hometown Democracy*, 29 So.3d 1053 (Fla. 2010).
[55] *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010).
[56] *Armstrong v. Harris*, 773 So.2d 7, 11-12 (Fla. 2000); *see also* §101.161(1), F.S.
[57] *Armstrong*, *supra* note 56, at 13.
[58] *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010); *Fla. Dept. of State v. Mangat*, 43 So.3d 642 (Fla. 2010); *Fla. Dept. of State* v. *Fla. State Conference of NAACP Branches*, 43 So.3d 662 (Fla. 2010).
[59] Section 101.043(1), F.S.
[60] Section 101.043(2), F.S.

Prior to an election, supervisors must test vote tabulating equipment.[61] A random sample of at least 5 percent of the devices for an optical scan system or 2 percent of the devices for a touchscreen system or 10 of the devices for either system, whichever is greater, is required.

Municipal Elections

Municipalities are allowed to move the date of a municipal election under certain circumstances.[62] Municipalities may also move the dates of the qualifying period for a municipal office when the election date has been moved.[63] However, the qualifying period can be no less than 14 days.[64]

Voting System Audits

Following the certification of each election, the county canvassing board or the local board responsible for certifying the election is required to conduct a manual audit of between 1% and 2% of the voting systems used in randomly selected precincts.[65] The section provides procedures that must be used to conduct the manual audit and the timeframe in which the manual audit must be completed.[66] After completion of the audit, the county canvassing board or local board must provide a report to the Department of State detailing the results.[67]

Absentee Ballots

An elector's request for an absentee ballot is deemed sufficient to receive an absentee ballot for all elections through the *next regularly scheduled general election*, unless the elector specifies the elections during that period for which he or she wishes to receive a ballot.[68] Ballots for absent uniform service voters and overseas voters must be sent at least 45 days before an election, for those timely requesting a ballot; there is no prescribed time for sending other absentee ballots. In addition, supervisors are required to make available electronically, and update by noon of each day, certain absentee ballot request information.

According to testimony from the Florida State Association of Supervisors of Elections (FSASE), there are a handful of municipalities that hold their elections *after* the general election but *before* the end of the calendar year, and it's unclear whether an elector's absentee ballot request remains valid for these local elections.[69]

Electors are permitted to request that their absentee ballot be mailed to an address other than the current mailing address on file with the supervisor of elections.[70] If the elector requests the absentee ballot be mailed to an address other than the current mailing address on file with the supervisor of elections, the elector must specify that either: the elector is absent from the county and does not plan to return prior to election day; the elector is temporarily unable to occupy his

[61] Section 101.5612(2), F.S.
[62] Section 101.75, F.S.
[63] Section 101.75(1), F.S.
[64] Section 101.75(3), F.S.
[65] Section 101.591, F.S.
[66] *See* s. 101.591(2)-(5), F.S.
[67] Section 101.591(5), F.S.
[68] Section 101.62(1)(a), F.S.
[69] Testimony of the Honorable David Stafford, FSASE President-Elect and Escambia Co. Supervisor of Elections before the Florida Senate Rules Subcommittee on Ethics and Elections (Mar. 28, 2011).
[70] Section 101.62(4)(b)1., F.S.

or her residence because of hurricane, tornado, flood, fire, or other emergency or natural disaster; or, the elector is in a hospital, assisted living facility, nursing home, short-term medical or rehabilitation center, or correctional facility.[71]

The county canvassing board may begin canvassing absentee ballots at 7 a.m. on the sixth day before an election, but not later than noon on the day following the election.[72] If the county is using electronic tabulating equipment, the processing of absentee ballots through the electronic tabulating equipment may also begin at 7 a.m. on the sixth day before the election.[73] However, it is a felony to release any results until the polls close on election day.[74]

Section 101.65, F.S., requires supervisors of elections to enclose detailed instructions with an absentee ballot. That section also provides the specific instructions to be enclosed. Certain first time voters are required to be provided with special absentee ballot instructions, the substance of which is provided for in statute.[75]

Early Voting

The concept of early voting was formally introduced in Florida in 1998 with the advent of "in-person absentee voting" in the offices of the supervisors of elections.[76] This form of early voting was discretionary for each supervisor of elections.[77] As the result of problems on election day with the 2002 primary elections in Broward and Miami-Dade counties, interim Secretary of State Jim Smith publicly encouraged voters statewide to "vote early" at the supervisors' offices and help ease some of the election-day administrative crunch and potential for problems. As a result, the 2004 Legislature adopted a mandatory early voting statute.[78]

Florida's present early voting statute allows voters to cast a ballot in the main or permanent branch office of a supervisor of elections, a city hall, or a public library, beginning 15 days before and ending on the 2nd day before an election.[79] For special elections, the beginning of the early voting period begins 8 days before the election. Early voting sites must be open for 8 hours on the weekdays and a total of 8 hours on the weekend within the hours of 7 a.m. and 7 p.m.

Contest of Election

An unsuccessful candidate, a qualified elector, or a taxpayer may contest the certification of an election in circuit court.[80] That Section establishes the allegations that must be contained in the complaint and provides that certain entities are indispensible parties to a contest.

Nomination for Presidential Electors; Minor Parties

Section 103.021(4), F.S., provides that a minor political party that is affiliated with a national political party that holds a convention to nominate candidates for President and Vice President of

[71] *Id.* Absent uniformed services voters and overseas voters are excluded from this requirement. Section 101.62(4)(b)2., F.S.
[72] Section 101.68(2)(a), F.S.
[73] *Id.*
[74] *Id.*
[75] Section 101.6923, F.S.
[76] Ch. 98-129, s. 17, LAWS OF FLA. (codified at s. 101.657, F.S.)
[77] *Id.*
[78] Ch. 2004-252, s. 13, LAWS OF FLA.
[79] Section 101.657, F.S.
[80] Section 102.168(1), F.S.

the United States must simply notify the Department of State by September 1 of an election year of the name of its candidates, and the names are included on the general election ballot. A "national party" is defined as one established and admitted to the ballot in at least one state other than Florida.

A minor political party that is not affiliated with a national party that holds a convention to nominate presidential and vice-presidential candidates may only get their candidates' names on the ballot by submitting petitions signed by one percent of the registered electors of the state (as of the preceding general election).

Presidential Preference Primary

The major political parties are required to elect a person to be the party's candidate for President of the United States or to select a delegation to the party's national convention.[81] There must be a Presidential Candidate Selection Committee composed of the Secretary of State, the Speaker of the House of Representatives, the President of the Senate, the minority leader of each house of the Legislature, and the chair of each political party required to have a presidential preference primary. The selection committee must meet in Tallahassee on the first Tuesday after the first Monday in November of the year before the presidential preference primary.[82] The mechanism to get a presidential candidate on the primary ballot and the qualifications for delegates is provided for in s. 103.101, F.S.

Removal of Political Party Officers and Members

Section 103.161, F.S., authorizes the chair of the state executive committee to remove or suspend state/county officers and members within the party structure for: violating their oath of office; engaging in activities that have or could have injured the name or status of the political party; or interfering with the activities of the political party.

Elections Code Violations

It is a first degree misdemeanor for an inspector or canvassing official to refuse to allow up to three observers near, at all times while ballots are being counted, to see whether the ballots are being correctly read, called, and tallied.[83]

Independent Expenditures

Independent expenditures are expenditures by a person for the purpose of expressly advocating the election or the approval or rejection of an issue which are not controlled by or coordinated with any candidate, political committee, or their respective agents.[84] Under s. 106.011, F.S., an expenditure is not considered an independent expenditure if a committee or person, after the last day of qualifying for statewide or legislative office, consults about the candidate's plans, projects, or needs, and then uses that information to plan, create, design, or prepare an independent expenditure or advertising campaign.[85]

[81] Section 103.101(1), F.S.
[82] Section 103.101(2)(c), F.S.
[83] Section 104.29, F.S.
[84] Section 106.011(5)(a), F.S.
[85] Section 106.011(5), F.S.; section 106.011(6), F.S.

Candidate Reimbursement Reporting
Candidates and their family members who receive reimbursement by check from the campaign depository for campaign expenses must report the name and *address* of the person to whom payment was made on periodic campaign finance reports.[86]

Appointment of Registered Agents
Each political committee, committee of continuous existence, or electioneering communications organization (ECO) is required to file a statement of appointment for both the registered office and registered agent with the Division of Elections (Division).[87] In the event that the registered office or registered agent changes, the entity is required to complete a written statement of change and file with the Division.[88]

Statement of Candidates
Candidates are required to file a statement with their filing officer that they have received, read, and understood the requirements of Chapter 106 of the Florida Statutes.[89] The candidate must file such statement within 10 days of the appointment of the candidate's campaign treasurer and designation of the campaign depository.[90]

Electioneering Communication Organizations (ECOs)
ECOs must register with the Division of Elections within 24 hours after receiving contributions or making expenditures for electioneering communications aggregating more than $5,000 in a calendar year.[91] This has led to some confusion, as an "electioneering communication," by definition, cannot occur until 30 days before a primary election or 60 days before a general election, or what appropriately can be termed the "ECO season."[92]

ECOs must file campaign finance reports detailing contributions received and expenditures made on the same schedule as political committees, that is, quarterly for most of the year but with greater frequency after candidate qualifying.[93]

Committees of Continuous Existence
Under Florida law, committees of continuous existence are defined as any group, organization, association, or other entity certified under the requirements of s. 106.04, F.S. Committees of continuous existence must file annual reports with the Division.[94] If the CCE fails to meet the criteria in s. 106.04(1), F.S., the Division revokes the committee's certification until the criteria is met.[95] The Legislature has granted the Division rulemaking authority to establish the procedure of revoking the CCE's certification.[96] If a CCE does not file its annual report on its

[86] Section 106.021 (3)(b), F.S.
[87] Section 106.022(1), F.S.
[88] When filing the original statement of appointment for the registered office and registered agent, the entity also pledges the undertaking to inform the Division of any change of the originally designated address of the entity. Section 106.022(1)(d).
[89] Section 106.023(1), F.S.
[90] Section 106.023(1), F.S.
[91] Section 106.03(1)(b), F.S.
[92] Section 106.011(18), F.S.
[93] Section 106.0703(1), F.S.
[94] Section 106.04(4)(a), F.S.
[95] Section 106.04(7), F.S.
[96] *Id.*

designated due date, the Division must levy a fine.[97] Once a report is found to be late, a Division filing officer must provide notice to the committee's treasurer.[98] The committee's treasurer may appeal or dispute a late filing fine by requesting a hearing before the Florida Elections Commission.[99] The Division's filing officer is to notify the commission of repeated late filing by a committee; the failure of a committee to file a report after given notice; or the failure to pay the imposed fine.[100]

CCEs must file campaign finance reporting forms at the same time as candidates and political committees, which must include transaction information from each credit card statement that will be included in the next report.[101] Failure to file subjects CCEs to a $50 per day fine for the first three days late, thereafter $500 per day, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater.[102] Unlike candidates and political committees, there is no enhanced $500 penalty for the first three days late with respect to the final campaign finance report due immediately preceding a primary or general election.[103]

Reports by Candidates and Political Committees

Campaign treasurers for candidates and political committees are to file regular reports detailing all contributions received and all expenditures made, by or on behalf of the candidate or political committee.[104] The reports are normally due on the 10th day following the end of each calendar quarter.[105] Additionally, a candidate facing opposition to nomination or election to an office, a political committee, or a committee of continuous existence must file a report on the 32nd, 18th, and 4th days immediately preceding the primary election and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election. A candidate who has opted to receive public campaign financing is required to file reports at more frequent intervals.[106] When a special election is called to fill a vacancy in office, all political committees and committees of continuous existence making contributions or expenditures to influence the results of the special election must file campaign treasurers' reports with the Division of Elections' filing officer on the dates set by the Department of State.[107]

The Division's filing officer may conditionally accept a report that is deemed incomplete. If a report is deemed incomplete, the Division must notify the campaign treasurer why the report was found to be incomplete by registered mail. The Division must allow the campaign treasurer 3 days from receipt of the notice to complete the report by filing an addendum. The filing officer

[97] Section 106.04(8)(a), F.S.
[98] Section 106.04(8)(b), F.S.
[99] Section 106.04(8)(c), F.S.
[100] Section 106.04(8)(d), F.S.
[101] Section 106.04(4)(b), F.S.
[102] Section 106.04(8)(a), F.S.
[103] See *infra* note 50 and accompanying text (political committees and candidates are subject to a $500 per day penalty for each day that they are late in filing their final campaign finance report).
[104] Section 106.07(1), F.S.
[105] The section provides variances in the event that the tenth day following the end of each calendar quarter falls on a Saturday, Sunday, or legal holiday. *Id.*
[106] Candidates who opt to receive public campaign financing through the Florida Election Campaign Financing Act must file reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the primary election, and on the 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to the general election. Section 106.07(1)(b), F.S.
[107] Section 106.07(1)(d)1, F.S.

may opt to notify the campaign treasurer of the report's deficiency by a telephone call in lieu of sending a notice via registered mail. If no additional information is received from the campaign treasurer within 3 days of the telephone notification, the filing officer shall send notice via registered mail.

Each report submitted to the Division must include each credit card statement after it is received by the campaign treasurer.[108] Additionally, the campaign depository is required to return all checks drawn from the campaign account to the campaign treasurer — which, in turn, the campaign treasurer is required to retain for records.[109] The maintained records are subject to inspection by the Division or the Florida Elections Commission (Commission) anytime during normal business hours.[110]

If the Division determines that a report is late, the filing officer must notify either the candidate or the chair of the political committee that the report is late and that a fine is levied for each day that the report is late.[111] Reports due immediately preceding each primary and general election are subject to a higher late fine.[112] The appropriate filing officer must notify the Commission of repeated late filing of reports.[113]

All candidates that are required to file reports with the Division pursuant to s. 106.07, F.S., must use the Division's electronic filing system.

Limitations on Campaign Contributions

Independent or minor party candidates may qualify to be placed on the ballot through the petition method.[114] Once a determination of qualification is made by the Department of State or the appropriate supervisor of elections, the department or supervisor must notify in writing all other candidates who have qualified for that same office within 3 days of the determination.[115] If an independent or minor party candidate failed to qualify through petition, any contribution received by a candidate, campaign treasurer, or deputy campaign treasurer after notification of the other candidate's failure to qualify must be returned to the contributor and may not be used on behalf of the candidate.[116]

More restrictions are placed on candidates' acceptance of campaign contributions by cash or cashier's check. An individual is prohibited from contributing or accepting a cash contribution or contribution by cashier's check in excess of $50.[117]

[108] Section 106.07(4)(a)11, F.S.
[109] Section 106.07(6), F.S.
[110] *Id.*
[111] Section 106.07(8)(b), F.S. The fine is $50 per day for the first three days late, followed by $500 per day thereafter, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater. *Id.*
[112] *Id.* The fine for late-filing the final report is $500 per day, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater. *Id.*
[113] Section 106.07(8)(d), F.S.
[114] Pursuant to Section 99.0955, F.S.
[115] Section 106.08(3)(c), F.S.
[116] Section 106.08(3)(c)2, F.S.
[117] Section 106.09(1), F.S.

Expenditures by Candidates and Political Committees

Candidates and political committees may use debit cards when making expenditures. Before a candidate or political committee does use a debit card, they must provide a list of all persons authorized to use the card with the Division.[118] Any debit cards that are issued for a candidate's campaign or a political committee must expire by midnight of the last day of the month of the general election.[119]

Surplus Campaign Funds

Florida law currently provides that all surplus funds of state candidates who received *public financing* must be deposited in the Election Campaign Financing Trust Fund. The Trust Fund has been defunct for years after not being reauthorized by the Legislature, and public financing of elections is now funded out of the General Revenue Fund.[120]

Other candidates may return, or "turn back," up to $10,000 of surplus funds to their political party, except that candidates for the Florida Senate may turn back up to $30,000.[121]

Political Advertising

Political advertisements that are circulated prior to an election and paid for by the candidate must prominently state certain information such as: the name of the candidate; the party affiliation; and the office sought.[122] Current law does not address statements that must be featured on the advertisements of write-in candidates. Political advertisements by non-candidates must include the name of the sponsor of the advertisement, as well as who paid for the advertisement (if different from the sponsor, and not patently clear from the content or format of the ad).

In 2010, the Legislature adopted changes to modernize Florida's political advertising disclaimer laws by excluding required disclaimers on certain Internet and electronically-delivered advertisements.[123]

If a candidate is running for partisan office, any political advertisement must feature the name of the political party for which the candidate is seeking nomination or is the nominee.[124] If a candidate is running for a partisan office but is running with no party affiliation, any political advertisements must state that the candidate is running with no party affiliation.[125] Any political advertisements, offered on behalf of a candidate, must state that the advertisement was approved by the candidate and must disclose who paid for the advertisement.[126] The "approved by" disclaimer is not required for campaign messages used by a candidate or his or her supporters if the message is displayed on clothing.[127]

[118] Section 106.11(2)(a)4, F.S.
[119] Section 106.11(2)(a)5, F.S.
[120] Section 106.141(4)(b), F.S.
[121] Section 106.141(4)(a)3., F.S.
[122] Section 106.143(1)(a), F.S.
[123] Ch. 2010-167, s. 18, LAWS OF FLA. (codified at s. 106.143(8), F.S.)
[124] Section 106.143(2), F.S.
[125] *Id.*
[126] Section 106.143(4)(a), F.S.
[127] Section 106.143(4)(c), F.S.

Campaign Fundraisers
In addition to the regular sponsorship disclaimers required in s. 106.143, F.S., tickets or advertising to campaign fundraising events must include an additional disclaimer that identifies the ticket purchase or any contribution as a contribution to the campaign of the candidate.[128]

Polls and Surveys
Current law provides that a candidate, PC, CCE, ECO, or state or county executive committee of a political party may authorize or conduct a political poll, survey, index, or measurement of any kind relating to candidacy for public office provided that complete jurisdiction over the poll is maintained by the person or entity.[129]

Florida Elections Commission
The Florida Elections Commission enforces the campaign finance laws. In addition, the Commission investigates alleged violations upon receipt of a legally sufficient, sworn complaint. The Commission is created as a separate budget entity within the Department of Legal Affairs, Office of the Attorney General.

The Commission has the power to subpoena witnesses and others with information relevant to an investigation, as well as to require the production of relevant papers, books, or other relevant documentation.[130] The Commission may pursue an action in any circuit court to compel any witness to appear, respond to lawful inquiries, and produce subpoenaed documentation.[131]

Penalties for Election Violations
The Florida Elections Commission has jurisdiction to investigate and determine violations of Chapters 104 and 106 of the Florida Statutes,[132] and to impose a civil penalty of up to $1,000 per violation, in most cases.[133]

Until 2007, where there were disputed issues of material fact, an alleged violator could elect to have a formal hearing at the Division of Administrative Hearings (DOAH), with the matter returning to the Commission for final disposition and a determination of penalties, if applicable. Otherwise, the Commission would conduct the hearing.

In 2007, the Legislature amended the procedure to have *all* cases default to an administrative law judge (ALJ) at DOAH after the Commission makes a probable cause determination, *unless* the alleged violator elects[134] to have a formal or informal hearing before the commission; or resolves the matter by consent order.[135] The 2007 changes also gave the ALJ the authority to enter a *final order* on the matter, appealable directly to Florida's appellate courts. Cases forwarded to DOAH

[128] Section 106.025(1)(c), F.S.
[129] Section 106.17, F.S.
[130] Section 106.26(1), F.S.
[131] *Id*.
[132] Section 106.25(1), F.S.
[133] Section 106.265(1), F.S. In addition, Sections 104.271 and 106.19, F.S., provide for expanded and enhanced penalties for certain election law violations.
[134] Within 30 days after the probable cause determination.
[135] Chapter 2007-30, Section 48, LAWS OF FLORIDA.

never return to the Commission for final disposition. The 2007 law, however, neglected to give the ALJ the power to impose a civil penalty in cases where the ALJ found a violation.

This omission has been the subject of litigation.[136] In April 2006, the Commission received a sworn complaint alleging that James Davis, a candidate, had violated certain elections laws. The Commission conducted an investigation and found probable cause, charging Mr. Davis with five violations of Chapter 106, F.S. Because he did not request a hearing before the Commission, or elect to resolve the matter by a consent order, the matter was referred to DOAH for a formal administrative hearing. Ultimately, the ALJ found that Mr. Davis violated the Election Code, as alleged. The ALJ declined to impose civil penalties, however, because he determined that he lacked the express authority to do so. The Commission appealed the case to the First District Court of Appeal, which affirmed the order. As a result, complaints heard by an ALJ can result in a violation without recourse to the imposition of a civil penalty for the violation.[137]

Electioneering Communications Organizations

Section 106.265, F.S., contains the specific authority for the Commission to impose a civil penalty for a violation of Chapter 104 or Chapter 106 of the Florida Statutes. That section authorizes the Commission to impose a civil penalty not to exceed $1,000 per count, with the precise amount dependent upon consideration of certain aggravating and mitigating factors. The section further provides that the Commission is responsible for collecting civil penalties when any person, political committee, committee of continuous existence, or political party fails or refuses to pay any civil penalties, and requires such penalties to be deposited into the now-defunct Election Campaign Financing Trust Fund.[138] Finally, the section permits a respondent, under certain circumstances, to seek reimbursement for attorney's fees.

Nothing in Section 106.265, F.S., specifically addresses *electioneering communications organizations*, which can also commit elections violations; until last year — when they were more explicitly detailed in statute — ECOs were generally treated like political committees for most purposes under the campaign finance laws.[139]

Public Officer or Employee Oath

Employees of the state, its departments and agencies, subdivisions, counties, cities, school boards, and districts of the free public school system of the state or counties, or institutions of higher learning, and all candidates for public office, except for federal office, are required to take the oath prescribed therein.[140] Any person who is required to take the employee oath and fails to do so is required to be discharged by the governing authority of his or her public employer, shall have his or her name removed from the payroll, and shall not be permitted to receive any payment as an employee or as an officer where he or she was serving.[141] Any person who refuses

[136] *Florida Elections Commission v. Davis*, 44 So.3d 1211 (Fla. 1st DCA 2010).
[137] Because of the nature of such proceedings, it is unclear whether the Commission would have jurisdiction to impose a civil penalty based upon a final order from DOAH — or even how they practically would accomplish it.
[138] The Elections Campaign Financing Trust Fund expired effective November 4, 1996, by operation of law. Funding for public campaign financing in statewide races has since been handled through the General Revenue Fund.
[139] *See generally*, Ch. 2010-167, LAWS OF FLA. (detailing requirements for ECOs in sections such as 106.0703, F.S.); *see also*, s. 106.011(1)(b)3., F.S. (2009) (for purposes of registering and reporting contributions and expenditures, ECOs are treated like political committees).
[140] Section 876.05(1), F.S.
[141] Section 876.06, F.S.

to take the oath in Section 876.05, F.S., is deemed to have failed to qualify for office and his or her name shall not be printed on the ballot as a qualified candidate.[142]

III. Effect of Proposed Changes:

Section 1. Amends s. 97.012, F.S., authorizing the Secretary of State to provide direction and opinions to the supervisors of elections on matters relating to their official duties with respect to the Florida Election Code[143] or rules adopted by the Department of State.

Section 2. Amends s. 97.021(18), F.S., providing that a minor political party is any group specified in s. 103.095, F.S., where the new substantive requirements for minor political parties are located.

Section 3. Amends s. 97.025, F.S., requiring the Department of State to make an Election Code pamphlet available to each candidate who qualifies, as opposed to providing a printed pamphlet. The bill also amends s. 97.025, F.S., to require only that the Department make the Election Code pamphlet available to each supervisor of election, so each candidate qualifying can have access to the pamphlet.

Section 4. Amends s. 97.0575, F.S., requiring third-party voter registration organizations to register with the Division of Elections and provide certain information in an electronic format; mandating that all voter registration applications used by such organization contain information identifying the organization and that information about the assignment of the forms be maintained in a database by the Division and supervisors of elections; providing that a third-party voter registration organization that collects voter registration applications serves as a fiduciary to the applicant, ensuring that any voter registration application entrusted to the organization or the agent is submitted as required in the section; requiring applications collected by these organizations to be turned into the Division or supervisor of elections within 48 hours after the applicant completes the form or the next business day, if the office is closed for that 48-hour period; acknowledging *force majeure* or impossibility of performance as an affirmative defense to submitting forms on the prescribed timetable.

The bill also does the following:

- Retains the civil fines currently in law;
- Requires the Secretary of State to refer any complaint to the Attorney General. The Attorney General may institute a civil action for a violation or to prevent a violation. Action for relief may include a permanent or temporary injunction or any other appropriate order; and
- Provides for enhanced Division rulemaking authority.

Section 5. Amends s. 97.071, F.S., requiring voter information cards to include an elector's polling place address; providing that when an elector's polling place address changes, the supervisor of elections must send a new card to the elector.

[142] Section 876.07, F.S.
[143] The Florida Election Code encompasses Chapters 97-106, F.S.

Section 6. Creates an unnumbered section of statute providing that all supervisors of elections must provide voter information cards including the polling place address for any elector who registers to vote or who is issued a new voter information card, on or after August 1, 2012.

Section 7. Amends s. 97.073(1), F.S., requiring the supervisor of elections to notify each voter registration applicant of the disposition of his application within 5 business days after the voter registration information is entered into the statewide voter registration system. If an application is approved, the supervisor must mail a voter identification card to the applicant. The voter identification card constitutes notice of registration. If an application is incomplete for failure to provide the information required in s. 97.053(5), F.S., the supervisor shall mail a notice requesting the missing information. If an application is a duplicate of a current registration record, the supervisor must treat the application as if it were an update, including a signature update, to the record and send a new voter information card. If the application is denied, the supervisor shall mail a notice of denial informing the applicant of the reason his or her application was denied.

Section 8. Amends s. 97.1031, F.S., specifying the procedure for an elector to notify the supervisor of elections of a change of address, name or party affiliation; providing that a registered voter who moves within the state may notify the supervisor by telephone or electronic means; providing that if the notification is by electronic means, the elector must provide his or her date of birth. Alternatively, the bill allows the elector who moves within the state to submit the change on a voter registration application or other signed written notice. When an elector changes his or her name by marriage or other legal process, the elector is required to notify his or her supervisor of elections or other voter registration official using a voter registration application.

Section 9. Amends s. 98.075, F.S., regarding voter registration list maintenance activities; requiring in the Department to identify registered voters who are deceased by using information from the Department of Health or the U.S. Social Security Administration; mandating that the supervisor of elections remove the name of the registered voter within 7 days after receiving information from the Department of Health or U.S. Social Security Administration that a voter is deceased; requiring the supervisor to remove the name of a registered voter from the statewide voter registration when the supervisor receives a copy of the death certificate issued by a governmental agency authorized to issue death certificates. If the Department or supervisor of elections learns that a registered voter is ineligible to vote due to death, adjudication as a convicted felon without having his or her civil rights restored, adjudicated mentally incapacitated without having his or her voting rights restored, or other legal basis, from sources other than the agencies enumerated in s. 98.075, F.S., the Department or supervisor is required to follow the notification procedures for removal in s. 98.075(7), F.S.

Section 10. Amends s. 98.093, F.S., authorizing the Department and supervisors of elections to receive or access certain information from state and federal officials and entities in the format prescribed in order to identify ineligible registered voters and maintain accurate and current statewide voter registration records; requiring the Florida Parole Commission to furnish information about those who have been granted clemency or any other updates made in the preceding month on at least a bimonthly basis; requiring the Parole Commission to provide the

following additional information which was not previously required: Florida driver's license number, Florida identification card number, or the last four digits of the social security number; mandating that the Department of Corrections identify those who have been convicted of a felony and committed to its custody or placed on community supervision; requiring that information be provided in a time and manner that enables the Department of State to identify registered voters who are convicted felons and meet its obligations under state and federal law.

Section 11. Effective July 1, 2012, amends s. 98.0981, F.S., prescribing in law the format requirements for voter history and precinct-level data reports; modifying the timeframes for information to be sent by the supervisors to the Department; requiring the Department to make precinct-level reports available in a voter database; subjecting supervisors of elections to a $50/day fine for late or incomplete reports, payable from supervisors' personal funds; expanding the elections for which voting history must be provided to include, in addition to general elections, presidential preference primaries, special elections, and primary elections; creating detailed file specifications for voting history and precinct-level election results data; requiring supervisors to reconcile the two data sets to ensure the integrity of the information. Fines are remitted to the Department of State, which transmits the fines for deposit in the General Revenue Fund.

The section requires the Department of State to make certain information available on a searchable, sortable, and downloadable database via its website. Requirements for the database are delineated in the bill.

Section 12. Amends s. 99.012, F.S., prohibiting a person not complying with the resign to run laws from qualifying as a candidate for election. Such person cannot be on the ballot.

Section 13. Amends s. 99.021, F.S., providing that a copy of the candidate oath or affirmation be made available to candidates by the officer before whom the candidate seeks to qualify in lieu of receiving a printed copy; removing the requirement that candidates for partisan office affirm that they have taken the employee oath;[144] requiring candidates for partisan office other than federal office to affirm that he or she will support the Constitution of the United States and the Constitution of the State of Florida; requiring candidates for federal office to affirm that they will support the U.S. Constitution. Any person seeking to qualify for nomination as a candidate of any political party is required to affirm his or her party membership and that he or she has not been a registered member of any other political party in the calendar year leading up to the general election. The bill also codifies current practice that those seeking to qualify for President or Vice President of the United States are not required to comply with the oath/affirmation requirement for federal office in s. 99.021, F.S.

Section 14. Amends s. 99.061, F.S., modifying the qualifying papers necessary to qualify for partisan federal, state, or multicounty district office; requiring that, at the time of qualifying for a constitutional office, each candidate file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a), F.S. The check required to pay the filing fees, if the person did not qualify by petition, must be drawn on the candidate's campaign account and be

[144] The oath is located in s. 876.05, Florida Statutes, which is amended elsewhere in the bill.

payable to the person or entity as prescribed by the filing officer. If the check for the filing fee is returned by the bank, the candidate no longer is required to submit a certified check within 48 hours of receipt of the notification that the check was returned. Rather, if the check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check. A candidate is no longer required to provide a copy of the notice of obtaining ballot position when he or she qualifies by the petition process in s. 99.095, F.S. Candidates are no longer required to submit the loyalty oath required by s. 876.05, F.S. The original appointment of campaign treasurer and designation of campaign depository are required to be filed by the end of qualifying, unless the candidate filed those forms prior to the beginning of the qualifying period. The bill also provides that the filing officer performs a ministerial function in reviewing qualifying papers. In determining whether a candidate is qualified, the filing officer shall review the qualifying papers to determine whether all items required have been properly filed and whether each item is complete on its face, including the verification of documents required to be verified. The filing officer may not determine whether the contents of the qualifying papers are accurate. The decision of the filing officer concerning whether a candidate is qualified is exempt from the Administrative Procedures Act in Chapter 120 of the Statutes.

Section 15. Amends s. 99.063, F.S., requiring the signature of a Lieutenant Governor candidate to be verified under oath or affirmation pursuant to s. 92.525(1)(a), F.S., at qualifying as opposed to "duly acknowledged"; deleting a requirement that Lt. Governor candidates file the loyalty oath required by s. 876.05, F.S., to conform to changes to that section in the bill.

Section 16. Amends s. 99.092, F.S., requiring that the filing officer transfer election assessments for candidates for partisan office directly to the Elections Commission Trust Fund.

Section 17. Amends s. 99.093, F.S., requiring the qualifying officer in municipal elections to forward election assessments paid by municipal candidates to the Florida Elections Commission for deposit in the Elections Commission Trust Fund, within thirty days after the close of qualifying.

Section 18. Amends s. 99.095, F.S., specifying that in a year of apportionment, any candidate for county or district office seeking ballot position through the petition process may obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries; provides that the candidate must obtain at least the number of signatures equal to 1 percent of the total number of registered voters divided by the total number of districts of the office involved; provides that the number of signatures required will be determined by a compilation of the immediately preceding general election.

Section 19. Amends s. 99.097, F.S., clarifying that the supervisors of elections check more than merely the signatures on petition forms to ensure that the signer is a registered voter and that the data on a petition applies to the voter whose signature appears on the form; clarifying that the rulemaking authority of the Department of State extends to all petitions, not just for the random sample method of verifying petitions; codifying Florida case law, which holds that the random sampling method of petition verification may not be used for constitutional amendment petitions; providing that an undue burden oath is no longer valid if persons are subsequently paid to solicit signatures on a petition and if monetary contributions are received by the petition sponsors, those

contributions first must be used to reimburse the supervisor of elections for any signature verification fees not paid due to the filing of a prior undue burden oath.

These changes are primarily clarifying and a codification of existing practice and case law. The signature update provision is a service to the voter to permit an address change when the voter affirmatively indicates on the petition that the voter's address has changed. The bill precludes persons from filing an undue burden oath indicating that they have insufficient resources to pay the 10 cents per signature verification fee, then collecting contributions or paying for petition circulators and never paying any signature verification fees.

Section 20. Amends s. 100.061, F.S., moving Florida's primary election from 10 weeks before the general election to 9 weeks (i.e., September 4, 2012), which corresponds with Labor Day Weekend.

Section 21. Amends s. 100.111, F.S., deleting obsolete requirements concerning filling vacancies created by an incumbent officeholder's qualification to run for federal office, as the resign-to-run law no longer applies to incumbent officeholders running for federal office; placing responsibility with the applicable qualifying officer to notify the chair of the applicable party's executive committee when a vacancy in nomination exists, rather than the Secretary of State; providing a process and timeframes for filling a vacancy in nomination. A person who qualified for nomination or election to or retention in a public office to be filled at the ensuing general election or who attempted to qualify and failed to qualify is prohibited from qualifying as a candidate to fill a vacancy in nomination. The bill also specifies that a vacancy in nomination is not created if an order of a court that has become final determines that a nominee did not properly qualify or did not meet the necessary qualifications to hold the office for which he or she sought to qualify.

Section 22. Amends s. 100.371, F.S., reducing the validity of initiative petition signatures from 4 years to 2 years after the petition is signed; requiring the initiative sponsor to submit signed and dated forms to the supervisor of elections for the county of residence listed by the person signing the form for verification; mandating that supervisors receiving misfiled petitions notify the initiative petition sponsor. If a signature is from a registered voter of another county, the supervisor shall notify the petition sponsor of the misfiled petition. The bill changes two signature verification requirements: the form must set forth the purported elector's city of residence; and, the purported elector must be a registered voter of the state both when the form is signed and when it is verified. Finally, this section removes the initiative signature revocation procedure that the Florida courts have determined to be unconstitutional.

Section 23. Amends s. 101.043, F.S., providing that the address that appears on the identification presented by an elector at the polls may not be used as the basis to confirm an elector's legal residence or otherwise challenge an elector's legal residence.

Section 24. Amends s. 101.045, F.S., readopting a prohibition against an elector voting in any election precinct or district other than the one in which the person has his or her legal residence and in which the person is registered; removing an elector's ability to change his or her name or address at the precinct and vote a *regular* ballot; such electors are still entitled to vote a *provisional* ballot.

Section 25. Amends s. 101.131, F.S., requiring the Division of Elections to promulgate a form to designate poll watchers; providing a noon deadline 14 days before early voting begins for designation of poll watchers; requiring poll watcher designations to be made by the chairman of the county political executive committee, the chairman of a political committee, or the candidate; making all poll watchers at-large poll watchers, able to enter all polling rooms and early voting areas; requiring supervisors of elections to provide poll watcher identification badges that poll watchers must wear when present at the polls.

Section 26. Amends s. 101.151, F.S., authorizing ballot-on-demand technology for printing election-day ballots, without the need for the Secretary of State's express written authorization; modifying ballot layout to eliminate headings and providing for the re-ordering of certain offices.

Section 27. Amends s. 101.161, F.S., providing that any action for a judicial determination that a ballot title or substance is misleading or otherwise deficient in a constitutional amendment adopted through joint resolution of the Legislature must commence within 30 days after the joint resolution is filed with the Secretary of State or at least 150 days before the election that the amendment is to appear on the ballot; whichever date occurs later; providing that any court hearing such an action must accord priority to this case and must render a decision expeditiously; directing the Attorney General to prepare a revised ballot title or substance that corrects the deficiency identified by the court if a court determines that the ballot title or substance is defective and appeal of the decision is either declined, abandoned, or exhausted; requiring the Department of State to provide a designated number to the revised ballot and substance for supervisors of elections to place on the ballot; specifying that a defect in the ballot title or substance of a constitutional amendment adopted through joint resolution is not grounds for removal from the ballot.

Section 28. Amends s. 101.5605, F.S., requiring the vote counting component of voting systems to meet Department of State standards for certification instead of industry standards.

Section 29. Amends s. 101.5606, F.S., eliminating an antiquated requirement that voting systems be capable of automatically producing precinct totals in marked or punched form.

Section 30. Amends s. 101.5612, F.S., modifying the random sample, pre-election testing of vote tabulators to require testing of *both* optical scan and touchscreen voting systems; specifying that a random sample test of the devices must consist of a random selection of at least 5 percent or 10 of the optical scan systems devices, whichever is greater, and a sample of at least 2 percent of the touchscreen systems used by voters with disabilities.

Section 31. Amends s. 101.5614, F.S., removing obsolete provisions relating to canvassing write-in votes; providing that for each ballot or ballot image, the canvassing board compare write-in votes with the votes cast on the ballot and if the number of votes for any office exceeds the number of votes allowed by law, the votes shall not be counted.

Section 32. Amends s. 101.591, F.S., specifying that if a manual recount was conducted pursuant to s. 102.166, F.S., it is not necessary to conduct a manual audit of the voting system.

The manual recount appears sufficient to satisfy the intent of the audit requirement provision because the individual ballots would be inspected.

Section 33. Amends s. 101.62, F.S., allowing a request for an absentee ballot to be sufficient for all elections through the end of the calendar year of the second ensuing, regularly-scheduled general election, unless the elector specifically indicates in their request which elections during that period that they desire to vote by absentee ballot; requiring supervisors to update and make available electronically absentee ballot request information by 8 a.m. daily, including weekends; requiring supervisors to begin mailing absentee ballots to non-uniformed and overseas voters between the 30th and 35th day of an election; mandating that supervisors mail such ballots within 48 hours of a timely request; deleting the "for cause" requirements for mailing an absentee ballot to an address that the elector specifies in his or her absentee ballot request that differs from the one on file with the supervisor of elections.

Section 34. Amends s. 101.65, F.S., providing for the following additional instructions to be included with absentee ballots:

> An absentee ballot will be considered illegal and not be counted if the signature in the voter's certificate does not match the signature on record. The signature on file at the start of the canvass of the absentee ballots is the signature that will be used to verify your signature on the voter's certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of the canvassing of absentee ballots, which occurs no earlier than the 15th day before election day.

Section 35. Amends s. 101.657, F.S., providing for early voting in elections containing state and local races to begin 7 days before an election; eliminating language governing early voting in special elections, to conform; eliminating the restriction that early voting sites be open between the hours of 7 a.m. and 7 p.m.; giving supervisors the discretion to hold early voting in other elections and determine the hours of operation of early voting sites in those elections.

Section 36. Amends s. 101.68, F.S., allowing the county canvassing board to begin canvassing absentee ballots at 7 a.m. on the 15th day before the election. This would allow canvassing to begin at the same time that early voting begins, and allow the supervisors greater efficiency in canvassing ballots. Supervisors would still be prohibited from releasing any election results until the polls close on Election Day.

Section 37. Amends s. 101.6923, F.S., providing for the following additional instructions to be included with special absentee ballot instructions for voters who registered to vote by mail and have not previously provided identification prior to voting for the first time in the state:

> An absentee ballot will be considered illegal and not be counted if the signature in the voter's certificate does not match the signature on record. The signature on file at the start of the canvass of the absentee ballots is the signature that will be used to verify your signature on the voter's certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of the canvassing of absentee ballots, which occurs no earlier than the 15th day before election day.

Section 38. Amends s. 101.75, F.S., deleting a requirement that governing bodies setting municipal elections to coincide with statewide or countywide elections provide for a 14-day candidate qualifying period.

Section 39. Amends s. 102.168, F.S., providing that the canvassing board responsible for canvassing the election is an indispensable party defendant in county and local election contests; clarifying that the Elections Canvassing Commission is an indispensable party defendant in federal, state, and multicounty election contests and in election contests for justice of the Supreme Court, judge of a district court of appeal, and judge of a circuit court. This section further provides that in any contest requiring a review of the canvassing board's decision on the legality of an absentee ballot pursuant to s. 101.68, F.S., based upon a comparison of the signature on the voter's certificate and the signature of the elector in the registration records, the circuit court may not review or consider any evidence other than the signatures on the voter's certificate and the signature of the elector in the registration records. The reviewing court shall only determine if the canvassing board abused its discretion in making its decision.

Section 40. Amends s. 103.021, F.S., modifying the definition of "national party" with respect to the nomination of affiliated minor party candidates for President and Vice President of the United States; limiting the term "national party" to one registered with and recognized as a qualified national committee of a political party by the Federal Election Commission; modifying the petition requirements for presidential and vice presidential candidates of a minor political party *not* affiliated with a national party holding a convention to nominate candidates, from 1 percent of the registered electors of the state for the preceding general election to "a number of electors in each of one-half of the congressional districts of the state, and of the state as a whole, equal to 2 percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding general election in which presidential electors were chosen."

Section 41. Authorizes s. 103.095, F.S., establishing new, substantive requirements for the regulation of minor political parties; authorizing the Department to cancel the filings of minor political parties and to promulgate rules concerning the cancellation of filing; making the requirements of the section retroactive for any party registered with the Department on July 1, 2011; providing that the new requirements must be complied with within 180 days after the Department notifies any existing minor political party or the minor political party's registration is automatically cancelled.

Section 42. Amends s. 103.101, F.S., eliminating the Presidential Candidate Selection Committee in connection with the presidential preference primary (PPP); providing for the political parties to directly designate candidates for the PPP by a date certain in November of the year preceding the PPP; requiring the Department to immediately notify each presidential candidate listed by the Secretary of State. The bill also makes technical and conforming changes to s. 103.101, F.S.

Section 43. Amends s. 103.141, F.S., deleting a provision relating to the removal of officers or members of a county executive committee, to conform to the repeal of s. 103.161, F.S., *infra*.

Section 44. Repeals s. 103.161, F.S., relating to the for-cause removal of officers or members of the state executive committee or county executive committee of a political party.

Section 45. Amends s. 104.29, F.S., to clarify that the inspectors or other election officials at the polling place shall, after the polls close, allow as many as three persons near to them to see whether the ballots are being reconciled correctly.

Section 46. Amends s. 106.011, F.S., clarifying the time period during which consultation by a committee or person about a candidate's plans, projects, or needs will constitute an exemption from the definition of an "independent expenditure;" tying the time frame to the candidate's specific qualifying period instead of the qualifying period for legislative and statewide candidates; providing that disbursements relating to potential candidate polls in s. 106.17, F.S., are not "contributions or expenditures" for purposes of determining whether someone is a "candidate" pursuant to Chapter 106, Florida Statutes (campaign finance).

Section 47. Amends s. 106.021, F.S., deleting a requirement that candidates (and their family members) receiving reimbursement for campaign expenses by check drawn on their campaign account report the *address* of each person *to whom* the candidate made payment, on their periodic campaign finance reporting forms.

Section 48. Amends s. 106.022, F.S., providing that a PC's, CCE's, or ECO's appointment of a registered agent and registered office be filed with the same filing officer that the entity registered with originally.

Section 49. Amends s. 106.023, F.S., revising the "Statement of Candidate" mandated for every candidate to state that the candidate has been *provided access* to Chapter 106 of the Florida Statutes, instead of *providing a copy*.

Section 50. Amends s. 106.025, F.S., excluding certain Internet and electronic campaign fundraiser tickets and advertising pursuant s. 106.143(8), F.S., from the additional fundraising sponsorship disclaimer requirements.

Section 51. Amends s. 106.03, F.S., clarifying that ECO's need only register with the Division at the commencement of the "ECO season," no earlier than 30 days before a primary or 60 days before a general election at which the ECO makes an aggregate *expenditure* in excess of $5,000; deleting a requirement that ECO's register after receiving *contributions* or making expenditures aggregating more than $5,000; clarifying that ECOs who support or oppose candidates at the multicounty or local level and PCs who make intend to support or oppose candidates or issues at the multicounty or local level need only register with the Division.

Section 52. Amends s. 106.04, F.S., requiring CCEs participating in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections; providing that CCEs include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement (to conform to the functionality of the electronic filing system); clarifying when campaign treasurer's reports for committee of continuous existence are due and how notification is provided when reports are late or

incomplete; clarifies the procedures for imposition of fines against committees of continuous existence; defining the term "repeated late filings," providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

Section 53. Amends s. 106.07, F.S., deleting a redundant requirement to file a third-quarter campaign finance report during an election season, as reports are due more frequently after qualifying — generally in 2-week intervals; providing that a campaign treasurer must be notified by certified mail or another method that provides a proof of delivery of notice when a filing officer has deemed a report as incomplete; establishing that, within 7 days of receiving the notice, the campaign treasurer must provide an addendum to the filing officer containing the information needed to complete the report; requiring PCs participating in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections; providing that PCs and candidates include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement (to conform to the functionality of the electronic filing system); defining the term "repeated late filings," providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

Section 54. Amends s. 106.0703, F.S., defining the term "repeated late filings," providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation; clarifying, for administrative ease of filers, that the initial campaign finance report filed by an ECO shall be a single, retroactive report of receipts and disbursements made from the date of the last general election, instead of multiple reports for each applicable calendar quarter and other abbreviated time frames applicable to reports of political committees and candidates.

Section 55. Amends s. 106.0705, F.S., requires campaign finance *office account* reports and *termination* reports (surplus funds) for individuals who file with the Division of Elections to be filed electronically, for consistency with other campaign finance filings and to enhance public access; deletes a time-delimited, outdated provision related to campaign finance filings; requiring the Division to amend its electronic campaign finance reporting system to provide for the initial, single, retroactive report ECOs must now file, to conform to changes to s. 106.0703(8), F.S., made by the Act.

Section 56. Amends s. 106.08, F.S., deleting a requirement that persons authorized to accept in-kind contributions to the state or county executive committee of a political party do so in a *signed* acceptance (the written acceptance must still be dated before the in-kind contribution is made); provides that persons accepting on behalf of county executive committees file their in-kind contribution acceptance with the applicable supervisor of elections instead of the Division of Elections; deletes obsolete provisions relating to minor party and independent candidates seeking to qualify by the petition method.

Section 57. Amends s. 106.09, F.S., clarifying that the $50 limit on contribution by cash and cashier's check are in the *aggregate, per election*; it also clarifies that the aggregate limits apply

to *making* contributions to *the same* candidate or committee or *accepting* contributions from *the same* contributor.

Section 58. Amends s. 106.11, F.S., eliminating a requirement for candidates using debit cards as bank checks to submit a list of authorized users to the Division of Elections (unnecessary in practice); removes the requirement that the debit cards expire no later than November 30 of an election year (banks do not typically issue termination dates for debit cards); clarifies that a candidate may be reimbursed for a loan that he or she has made to the campaign "at any time the campaign account has sufficient funds to repay the loan and satisfy its other obligations;" makes technical changes to the designation of a campaign account.

Section 59. Amends s. 106.141, F.S., directing that surplus campaign funds of candidates that have received public financing be returned to the General Revenue Fund, after paying off: previous monetary obligations of the campaign, costs for closing down campaign offices, and, costs associated with preparing final campaign reports; authorizes unlimited turn backs of surplus campaign funds to a candidate's political party.

Section 60. Amends s. 106.143, F.S., mandating that a write-in candidate use a specified disclaimer for political advertisements; changing the sponsorship disclaimer for non-candidate political advertisements to require disclosure of the person *paying* for the advertisement in lieu of the *sponsor*; simplifying the requirements for disclaimers for political party and political committee 3-pack ads; creating a new, specific-language sponsorship disclaimer for political advertisements made as in-kind contributions from a political party; prohibiting candidates for nonpartisan office from referring to party affiliation in their political advertisements, and prohibiting them from campaigning based on party affiliation; clarifying that if a political advertisement is paid for a candidate, the advertisement need not specify that the candidate "approved" the advertisement (mirroring the treatment of political disclaimers in the 2010 "Technology in Elections Act",[145] which created a new disclaimer for electronic ads that merely states: "Paid by (name of candidate), (party affiliation), for (office sought)"; deletes an exclusion from the "approved by" disclaimer for campaign messages designed to be worn, to conform to changes made to the general 'paid-for-by' disclaimer in the 2010 Technology in Elections Act.[146]

Section 61. Amends s. 106.17, F.S., providing that political parties and affiliated party committees may conduct polls for the purpose of determining the viability of potential candidates and share those results with potential candidates without such activities constituting a contribution to the potential candidate or expenditure by the political party or affiliated party committee.

Section 62. Amends s. 106.18, F.S., deleting an outdated provision relating to candidates filing copies of their campaign finance reports. Before going to electronic filings, candidates required to file with the Division also had to file copies with the applicable supervisors of elections.

[145] Ch. 2010-167, s. 18, LAWS OF FLA.
[146] *Id.*

Section 63. Amends s. 106.19, F.S., providing that a candidate's failure to comply with the requirements of Chapter 106 has no effect on whether the candidate has qualified for the office sought.

Section 64. Amends s. 106.25, F.S., providing that respondents against whom a sworn complaint is received by the Florida Elections Commission shall have 14 days after receipt to file an initial response, and prohibiting the executive director from making a legal sufficiency determination on the complaint during that time; prohibiting the Commission from determining by rule what constitutes "willfulness" for purposes of determining elections violations; authorizing the Commission to enter into consent decrees with a respondent without requiring an admission of guilt; reversing the current default procedure whereby alleged election law violations are transferred to the Division of Administrative Hearings (DOAH) unless the party charged with the offense elects to have a hearing before the Commission; mandating that the alleged violator affirmatively request a hearing at DOAH within 30 days after the Commission's probable cause determination, or the Commission will hear the case; authorizing the DOAH administrative law judge to impose civil penalties to the same extent as the Commission, and that he or she consider the same mitigating or aggravating circumstances in determining fines.

Section 65. Amends s. 106.26, F.S., providing that the proper venue for the Florida Elections Commission to file a complaint to enforce a subpoena against a witness is the circuit court where the witness resides.

Section 66. Amends s. 106.265, F.S., integrating ECOs into a statutory list of entities for the purpose of assessing election law civil penalties; clarifying that all civil penalties collected are deposited to the General Revenue Fund of the State instead of the defunct Election Campaign Financing Trust Fund.

Section 67. Amends s. 106.29, F.S., clarifying that political party executive committees making contributions or expenditures in special primary or special elections must file campaign finance reports on the dates set by the Department of State in s. 100.111, F.S.; providing for the filing of such reports on the Friday before a special primary or special election, and subjecting the state and county executive committee filing late to a $10,000-per-day or $500-per-day fine, consistent with other elections; provides that notice of fines is sufficient upon proof of delivery of written notice to the mailing address or street address on record with the filing officer; establishes repeated late filings (3 late filings in any 2-year period) as a separate violation.

Section 68. Amends s. 106.35, F.S., deleting outdated provisions relating to paper reports associated with public campaign financing. Paper reports have been replaced by the Division's electronic filing system as mandated by s. 106.0705, F.S.

Section 69. Amends s. 876.05, F.S., deleting the requirement that all candidates for public office, other than candidates for federal office, execute the public employees' oath.

Section 70. Repeals s. 876.07, F.S., which provides that a candidate who fails to execute the oath shall be deemed to have not qualified for public office and shall not be listed on the ballot as a qualified candidate.

Section 71. Provides for a severability clause.

Section 72. Except as otherwise provided, the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may result in very minor additional costs to prepare and file local campaign finance reports for CCEs who participate in county or municipal elections.

C. Government Sector Impact:

The bill may be expected to have a positive fiscal impact as a result of: reducing the time period for early voting from 14 days to 6 days; higher penalties being realized for certain late-filed reports by CCEs; fines being realized on the new election violation of "repeated late filings;" no longer requiring county canvassing boards to perform a voting system audit if a manual recount is completed; and, abolishing the requirement of providing candidates with a physical copy of Chapter 106 of the Florida Statutes. The precise fiscal impacts are indeterminate.

The bill will also require six counties to issue new voter information cards reflecting the polling place address. While it varies from county to county, the average county cost to print and mail one card is roughly 52 cents.[147] However, any additional costs will likely be minimal since all counties will be issuing new voter information cards in 2012 as a result of reapportionment.

[147] The cost estimate is based on 2009 data provided by the Florida State Association of Supervisors of Elections.

Finally, the bill requires supervisors of elections to pay for the cost of maintaining a database of voter registration forms assigned to the third-party registration organizations. The current cost is indeterminate.

VI. Technical Deficiencies:

Section 11 of the bill requires the Department of State to submit voting history information to the Legislature 15 days after certification of an election, but that same section provides that the supervisors need not submit such data to the Department until *30 days* after the election certification: these timetables should be reversed or amended.

VII. Related Issues:

On March 24, 2011, the Legislature overrode the governor's veto on CS/CS/HB 1207,[148] which authorized affiliated party committees (APC's). Post-session, the Division of Statutory Revision will make the necessary changes to *existing* statutory text modified in the bill to harmonize the changes herein with the veto override, but the Division does not have the authority to insert the term "affiliated party committee" in any newly-created text. That is why the APC term may be found in certain newly-created text in the bill but not in the existing, underlying statutes in which the new text is being inserted.

VIII. Additional Information:

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

CS/CS by Rules on April 15, 2011:
This committee substitute includes the entirety of the previous committee substitute (CS/SB 2086), along with numerous other changes to the Florida Election Code. Some of the more significant changes include: modifying the responsibilities of the Secretary of State to provide direction to supervisors of elections; changing the primary date from 10 weeks to 9 weeks before the general election; reducing the early voting period from fourteen days to six days; revising requirements for third-party voter registration organizations; requiring electors changing names or addresses at polling places on election day to vote a provisional ballot; establishing revised timeframes and specifying the format for supervisors of elections and the Department of State to submit information on state voter history and precinct data; revising the form of the oaths required of candidates at qualifying; revising provisions relating to the resign-to-run law; modifying ballot format specifications; reducing the validity period for initiative petition signatures from 4 years to 2 years; allowing for the unlimited turn back of surplus funds by candidates to their political parties.

Other changes include: establishing extensive new regulations for minor political parties; eliminating certain requirements for the Department of State to produce paper copies of certain documents in lieu of making an electronic version available; requiring voter registration cards to contain polling place addresses for voters registering after August 1,

[148] Ch. 2011, s.6, LAWS OF FLA.

2012; amending procedures for handling voter registrations; providing new procedures for changing voter information with respect to residence, name, and party affiliation; modifying voter registration list maintenance activities; amending information requirements for the Florida Voter Registration System; amending procedures for compiling and providing voter history and precinct-level election results; modifying the candidate qualifying oaths; amending requirements for candidate qualifying papers; modifying the candidate-qualifying affirmation requirements for lieutenant governor candidates; modifying the mechanism for transferring election assessments of certain candidates to the Florida Elections Commission; amending methods and requirements relating to signature verification on petitions; modifying provisions relating to vacancies in nomination; modifying procedures with respect to initiative petition signature verification; precluding address information on a voter's I.D. at the polls from being used to challenge a voter's legal residence; authorizing at-large poll watchers; modifying ballot specifications; adopting Florida certification standards for voting equipment certification in lieu of industry standards; modifying the requirements for random, pre-election testing of voting equipment; amending procedures to canvass write-in ballots, to eliminate obsolete requirements; providing that absentee ballot requests shall be valid for all elections through the end of the calendar year of the second ensuing general election; modifying the time to mail certain absentee ballots; modifying absentee ballot instructions; deleting certain restrictions with respect to the requisite candidate qualifying period for certain municipal elections; amending procedures relating to election contests; modifying the procedures for minor political parties to designate presidential and vice-presidential candidates for inclusion on the general election ballot; deleting the selection committee in connection with the presidential preference primary and providing for the direct designation of candidates; deleting a provision authorizing the state executive committee chair to remove certain officers and members for cause; modifying election penalties with respect to reconciling ballots after the polls close; deleting certain electronic fundraising tickets and advertising from the specific fundraising disclaimer in s. 106.025, F.S.; modifying ECO registration and reporting requirements; modifying certain political advertising disclaimers; authorizing political parties and APCs to run pre-candidate polls that are not considered contributions or expenditures; modifying procedures relating to the Florida Elections Commission; authorizing the imposition of election law fines and penalties by an administrative law judge at the Division of Administrative Hearings; incorporating ECOs into the list of entities subject to election law fines and civil penalties; adding a severability clause; and, changing the effective date, in most cases.

CS by Ethics and Elections on April 4, 2011:
The committee substitute differs from the original bill in that it:

- Adds requirements that voter information cards issued by supervisors of elections must include an elector's polling place address.
- Provides that when an elector's polling place address changes, the supervisor must send a new card to the elector.
- Specifies that the supervisor must provide a voter information card meeting the requirements of this act for any elector who, on or after August 1, 2012, registers to vote, requests a replacement card, or changes their name, address, or party affiliation.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (a), (d), and (e) of subsection (3) of section 120.54, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, are amended to read:

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(a) *Notices.*—

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting

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forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2)<u>;</u> ~~, and~~ a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice<u>; and a statement as to whether, based on the statement of the estimated regulatory costs, or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3)</u>. The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Weekly not less than 28 days prior to the intended action. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.


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3. The notice shall be mailed to all persons named in the proposed rule and to all persons who, at least 14 days prior to such mailing, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(d) *Modification or withdrawal of proposed rules.*—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings held on the rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and

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the end of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Weekly at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the rule becomes effective ~~date~~, a rule may be modified or withdrawn only in the following circumstances: ~~response to an objection by the committee or may be modified to extend the effective date by not more than 60 days.~~

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may

be withdrawn but may not be modified; or

d. When the committee notifies ~~has notified~~ the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days

or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination


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pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the department; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Weekly.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., ~~or~~ on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, ~~or~~ on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate


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review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

Section 2. Paragraph (d) of subsection (1) and subsection (4) of section 120.541, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, are amended to read:

120.541 Statement of estimated regulatory costs.—

(1)

(d) At least 21 ~~45~~ days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and shall provide notice on the agency's website that it is available to the public.

(4) This section ~~Paragraph (2)(a)~~ does not apply to the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6).

Section 3. Paragraph (a) of subsection (2) of section 120.56, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, is amended to read:

120.56 Challenges to rules.—

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed

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rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 ~~44~~ days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change. A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the rule and is not limited to challenging the change to the proposed rule.

Section 4. Subsection (16) of section 120.80, Florida Statutes, is amended, and subsections (17) and (18) are added to that section, to read:

120.80 Exceptions and special requirements; agencies.—

(16) FLORIDA BUILDING COMMISSION.—

(a) Notwithstanding the provisions of s. 120.542, the

Florida Building Commission may not accept a petition for waiver or variance and may not grant any waiver or variance from the requirements of the Florida Building Code.

(b) The Florida Building Commission shall adopt within the Florida Building Code criteria and procedures for alternative means of compliance with the code or local amendments thereto, for enforcement by local governments, local enforcement districts, or other entities authorized by law to enforce the Florida Building Code. Appeals from the denial of the use of alternative means shall be heard by the local board, if one exists, and may be appealed to the Florida Building Commission.

(c) Notwithstanding ss. 120.565, 120.569, and 120.57, the Florida Building Commission and hearing officer panels appointed by the commission in accordance with s. 553.775(3)(c)1. may conduct proceedings to review decisions of local building code officials in accordance with s. 553.775(3)(c).

(d) Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Building Code expressly authorized by s. 553.73.

(17) STATE FIRE MARSHAL.—Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Fire Prevention Code expressly authorized by s. 633.0215.

(18) DEPARTMENT OF TRANSPORTATION.—Sections 120.54(3)(b) and 120.541 do not apply to the adjustment of tolls pursuant to s. 338.165(3).

Section 5. Paragraph (l) is added to subsection (1) of section 120.81, Florida Statutes, to read:

120.81 Exceptions and special requirements; general areas.—

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(1) EDUCATIONAL UNITS.—

(l) Sections 120.54(3)(b) and 120.541 do not apply to the adoption of rules pursuant to s. 1012.22, s. 1012.27, s. 1012.34, s. 1012.335, or s. 1012.795.

Section 6. This act shall take effect upon becoming a law.

========== 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 rulemaking; amending s. 120.54, F.S.; requiring that an agency include in its notice of intended rulemaking a statement as to whether the proposed rule will require legislative ratification; providing for modification or withdrawal of an adopted rule that is not ratified by the Legislature; clarifying that certain proposed rules are effective only when ratified by the Legislature; amending s. 120.541, F.S.; reducing the time before an agency files a rule for adoption within which the agency must notify the person who submitted a lower cost alternative and the Administrative Procedures Committee; excluding rules adopting federal standards and emergency rulemaking from certain provisions; amending s. 120.56, F.S.; reducing the time within which a substantially affected person may seek an administrative determination of the invalidity of a rule after the statement or revised statement of

estimated regulatory costs is available; amending s. 120.80, F.S.; exempting the adoption of certain amendments and the triennial updates to the Florida Building Code from required legislative ratification; exempting the adoption of certain amendments and the triennial updates to the Florida Fire Prevention Code from required legislative ratification; exempting the adoption of rules adjusting rates of certain transportation and expressway tolls from the preparation of a statement of estimated regulatory costs and from submission for legislative ratification; amending s. 120.81, F.S.; excluding the adoption of rules under chapter 2011-1, Laws of Florida, the Student Success Act, from the preparation of a statement of estimated regulatory costs and from submission for legislative ratification; providing an effective date.

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 Budget Committee

BILL:	CS/SB 1382
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Bennett
SUBJECT:	Agency Rulemaking
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	**Fav/CS**
2.	Martin	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill refines certain agency rulemaking procedures under the Administrative Procedures Act by referencing the legislative ratification now required by s. 120.541(3), F.S. The bill also revises certain rulemaking timeframes to conform those times with other periods required in the rulemaking statute, s. 120.54, F.S.

This bill substantially amends the following sections of the Florida Statutes: 120.54, 120.541, and 120.56.

II. Present Situation:

The Administrative Procedure Act

Because administrative agencies have been granted extensive investigative, rulemaking, and adjudicating powers, statutes such as the Florida Administrative Procedure Act (APA) have been adopted to provide parties in administrative proceedings with procedural protection and due process.[1] The APA allows individuals who feel that their interests are being or will be affected

[1] 2 FLA. JUR 2D *Administrative Law* s. 1 (2007).

by the preliminary decisions of agencies to challenge those decisions.[2] The central purpose of the APA is to provide the basic fairness that should surround all governmental activity, such as:

- The opportunity for adequate and full notice of agency activities;
- The right to present viewpoints and to challenge the views of others;
- The right to develop a record which is capable of court review;
- The right to locate precedent and have it applied; and
- The right to know the factual bases and policy reasons for agency action.[3]

The Division of Administrative Hearings (DOAH), which consists of an independent group of administrative law judges (ALJ's), conducts hearings under ch. 120, F.S., when certain agency decisions, e.g., rules and determinations of a party's substantial interest, are challenged by substantially affected persons.[4]

House Bill 1565

HB 1565 was passed during the 2010 regular session but was vetoed by Governor Crist. On November 16, 2010, the Legislature in special session voted to override that veto and the bill became law as Chapter 2010-279. The law created new s. 120.541(3), F.S., requiring submission of rules with certain economic impacts for ratification by the Legislature before they may go into effect. The law also lengthened the time (from 21 days to 45 days) before an agency could adopt a rule after revising a required economic analysis and lengthened the time (from 20 days to 44 days) for a person to challenge the validity of a rule after the agency prepared the required economic analysis. These changes created a potential timing conflict with existing provisions which only allowed 21 days before adopting a rule if the economic analysis was not revised.

Agency Rulemaking

Under current law, an agency begins the formal rulemaking process by filing a notice of the proposed rule.[5] The notice is published by the Department of State in the Florida Administrative Weekly[6] and must provide certain information, including the text of the proposed rule, a summary of the statement of estimated regulatory costs (SERC), if one is prepared, and how a party may request a public hearing.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[7] Prior to the 2010 revision the law provided only two contingencies[8] to "effectiveness;" legislative ratification became the third.[9]

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[2] Judge Linda M. Rigot, *Administrative Law: A Meaningful Alternative to Circuit Court Litigation*, 75 FLA. B.J. 14, 14 (2001); *see also* 2 FLA. JUR 2D *Administrative Law* s. 5 (2007).
[3] 2 FLA. JUR 2D *Administrative Law* s. 5 (2007) (*quoting Singer Island Civic Ass'n, Inc. v. State Dep't of Environmental Regulation*, 636 So. 2d 723, 725 (Fla. 4th DCA 1994)).
[4] Rigot, *supra* note 2, at 14.
[5] Section 120.54(3)(a)1., F.S.
[6] Section 120.55(1)(b)2., F.S.
[7] Section 120.54(3)(e)6., F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption.
[8] Id. A rule became effective either 20 days after being filed for adoption or on a date specified by statute. Rules not required to be filed with the Department of State became effective when adopted by the agency head or on a date specified by rule or statute.

Rules normally must be filed for adoption no earlier than 28 days nor later than 90 days after the agency publishes the notice of proposed rule; the later deadline may change depending on different factors.[10] To ensure completion of the rulemaking process, the APA provides different times in which a party may challenge a proposed rule.[11] If an agency is required to prepare a SERC the rule cannot be filed for adoption until 21 days after the SERC is provided to parties and made publicly available.[12]

The 2010 revision did not alter this requirement but created new provisions delaying adoption of a rule for 45 days after the agency made a *revised* SERC available[13] and providing 44 days for a party to challenge a proposed rule.[14] These revised times conflict with the various 21 day timeframes provided for different aspects of rulemaking, such as filing a rule for adoption, requesting a hearing and submitting materials responding to the rulemaking notice,[15] or filing notices of substantial changes due to an objection from the Joint Administrative Procedures Committee.[16]

III. Effect of Proposed Changes:

The bill would require an agency's statutory notice of proposed rulemaking to include a statement as to whether legislative ratification will be required before the rule goes into effect. The bill also expressly includes legislative ratification in the statutory description of those contingencies affecting when a rule becomes effective.

The bill resolves the timing conflicts created in the 2010 law reversing the changes as follows:

- Instead of allowing 45 days, the bill requires a revised SERC be provided at least 21 days before the rule is filed for adoption, conforming the time with that for adopting a rule after providing an original SERC;[17] and
- The bill reverts the time to 20 days for challenging a proposed rule after the agency provides a SERC, requiring the challenge be brought during the waiting period before the rule may be filed for adoption.

The bill takes effect July 1, 2011.

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[9] Section 120.541(3), F.S.
[10] Section 120.54(3)(e)2., F.S. The 90 day period is extended for an additional 21 days if a party submits a lower cost regulatory alternative to a proposed rule and the agency is compelled to prepare a SERC if one was not previously done. S. 120.541(1)(a), as amended by Ch. 2010-279, s. 2, Laws of Florida.
[11] Section 120.56(2)(a), F.S. Originally, a party had 20 days after a SERC or revised SERC was made available in which to challenge a proposed rule.
[12] Section 120.54(3)(e)2., F.S.
[13] Section 120.541(1)(d), F.S.
[14] Section 120.56(2)(a), F.S., as amended by Ch. 2010-279, s. 3, Laws of Florida.
[15] Section 120.54(3)(c)1., F.S.
[16] Section 120.54(d)1., F.S.
[17] Section 120.54(3)(e)2., F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Requiring disclosure in the rulemaking notice of whether the proposed rule may require legislative ratification will have an indeterminate but probably insignificant impact on agency expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on April 5, 2011:
The committee substitute made a technical amendment to the title.

B. Amendments:

None.

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 Budget Committee

BILL:	SB 870
INTRODUCER:	Senator Storms
SUBJECT:	Compensation of County Officials
DATE:	April 20, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Favorable**
2.	Martin	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

This bill allows certain county officials to reduce their salary on a voluntary basis. The county officers include each: member of a board of county commissioners; clerk of the circuit court; county comptroller; sheriff; supervisor of elections; property appraiser; and tax collector.

This bill substantially amends the following sections of the Florida Statutes: 145.031, 145.051, 145.071, 145.09, 145.10 and 145.11.

II. Present Situation:

Compensation of County Officials

Article II, s. 5(c), of the Florida Constitution provides that "the powers, duties, compensation and method of payment of state and county officers shall be fixed by law."[1] Chapter 145, F.S., articulates Legislative intent to provide uniform compensation of county officials that have substantially equal duties and responsibilities.[2] Chapter 145, F.S., outlines the salary schedules for specified county officials "based on a classification of counties according to each county's population."[3]

The salary schedules for the following county officers are provided respectively in ss. 145.031-145.11, F.S.: board of county commissioners; clerk of the circuit court; county comptroller; sheriff; supervisor of elections; property appraiser; and tax collector (see below). Each county

[1] FLA. CONST. art. II, s. 5(c).
[2] Section 145.011(3), F.S.
[3] Section 145.011(4), F.S.

officer receives a salary of the amount indicated in the schedule, based on the population of his or her county. Additional compensation is made "for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the group times the group rate."[4]

Salary Computation Methodology and Formula

Computation of a county official's salary begins by determining the following figures provided in the statutory salary schedules for county officials, outlined in ss.145.031-145.11, F.S.:

- The relevant population group number for the elected officer, based on the county's population range;
- The official's relevant base salary and group rate according to his or her prescribed salary schedule; and
- The difference between the county's population estimate and the minimum group rate.[5]

After determining these figures, the following computation formula is then used to calculate the county official's salary:

Salary = ***[Base Salary + (Population above Group Minimum x Group Rate)] x Initial Factor x Certified Annual Factor x Certified Cumulative Annual Factor***

[6]

Section 145.19(1), F.S., defines the terms "annual factor," "cumulative annual factor," and "initial factor," as follows:

- *Annual Factor* means 1 plus the lesser of either: 1) the average percentage increase in the salaries of state career service employees for the current fiscal year as determined by the Department of Management Services or as provided in the General Appropriations Act; or 2) 7 percent;
- *Cumulative Annual Factor* means the product of all annual factors certified under this act prior to the fiscal year for which salaries are being calculated; and
- *Initial Factor* means a factor of 1.292, which is the product, rounded to the nearest thousandth, of an earlier cost-of-living increase factor authorized by Chapter 73-173, Laws of Florida, and intended by the Legislature to be preserved in adjustments to salaries made prior to the enactment of Chapter 76-80, Laws of Florida, multiplied by the annual increase factor authorized by Chapter 79-327, Laws of Florida.

[4] Sections 145.031, 145.051, 145.071, 145.09, 145.10 and 145.11, F.S.
[5] Florida Legislative Committee on Intergovernmental Relations, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2009-10*, at 4. (Sept. 2009) (on file with the Senate Committee on Community Affairs).
[6] Florida Legislative Committee on Intergovernmental Relations, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2009-10*, at 4. (Sept. 2009) (on file with the Senate Committee on Community Affairs).

In 2009, the Florida Legislative Committee on Intergovernmental Relations provided the following sample computation of a tax collector's salary:

Sample Computation of Salary[7]
Officer: Tax Collector
2008 Population Estimate: 252,388
Group Number Minimum (IV): 200,000
Corresponding Base Salary (Group IV): $30,175
Corresponding Group Rate (Group IV): $0.01575
Initial Factor: 1.292
Certified Annual Factor: 1.0000
Certified Cumulative Annual Factor: 3.1681

Salary = [$30,175 + [(252,388-200,000) x 0.01575]] x 1.292 x 1.0000 x 3.1681
= $126,889

Additional Compensation for Special Qualification Salary

The following county officers qualify for an additional $2,000 per year special qualification salary, pursuant to specified requirements:

- Each clerk of the circuit court who has met the certification requirements established by the Supreme Court, within 6 years after first taking office, and who completes continuing education courses each year prescribed by the Supreme Court;[8]
- Each sheriff who has met the qualification requirements established by the Department of Law Enforcement, within 6 years after first taking office and who completes continuing education courses each year prescribed by the Department of Law Enforcement;[9]
- Each supervisor of elections who has met the certification requirements established by the Division of Elections of the Department of State, within 6 years after first taking office and who completes continuing education courses each year prescribed by the Division;[10]
- Each property appraiser who has met the requirements established by the Department of Revenue and who has been designated a certified Florida property appraiser, within 4 years after first taking office. The property appraiser must also complete continuing education courses each year as prescribed by the Department of Revenue to remain certified;[11] and
- Each tax collector who has met the requirements established by the Department of Revenue and who has been designated a certified Florida tax collector, within 4 years after first taking office. The tax collector must also complete continuing education courses each year as prescribed by the Department of Revenue to remain certified.[12]

[7] *Id.*
[8] Section 145.051(2), F.S.
[9] Section 145.071(2), F.S.
[10] Section 145.09(3), F.S.
[11] Section 145.10(2), F.S. (Note, this section allows the executive director of the Department of Revenue to waive these requirements for any property appraiser who is 60 years of age and who has been a property appraiser for 20 years. *See* s. 145.10(2)(c), F.S.)
[12] Section 145.11(2), F.S.

Salary Schedules for County Officials [13]

Elected County Constitutional Officers	Population Group Numbers	County Population Range		Base Salary	Group Rate
		Minimum	Maximum		
-Clerk of Circuit Court -County Comptroller -Property Appraiser -Tax Collector *ss. 145.051, 145.10, and 145.11, F.S.*	I	-0-	49,999	$21,250	$0.07875
	II	50,000	99,999	$24,400	$0.06300
	III	100,000	199,999	$27,550	$0.02625
	IV	200,000	399,999	$30,175	$0.01575
	V	400,000	999,999	$33,325	$0.00525
	VI	1,000,000		$36,475	$0.00400
-Supervisor of Elections *s. 145.09*	I	-0-	49,999	$17,228	$0.075
	II	50,000	99,999	$20,228	$0.060
	III	100,000	199,999	$23,228	$0.025
	IV	200,000	399,999	$25,728	$0.015
	V	400,000	999,999	$28,728	$0.005
	VI	1,000,000		$31,728	$0.004
-Sheriff *s.145.071, F.S*	I	-0-	49,999	$23,350	$0.07875
	II	50,000	99,999	$26,500	$0.06300
	III	100,000	199,999	$29,650	$0.02625
	IV	200,000	399,999	$32,275	$0.01575
	V	400,000	999,999	$35,425	$0.00525
	VI	1,000,000		$38,575	$0.00400
-Board of County Commissioners *s. 145.031*	I	-0-	9,999	$4,500	$0.150
	II	10,000	49,999	$6,000	$0.075
	III	50,000	99,999	$9,000	$0.060
	IV	100,000	199,999	$12,000	$0.045
	V	200,000	399,999	$16,500	$0.015
	VI	400,000	999,999	$19,500	$0.005
	VII	1,000,000		$22,500	$0.000

Attorney General Opinion

In 2008, Florida Attorney General Bill McCollum issued an advisory opinion stating that a sheriff does not have the authority to voluntarily reduce his/her salary due to the salary uniformity requirements provided in both ch. 145, F.S., and article II, s. 5(c), of the Florida Constitution.[14] The Attorney General supported his position by referencing the legislative intent behind ch. 145, F.S., provided in s. 145.011, F.S., and further referencing the language in s. 145.16(1), F.S., which states that:

[13] Sections 145.031(1), 145.051(1), 145.071(1), 145.09(1), 145.10(1) and 145.11(1), F.S.
[14] Op. Atty Gen. Fla. 2008-28 (May 28, 2008) (on file with the Senate Committee on Community Affairs).

> . . . the preservation of statewide uniformity of county officials' salaries is essential to the fulfillment of the legislative intent expressed in this chapter and intends by this section to prevent any laws which would allow officials in individual counties to be excepted from the uniform classification provided in this chapter.

The Attorney General Opinion also highlighted the provisions of article II, s. 5(c), of the Florida Constitution, which require the compensation of county officers to be fixed by law. The Attorney General articulated that the Supreme Court also recognizes that the authority to set salaries for county officers is vested in the Legislature, as provided in the 1925 Supreme Court case of *State ex rel. Buford v. Spencer*.[15]

In conclusion, the Attorney General held that:

> [t]o permit a county officer to alter the statutorily prescribed compensation would be contrary to the expressly stated legislative intent for uniformity in enacting Chapter 145 and the provisions of Article II, section 5(c), Florida Constitution, which requires that the salary of county officers be 'fixed by law.'[16]

2009 Amendments Affecting Compensation of Certain School District Officials

In 2009, the Legislature made amendments to current general law to allow certain school **officials to reduce their salary rate on a voluntary basis.**

Chapter 2009-3, Laws of Florida, (CS/CS/SB 6-A) amended s. 1001.395, F.S., to provide that "notwithstanding the provisions of s. 1001.395 or s. 145.19, F.S., district school board members may reduce their salary rate on a voluntary basis."[17] This change became effective on February1, 2009.

Chapter 2009-59, Laws of Florida, (CS/CS/SB 1676) amended s. 1001.47, F.S., to provide that "notwithstanding the provisions of s. 1001.47 or s. 145.19, F.S., elected school superintendents may reduce their salary rate on a voluntary basis . . . and that the salary of each elected school superintendent shall be reduced by 2 percent."[18] These changes became effective on July 1, 2009.

III. Effect of Proposed Changes:

Section 1 amends s. 145.031, F.S., to allow each member of the board of county commissioners to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

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[15] *See* 87 So. 2d 634 (Fla. 1921).
[16] Op. Atty Gen. Fla. 2008-28 (May 28, 2008) (on file with the Senate Committee on Community Affairs).
[17] Florida Legislative Committee on Intergovernmental Relations, *supra* note 5, at 2. *See also* s. 1001.395(2), F.S.
[18] Florida Legislative Committee on Intergovernmental Relations, *supra* note 5, at 2. *See also* s. 1001.47(6)-(7), F.S.

Section 2 amends s. 145.051, F.S., to allow each clerk of the circuit court and each county comptroller to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 3 amends s. 145.071, F.S., to allow each sheriff to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 4 amends s. 145.09, F.S., to allow each supervisor of elections to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 5 amends s. 145.10, F.S., to allow each property appraiser to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 6 amends s. 145.11, F.S., to allow tax collector to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 7 provides that this act shall take effect on July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

As a result of this bill, certain county officials will be allowed to reduce their salary on a voluntary basis.

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.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (k) of subsection (2) of section 627.062, Florida Statutes, is amended, and paragraph (l) is added to that subsection, to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(k)1. A residential property ~~An~~ insurer may make a separate filing limited solely to an adjustment of its rates for reinsurance, the cost of financing products used as a replacement for reinsurance, ~~or~~ financing costs incurred in the

purchase of reinsurance, ~~or financing products to replace or finance the payment of the amount covered by the Temporary Increase in Coverage Limits (TICL) portion of the Florida Hurricane Catastrophe Fund including replacement reinsurance for the TICL reductions made pursuant to s. 215.555(17)(c); the actual cost paid due to the application of the TICL premium factor pursuant to s. 215.555(17)(f);~~ and the actual cost paid due to the application of the cash build-up factor pursuant to s. 215.555(5)(b) if the insurer:

a. Elects to purchase financing products such as a liquidity instrument or line of credit, in which case the cost included in ~~the~~ filing for the liquidity instrument or line of credit may not result in a premium increase exceeding 3 percent for any individual policyholder. All costs contained in the filing may not result in an overall premium increase of more than 15 ~~10~~ percent for any individual policyholder.

b. Includes in the filing a copy of all of its reinsurance, liquidity instrument, or line of credit contracts; proof of the billing or payment for the contracts; and the calculation upon which the proposed rate change is based demonstrating ~~demonstrates~~ that the costs meet the criteria of this section ~~and are not loaded for expenses or profit for the insurer making the filing~~.

~~c. Includes no other changes to its rates in the filing.~~

~~d. Has not implemented a rate increase within the 6 months immediately preceding the filing.~~

~~e. Does not file for a rate increase under any other paragraph within 6 months after making a filing under this paragraph.~~

c.~~f.~~ That purchases reinsurance or financing products from an affiliated company ~~in compliance with this paragraph~~ does so only if the costs for such reinsurance or financing products are charged at or below charges made for comparable coverage by nonaffiliated reinsurers or financial entities making such coverage or financing products available in this state. For the purposes of this subparagraph, the term "affiliated company" means an entity that owns, or whose ultimate parent company owns, directly or indirectly, more than 50 percent of the outstanding voting securities of the residential property insurer.

2. An insurer may ~~only~~ make only one filing per ~~in any~~ 12-month period under this paragraph.

3. An insurer that elects to implement a rate change under this paragraph must file its rate filing with the office at least 45 days before the effective date of the rate change. After an insurer submits a complete filing that meets all of the requirements of this paragraph, the office has 45 days after the date of the filing to review the rate filing and determine if the rate is excessive, inadequate, or unfairly discriminatory.

(l)1. On or after January 1, 2012, an insurer complying with s. 627.7031 may use a rate for residential property insurance when providing residential coverage, as described in s. 627.4025, different from the otherwise applicable filed rate as provided in this paragraph.

2. Policies subject to this paragraph may not be counted in the calculation under s. 627.171(2).

3. Such rates shall be filed with the office as a separate filing. The initial rates used by an insurer under this

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paragraph may not provide for rates that represent more than a 15 percent statewide average rate increase over the most recently filed and approved rate. A rate filing under this paragraph submitted in any year after the implementation of such initial rates may not provide for rates that represent more than a 15 percent statewide average rate increase in a year over the rates in effect under this paragraph at the time of the filing. A rate filing under this paragraph may not provide for a percentage rate increase as to any individual policyholder that exceeds two times the statewide average rate increase provided for in the filing.

4. This paragraph does not affect the authority of the office to disapprove a rate as inadequate or to disapprove a rate filing for charging any insured or applicant a higher premium solely because of the insured's or applicant's race, religion, marital status, sex, or national origin. Upon finding that an insurer has used any such factor in charging an insured or applicant a higher premium, the office may direct the insurer to make a new filing for a new rate that does not use such factor.

The provisions of this subsection shall not apply to workers' compensation and employer's liability insurance and to motor vehicle insurance.

Section 2. Effective January 1, 2015, paragraph (l) of subsection (2) of section 627.062, Florida Statutes, as created by this act, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:


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(l)1. On or after January 1, 2012, an insurer complying with the requirements of s. 627.7031 may use a rate for residential property insurance when providing residential coverage, as described in s. 627.4025, different from the otherwise applicable filed rate as provided in this paragraph.

2. Policies subject to this paragraph may not be counted in the calculation under s. 627.171(2).

3. Such rates shall be filed with the office as a separate filing. The initial rates used by an insurer under this paragraph may not provide for rates that represent more than a 15 percent statewide average rate increase over the most recently filed and approved rate. A rate filing under this paragraph submitted in any year after the implementation of such initial rates may not provide for rates that represent more than a 15 percent statewide average rate increase in a year over the rates in effect under this paragraph at the time of the filing. A rate filing under this paragraph may not provide for a percentage rate increase as to any individual policyholder that exceeds two times the statewide average rate increase provided for in the filing.

4.a. A filing under this paragraph must include a statement that the insurer has in place, or intends to have in place as of the effective date of the rates, a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents sufficient to cover the insurer’s 100-year probable maximum loss as described in s. 627.7031.

b. No later than the last day of July of the year in which the rates are in effect, the insurer must provide its certification to the office demonstrating that it has in fact in

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place a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum loss as described in s. 627.7031.

c. If the insurer fails to maintain the required combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents, the subject rate filing under this paragraph is void and shall be replaced by the insurer's rates in effect under this paragraph at the time of the filing, retroactive to the effective date of the subject rate filing under this paragraph. In such circumstances, the office shall order the insurer to return to each insured the difference between the premium calculated according to the rate filing under this paragraph and the premium under the rates in effect under this paragraph at the time of the subject filing, which may, in the discretion of the insurer, be in the form of a refund or a credit. This sub-subparagraph does not preclude the insurer from making another filing under this paragraph, but such filing may not take effect before June 1 of the following year.

5.~~4.~~ This paragraph does not affect the authority of the office to disapprove a rate as inadequate or to disapprove a rate filing for charging any insured or applicant a higher premium solely because of the insured's or applicant's race, color, creed, marital status, sex, or national origin. Upon finding that an insurer has used any such factor in charging an insured or applicant a higher premium, the office may direct the insurer to make a new filing for a new rate that does not use such factor.

The provisions of this subsection shall not apply to workers' compensation and employer's liability insurance and to motor vehicle insurance.

Section 3. Paragraph (c) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The plan of operation of the corporation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which forms must be approved by the office prior to use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which coverage is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property

insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. that contain more restrictive coverage.

2.a. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the quota share primary insurance

agreement, may not be altered by the inability of the other party to the agreement to pay its specified percentage of hurricane losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that neither the authorized insurer nor the corporation may be held responsible beyond its specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation

board, for all eligible risks of the authorized insurer covered under the quota share primary insurance agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under quota share primary insurance agreements, the corporation and the authorized insurer shall maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by Florida Hurricane Catastrophe Fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of quota share agreements, pricing of quota share agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under

the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer shall be voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation shall have the power to borrow funds, by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may, but is not required to, seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2., in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation is authorized

to take all actions needed to facilitate tax-free status for any such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation shall have the authority to pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4.a. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of eight individuals who are residents of this state, from different geographical areas of this state. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance. The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board of governors are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one

member of the board for a 2-year term and one member for a 3-year term. Any board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board of governors in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage. The members of the advisory committee shall consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida

Association of Realtors; and one representative appointed by the Florida Bankers Association. All members must serve for 3-year terms and may serve for consecutive terms. The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to the provisions of s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, with regard to a policyholder of the corporation or a policyholder removed from the corporation

through an assumption agreement until the end of the assumption period, the policyholder remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual

agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, with regard to a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of

the assumption period, the policyholder remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation

policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison shall be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss

payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the high-risk account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant shall be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates therefor.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus shall be available to defray deficits in that account as to future years and shall be used for that purpose prior to assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be

uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

9. Must provide that the corporation shall make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that, if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer that does not provide coverage identical to the coverage provided by the corporation. The notice shall also specify that acceptance of corporation coverage creates a conclusive presumption that the

applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the corporation. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the high-risk account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the high-risk account in 2006 or thereafter may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds pursuant to s. 627.3512, but the regular assessment must be paid in full within 12 months after being levied by the corporation.

A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan shall provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide, by July 1, 2007, a premium payment plan option to its policyholders which allows at a minimum for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built prior to 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

19. As of January 1, 2012, must require that the agent

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obtain from an applicant for coverage from the corporation an acknowledgement signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE STATE LEGISLATURE.

3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant’s signed acknowledgement and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this sub-subparagraph.

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b. The signed acknowledgement form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

Section 4. Section 627.7031, Florida Statutes, is created to read:

627.7031 Residential property insurance option.—

(1) An insurer holding a certificate of authority to write property insurance in this state may offer or renew residential property insurance policies at rates established in accordance with s. 627.062(2)(l), subject to all of the requirements and prohibitions of this section.

(2) An insurer offering or renewing policies at rates established in accordance with s. 627.062(2)(l) may not purchase coverage from the Florida Hurricane Catastrophe Fund under the temporary increase in coverage limit option under s. 215.555(17).

(3) Before the effective date of a newly issued policy at rates established in accordance with s. 627.062(2)(l) or before the effective date of a renewal policy at rates established in accordance with s. 627.062(2)(l), the applicant or insured must be given the following notice, printed in at least 12-point boldfaced type:

THE RATE FOR THIS POLICY IS NOT SUBJECT TO FULL RATE REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER THAN RATES APPROVED BY THAT OFFICE. A RESIDENTIAL PROPERTY POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE AVAILABLE

FROM THIS INSURER, ANOTHER INSURER, OR CITIZENS PROPERTY INSURANCE CORPORATION. PLEASE DISCUSS YOUR POLICY OPTIONS WITH AN INSURANCE AGENT WHO CAN PROVIDE A CITIZENS QUOTE. YOU MAY WISH TO VIEW THE OFFICE OF INSURANCE REGULATION'S WEBSITE AT WWW.SHOPANDCOMPARERATES.COM FOR MORE INFORMATION ABOUT CHOICES AVAILABLE TO YOU.

For policies renewed at a rate established in accordance with s. 627.062(2)(l), the notice must be furnished in writing at the same time as the renewal notice on a document separate from the renewal notice, but may be included within the same mailing as the renewal notice.

(4) Before the effective date of a newly issued policy at rates established in accordance with s. 627.062(2)(l) or before the effective date of the first renewal at rates established in accordance with s. 627.062(2)(l) of a policy originally issued before the effective date of this section, the applicant or insured must:

(a) Be provided or offered, for comparison purposes, an estimate of the premium for a policy from Citizens Property Insurance Corporation reflecting substantially similar coverages, limits, and deductibles to the extent available.

(b) Provide the insurer or agent with a signed copy of the following acknowledgment form, which must be retained by the insurer or agent for at least 3 years. If the acknowledgment form is signed by the insured or if the insured remits payment in the amount of the rate established in accordance with s. 627.062(2)(l) after being mailed, otherwise provided, or offered

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the comparison specified in paragraph (a), an insurer renewing a policy at such rate shall be deemed to comply with this section, and it is presumed that the insured has been informed and understands the information contained in the comparison and acknowledgment forms:

ACKNOWLEDGMENT:

1. I HAVE REVIEWED THE REQUIRED DISCLOSURES AND THE REQUIRED PREMIUM COMPARISON.

2. I UNDERSTAND THAT THE RATE FOR THIS RESIDENTIAL PROPERTY INSURANCE POLICY IS NOT SUBJECT TO FULL RATE REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER THAN RATES APPROVED BY THAT OFFICE.

3. I UNDERSTAND THAT A RESIDENTIAL PROPERTY INSURANCE POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE AVAILABLE FROM CITIZENS PROPERTY INSURANCE CORPORATION.

4. I UNDERSTAND THAT THE FLORIDA OFFICE OF INSURANCE REGULATION'S WEBSITE WWW.SHOPANDCOMPARERATES.COM CONTAINS RESIDENTIAL PROPERTY INSURANCE RATE COMPARISON INFORMATION.

(5) The following types of residential property insurance policies are not eligible for rates established in accordance with s. 627.062(2)(l) and are not subject to the other provisions of this section:

(a) Residential property insurance policies that exclude coverage for the perils of windstorm or hurricane.

(b) Residential property insurance policies subject to a consent decree, agreement, understanding, or other arrangement between the insurer and the office relating to rates or premiums for policies removed from Citizens Property Insurance Corporation.

Section 5. Effective January 1, 2015, section 627.7031, Florida Statutes, as created by this act, is amended to read:

627.7031 Residential property insurance option.—

(1) An insurer holding a certificate of authority to write property insurance in this state may offer or renew residential property insurance policies at rates established in accordance with s. 627.062(2)(l), subject to all of the requirements and prohibitions of this section.

(2) An insurer may offer or renew policies at rates established in accordance with s. 627.062(2)(l) only if the insurer has in place a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum loss. The insurer shall determine its probable maximum loss using one or more models that meet the standards of the Florida Commission on Hurricane Loss Projection Methodology.

(3) ~~(2)~~ An insurer offering or renewing policies at rates established in accordance with s. 627.062(2)(l) may not purchase coverage from the Florida Hurricane Catastrophe Fund under the temporary increase in coverage limit option under s. 215.555(17).

(4) ~~(3)~~ (a) Before the effective date of a newly issued policy at rates established in accordance with s. 627.062(2)(l) or before the effective date of a renewal policy at rates

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established in accordance with s. 627.062(2)(l), the applicant or insured must be given the following notice, printed in at least 12-point boldfaced type:

THE RATE FOR THIS POLICY IS NOT SUBJECT TO FULL RATE REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER THAN RATES APPROVED BY THAT OFFICE. A RESIDENTIAL PROPERTY POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE AVAILABLE FROM THIS INSURER, ANOTHER INSURER, OR CITIZENS PROPERTY INSURANCE CORPORATION. PLEASE DISCUSS YOUR POLICY OPTIONS WITH AN INSURANCE AGENT WHO CAN PROVIDE A CITIZENS QUOTE. YOU MAY WISH TO VIEW THE OFFICE OF INSURANCE REGULATION'S WEBSITE AT WWW.SHOPANDCOMPARERATES.COM FOR MORE INFORMATION ABOUT CHOICES AVAILABLE TO YOU.

(b) For policies renewed at a rate established in accordance with s. 627.062(2)(l), the notice described in paragraph (a) must be furnished in writing at the same time as the renewal notice on a document separate from the renewal notice, but may be contained within the same mailing as the renewal notice.

(5) ~~(4)~~ Before the effective date of a newly issued policy at rates established in accordance with s. 627.062(2)(l) or before the effective date of the first renewal at rates established in accordance with s. 627.062(2)(l) of a policy originally issued before the effective date of this section, the applicant or insured must:

(a) Be provided or offered, for comparison purposes, an estimate of the premium for a policy from Citizens Property Insurance Corporation reflecting substantially similar coverages, limits, and deductibles to the extent available.

(b) Provide the insurer or agent with a signed copy of the following acknowledgment form, which must be retained by the insurer or agent for at least 3 years. If the acknowledgment form is signed by the insured or if the insured remits payment in the amount of the rate established in accordance with s. 627.062(2)(l) after being mailed, otherwise provided, or offered the comparison specified in paragraph (a), an insurer renewing a policy at such rate shall be deemed to comply with this section, and it is presumed that the insured has been informed and understands the information contained in the comparison and acknowledgment forms:

ACKNOWLEDGMENT:

1. I HAVE REVIEWED THE REQUIRED DISCLOSURES AND THE REQUIRED PREMIUM COMPARISON.

2. I UNDERSTAND THAT THE RATE FOR THIS RESIDENTIAL PROPERTY INSURANCE POLICY IS NOT SUBJECT TO FULL RATE REGULATION BY THE FLORIDA OFFICE OF INSURANCE REGULATION AND MAY BE HIGHER THAN RATES APPROVED BY THAT OFFICE.

3. I UNDERSTAND THAT A RESIDENTIAL PROPERTY INSURANCE POLICY SUBJECT TO FULL RATE REGULATION REQUIREMENTS MAY BE AVAILABLE FROM CITIZENS PROPERTY INSURANCE CORPORATION.

4. I UNDERSTAND THAT THE FLORIDA OFFICE OF

INSURANCE REGULATION'S WEBSITE
WWW.SHOPANDCOMPARERATES.COM CONTAINS RESIDENTIAL
PROPERTY INSURANCE RATE COMPARISON INFORMATION.

(6) ~~(5)~~ The following types of residential property insurance policies are not eligible for rates established in accordance with s. 627.062(2)(l) and are not subject to the other provisions of this section:

(a) Residential property insurance policies that exclude coverage for the perils of windstorm or hurricane.

(b) Residential property insurance policies subject to a consent decree, agreement, understanding, or other arrangement between the insurer and the office relating to rates or premiums for policies removed from Citizens Property Insurance Corporation.

Section 6. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

========== 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 residential property insurance; amending s. 627.062, F.S.; revising costs to be included in a rate filing; revising the overall premium increase for a rate filing; revising the information that must be included in a rate filing relating to reinsurance; deleting a provision

prohibiting an insurer from implementing a rate increase within 6 months before it makes certain rate filings; deleting a provision prohibiting an insurer from filing for a rate increase within 6 months after it makes certain rate filings; authorizing an insurer to use a rate for residential property insurance that differs from its otherwise filed rate after a specified date under certain circumstances; requiring such rates to be filed with the Office of Insurance Regulation; specifying the maximum difference between rates; limiting the percentage rate increase as to any individual policyholder; preserving the authority of the office to disapprove a rate for inadequacy or discrimination; providing a future revision that requires the inclusion of a statement in certain rate filings relating to the insurer's current or future ability to cover a specified probable maximum loss, requires certification by an insurer relating to the insurer's ability to actually cover a specified probable maximum loss, voids certain rates if an insurer fails to maintain sufficient funds or coverages to cover a specified probable maximum loss, and requires refunds and credits to insureds if an insurer fails to maintain sufficient funds or coverages to cover a specified probable maximum loss; amending s. 627.351, F.S.; requiring insurance agents to obtain a signed acknowledgment from an applicant for coverage and certain policyholders relating to surcharges and assessments potentially being imposed

under a Citizens Property Insurance Corporation policy; requiring Citizens Property Insurance Corporation to maintain signed acknowledgments; specifying that a signed acknowledgment creates an evidentiary presumption relating to an insured's liability for surcharges and assessments; creating s. 627.7031, F.S.; specifying circumstances under which an insurer may offer or renew residential property insurance policies subject to the amendments to s. 627.062, F.S., contained in this act; prohibiting such insurers from procuring coverage under the temporary increase in coverage limits option; requiring specific notices to applicant or insured; requiring Citizens Property Insurance Corporation premium estimates and signed acknowledgments; specifying ineligible types of policies; providing a future revision requiring an insurer to have certain resources to cover a specified probable maximum loss in order to offer or renew policies at certain rates; providing effective dates.

781972

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/18/2011	.	
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The Committee on Budget (Montford) recommended the following:

Senate Amendment to Amendment (466740)

Delete lines 73 - 77
and insert:
a 10 percent statewide average rate increase over the most recently filed and approved rate. A rate filing under this paragraph submitted in any year after the implementation of such initial rates may not provide rates that represent more than a 10 percent statewide average rate increase in a year over the

Delete lines 111 - 115
and insert:
10 percent statewide average rate increase over the most recently filed and approved rate. A rate filing under this

781972

paragraph submitted in any year after the implementation of such initial rates may not provide rates that represent more than a 10 percent statewide average rate increase in a year over the

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 Budget Committee

BILL:	SB 1330
INTRODUCER:	Senator Hays
SUBJECT:	Residential Property Insurance
DATE:	April 11, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Favorable**
2.	Betta	Meyer, C.	BC	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill authorizes insurers to use an alternative rate for residential property insurance from the rate approved by the Office of Insurance Regulation (OIR). The alternative rate may not be more than 15 percent above the statewide average rate of the company's most recently approved standard rate filing. Rate increases for individual policyholders cannot exceed double the proposed alternative rate. The OIR may deny the alternative rate if it is inadequate or it proposes a higher premium based on the policyholder's race, color, creed, marital status, sex, or national origin. The bill places requirements on insurers seeking to use an alternate rate. The insurer may not purchase Temporary Increase in Coverage Limits (TICL) coverage from the Florida Hurricane Catastrophe Fund (Cat Fund). Effective January 1, 2015, insurers must have the ability to cover its 100-year probable maximum loss (PML) due to a hurricane.

The insurance agent must obtain a signed form acknowledging that the applicant for Citizens Property Insurance Corporation (Citizens) coverage or current Citizens policyholder understands the potential liability for surcharges and assessments of Citizens policyholders. The agent must obtain the signed acknowledgment from all Citizens applicants and all Citizens policyholders prior to the first renewal of a Citizens policy that occurs after the effective date of the bill.

This bill substantially amends sections 627.062 and 627.351, Florida Statutes.

The bill creates section 627.7031, Florida Statutes.

II. Present Situation:

"Property insurance"[1] includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows:

- *Personal lines residential coverage*: homeowners', mobile home owners', dwelling, tenants', condominium unit owners', cooperative unit owner's and similar policies.
- *Commercial lines residential coverage*: coverage provided by a condominium association, cooperative association, apartment building and similar policies.
- *Commercial nonresidential coverage*: coverage provided by commercial business policies.

Generally, residential property insurance covers a policyholder's residence, providing reimbursement due to damages sustained by the residence, including windstorm damage. Section 627.4025, F.S., defines "residential coverage" as personal lines residential coverage and commercial lines residential coverage.

Rate Regulation for Property, Casualty, and Surety Insurance

The primary purpose of Part I of ch. 627, F.S., known as the Rating Law, is to ensure that property, casualty, and surety insurance rates are not excessive, inadequate, or unfairly discriminatory and that these standards apply to every property insurance rate.

Section 627.0645, F.S., requires every property insurance company to make a rate filing, which contains the insurer's proposed rates, with the office each year. The office reviews the rate filing and either approves or disapproves the proposed rates. If an insurer does not want to change its rates one year, instead of a rate filing the insurer may file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate. In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, when applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.

[1] Section 624.604, F.S., defines property insurance as insurance on real or personal property of every kind and interest, whether on land, water, or in the air, against loss or damage for any and all hazards and against loss or damage.

- Other relevant factors impacting frequency and severity of claims or expenses.

Excess Rates

Section 627.171, F.S., permits an insurer to use a rate in excess of the insurer's filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies written or renewed in each calendar year.

Citizens Property Insurance Corporation (Citizens or corporation)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[2] It is not a private insurance company.[3] Citizens' book of business is divided into three separate accounts:[4]

- **Personal Lines Account (PLA)** – Multiperil Policies[5]
  Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies covering damage to property from windstorm and from other perils.
- **Commercial Lines Account (CLA)** – Multiperil Policies
  Consists of condominium association, apartment building, and homeowners' association policies covering damage to property from windstorm and from other perils.
- **High-Risk Account (HRA)** – Wind-only[6] and Multiperil Policies
  Consists of personal lines wind-only policies, commercial residential wind-only policies, and commercial non-residential wind-only policies issued in limited eligible coastal areas which cover damage to property from windstorm only. Also consists of personal and commercial residential multiperil policies in specified coastal areas (wind-only zones) issued since 2007 which cover damage to property from windstorm and from other perils.

Each Citizens' account is a separate statutory account and, therefore, has separate calculations of surplus and deficits. By statute, assets of each account may not be comingled or used to fund losses in another account.[7]

In the event Citizens incurs a deficit (its obligations to pay claims exceed its capital plus reinsurance recoveries) it may levy assessments on most of Florida's property and casualty

[2] Voluntary admitted market refers to insurers licensed to transact insurance in Florida.
[3] s. 627.351(6)(a)1., F.S.
[4] s. 627.351(6)(b)2., F.S.
[5] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.
[6] A wind-only policy provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.
[7] s. 627.351(6)(b)2.b., F.S.

insurance policyholders in a specific sequence set by statute.[8] The three Citizens' accounts calculate deficits and resulting assessment needs independently.

Citizens Policyholder Surcharges[9]

If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account for a maximum total of 45 percent. This surcharge is collected over 12 months on all Citizens' policies and collected upon issuance and renewal.

Regular Assessments[10]

Upon the exhaustion of the Citizens policyholder surcharge for a particular account, Citizens may levy a regular assessment of up to 6 percent of premium or 6 percent of the deficit per account, for a maximum total of 18 percent. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.[11] Property and casualty insurers with policies subject to the regular assessment provide the assessment to Citizens up front and subsequently recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Citizens is usually able to collect regular assessment funds within 30 days after levy.

Emergency Assessments[12]

Upon the exhaustion of the Citizens' policyholder surcharge and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent. This assessment can be collected for as many years as is necessary to rectify a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.[13] Initially, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied, but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Conclusive Presumptions

A statutory presumption is conclusive if it prevents a party from proving or disproving the presumed fact. Conclusive presumptions can raise constitutional due process concerns but are permissible in some circumstances. The constitutionality of a conclusive presumption under the due process clause is measured by determining (1) whether the concern of the Legislature was

[8] s. 627.351(6)(b)3.a.,d., and i ., F.S.
[9] s. 627.351(6)(b)3.i., F.S.
[10] s. 627.351(6)(b)3.a. and b., F.S.
[11] The assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.
[12] s. 627.351(6)(b)3.d., F.S.
[13] This assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. See s. 627.351(6)(b)3.f., F.S.

reasonably aroused by the possibility of an abuse which it legitimately desired to avoid; (2) whether there was a reasonable basis for a conclusion that the statute would protect against its occurrence; and (3) whether the expense and other difficulties of individual determinations justify the inherent imprecision of a conclusive presumption.[14] Florida insurance statutes contain conclusive presumptions related to selection or rejection of homeowner's law and ordinance coverage,[15] a motor vehicle insurance policyholder's election to purchase uninsured motorist coverage at lower limits than the insured's bodily injury coverage,[16]the assessment liability of the policyholders of a worker's compensation self insurance fund,[17] informed consent of HIV and AIDS testing for insurance purposes,[18] and the possibility that a Citizens Property Insurance Corporation policy could be replaced by a policy from an authorized insurer that does not provide identical coverage.[19]

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 627.062(2)(l), F.S., to authorize insurers to sell residential property insurance policies at an alternative rate that is different than the rate approved by the OIR pursuant to the requirements of the Rating Law. The alternative rate is subject to the following requirements:

- *A 15 Percent Maximum Statewide Rate Increase* – The alternative rate may create a statewide average rate increase of up to 15 percent above the company's most recently approved standard rate filing. Subsequent expedited rate filings may create a statewide average rate increase of up to 15 percent above the previous year's approved expedited rate filing. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase.
- *A Maximum Individual Policyholder Rate Increase of 2 Times the Statewide Increase* – The alternative rate may create a percentage rate increase for an individual policyholder of up to 2 times the statewide average rate increase provided for in the filing. For example, if the rate filing proposes a statewide 14 percent rate increase, the rate increase applicable to an individual policyholder cannot exceed 28 percent.

The alternative rate filing process does not alter the insurer's responsibility to file all materials that are required under the rating law and administrative rule. However, the rate filing will be subject to only a limited review by the OIR. Under current law, a rate shall not be excessive, inadequate, or unfairly discriminatory. The bill instead utilizes the following rate standard:

- *Excessive Rates* – The authorization of a 15 percent rate increase implicitly prevents the office from denying the rate as excessive unless the proposed alternative rate causes more than a 15 percent statewide rate increase or an increase to an individual policyholder that is more than double the statewide average increase.

[14] Hall v. Recchi America, Inc., 671 So.2d 197, 200 (Fla 1st DCA 1996)
[15] Section 627.7011(2), F.S.
[16] Section 627.727(1), F.S.
[17] Section 440.585, F.S.
[18] Section 627.429, F.S.
[19] Section 627.351(6)(c)11., F.S.

- *Inadequate Rates* – The OIR may disapprove the alternative rate if it is inadequate. The office's authority to deny an inadequate rate is not altered in the alternative rate review process.
- *Unfairly Discriminatory Rates* – The alternative rate review process limits the prohibition against "unfairly discriminatory" rates in s. 627.062(2)(b), F.S. Under current law, a determination that a rate is "unfairly discriminatory" is based on an actuarial determination that the rate does not bear a reasonable relationship to the expected loss and expense experience of a risk or group of risks or fails to account for a risk management program. Under the alternative rate-filing process, the examination of whether a rate is "unfairly discriminatory" is altered and uses a different standard. The alternative rate is unfairly discriminatory and must be disapproved if it proposes a higher premium based on the policyholder's race, color, creed, marital status, sex, or national origin. The OIR may direct the insurer to submit a new rate filing that does use the prohibited factor.

Other statutory provisions related to the alternative rate filing process include:

- *Separate Rate Filing* – The rate must be filed with the OIR as a separate filing.
- *Excess Rate Calculation Inapplicable* – Policies which are subject to this rate provision are not counted in the calculation of excess rates under s. 627.171, F.S.
- *Insurer Must Cover the 100-Year PML (Effective Jan. 1, 2015)* – Effective January 1, 2015, the insurer must include with the expedited filing a statement that the insurer has (or intends to have) the ability to cover its 100-year PML through a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents. The insurer must subsequently provide a certification to the OIR by July 31st that it can cover the 100-year PML. If the insurer fails to maintain resources sufficient to cover the 100-year PML, the expedited rate filing is void and shall be replaced by the insurer's rates that were effective when the expedited rate was filed. The insurer must give the policyholder a refund or premium discount in the amount of excess premium collected to pursuant to the voided rate.

Section 3 amends s. 627.736(6)(c), F.S., relating to statutory standards for the Citizen's Property Insurance Corporation plan of operation, to require that the insurance agent obtain a signed form acknowledging that the applicant for Citizens coverage or current Citizens policyholder understands the potential liability for surcharges and assessments of Citizens policyholders. The agent must obtain the signed acknowledgment from all Citizens applicants and all Citizens policyholders prior to the first renewal of a Citizens policy that occurs after the effective date of the bill. The acknowledgment form states that the policyholder understands that:

- Citizens policyholders are subject to Citizens policyholder surcharges if the corporation sustains a deficit.
- The policyholder surcharges could be as high as 15 percent of premium in each of three Citizens accounts, or a different amount established by the Legislature.
- The policyholder may be subject to emergency assessments to the same extent as policyholders of other insurance companies.

Citizens must maintain a signed copy of the acknowledgement form. A signed acknowledgment form creates a conclusive presumption the policyholder understood and accepted the surcharge and assessment liability placed on Citizens policyholders.

Sections 4 and 5 create s. 627.7031, F.S., to provide requirements for using the expedited residential property insurance rate filing option. Insurers may write residential property insurance policies at rates approved pursuant to the expedited rate filing process, subject to the following requirements:

- *No Cat Fund TICL Coverage* – The insurer may not purchase TICL coverage from the Cat Fund.
- *Disclosure That the Policy is not Subject to Full Rate Regulation* – Insurers must provide new applicants and current insureds prior to policy renewal with written notice that: (1) the rate for the policy is not subject to full rate regulation by the OIR and may be higher than rates approved by the office; (2) Coverage subject to full rate regulation may be otherwise available from private market insurers or Citizens; (3) the insured should discuss policy options with an agent who can provide a Citizens quote; and (4) the OIR's website at www.shopandcomparerates.com has more information about insurance choices that are available.
- *Provide Applicants and Current Policyholders with a Citizens Premium Estimate* – An applicant or current policyholder must be provided a Citizens premium estimate for similar coverage prior to the effective date of the new policy or, if the policy existed prior to this bill becoming law, prior to the first renewal that uses a rate approved via the expedited rate filing process.
- *Written Acknowledgement of Disclosures* – The applicant or insured must sign a written acknowledgment that: (1) The insured has reviewed the required disclosures and premium comparison; (2) The insured understands that the rate is not subject to full rate regulation by the OIR and may be higher than rates approved by the office; (3) The insured understands that residential property insurance policies subject to full rate regulation may be available through Citizens; and (4) The insured understands that the OIR website www.shopandcomparerates.com contains residential property insurance rate comparison information.
- *The Insurance Policy Cannot Exclude Hurricane Coverage* – Policies that exclude hurricane or windstorm coverage cannot charge rates approved via the expedited rate filing process.
- *Citizens Take-Out Policies Not Eligible if Subject to Rate Arrangement* – A rate approved via the expedited rate filing process may not be applied to policies removed from Citizens by a private carrier if the policy is subject to a consent decree, agreement, understanding, or other arrangement between the insurer and the OIR relating to rates or policy premiums.
- *Insurer Must Be Able to Cover the 100-Year PML (Effective Jan. 1, 2015)* – Effective January 1, 2015, in order to sell policies using rates approved by the expedited rate filing process, the insurer must have the ability to cover its 100-year PML through a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents. The probable maximum loss must be determined using a hurricane model approved by the Florida Commission on Hurricane Loss Projection Methodology.

Section 6 provides that the bill is effective upon becoming a law, except as otherwise provided. Sections 2 and 5 of the bill are effective January 1, 2015.

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:

Property insurance policies with rates different than an insurer's filed rates are likely to have higher premiums than the insurer's previously filed rate. Some homeowners may be willing to pay the higher premium in exchange for obtaining a policy from a particular insurer. However, some insurers may actually choose to implement an alternative rate that is lower than its actuarially indicated rate in order to take advantage of the expedited rate review process created by the bill. The bill establishes maximum limits on the amount an insurer may increase its rates over a period of years. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase.

The number of policies in Citizens may increase as a result of this bill. If property insurance premiums increase and if such increases make the premiums for a policy higher than a comparable policy from Citizens, then some policyholders may opt to cancel their existing property policy and obtain a policy from Citizens due to the premium difference in the policies. The actual number of policies that may move from the voluntary market to Citizens cannot be calculated.

The bill may incentivize insurance companies in the private market to write multi-peril policies[20] currently written by Citizens. If insurers determine it is advantageous for their

[20] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

company to write these policies at rates different than their filed rates, then these companies will write multi-peril policies currently written by Citizens. However, the policyholder would have to choose to move from Citizens to the private market insurer.

The bill may also incentivize insurance companies in the private market to assume the wind coverage on wind-only policies[21] currently written by Citizens. If insurers charge rates different than their filed rates and determine it is advantageous for the company to write the wind portion of policies currently in Citizens as wind-only policies, then some of the wind-only policies could be written by the private market. The policyholder would have to choose to move from Citizens to the private market insurer.

C. Government Sector Impact:

The Office of Insurance Regulation indicates that implementation of the provisions of this bill will not result in a fiscal impact to the office.

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.

[21] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability is available in a separate policy.

353118

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete lines 227 - 230

and insert:

4. Any major structure, as defined in s. 161.54(6)(a), for which a permit for new construction or substantial improvement, as defined in s. 161.54, is applied for, on or after June 1, 2012, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053, or within the Coastal Barrier Resources System, 16 U.S.C. ss. 3501-3510.


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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete lines 583 - 584.

686040

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete line 741

and insert:

July 1, 2012. Upon receiving the report, the board shall

744572

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete line 826

and insert:

subparagraph 9. ~~8.~~ Notwithstanding these limitations, but still subject to s. 627.3517, an

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete line 889

and insert:

Notwithstanding these limitations, but still subject to s. 627.3517, an application for coverage

706004

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete lines 1431 - 1492
and insert:
d. Notwithstanding any other provision of law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate in the program in the same manner and on the same terms as an authorized insurer, except as provided under this subparagraph.
(I) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation,

706004

take-out, or keep-out plan and then comply with all of the corporation's requirements for such plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(II) In considering a surplus lines insurer's request for approval for its plan, the office must determine that the surplus lines insurer meets the following requirements:

(A) Maintains surplus of $50 million on a company or pooled basis;

(B) Maintains an A.M. Best Financial Strength Rating of "A-" or better;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season, and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association, and an outline of any substantial differences in coverage between the existing policy and the policy being offered to the insured; and

(E) Provides similar policy coverage.

This sub-sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), and (e).


706004

(III) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation must remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Department of Financial Services, Bureau of Collateral Securities. The surplus lines insurer shall submit to the office with the initial deposit an accounting of the policies assumed and the amount of unearned premium for such policies along with a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer shall make a filing within 10 days following each calendar quarter, attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation, and shall submit additional funds if the special deposit is insufficient to cover the unearned premium on assumed policies, or may receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court with jurisdiction over the insolvency.

(IV) Surplus lines brokers representing a surplus lines

706004

insurer on a take-out program must obtain confirmation, in written or e-mail form, from each producing agent in advance stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an admitted carrier, the offer of coverage from the admitted carrier shall be given priority by the corporation.

4. The plan must ~~shall~~ provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. If ~~In the event~~ an assessment against an assessable insurer is deferred in whole or in part, the amount ~~by which such assessment is~~ deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. ~~Effective July 1, 2007,~~ In order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer

706004

and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.


110816

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment to Amendment (706004)

Delete line 58
and insert:
or shall receive a return of funds within 60 days if the special

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Joyner) recommended the following:

Senate Amendment

Delete line 1519

and insert:

corporation.~~;~~ In any such action, the corporation is ~~shall~~

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 Budget Committee

BILL:	CS/SB 1714
INTRODUCER:	Banking and Insurance Committee and Senator Hays
SUBJECT:	Citizens Property Insurance Corporation
DATE:	April 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Frederick	Meyer, C.	BC	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill makes the following changes relating to Citizens Property Insurance Corporation (Citizens), the not-for-profit, tax-exempt governmental entity that provides property insurance coverage to those unable to find coverage in the voluntary admitted market in Florida.

Eligibility Requirements

- Applicants for Citizens personal lines residential (homeowners) coverage or commercial lines residential coverage are ineligible to obtain such coverage if the premium for coverage from an authorized insurer is within 25 percent of the Citizens premium. As of January 1, 2015, such applicants are ineligible for Citizens coverage upon receiving an offer of private market coverage at any approved rate.
- As of 2012, all structures with a replacement value of $1 million or more are ineligible for Citizens.
- As of 2014, residential structures in the Personal Lines Account with a replacement value of $750,000 or more are ineligible for coverage.
- As of 2016, residential structures in the Personal Lines Account with a replacement value of $500,000 or more are ineligible for coverage.

- A Citizens applicant or policyholder must maintain a separate flood insurance policy that has coverage limits for the building and contents equal to those provided under the Corporations' policy, subject to the maximum limits available under the National Flood Insurance Program if the property is located in a Special Flood Hazard Area as defined by the National Flood Insurance Program (NFIP).
- Citizens must cease issuing new commercial nonresidential insurance policies.
- Structures that obtain a construction permit on or after June 1, 2011, that are located seaward of the coastal construction control line shall be ineligible for Citizens coverage.

Citizens Rates

- Citizens must implement a rate increase of up to 20 percent by territory and 25 percent for any single policy each year for each residential line of business it writes. The mandatory rate increase expires January 1, 2015. The limitation on rate increases does not apply to sinkhole coverage or costs incurred through the purchase of private reinsurance.
- Citizens must develop its rates using an industry expense equalization factor.
- Citizens is prohibited from reducing rates.
- Citizens may impose a premium surcharge on residential structures located within the wind-borne debris region that do not have opening protections.

Citizens Coverage

- Citizens may not offer or renew HO-3 homeowners policies as of December 31, 2012. Instead, Citizens must offer a policy similar to what is available in the private insurance market under an HO-3 (homeowners), HO-4 (renters), or HO-6 (condominium) policy.
- Citizens must offer sinkhole coverage. Policies covering sinkhole that are effective on or after February 1, 2012, will not provide coverage to appurtenant structures.
- Payments for sinkhole loss tendered by Citizens must be dedicated entirely to repairing the structure or remediating of the land.
- Citizens policies issued or renewed on or after February 1, 2012, will not cover screened enclosures.
- Citizens policies issued or renewed on or after February 1, 2013, will not cover detached structures.
- Citizens policies issued or renewed on or after February 1, 2013, will not cover specified items of personal property.

Citizens Surcharges and Assessments

- Citizens must levy the full amount of the Citizens policyholder surcharge before levying a regular assessment.
- Citizens policyholders must pay emergency assessments that are 1.5 times the emergency assessment levied on insureds in the private insurance market.
- As of January 1, 2012, an agent seeking to place coverage with Citizens must obtain the applicant's signature on a written disclosure of liability to surcharges and assessments.

Public Adjusters

- Prohibits policyholders from engaging the services of a public adjuster with respect to any claim incurred under a policy issues by Citizens until the policyholder has received an offer on the claim from Citizens.
- Limits public adjuster compensation on Citizens claims to a reasonably hourly rate, not to exceed 5 percent of the additional amount secured by the policyholder in excess of the Citizens offer.

Other Provisions

- Clarifies existing law that Citizens is not subject to bad faith liability.
- Exempts Citizens from liability to pay attorney's fees pursuant to s. 627.428, F.S.
- Deletes requirements that Citizens reduce the boundaries of the high-risk area.
- Discontinues the statutory authorization for insurers to provide multi-policy discounts when a homeowner's policy is insured by Citizens or taken out from Citizens by a different insurer.
- Authorizes eligible surplus lines carriers to take part in any depopulation, take-out, or keep-out program adopted by Citizens.
- Citizens must enact recommendations by an independent third-party consultant on the relative costs and benefits of outsourcing Citizens policy issuance and service functions to private servicing carriers or similar entities.
- Repeals the Citizens quota-share insurance program.
- Provides conflict of interest procedures for Citizens board members.

The bill is effective upon becoming a law.

This bill substantially amends the following sections of the Florida Statutes: 627.0655, 627.351(6), and 627.3511(4).

II. Present Situation:

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[1] It is a governmental entity and not a private insurance company.[2] Created in 2002 by the Florida Legislature, Citizens combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The merger allowed Citizens to become exempt from federal income taxes, resulting in millions of dollars in annual savings, as well as additional administrative and economic efficiencies.

[1] Admitted market means insurance companies licensed to transact insurance in Florida.
[2] Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

Citizens operates under the direction of an 8-member Board of Governors[3] and offers three types of property and casualty insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.[4] Assets may not be commingled or used to fund losses in another account.[5] In its most recent monthly report,[6] Citizens reported the following data as of February 28, 2011:

- Personal Lines Account (PLA): Statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
  - 854,701 Policies in Force
  - $194,695,466,632 Total Exposure
  - $1,330,029,554 In Force Premium
- Commercial Lines Account (CLA): Statewide account offering multiperil policies covering commercial residential-condominium associations, apartment buildings and homeowners associations; and commercial non-residential policies.
  - 8,377 Policies in Force
  - $42,309,533,919 Total Exposure
  - $213,883,613 In Force Premium
- High-Risk Account (HRA): Coastal area account offering personal residential wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas. In addition, in August of 2007, Citizens began offering personal and commercial residential multiperil policies in the HRA.
  - 445,779 Policies in Force
  - $229,169,417,342 Total Exposure
  - $1,141,058,109 In Force Premium
- Total All Accounts Combined:
  - 1,308,857 Policies in Force
  - $466,174,417,893 Total Exposure
  - $2,684,971,276 In Force Premium

Citizens financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, its policyholder surcharges, and regular and emergency assessments. With the estimated income from 2011, Citizens will have an accumulated surplus of approximately $5.4 billion. Citizens has approximately $6.3 billion in mandatory layer reinsurance from the FHCF. Citizens has additional pre-event liquidity of $2.9 billion. Aggregately, for 2011 Citizens has a claims paying capacity of $14.672 billion.

Citizens' probable maximum loss (PML) from a 1-in-100 year event is $22.2 billion. In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceed its capital plus reinsurance

[3] The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives appoint two members each.
[4] The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.
[5] Section 627.351(6)(b)2b., F.S
[6] *See* https://www.citizensfla.com/about/corpfinancials.cfm; last visited March 26, 2011.

recoveries), it may levy regular assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute as follows:[7]

- Require up to a 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.
- If the Citizens' surcharge is insufficient to cure the deficit for any individual account, Citizens can require an assessment against insurers (which may be recouped from their policyholders through a rate filing process) of up to 6 percent of premium for most lines of property and casualty insurance, or 6 percent of the deficit, whichever is greater. This assessment may also be levied per account for a maximum total assessment of 18 percent; however, this assessment is not levied against Citizens' policyholders.
- Require any remaining deficit to be funded by multi-year emergency assessments on policyholders on most types of property and casualty insurance, including Citizens' policies, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater. This assessment may be levied per account for a total maximum assessment of 30 percent per policy.

Citizens Rates

Until 2010, Citizens rates had been frozen by statute[8] at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound.[9] Citizens must implement an annual rate increase which does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Sinkhole Experience

Insurers, including Citizens, offering property insurance to homeowners in Florida have been required to offer coverage for damages resulting from sinkholes since 1981.[10] Under current law, insurers must make available to policyholders, for an appropriate additional premium, sinkhole coverage for losses on any structure, including personal property contents. Sinkhole coverage includes repairing the home, stabilizing the underlying land, and foundation repairs. Property insurers must also provide coverage for catastrophic ground cover collapse.[11] According to a data call issued by the Office of Insurance Regulation (OIR) in 2010, 66 percent of Florida's sinkhole claims were filed in three counties, Hernando, Pasco and Hillsborough.

[7] Section 627.351(6)(b)3.a.,d., and i., F.S.
[8] Section 627.351(6)(n)4., F.S.
[9] Ch. 2009-87; s.10, L.O.F.
[10] Ch. 81-280, L.O.F.
[11] Catastrophic ground cover collapse refers to damage from an abrupt ground collapse for which the property is condemned.

The largest writer of sinkhole coverage in Florida is Citizens, and its market share of the sinkhole coverage is even higher in the three counties of greatest activity (Hernando, Pasco and Hillsborough). The rate that Citizens is authorized to charge for sinkhole coverage is far below that which would be necessary to cover the sinkhole losses it incurs, particularly in Hernando, Pasco and Hillsborough. Some examples of Citizens' sinkhole rate deficiency are as follows: In 2009, sinkhole losses[12] from Hernando were almost seven times the premium that was collected to cover those losses. The total premium in Hernando to cover sinkhole losses was $5.9 million, but the losses in Hernando were $40.5 million.

In fact, sinkhole losses from Hernando alone were nearly twice the amount of the entire statewide premium. The total premium collected statewide for the sinkhole endorsement in 2009 was $22.2 million, while in Hernando sinkholes losses were $40.5 million. Pure premium is the term used to describe the amount that all policyholders with the sinkhole endorsement would need to pay to cover the sinkhole losses (with no profit or indirect costs added). The statewide sinkhole pure premium was $295, while the sinkhole premium that Citizens was allowed to collect to cover sinkholes averaged only $73. The pure premium for Hernando sinkhole losses was $5,300, but the average premium was only $775 for this coverage.

The high cost of sinkhole losses is a result the combination of the two primary components of total losses: claims frequency and claims severity. Claims frequency is commonly measured as a percentage: the ratio of the number of claims compared to the number of policyholders in a given period. Citizens' statewide claims frequency more than doubled from two-tenths of a percent in 2005 to almost one-half percent in 2009. In Hernando, Citizens' claims frequency in 2009 was six times what it was in 2005, going from approximately one percent in 2005 to almost seven percent in 2009. This means that for every 100 policyholders purchasing coverage in 2009, seven policyholders filed a claim.

The extraordinary rise in the claims frequency ratio resulted from the fact that the actual number of claims continues to rise, even while the number of policyholders selecting to purchase the coverage is declining. Sinkhole coverage became an optional endorsement in 2007 (although ground cover collapse remains a mandatory coverage), and a significant number of policyholders began to drop the sinkhole coverage. As a result of this substantial reduction in the number of people choosing to pay for sinkhole coverage, the problems of the increasing number of claims is magnified by the fact that there are fewer policyholders (and therefore less total collected premium) over which to spread the increasing losses. Citizens data shows:

- The percent of Citizens' statewide policies with sinkhole coverage fell from 100 percent in 2006 (when it was mandatory) to 61 percent in 2009.
- In Hernando County, the percent of Citizens' policies with sinkhole coverage fell from 100 percent in 2006 to 37 percent in 2009.
- In Pasco County, the percent of Citizens' policies with sinkhole coverage fell from 100 percent in 2006 to 22 percent 2009.

[12] As used here, "losses" refers to indemnity costs for both open and closed claims, plus loss adjustment expenses (LAE). A loss adjustment expense (LAE) is the direct cost associated with investigating, administering, defending, or paying an insurance claim.

Notwithstanding the substantial reduction in the number of policyholders choosing sinkhole coverage, there has still been a rise in the number of sinkhole claims being filed. Citizens' data shows:

- Statewide, the number of sinkhole claims more than doubled between 2005 and 2009, rising from 660 in 2005 to 1404 in 2009.
- In Hernando County, the number of sinkhole claims more than quadrupled, rising from 113 in 2005 to 520 in 2009.

The other primary component driving the sinkhole losses is the average claim severity. The average severity is the average amount of cost that Citizens incurred (indemnity plus LAE) for all claims for which a payment was made. Citizens' average annual claim severity between 2005 and 2009 averaged $130,191, with a range from $91,717 (2009) to $155,286 (2007). In 2005, the average claim severity actually exceeded the average coverage limit for the structure.

Bad Faith Claims

Bad faith liability is premised on the concept that an insurer that handles a claim should act in good faith towards its insured and "has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business."[13] Florida recognizes two bad faith causes of actions against insurers: first party bad faith and third party bad faith. Florida first recognized Third-party bad faith at common law in 1938.[14] Third-party bad faith protects an insured from the insurer failing to settle a claim brought by a third party in good faith and exposing the insured to a judgment in excess of policy limits. Florida courts refused to recognize a first-party bad faith tort until it was established by the Legislature in 1982 with the enactment of section 624.155, Florida Statutes, the Civil Remedy statute.

Section 624.155, Florida Statutes permits any person to bring a civil action against an insurer when the insurer commits certain acts or the insured is damaged by statutory violations[15] of the insurer. Specifically, the insurer may bring the claim when the insurer does not attempt to settle a claim in good faith when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward the insured and with due regard to the interests of the insured. A claim may also be brought if the insurer makes claims payments without identifying the coverage under which the payment is made or attempts to influence settlements under one portion of the insurance policy by refusing to promptly resolve a claim it should settle under another portion of the policy.

The insurer is not liable for bad faith liability until the Plaintiff obtains an adjudication in its favor at trial or on appeal, at which point insurer liability for bad faith, costs and reasonable attorney's fees attaches. The insured must prove that the insured committed bad faith in order to obtain recovery. In order to bring an action under s. 624.155, F.S., the Plaintiff must provide the authorized insurer and the Department of Financial Services 60-days written notice of the violation. The notice must detail the statutory provisions the insurer is alleged to have violated,

[13] *Boston Old Colony Ins. Co. v. Gutierrez*, 386 So.2d 783 (Fla. 1980)
[14] *See* *Auto. Mut. Indem. Co. v. Shaw*, 134 Fla. 815, 184 So. 852 (1938).
[15] Violations giving rise to a statutory bad faith claim are s. 626.9541(1)(i), (o), or (x), F.S.; s. 626.9551, F.S.; s. 626.9705, F.S.; s. 626.9706, F.S.; s. 626.9707, F.S.; or s. 627.7283, F.S.

the facts and circumstances giving rise to the violation, reference to insurance policy language relevant to the violation. No action for bad faith may be brought if the insurer pays the requested damages or corrects the circumstances giving rise to the violation within 60 days.

Citizens Property Insurance Corporation has generally been considered to be immune from statutory bad faith liability based upon its sovereign immunity from suit in s. 627.351(6)(s)1., F.S. The courts have noted that the statute creates exemptions from Citizens' grant of immunity, but that an action for bad faith is not one of the exceptions.[16] However, a recent decision of the First District Court of Appeals refused to reverse a trial court determination that Citizens is subject to bad faith liability based on the exceptions to Citizens' immunity for willful torts and a breach of the insurance contract.[17]

Surplus Lines Insurance Coverage – Background

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR) pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,[18] are broadly regulated by the OIR under the Insurance Code as to reserves, surplus as to policyholders, solvency, rates and forms, market conduct, permissible investments, and affiliate relationships.[19] Authorized insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.[20]

Surplus lines insurers are regulated by the state, but do not have to obtain a COA and are not required to adhere to the other requirements mentioned above. Surplus lines insurance is an alternative type of insurance coverage for consumers to buy property-liability insurance from unauthorized (non-admitted) insurers when consumers are unable to purchase the coverage they need from admitted insurers. Surplus lines insurance is coverage provided by a company that is not licensed in Florida, but is allowed to transact insurance in the state as an "eligible" insurer[21] under the surplus lines law (ss. 626.913-626.937, F.S.). Under this law, insurance may only be purchased from a surplus lines carrier if the necessary amount of coverage cannot be procured after a diligent effort to buy the coverage from authorized insurers.[22] Rates charged by a surplus lines carrier must not be lower than the rate applicable and in use by the majority of the authorized insurers writing similar coverages on similar risks in Florida.[23] Likewise, a surplus

[16] *Citizens Prop. Ins. Co. v. Garfinkel*, 25 So.3d 62 (Fla. 5th DCA 2009).
[17] *Citizens Prop. Ins. Co. v. San Perdido Ass'n, Inc.*, 46 So.3d 1051 (Fla 1st DCA 2010).
[18] An "authorized" or "admitted" insurer is one duly authorized by a COA to transact insurance in this state.
[19] The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[20] For example, Florida licensed direct writers of property and casualty insurance must be members of the Florida Insurance Guaranty Association, which handles the claims of insolvent insurers under part II of ch. 631, F.S., and insurers offering workers' compensation coverage in Florida must be members of the Florida Workers' Compensation Insurance Guaranty Association, which provides payment of covered claims for insurers that are declared insolvent under part V of ch. 631, F.S.
[21] An "eligible surplus lines insurer" as defined in s. 626.914(2), F.S., is an "unauthorized insurer" which has been made eligible by the Office of Insurance Regulation to issue insurance coverage under the surplus lines law.
[22] See s. 626.914(4), F.S. A "diligent effort" is defined as seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage being sought. The rejections must be documented.
[23] Section 626.916(1)(b), F.S.

lines policy contract form must not be more favorable to the insured as to the coverage or rate offered by the majority of authorized carriers.[24]

The surplus lines law contains specific financial and other requirements that unauthorized insurers must comply with in order to become eligible surplus lines insurers and obtain approval by the OIR. For example, a surplus lines insurer must maintain a surplus as to policyholders of not less than $15 million and have been licensed in its state or country of domicile for at least three years.[25]

Historically, surplus lines insurers have never been held subject to Florida's regulation of rates, forms, or other requirements under ch. 627, F.S., as are admitted insurers.[26] This is true of the regulatory treatment of surplus lines insurers in other states across the country. The different regulatory treatment is due to the unique nature of surplus lines insurance because it covers consumer needs arising from emerging technologies, new business practices, or changing legal environments which require a quick response that is often difficult for admitted insurers to provide, according to representatives with the Florida Surplus Lines Office.

III. Effect of Proposed Changes:

This bill amends s. 627.0655, F.S., to eliminate the ability of insurers to offer a multi-line insurance discounts for insurance policies placed with Citizens or a "take out" policy from Citizens that is assumed by a different carrier. The current authority to offer multi-line discounts on Citizens policies and "take out" policies serviced by the same agent will be unavailable for policies issued or renewed after January 1, 2013. The change is intended to create an additional incentive for private market insurers to write property insurance and for agents to attempt to place property insurance with private market carriers.

The bill amends s. 627.351(6), F.S., governing Citizens Property Insurance Corporation, in the following areas.

Revision of Legislative Intent Language

The bill revises Citizens intent language primarily by deleting language that the Legislature intends for Citizens to provide affordable coverage.

Citizens Eligibility – Prohibitions on Higher Value Structures

Citizens will cease writing coverage for:

[24] Section 626.916(1)(c), F.S.
[25] Section 626.918, F.S.
[26] *See Affidavits In Support of Intervenor-Plaintiff Essex Insurance Company's Amended Motion for Summary Judgment* by Steve Parton, Office of Insurance Regulation, General Counsel, and Belinda Miller, Office of Insurance Regulation, Deputy Commissioner for Property and Casualty Insurance, filed in *Howard v. Choice Hotels International, Inc.*, Case No. CA06-680-55 (Fla. 7th Cir. Tr. Ct. 2008).

- Structures with a dwelling replacement cost of $1 million or more or a single condominium unit with a combined dwelling and contents replacement cost of $1 million or more on January 1, 2012.
- Structures in the personal lines account with a dwelling replacement cost of $750,000 or more or a single condominium unit with a combined dwelling and contents replacement cost of $750,000 or more on January 1, 2014.
- Structures in the personal lines account with a dwelling replacement cost of $500,000 or more or a single condominium unit with a combined dwelling and contents replacement cost of $500,000 or more on January 1, 2016.

Essentially, the bill creates a two-tiered prohibition on Citizens coverage. As of 2012, all structures with a replacement value of $1 million or more will be ineligible for Citizens, while residential structures in the Personal Lines Account will have more stringent prohibitions beginning in 2014. A risk that becomes ineligible for Citizens coverage but is insured by a Citizens policy will continue to be insured through the end of the policy term. For instance, if a structure is valued at $1 million and has a Citizens policy that terminates June 1, 2012, will continue to be insured by Citizens for the full term of the policy, but will not be renewed.

Citizens Eligibility – Offers of Coverage from Authorized Private Market Insurers

The bill revises the eligibility criteria for obtaining a Citizens policy for personal lines residential risks and commercial lines residential risks. For personal lines residential policies (homeowners), if the new policy will be effective before January 1, 2015, the applicant is ineligible to obtain such coverage from Citizens if the premium for coverage from an authorized insurer is within 25 percent of the Citizens premium. For example, if a consumer applies for coverage with Citizens and the Citizens premium is $1,000, the policyholder is eligible for Citizens coverage only if the applicant cannot obtain private market insurance for at a premium of $1,250 or less. For new policies effective on January 1, 2015, and thereafter, a risk is ineligible for Citizens coverage if it has an offer of coverage that includes wind coverage from a private market insurer at the insurer's approved rate.

For commercial lines residential policies, if the new policy will be effective before January 1, 2015, the applicant is ineligible to obtain such coverage from Citizens if the premium for coverage from an authorized insurer is within 25 percent of the Citizens premium. A renewal policy is not eligible for citizens if it has a private market offer of coverage, including wind, at the private market insurer's approved rate.

Citizens Eligibility – Offers of Coverage from Surplus Lines Insurers

The bill requires Citizens to issue policies that make a policyholder ineligible for Citizens coverage upon receipt of an offer of coverage from a surplus lines insurer. Under current law, if an authorized private-market insurer offers to cover a risk insured by Citizens at the insurer's approved rates, the risk is not eligible for Citizens except as otherwise provided in the Citizens statute. Under the bill, current Citizens policyholder and new Citizens applicants are ineligible for Citizens coverage upon receipt of an offer of coverage from an authorized insurer that does not exceed the Citizens premium by more than 25 percent.

The bill also authorizes eligible surplus lines carriers to take part in any depopulation, take-out, or keep-out program adopted by Citizens. To qualify for participation, the surplus lines carrier must obtain approval from the OIR for its depopulation, take-out, or keep-out plan and comply with Citizens for all Citizens requirements that are applicable to admitted insurers. The OIR must also determine that the surplus lines insurer is financially viable by verifying it has a surplus of $50 million on a company or pooled basis; maintains surplus, reserves and reinsurance sufficient to cover two 200-year probable maximum hurricane losses in a single hurricane season; and maintains an A.M. Best Financial Strength rating of "A-" or better.

The policy offered by the surplus lines carrier must provide similar coverage to the Citizens policy and outline any substantial differences in coverage between the existing policy and the proposed surplus lines policy. The surplus lines carrier must also notify the policyholder that surplus lines policies are not covered by the Florida Insurance Guaranty Association.

Citizens Eligibility – Requirement to Purchase National Flood Insurance Program Coverage

If property is located in the Special Flood Hazard Area as defined by the National Flood Insurance Program (NFIP), a Citizens applicant or policyholder must maintain a separate flood insurance policy that has coverage limits for the building and contents equal to those provided under the Corporations' policy, subject to the maximum limits available under the National Flood Insurance Program. The requirement does not apply to tenants or condominium unit owners above the ground floor, a Citizens policy that excludes wind and hail coverage, a risk not eligible for flood coverage under the NFIP, or a mobile home located more than 2 miles from open water (ocean, gulf, bay, river, or the intracoastal waterway). The requirement to maintain flood insurance applies to new Citizens policies issued on or after January 1, 2012 and policies renewed on or after January 1, 2013.

Citizens Eligibility – Cessation of New Commercial Nonresidential Policies

Citizens will cease accepting applications and issuing new policies for commercial nonresidential insurance once the bill becomes law. Current commercial nonresidential policies will remain in effect.

Citizens Eligibility – Cessation of Coverage for New Structures within Coastal Construction Control Line

Structures that obtain a construction permit on or after June 1, 2011, that are located seaward of the coastal construction control line shall be ineligible for Citizens coverage.

Citizens Rates

The bill provides a statement of legislative intent that Citizens coverage be actuarially determined and not competitive with rates in the admitted voluntary market. Citizens rates should be those of a residual market mechanism that provides insurance only when it cannot be procured in the voluntary market. A Citizens rate filing made on or after July 1, 2011 must conform to the following requirements:

- *Mandatory Rate Increase* – Citizens must implement a rate increase each year for each residential line of business it writes of up to 20 percent by territory and 25 percent for any single policy. The mandatory rate increase expires January 1, 2015, and does not apply to rates for sinkhole coverage or costs for the purchase of private reinsurance. Under current law, Citizens must implement a yearly rate increase that does not exceed 10 percent for any single policyholder.
- *Annual Rate Filing* – Citizens must file its recommended rates with the Office of Insurance Regulation at least annually.
- *Industry Expense Equalization Factor* – Citizens must develop its rates using an industry expense equalization factor. The factor is designed to include within Citizens' rates standard insurance industry ratemaking expense provisions. The factor must include:
  - a catastrophe risk load;
  - a provision for taxes;
  - a market provision for reinsurance costs; and
  - an industry expense provision for general expenses, acquisition expenses, and commissions.
- *OIR Establishment of Rates* – The OIR must consider the recommended rates and issue a final order establishing the rates within 45 days after they are filed. Citizens may not pursue an administrative challenge or judicial review of the OIR's final order.
- *Prohibition Against Reducing Rates* – Citizens is prohibited from reducing rates.
- *Surcharge on Structures Without Opening Protection* – Effective October 1, 2011, Citizens may impose a premium surcharge on residential structures located within the wind-borne debris region that do not have opening protections (i.e. shutters) that are required by the Florida Building Code. The surcharge is not subject to any restrictions contained in the Citizens statute or the Rating Law (s. 627.062, F.S.).

The bill deletes the requirement that the public hurricane loss projection model must serve as the minimum benchmark for determining the windstorm portion of Citizens' rates. The bill also deletes provisions related to the current 10 percent mandatory rate increase, including a provision that sunsets the mandatory rate increase once Citizens has implemented actuarially sound rates for any line of business.

Citizens Coverage – Elimination of HO-3 Homeowners Policies

Citizens will not offer or renew HO-3 homeowners policies as of December 31, 2012. Instead, Citizens must offer a policy similar to what is available in the private insurance market under an HO-3, HO-4, or HO-6 policy. The prohibition on HO-3 coverage will result in Citizens using policy forms that provide coverage for fewer perils.

The HO-3 policy is an "all perils" homeowners policy that provides coverage to the structure for damage caused by any peril that is not specifically excluded from coverage and provides broad "named perils" coverage for damage to personal property. The HO-4 policy is a tenant's (renter's) insurance policy that provides "named peril" coverage for the personal property of tenants. The HO-6 policy is a condominium unit owner's policy that provides broad "named peril" coverage for personal property and building components in which the policyholder has an insurable interest.

If Citizens replaces the HO-3 policy with a "named perils" policy form, it will make it more difficult for policyholders to prove they have sustained a covered loss. One of the key differences between an "all perils" policy and a "named perils" deals with which party has the burden of proof regarding whether the loss was caused by a covered peril. When property is insured by an all perils policy, the insurer has the burden of proof to show that the cause of damage was a peril that is excluded by the policy. However, when property is insured by a "named perils" policy, the policyholder has the burden of proving that the cause of damage was a peril for which the policy provides coverage.

Citizens Coverage – Sinkholes

The bill requires Citizens to offer sinkhole coverage. New or renewal Citizens policies effective on or after February 1, 2012, that insure sinkholes will not include coverage for losses directly or indirectly caused by sinkhole activity to appurtenant structures (attached structures), driveways, sidewalks, decks, or patios. Citizens may provide notice of the change to current policies by including a notice of coverage change with the policy renewal. Any payment for sinkhole loss tendered by Citizens must be dedicated entirely to repairing the structure or remediation of the land, regardless of whether to payment is made pursuant to the contract, mediation, neutral evaluation, appraisal, arbitration, settlement or litigation.

Citizens Coverage – Cessation of Coverage for Screen Enclosures, Detached Structures, and Specified Items of Personal Property.

All Citizens policies issued or renewed on or after February 1, 2012, will not provide coverage for attached or detached screen enclosures. Personal residential policies that are new or renewed on or after February 1, 2013, will not provide coverage for detached structures that are separated from the dwelling. Coverage will not be provided for a structure connected to the dwelling by a fence, utility line, or similar connection.

Personal residential policies effective on or after February 1, 2013, will not provide coverage for the following items of personal property: watercraft, trailers, jewelry, furs, firearms, silverware, business property on premises, business property away from premises, or grave markers.

Citizens Deficit Assessments – Citizens Policyholder Surcharge

Citizens is prohibited from levying a regular assessment for a particular year's deficit until it has first levied the full amount of the Citizens policyholder surcharge (up to 15 percent of premium for each of the three Citizens accounts). The policyholder surcharge must be paid upon renewal, cancellation or termination of the policy. New Citizens policies issued within 12 months after the

levy of the surcharge or the period of time necessary to collect the surcharge must also require payment of the policyholder surcharge.

Citizens Deficit Assessments – Emergency Assessments

The bill requires Citizens policyholders to pay Citizens emergency assessments that are 1.5 times the emergency assessment levied on subject lines of business in the private insurance market.

Citizens Deficit Assessments - Notice of Surcharge and Assessment Liability

As of January 1, 2012, an agent seeking to place coverage with Citizens must obtain a the applicant's signature on a written acknowledgement form notifying the applicant of the potential liability for surcharges and assessments placed on Citizens policyholders. If the acknowledgement form states that the policyholder understands that:

- If Citizens sustains a deficit, the policyholder could be subject to surcharges as high as 45 percent of premium.
- The policyholder is subject to emergency assessments to the same extent as policyholders of other insurance companies, or a different amount as imposed by the Legislature.
- Citizens is not supported by the full faith and credit of the state.

Citizens must maintain a copy of the signed acknowledgment form and send a copy to the policyholder upon the first renewal. The signed acknowledgment form creates a conclusive presumption the policyholder understood and accepted his or her potential surcharge and assessment liability.

Exemption from Bad Faith Liability and Extracontractual Damages

The bill clarifies existing law that Citizens is not liable for any claim for bad faith liability and that the Citizens statute and other provisions of law do not create a cause of action for bad faith or a claim for extracontractual damages. The bill states that the exemption from bad faith liability is part of the immunity from liability granted to the corporation and its agents, employees, board members, committee members and the OIR for actions taken by them in the performance of their duties or responsibilities under the Citizens statute. The bad faith exemption is premised on the fact that Citizens is a governmental entity that serves a public purpose.

Exemption from Attorney's Fee Liability

The bill also exempts Citizens from liability to pay the attorney's fees of policyholders and beneficiaries in legal actions that allege a breach of contract or seek payment of policy benefits. Under current law, Citizens is subject to pay attorney's fees pursuant to s. 627.428, F.S.

Public Adjuster Prohibition

Policyholders are prohibited from engaging the services of a public adjuster with respect to any claim incurred under a policy issues by Citizens until Citizens has tendered an offer on the claim. The public adjuster's fee must be based on a reasonable hourly rate and may not be based on a

contingency basis based upon a percentage of the claim amount. The public adjuster's total fee may not exceed 5 percent of the additional amount paid to the policyholder in excess of the Citizens offer on the claim. The limitation on retaining a public adjuster is a condition of coverage and made in recognition of Citizens' status as a government entity.

Agents – Eligibility for Appointment

Effective January 1, 2012, an insurance agent may only be appointed to be a licensed agent for Citizens if the agent holds an appointment with an authorized insurer that is actually writing personal lines residential property coverage in the state. Section 626.015(3), F.S., defines an "appointment" as authority given by an insurer or employer to a licensee to transact insurance or adjust claims on its behalf. Current law only requires that the agent have an appointment with a private market insurer that is currently writing coverage at the time of the agent's appointment with Citizens. Under the bill, an licensed Citizens agent can no longer represent it if the private market company that appointed the agent stops actively writing property coverage in Florida.

Agents – Grounds for Termination

Citizens must immediately terminate an agent's appointment to represent it if the Department of Financial Services determines that the agent violated s. 626.9541(1)(h), F.S. Section 626.9541(1)(h), F.S., prohibits unlawful rebates and defines such acts as an unfair insurance trade practice.

Citizens Governance – Outsourcing of Citizens Policy Issuance and Service Functions

The Citizens board of directors must commission an independent third-party consultant with expertise in insurance company management to issue a report that makes recommendations on the relative costs and benefits of outsourcing Citizens policy issuance and service functions to private servicing carriers or similar entities in the private market. The consultant must consider how other residual markets outsource appropriate functions or use servicing carriers. The report must be completed by February 1, 2012.

The board must develop a plan to implement the report and submit the plan to the Financial Services Commission. The commission has 30 days to review the plan and make any revisions. If the Commission approves the plan, the Citizens board of directors must begin implementing it by January 1, 2013.

Citizens Governance – Market Accountability Advisory Committee

The bill expands the function of the Market Accountability Advisory Committee to include providing advice in issues regarding agent appointments and compensation. Accordingly, the committee will include issues relating to producer compensation and agency agreements within the report it provides during each Citizens board meeting. The bill also clarifies that members of the committee are must be appointed for a 3-year term, but are not required to serve the entire term.

Citizens Governance – Conflict of Interest Procedures for Citizens Board Members

The bill provides procedures for board members who have a conflict of interest regarding a particular matter. A Citizens board member may not vote on any measure that would inure to the gain or loss of the board member; the board member's corporate principal or the parent or subsidiary of the corporate principal; or the relative or business associate of the board member. A board member with a conflict must state his or her interest in the matter prior to the vote being taken. The board member must also provide written disclosure of the conflict within 15 days after the vote, and the disclosure must be included in the minutes of the board meeting and available as a public record.

Repeal of Requirement to Reduce Citizens High-Risk Area

Risks located within Citizens' high-risk area are eligible for wind-only coverage from the corporation. The bill deletes the requirement that the Citizens board of directors annually report to the Legislature the reduction or increase in the 100-year probable maximum loss attributable to the combined PML of wind-only coverage and the Citizens quota-share program, when compared to the 100-year PML for the Florida Windstorm Underwriting Association as of February 2001 (the benchmark PML). The bill also deletes requirements that Citizens reduce the boundaries of the high-risk area. As of December 1, 2010, current law requires the Citizens board of directors to reduce the boundaries of the high-risk to the extent necessary to reduce the probably maximum loss attributable to wind-only coverages and the quota-share program to 25 percent below the benchmark PML. As of February 1, 2015, the high risk area boundaries must be further reduced to create a 50 percent PML reduction below the benchmark PML.

Repeal of the Citizens Quota Share Program

The bill deletes statutory authorization for Citizens to enter into quota share primary insurance agreements, as defined in s. 627.4025(2)(a), F.S., to provide hurricane coverage for risks eligible for coverage in the Citizens high-risk account. Quota share insurance is an agreement between Citizens and a private market insurer to provide insurance coverage in specified percentages.

Section 1 amends s. 627.0655, F.S., to eliminate the ability of insurers to offer multi-line insurance discounts for insurance placed with Citizens or a "take out" policy from Citizens that is assumed by a different carrier after January 1, 2013.

Section 2 amends s. 627.351 (6), F.S., to make technical conforming changes related to the statutory changes in the bill.

Section 3 amends s. 627.3511(4), F.S., to make technical and conforming changes related to the statutory changes in the bill.

Section 4 provides that this act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The change is intended to create an additional incentive for private market insurers to write property insurance and for agents to attempt to place property insurance with private market carriers.

Citizens policyholders will be subject to a yearly rate increase of no more than 20% per territory and 25% per policy, not including rate increases attributable to sinkhole coverage or the purchase of private reinsurance. The requirement that Citizens use an industry expense equalization factor will also increase Citizens rates. The rate-increase requirements are intended to return Citizens to its original intended purpose as the property insurer of last resort. The rate increases should also improve the ability of Citizens to pay catastrophe claims out of its surplus and accelerate the depopulation of its policies into the private insurance market.

Citizens policyholders will be subject to emergency assessments levied by Citizens that are 1.5 times the emergency assessment levied on policyholder in the private market. The provision ensures that Citizens policyholders will face greater liability for such assessments than other policyholders.

Citizens policies coverage will generally be more restrictive under the bill. Citizens is prohibited from issuing a standard HO-3 policy that provides coverage for "all-perils" that are not specifically excluded from the policy. The bill also eliminates personal residential coverage for detached structures, specified items personal property, and screened enclosures, appurtenant structures, sidewalks, and patios.

All structures with a value of $1 million or more will be ineligible for Citizens coverage beginning in 2012. Policyholders in the personal lines account will be ineligible for

Citizens coverage in 2014 if the structure has a value of $750,000 or more. In 2016, structures valued at $500,000 or more are ineligible. The owners of these properties will be forced to obtain coverage from the admitted insurance market or a largely unregulated surplus lines insurance carrier.

The prohibition on million dollar structures will also affect Citizens policyholders owning residences valued at over $1 million who complied with s. 627.736(a)5., F.S., which requires owners of $750,000 homes in the wind-borne debris region to purchase opening protections (i.e. shutters) in order to remain eligible as of January 1, 2009. Such policyholders will now be ineligible for Citizens if the residence is valued at $1 million or more. Policyholders for structures that in the wind borne debris region for Citizens that do not have opening protections installed will be subject to a surcharge.

Insureds located within a Special Flood Hazard Area as defined by the National Flood Insurance Program will be required to maintain a separate flood insurance policy as a condition of Citizens coverage. Such insureds will have additional protection from flood damage, which is excluded under the Citizens policy, but will have to incur additional cost.

Citizens cannot insure new structures seaward of the coastal construction control line that are permitted after June 1, 2011. This should discourage development of beachfront properties that are extremely vulnerable to hurricane loss.

Business owners who cannot procure commercial property insurance coverage in the admitted private insurance market will be ineligible to obtain such coverage from Citizens. This will likely necessitate the purchase of insurance from a nonadmitted surplus lines insurance carrier.

Authorization of surplus lines carriers to take part in Citizens depopulation programs may help reduce the number of policies in Citizens and reduce its liability for losses due to a catastrophic event. However, policyholders of surplus lines carriers will not be afforded protection in the event the surplus lines carrier is insolvent because the Florida Insurance Guaranty Association does not cover surplus lines policies.

Citizens must provide sinkhole coverage under the bill, which will ensure that such coverage is available in the private market. Citizens, however, will only provide benefits for sinkhole losses if such monies are used to repair the structure and remediate the sinkhole. This requirement should help eliminate frivolous sinkhole claims from policyholders who are seeking a cash payout rather than the means to repair their properties.

C. Government Sector Impact:

Citizens Property Insurance Corporation estimates that implementation of the provisions of this bill will result in an additional $210 million in premiums collected. There are also costs associated with implementing the coverage changes. Citizens will likely incur

expenses in replacing its current HO-3 homeowners' insurance policy with an alternative policy form that is similar to coverage available in the private market.

Citizens may benefit from outsourcing its policy issuance and service functions to private servicing carriers or similar entities if the private market can effectively perform these functions at a lower cost.

Clarification of Citizens existing exemption from bad faith liability will help ensure that the courts do not apply the civil remedy statute or common law bad faith liability to claims handled by Citizens.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance Committee on March 29, 2011

The committee substitute contains the following changes:

- Discontinues the statutory authorization for companies to give a multi-policy discount for a homeowner's policy that is insured by Citizens or taken out of Citizens by a different carrier.
- Prohibits a policyholder from hiring a public adjuster until Citizens has tendered an offer of a claim.
- Places limits on public adjuster compensation for claims under a Citizens policy.
- Prohibits Citizens from insuring structures seaward of the coastal construction control line that are permitted after June 1, 2011.
- Specifies that Citizens will not cover detached structures separated from the dwelling.
- Specifies that Citizens will not cover certain items of personal property.
- Requires Citizens to offer sinkhole coverage.
- Prohibits Citizens from making payments for sinkhole loss unless the funds are used to repair the structure and remediate sinkhole conditions.
- Specifies that Citizens is not liable for attorney's fees under s. 627.428, F.S.
- Authorizes surplus lines insurers to participate in Citizens depopulation, take-out, and keep-out programs.
- Authorizes Citizens to levy a surcharge on personal lines residential properties located within the wind-borne debris region that lack opening protections.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 584
INTRODUCER:	Health Regulation Committee and Senator Flores
SUBJECT:	Massage Therapy
DATE:	April 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/CS**
2.	Bradford	Hansen	BHA	**Favorable**
3.	Bradford	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This committee substitute (CS) of SB 584 authorizes a person, who meets certain licensure requirements and graduates from a massage therapy school that is accredited and approved by the Board of Massage Therapy (board), to obtain a temporary permit from the board to practice massage therapy. The temporary permit is valid for 6 months after its issuance by the board, until the applicant fails the massage licensure examination, or until the applicant receives a massage therapist license, whichever occurs first. The CS allows those with a temporary permit to practice massage only under the supervision of a licensed massage therapist, who has an active and unencumbered license.

The CS requires an applicant seeking a temporary permit to practice massage therapy to pay a one-time fee of $50. The estimated revenue the DOH expects to generate from the temporary permit fees is $130,300 annually. Any costs associated with this new regulatory function will be covered by the fees generated.

The CS provides an effective date of January 3, 2012.

This CS substantially amends the following sections of the Florida Statutes: 480.041 and 480.044.

II. Present Situation:

Background

The American Massage Therapy Association (AMTA)[1] estimated that in 2010, massage therapy was a $12-17 billion industry. The AMTA also estimated that there are approximately 280,000 to 320,000 massage therapists and massage school students in the United States. According to the U.S. Department of Labor in 2010, employment for massage therapists is expected to increase 19 percent from 2008 to 2018, faster than the average for all occupations.[2]

In May 2008, median hourly wages of massage therapists, including gratuities, were $16.78. The middle 50 percent earned between $11.36 and $25.14. The lowest 10 percent earned less than $8.01, and the highest 10 percent earned more than $33.47. Because many therapists work part time, yearly earnings can vary considerably, depending on the therapist's schedule. Generally, massage therapists earn some portion of their income as gratuities. For those who work in a hospital or other clinical setting, however, tipping is not common.[3]

Currently, 43 states and the District of Columbia regulate massage therapists or provide voluntary state certification.[4] In states that regulate massage therapy, massage therapists must meet the legal requirements to practice, which may include minimum hours of initial training and passing an exam. In states that do not regulate massage therapy, this task may fall to local municipalities. Most states that license massage therapists require a passing grade on the Massage & Bodywork Licensing Exam (MBLEx) or one of two exams provided by the National Certification Board for Therapeutic Massage & Bodywork.[5]

Florida Regulation of Massage Therapists and Massage Establishments

Massage therapists and massage establishments in Florida are regulated by the board, within the DOH, under the Massage Practice Act, ch. 480, F.S., and Chapter 64B7, Florida Administrative Code. A person must be licensed as a massage therapist to practice massage for compensation, unless otherwise specifically exempted under the Massage Practice Act.[6] In order to be licensed as a massage therapist, an applicant must:

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[1] AMTA is the largest non-profit, professional association serving more than 56,000 massage therapists, massage students, and massage schools. *See* AMTA, *2011 Massage Therapy Industry Fact Sheet*, available at: http://www.amtamassage.org/articles/2/PressRelease/detail/2320 (Last visited on March 4, 2011).

[2] U.S. Department of Labor, Bureau of Labor Statistics; *Occupational Outlook Handbook, 2010-11 Edition: Massage Therapists*; available at http://www.bls.gov/oco/ocos295.htm#projections_data (Last visited on March 1, 2011).

[3] *Id.*

[4] AMTA, *2011 Massage Therapy Industry Fact Sheet*, available at: http://www.amtamassage.org/articles/2/PressRelease/detail/2320 (Last visited on March 4, 2011). A list of states and a summary of their massage regulations is available at: http://www.massagetherapy.com/_content/careers/MTreg.pdf (Last visited on March 4, 2011). Currently, Alaska, Idaho, Kansas, Minnesota, Oklahoma, Vermont, and Wyoming do not regulate massage therapy.

[5] AMTA, *2011 Massage Therapy Industry Fact Sheet*, available at: http://www.amtamassage.org/articles/2/PressRelease/detail/2320 (Last visited on March 4, 2011).

[6] Section 480.047(1)(a), F.S. *See also* s. 480.033(4), F.S.

- Be at least 18 years old or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a board-approved massage school[7] or apprenticeship program; and
- Pass an examination,[8] which is currently offered in English and in Spanish.[9]

Licensed massage therapists may practice in a licensed massage establishment, at a client's residence or office, or at a sports event, convention or trade show.[10] Sexual misconduct, defined as a violation of the professional relationship through the use of such relationship to engage or attempt to engage in sexual activity outside the scope of the profession, is strictly prohibited.[11]

A person may be approved by the board to become an apprentice to study massage under the instruction of a licensed massage therapist, if the person meets the qualifications stated in Rule 64B7-29.002, Florida Administrative Code. To qualify for an apprenticeship, the applicant must have secured the sponsorship of a sponsoring massage therapist, complete a DOH application, pay a $100 fee, and must not be enrolled simultaneously as a student in a board-approved massage school.[12]

Section 480.43, F.S., provides that a massage establishment license is required at any facility where massage therapy services are offered by a licensed massage therapist and directs the board to adopt application criteria. It also provides that massage establishment licenses may not be transferred to a new owner, but may be transferred to a new location if the new location is inspected and approved by the board and an application and inspection fee has been paid. A license may be transferred from one business name to another if approved by the board and if an application fee has been paid.

The board's rules include insurance requirements, compliance with building codes, and safety and sanitary requirements, and require a licensed massage therapist to be onsite any time a client is receiving massage services.[13] Upon receiving an application, the DOH inspects the establishment to ensure it meets the licensure requirements.[14] Once licensed, the DOH inspects the establishment at least annually.[15]

An application for a massage establishment license may be denied for an applicant's conviction of crimes related to the practice of massage, and must be denied for convictions of enumerated crimes within 15 years of application[16] and for past sexual misconduct.[17]

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[7] A list of board-approved massage schools is available at: http://www.doh.state.fl.us/mqa/massage/lst_ma-school.pdf (Last visited on March 4, 2011).
[8] Section 480.042, F.S.
[9] Rule 64B7-25.001(3), F.A.C.
[10] Section 480.046(1)(n), F.S.
[11] Section 480.0485, F.S. *See also* Rule 64B7-26.010, F.A.C.
[12] *See* rule 64B7-27.005, for the apprentice fee amount.
[13] Rule 64B7-26.003, F.A.C.
[14] Rule 64B7-26.004, F.A.C.
[15] Rule 64B7-26.005, F.A.C.
[16] Section 456.0635, F.S.
[17] Section 456.063, F.S.

It is a misdemeanor of the first degree to operate an unlicensed massage establishment.[18] Currently, upon receiving a complaint that unlicensed activity is occurring, the DOH's Medical Quality Assurance inspectors coordinate with local law enforcement. Unlicensed practice of massage therapy is punishable as a third-degree felony.[19] The DOH may issue cease and desist notices, enforceable by filing for an injunction or writ of mandamus and seek civil penalties against the unlicensed party in circuit court.[20] The DOH may also impose, by citation, an administrative penalty up to $5,000. While the DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

III. Effect of Proposed Changes:

Section 1 amends s. 480.041, F.S., to authorize the board to issue a temporary permit to practice massage therapy to an applicant who graduates from a massage therapy school that is board-approved and accredited by an accrediting agency recognized by the U.S. Department of Education.

An applicant only qualifies to apply for a temporary permit if he or she is at least 18 years of age or has received a high school diploma or graduate equivalency diploma, has completed a course of study at an accredited and board-approved massage school, and has not yet taken the examination required for licensure. An applicant must apply to the DOH in writing upon forms prepared and furnished by the DOH. Applicant's who receive a temporary permit are subject to the provisions in s. 480.046, F.S., which specifies circumstances under which the DOH can deny a license or conduct a disciplinary action.

This section specifically exempts applicants for temporary permits from the:

- Licensure requirements that require a passing grade on an examination administered by the DOH;
- Board's rules that require education, examination, and certification for the practice of colonic irrigation;
- Board's rules relating to licensing procedures for those desiring to be licensed in Florida and who hold an active license in, and have practiced in, another state, territory, or jurisdiction of the U.S. or any foreign national jurisdiction which has licensing standards substantially similar to, equivalent to, or more stringent than the standards in Florida for licensure.

The temporary permit is only valid for 6 months after issuance by the board, until the applicant fails the massage licensure examination, or receives a massage therapist license, whichever occurs first. A person practicing massage therapy under a temporary permit must be supervised by a licensed massage therapist who has a full, active, and unencumbered license.

Section 2 amends s. 480.044, F.S., to require the board to set a $50 fee for temporary permits for providing massage therapy services.

Section 3 provides an effective date of January 3, 2012.

[18] Section 480.047, F.S.
[19] Section 456.065, F.S.
[20] *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Applicants seeking a temporary permit to perform massage therapy services will be required to pay a fee of $50.

B. Private Sector Impact:

Businesses offering massage therapy services may be able to offer services to the public for less money if persons with temporary permits, while supervised, are able to provide such services at a reduced rate.

C. Government Sector Impact:

The DOH has estimated that approximately 2,606 applicants would have requested a temporary permit if 75 percent of the 3,475 applicants for massage therapy licensure in fiscal year 2009-10 requested a temporary permit. The DOH has reported that it will not require additional resources to implement the provisions of this bill and will absorb the costs associated with rulemaking responsibilities and the changes that will be needed for the DOH's application forms and database. The estimated revenue the DOH expects to generate from the temporary permit fees is $130,300.[21]

VI. Technical Deficiencies:

The bill in lines 61-64 requires applicants seeking a temporary permit to meet all of the qualifications for licensure under s. 480.041, F.S., except for a provision under paragraph (1)(b) pertaining to the completion of an apprenticeship program and paragraphs (1)(c), (4)(b), and (4)(c). Paragraphs (4)(b) and (4)(c) require the *board to adopt rules* concerning the practice of

[21] Department of Health, *Bill Analysis, Economic Statement, and Fiscal Note for SB 584*, dated February 8, 2011. A copy of this analysis is on file with the Senate Health Regulation Committee.

colonic irrigation and licensing procedures for practitioners licensed in other states. Therefore, it may be more appropriate to say in lines 61-64 that an applicant must meet all of the licensure requirements except for a provision under paragraph (1)(b) pertaining to the completion of an apprenticeship program, paragraph (1)(c), and any rules adopted under paragraphs (4)(b) and (4)(c).

VII. Related Issues:

In lines 75-78, it is unclear whether the intent is to require a licensed massage therapist to provide "direct supervision" of a person practicing massage therapy under a temporary permit. Furthermore, the term "supervision" is not defined in ch. 480, F.S., the Massage Practice Act.

On January 28, 2011, during a board meeting, the board voted unanimously to oppose this bill. The board gave the following reasons:

- Temporary permits do not serve the public health and safety;
- Temporary permit holders do not meet basic entry level requirements with regards to practicing with reasonable skill and safety because they have not proven competency by passing the entry level examinations. The examinations are provided daily via computer based testing and may be taken prior to or immediately after graduation from an approved program.
- Supervision required is not sufficiently defined without rulemaking authority by the board.
- The bill will increase regulatory costs.[22]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by the Health Regulation Committee on March 9, 2011:

The CS differs from the bill in that it:

- Authorizes the Department of Health to prepare and furnish the appropriate application forms to applicants seeking temporary permits to practice massage therapy.
- Sets the temporary permit fee at $50 to avoid rulemaking procedures to determine a fee.
- Extends the effective date to January 3, 2012, to allow the Department of Health time to implement provisions of the bill.
- Clarifies that the board may only issue a temporary permit to an applicant who graduates from a massage school that is accredited by an accrediting agency recognized by the U.S. Department of Education.
- Clarifies that an applicant may not complete an apprentice program in lieu of completing a course of study at a board-approved massage school in order to be eligible to apply for a temporary permit.

[22] *Supra* fn. 21.

- Specifies that an applicant may apply for a temporary permit if the applicant has completed a course of study at a massage school that has been board-approved and accredited by an accrediting agency recognized by the U.S. Department of Education.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete line 905
and insert:
practitioner, physician assistant, or physician.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Between lines 2601 and 2602
insert:

Section 71. Section 409.9021, Florida Statutes, is amended to read:

409.9021 Conditions for Medicaid ~~Forfeiture of~~ eligibility ~~agreement~~.—

(1) As a condition of Medicaid eligibility, subject to federal approval, a Medicaid applicant shall agree in writing to forfeit all entitlements to any goods or services provided through the Medicaid program if he or she has been found to have committed fraud, through judicial or administrative

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determination, two times in a period of 5 years. This provision applies only to the Medicaid recipient found to have committed or participated in the fraud and does not apply to any family member of the recipient who was not involved in the fraud.

(2) A person who is eligible for Medicaid services and who has access to health care coverage through an employer-sponsored health plan may not receive Medicaid services reimbursed under s. 409.908, s. 409.912, or s. 409.986, but may use Medicaid financial assistance to pay the cost of premiums for the employer-sponsored health plan for the eligible person and his or her Medicaid-eligible family members.

(3) A Medicaid recipient who has access to other insurance or coverage created pursuant to state or federal law may opt out of the Medicaid services provided under s. 409.908, s. 409.912, or s. 409.986 and use Medicaid financial assistance to pay the cost of premiums for the recipient and the recipient's Medicaid-eligible family members.

(4) Subsections (2) and (3) shall be administered by the agency in accordance with s. 409.964(1)(j). The maximum amount available for the Medicaid financial assistance shall be calculated based on the Medicaid capitated rate as if the Medicaid recipient and the recipient's eligible family members participated in a qualified plan for Medicaid managed care under this chapter.

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

And the title is amended as follows:

Delete line 230

and insert:

certain circumstances; amending s. 409.9021, F.S.; revising provisions relating to conditions for Medicaid eligibility; prohibiting a recipient who has access to employer-sponsored health care from obtaining services reimbursed through the Medicaid fee-for-service system; requiring the agency to develop a process to allow the Medicaid premium that would have been received to be used to pay employer premiums; requiring that the agency allow opt-out opportunities for certain recipients; amending s. 409.91196, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2714 - 2718
and insert:
3. For a prescribed drug billed as a 340B prescribed medication rendered to all Medicaid-eligible individuals, including claims for cost sharing for which the agency is responsible, the claim must meet the requirements of the Deficit Reduction Act of 2005 and the federal 340B program, and contain a national drug code.

Delete lines 4006 - 4018
and insert:

165656

Section 104. Subsection (23) and paragraph (a) of subsection (54) of section 499.003, Florida Statutes, are amended to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(23) "Health care entity" means a closed pharmacy or any person, organization, or business entity that provides diagnostic, medical, surgical, or dental treatment or care, or chronic or rehabilitative care, but does not include any wholesale distributor or retail pharmacy licensed under state law to deal in prescription drugs. However, a blood establishment is a health care entity that may engage in the wholesale distribution of prescription drugs under s. 499.01(2)(g)1.c.

(54) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(a) Any of the following activities, which is not a violation of s. 499.005(21) if such activity is conducted in accordance with s. 499.01(2)(g):

1. The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a prescription drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of that organization.

2. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in s. 501(c)(3) of the Internal Revenue Code of 1986, as amended and revised, to a

nonprofit affiliate of the organization to the extent otherwise permitted by law.

3. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control. For purposes of this subparagraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, by voting rights, by contract, or otherwise.

4. The sale, purchase, trade, or other transfer of a prescription drug from or for any federal, state, or local government agency or any entity eligible to purchase prescription drugs at public health services prices pursuant to Pub. L. No. 102-585, s. 602 to a contract provider or its subcontractor for eligible patients of the agency or entity under the following conditions:

a. The agency or entity must obtain written authorization for the sale, purchase, trade, or other transfer of a prescription drug under this subparagraph from the State Surgeon General or his or her designee.

b. The contract provider or subcontractor must be authorized by law to administer or dispense prescription drugs.

c. In the case of a subcontractor, the agency or entity must be a party to and execute the subcontract.

~~d. A contract provider or subcontractor must maintain separate and apart from other prescription drug inventory any prescription drugs of the agency or entity in its possession.~~

d.~~e.~~ The contract provider and subcontractor must maintain

and produce immediately for inspection all records of movement or transfer of all the prescription drugs belonging to the agency or entity, including, but not limited to, the records of receipt and disposition of prescription drugs. Each contractor and subcontractor dispensing or administering these drugs must maintain and produce records documenting the dispensing or administration. Records that are required to be maintained include, but are not limited to, a perpetual inventory itemizing drugs received and drugs dispensed by prescription number or administered by patient identifier, which must be submitted to the agency or entity quarterly.

e.~~f.~~ The contract provider or subcontractor may administer or dispense the prescription drugs only to the eligible patients of the agency or entity or must return the prescription drugs for or to the agency or entity. The contract provider or subcontractor must require proof from each person seeking to fill a prescription or obtain treatment that the person is an eligible patient of the agency or entity and must, at a minimum, maintain a copy of this proof as part of the records of the contractor or subcontractor required under sub-subparagraph e.

f.~~g.~~ In addition to the departmental inspection authority set forth in s. 499.051, the establishment of the contract provider and subcontractor and all records pertaining to prescription drugs subject to this subparagraph shall be subject to inspection by the agency or entity. All records relating to prescription drugs of a manufacturer under this subparagraph shall be subject to audit by the manufacturer of those drugs, without identifying individual patient information.

165656

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 360
and insert:
activities; redefining the term "wholesale distribution" to delete a provision requiring certain entities to keep prescription drugs of the agency separate from other drugs in their inventory; amending s. 499.005, F.S.; clarifying

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Delete lines 2923 - 2926

and insert:

for the use of a drug. The agency shall accept from prescribers or pharmacists electronic requests for any drug requiring prior authorization and ~~may~~ post prior authorization criteria and protocol and updates to the list of drugs that are subject to prior authorization on an Internet website without amending its rule or engaging in additional rulemaking.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Flores) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 2981 and 2982
insert:

(41) The agency shall provide for the development of a demonstration project by establishment in Miami-Dade County of a long-term-care facility and a psychiatric facility licensed pursuant to chapter 395 to improve access to health care for a predominantly minority, medically underserved, and medically complex population and to evaluate alternatives to nursing home care and general acute care for such population. Such project is to be located in a health care condominium and colocated with licensed facilities providing a continuum of care. ~~The~~

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~~establishment of~~ This project is not subject to the provisions of s. 408.036 or s. 408.039.

====== 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 2612 - 2613

and insert:

Section 72. Paragraph (a) of subsection (39) and subsection (41) of section 409.912, Florida Statutes, are amended to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

Between lines 233 and 234

insert:

revising provisions relating to a demonstration project in Miami-Dade County to include a psychiatric facility;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 3561 and 3562
insert:

Section 88. Section 430.81, Florida Statutes, is created to read:

430.81 Implementation of a teaching agency for home and community-based care.—

(1) As used in this section, the term "teaching agency for home and community-based care" means a home health agency that is licensed under part III of chapter 400 and has access to a resident population of sufficient size to support education, training, and research relating to geriatric care.

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(2) The Department of Elderly Affairs may designate a home health agency as a teaching agency for home and community-based care if the home health agency:

(a) Has been a not-for-profit, designated community care for the elderly lead agency for home and community-based services for more than 10 consecutive years.

(b) Participates in a nationally recognized accreditation program and holds a valid accreditation, such as the accreditation awarded by the Community Health Accreditation Program.

(c) Has been in business in this state for a minimum of 20 consecutive years.

(d) Demonstrates an active program in multidisciplinary education and research that relates to gerontology.

(e) Has a formalized affiliation agreement with at least one established academic research university that has a nationally accredited health professions program in this state.

(f) Has salaried academic faculty from a nationally accredited health professions program.

(g) Is a Medicare- and Medicaid-certified home health agency that has participated in the nursing home diversion program for a minimum of 5 consecutive years.

(h) Maintains insurance coverage pursuant to s. 400.141(1)(s) or proof of financial responsibility in a minimum amount of $750,000. Such proof of financial responsibility may include:

1. Maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52; or

2. Obtaining and maintaining pursuant to chapter 675 an

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unexpired, irrevocable, nontransferable, and nonassignable letter of credit issued by any bank or savings association authorized to do business in this state. This letter of credit shall be used to satisfy the obligation of the agency to the claimant upon presentation of a final judgment indicating liability and awarding damages to be paid by the facility or upon presentment of a settlement agreement signed by all parties to the agreement when such final judgment or settlement is a result of a liability claim against the agency.

(3) A teaching agency for home and community-based care may be affiliated with an academic health center in this state. The purpose of such affiliation is to foster the development of methods for improving and expanding the capability of home health agencies to respond to the medical, health care, psychological, and social needs of frail and elderly persons by providing the most effective and appropriate services. A teaching agency for home and community-based care shall serve as a resource for research and for training health care professionals in providing health care services in homes and community-based settings to frail and elderly persons.

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

And the title is amended as follows:

Delete line 304

and insert:

issuance of conditional licenses; creating s. 430.81, F.S.; providing a definition; authorizing the Department of Elderly Affairs to designate a home health agency as a teaching agency for home and

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community-based care; establishing criteria for qualification; authorizing a teaching agency to be affiliated with an academic research university in the state which meets certain criteria; authorizing a teaching agency to be affiliated with an academic health center; repealing s.

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 3593 and 3594
insert:

Section 90. Paragraph (h) of subsection (3) of section 456.053, Florida Statutes, is amended to read:

456.053 Financial arrangements between referring health care providers and providers of health care services.—

(3) DEFINITIONS.—For the purpose of this section, the word, phrase, or term:

(h) "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

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1. In which each health care provider who is a member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel;

2. For which substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; ~~and~~

3. In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group; and~~.~~

4. That provides radiation therapy services, including the full range of radiation therapy services, such that no single type of cancer, as a primary or secondary diagnosis and as described by the International Statistical Classification of Diseases, constitutes 40 percent or more of the group's cases for professional and technical radiation therapy services, and the health care providers within the group who refer patients for radiation therapy services do not own 50 percent or more of the group practice. As used in this subparagraph, the term "case" means an individual patient's radiation treatment course.

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

And the title is amended as follows:

Delete line 309

and insert:

applicants; amending s. 456.053, F.S.; redefining the term "group practice" to include certain groups that

provide radiation therapy services; amending s. 483.035, F.S.; providing for a

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 3857 and 3858
insert:

Section 101. Section 627.6011, Florida Statutes, is created to read:

627.6011 Mandated coverages.—Mandatory health benefits regulated by this chapter which must be covered by an insurer are intended to apply only to the types of health benefit plans defined in s. 627.6699(3)(k), issued in any market, unless specifically designated. As used in this section, the term "mandatory health benefits" means benefits provided in ss. 627.6401-627.64193 and any cross-references to such sections, or

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any other mandatory treatments, health coverages, or benefits enacted after the effective date of this act.

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

And the title is amended as follows:

Delete line 329

and insert:

incentives are not insurance benefits; creating s. 627.6011, F.S.; providing clarification regarding the types of coverage that must be included in mandatory benefits; providing a definition; amending s.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 4033 - 4121
and insert:

Section 106. Paragraphs (a), (g), and (t) of subsection (2) of section 499.01, Florida Statutes, are amended to read:

499.01 Permits.—

(2) The following permits are established:

(a) *Prescription drug manufacturer permit.*—A prescription drug manufacturer permit is required for any person that is a manufacturer of a prescription drug and that manufactures or distributes such prescription drugs in this state.

1. A person that operates an establishment permitted as a

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prescription drug manufacturer may engage in wholesale distribution of prescription drugs manufactured at that establishment and must comply with all of the provisions of this part, except s. 499.01212, and the rules adopted under this part, except s. 499.01212, which ~~that~~ apply to a wholesale distributor.

2. A prescription drug manufacturer must comply with all appropriate state and federal good manufacturing practices.

3. A blood establishment, as defined in s. 381.06014, operating in a manner consistent with the provisions of Title 21 C.F.R. parts 211 and 600-640, and manufacturing only the prescription drugs described in s. 499.003(54)(d) is not required to be permitted as a prescription drug manufacturer under this paragraph or to register products under s. 499.015.

(g) *Restricted prescription drug distributor permit.*—

1. A restricted prescription drug distributor permit is required for:

a. Any person located in this state that engages in the distribution of a prescription drug, which distribution is not considered "wholesale distribution" under s. 499.003(54)(a).

b.~~1.~~ Any ~~A~~ person located in this state who engages in the receipt or distribution of a prescription drug in this state for the purpose of processing its return or its destruction ~~must obtain a permit as a restricted prescription drug distributor~~ if such person is not the person initiating the return, the prescription drug wholesale supplier of the person initiating the return, or the manufacturer of the drug.

c. A blood establishment located in this state which collects blood and blood components only from volunteer donors

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as defined in s. 381.06014 or pursuant to an authorized practitioner's order for medical treatment or therapy and engages in the wholesale distribution of a prescription drug not described in s. 499.003(54)(d) to a health care entity. The health care entity receiving a prescription drug distributed under this sub-subparagraph must be licensed as a closed pharmacy or provide health care services at that establishment. The blood establishment must operate in accordance with s. 381.06014 and may distribute only:

(I) Prescription drugs indicated for a bleeding or clotting disorder or anemia;

(II) Blood-collection containers approved under s. 505 of the federal act;

(III) Drugs that are blood derivatives, or a recombinant or synthetic form of a blood derivative;

(IV) Prescription drugs that are identified in rules adopted by the department and that are essential to services performed or provided by blood establishments and authorized for distribution by blood establishments under federal law; or

(V) To the extent authorized by federal law, drugs necessary to collect blood or blood components from volunteer blood donors; for blood establishment personnel to perform therapeutic procedures under the direction and supervision of a licensed physician; and to diagnose, treat, manage, and prevent any reaction of either a volunteer blood donor or a patient undergoing a therapeutic procedure performed under the direction and supervision of a licensed physician,

as long as all of the health care services provided by the blood

establishment are related to its activities as a registered blood establishment or the health care services consist of collecting, processing, storing, or administering human hematopoietic stem cells or progenitor cells or performing diagnostic testing of specimens if such specimens are tested together with specimens undergoing routine donor testing.

2. Storage, handling, and recordkeeping of these distributions by a person required to be permitted as a restricted prescription drug distributor must comply with the requirements for wholesale distributors under s. 499.0121, but not those set forth in s. 499.01212 if the distribution occurs pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b.

3. A person who applies for a permit as a restricted prescription drug distributor, or for the renewal of such a permit, must provide to the department the information required under s. 499.012.

4. The department may adopt rules regarding the distribution of prescription drugs by hospitals, health care entities, charitable organizations, ~~or~~ other persons not involved in wholesale distribution, and blood establishments, which rules are necessary for the protection of the public health, safety, and welfare.

(t) *Health care clinic establishment permit.*—Effective January 1, 2009, a health care clinic establishment permit is required for the purchase of a prescription drug by a place of business at one general physical location that provides health care or veterinary services, which is owned and operated by a business entity that has been issued a federal employer tax identification number. For the purpose of this paragraph, the

term "qualifying practitioner" means a licensed health care practitioner defined in s. 456.001, or a veterinarian licensed under chapter 474, who is authorized under the appropriate practice act to prescribe and administer a prescription drug.

1. An establishment must provide, as part of the application required under s. 499.012, designation of a qualifying practitioner who will be responsible for complying with all legal and regulatory requirements related to the purchase, recordkeeping, storage, and handling of the prescription drugs. In addition, the designated qualifying practitioner shall be the practitioner whose name, establishment address, and license number is used on all distribution documents for prescription drugs purchased or returned by the health care clinic establishment. Upon initial appointment of a qualifying practitioner, the qualifying practitioner and the health care clinic establishment shall notify the department on a form furnished by the department within 10 days after such employment. In addition, the qualifying practitioner and health care clinic establishment shall notify the department within 10 days after any subsequent change.

2. The health care clinic establishment must employ a qualifying practitioner at each establishment.

3. In addition to the remedies and penalties provided in this part, a violation of this chapter by the health care clinic establishment or qualifying practitioner constitutes grounds for discipline of the qualifying practitioner by the appropriate regulatory board.

4. The purchase of prescription drugs by the health care clinic establishment is prohibited during any period of time

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when the establishment does not comply with this paragraph.

5. A health care clinic establishment permit is not a pharmacy permit or otherwise subject to chapter 465. A health care clinic establishment that meets the criteria of a modified Class II institutional pharmacy under s. 465.019 is not eligible to be permitted under this paragraph.

6. This paragraph does not apply to the purchase of a prescription drug by a licensed practitioner under his or her license. A professional corporation or limited liability company composed of dentists and operating as authorized in s. 466.0285 may pay for prescription drugs obtained by a practitioner licensed under chapter 466, and the licensed practitioner is deemed the purchaser and owner of the prescription drugs.

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

And the title is amended as follows:

Delete line 376

and insert:

prescription drugs by blood establishments; authorizing certain business entities to pay for prescription drugs obtained by practitioners licensed under ch. 466, F.S.; providing

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Wise) recommended the following:

Senate Amendment (with title amendment)

Between lines 3254 and 3255
insert:

Section 77. Subsections (1), (6), (7), and (8) of section 429.178, Florida Statutes, are amended to read:

429.178 Special care for persons with Alzheimer's disease or other related disorders.—

(1) A facility that ~~which~~ advertises that it provides special care for persons with Alzheimer's disease or other related disorders must meet the following standards of operation:

(a)~~1. If the facility has 17 or more residents,~~ Have an

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awake staff member on duty at all hours of the day and night for each secured unit of the facility which houses any residents with Alzheimer's disease or other related disorders.~~; or~~

~~2. If the facility has fewer than 17 residents, have an awake staff member on duty at all hours of the day and night or have mechanisms in place to monitor and ensure the safety of the facility's residents.~~

(b) Offer activities specifically designed for persons who are cognitively impaired.

(c) Have a physical environment that provides for the safety and welfare of the facility's residents.

(d) Employ staff who have completed the training and continuing education required in subsection (2).

For the safety and protection of residents with Alzheimer's disease, related disorders, or dementia, a secured, locked unit may be designated. The unit may consist of the entire building or a distinct part of the building. Exit doors must be equipped with an operating alarm system which release upon activation of the fire alarm. These units are exempt from specific life safety requirements to which assisted living residences are normally subject. A staff member must be awake and present in the secured unit at all times.

(6) The department shall maintain and post on its website ~~keep~~ a current list of providers who are approved to provide initial and continuing education for staff and direct care staff members of facilities that provide special care for persons with Alzheimer's disease or other related disorders.

~~(7) Any facility more than 90 percent of whose residents~~

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~~receive monthly optional supplementation payments is not required to pay for the training and education programs required under this section. A facility that has one or more such residents shall pay a reduced fee that is proportional to the percentage of such residents in the facility. A facility that does not have any residents who receive monthly optional supplementation payments must pay a reasonable fee, as established by the department, for such training and education programs.~~

(7) ~~(8)~~ The department shall adopt rules to establish standards for trainers and training and to implement this section.

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

And the title is amended as follows:

Delete line 268

and insert:

the issuance of conditional licenses; amending s. 429.178, F.S.; requiring a facility that houses persons with Alzheimer's disease or other related disorders to have an awake staff member on duty at all hours of the day and night for each secured unit of the facility; removing obsolete provisions relating to training and education programs; authorizing the designation of a secured, locked unit for residents with Alzheimer's disease, related disorders, or dementia; providing that the locked units are exempt from specific life safety requirements to which

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assisted living residences are normally subject;
amending s.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Wise) recommended the following:

Senate Amendment (with title amendment)

Between lines 3336 and 3337
insert:

Section 80. Subsections (3) and (4) of section 429.27, Florida Statutes, are amended to read:

429.27 Property and personal affairs of residents.—

(3) A facility <u>administrator</u>, upon mutual consent with the resident, shall provide for the safekeeping in the facility of personal effects<u>, including funds,</u> not in excess of $500 ~~and funds of the resident not in excess of $200 cash~~, and shall keep complete and accurate records of all such funds and personal effects received. If a resident is absent from a facility for 24


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hours or more, the facility may provide for the safekeeping of the resident's personal effects, including funds, in excess of $500.

(4) Any funds or other property belonging to or due to a resident, or expendable for his or her account, which is received by the administrator ~~a facility~~ shall be trust funds which shall be kept separate from the funds and property of the facility and other residents or shall be specifically credited to such resident. Such trust funds shall be used or otherwise expended only for the account of the resident. At least once every 3 months, unless upon order of a court of competent jurisdiction, the administrator ~~facility~~ shall furnish, upon written request, to the resident and his or her guardian, trustee, or conservator, if any, a complete and verified statement of all funds and other property to which this subsection applies, detailing the amount and items received, together with their sources and disposition. In any event, the facility shall furnish such statement annually and upon the discharge or transfer of a resident. Any governmental agency or private charitable agency contributing funds or other property to the account of a resident shall also be entitled to receive such statement annually and upon the discharge or transfer of the resident.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

Delete line 284
and insert:


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care-related services; amending s. 429.27, F.S.; requiring that upon mutual consent with the resident, the facility administrator keep safe the personal effects of the resident, including funds, not in excess of a specified amount; requiring the administrator, upon written request, to furnish at least once every 3 months to the resident and his or her guardian, trustee, or conservator, if any, a complete and verified statement of all funds and other property in the custody of the administrator; amending s. 429.28, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Flores) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 2981 and 2982
insert:

(41) The agency shall establish ~~provide for the development of~~ a demonstration project ~~by establishment~~ in Miami-Dade County of a long-term-care facility and a psychiatric facility licensed pursuant to chapter 395 to improve access to health care for a predominantly minority, medically underserved, and medically complex population and to evaluate alternatives to nursing home care and general acute care for such population. Such project is to be located in a health care condominium and collocated ~~colocated~~ with licensed facilities providing a continuum of

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care. These projects are ~~The establishment of this project is~~ not subject to the provisions of s. 408.036 or s. 408.039.

====== 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 2612 - 2613

and insert:

Section 72. Paragraph (a) of subsection (39) and subsection (41) of section 409.912, Florida Statutes, are amended to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

Between lines 233 and 234

insert:

requiring that the agency establish a demonstration project in Miami-Dade County of a psychiatric facility;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Wise) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 3297 - 3303
and insert:
(2) Every licensed facility ~~licensed under this part~~ is required to maintain adverse incident reports. For purposes of this section, the term, "adverse incident" means:
(a) An event over which facility staff ~~personnel~~ could exercise control rather than as a result of the resident's condition and results in:
1. Death;
2. Brain or spinal damage;
3. Permanent disfigurement;


597894

4. Fracture or dislocation of bones or joints;

5. Any condition that required medical attention to which the resident has not given his or her consent, excluding proceedings governed by part I of chapter 394, but including failure to honor advanced directives;

6. Any condition that requires the transfer of the resident from the facility to a unit providing more acute care due to the incident rather than the resident's condition before the incident; or

7. An event that is reported to law enforcement ~~or its personnel~~ for investigation; or

(b) Resident elopement, if the elopement places the resident at risk of harm or injury.

~~(3) Licensed facilities shall provide within 1 business day after the occurrence of an adverse incident, by electronic mail, facsimile, or United States mail, a preliminary report to the agency on all adverse incidents specified under this section. The report must include information regarding the identity of the affected resident, the type of adverse incident, and the status of the facility's investigation of the incident.~~

(3)~~(4)~~ Licensed facilities shall provide within 15 business days after the occurrence of an adverse incident, by electronic mail, facsimile, or United States mail, a full report to the agency on the ~~all~~ adverse incident, including information regarding the identity of the affected resident, the type of adverse incident, and ~~incidents specified in this section. The report must include~~ the results of the facility's investigation into the adverse incident.

~~(5) Each facility shall report monthly to the agency any~~

~~liability claim filed against it. The report must include the name of the resident, the dates of the incident leading to the claim, if applicable, and the type of injury or violation of rights alleged to have occurred. This report is not discoverable in any civil or administrative action, except in such actions brought by the agency to enforce the provisions of this part.~~

(4) ~~(6)~~ Abuse, neglect, or exploitation must be reported to the Department of Children and Family Services as required under chapter 415.

(5) ~~(7)~~ The information reported to the agency pursuant to subsection (3) which relates to persons licensed under chapter 458, chapter 459, chapter 461, chapter 464, or chapter 465 shall be reviewed by the agency. The agency shall determine whether any of the incidents potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 apply. The agency may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken in response to the incident. The agency shall review each incident and determine whether it potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 apply.

(6) ~~(8)~~ If the agency, through its receipt of the adverse incident reports prescribed in this part or through any investigation, has reasonable belief that conduct by a staff member ~~or employee~~ of a licensed facility is grounds for disciplinary action by the appropriate board, the agency shall report this fact to such regulatory board.

(7) ~~(9)~~ The adverse incident report ~~reports and preliminary~~

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~~adverse incident reports~~ required under this section is ~~are~~ confidential as provided by law and is ~~are~~ not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or appropriate regulatory board.

(8) ~~(10)~~ The Department of Elderly Affairs may adopt rules necessary to administer this section.

====== 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 3291 - 3294

and insert:

Section 78. Subsections (2) through (10) of section 429.23, Florida Statutes, are amended to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

Delete line 274

and insert:

exceptions; amending s. 429.23, F.S.; revising provisions relating to the internal risk management and quality assurance program and adverse incidents and reporting requirements; deleting

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Wise) recommended the following:

Senate Amendment (with title amendment)

Between lines 3416 and 3417
insert:

Section 83. Section 429.47, Florida Statues, is amended to read:

429.47 Prohibited acts~~; penalties for violation~~.—

(1) While an assisted living ~~a~~ facility is under construction or is seeking licensure, the owner may advertise to the public prior to obtaining a license. Facilities that are certified under chapter 651 shall comply with the advertising provisions of s. 651.095 rather than those provided for in this subsection.

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(2) A freestanding facility shall not advertise or imply that any part of it is a nursing home. For the purpose of this subsection, "freestanding facility" means a facility that is not operated in conjunction with a nursing home to which residents of the facility are given priority when nursing care is required. A person who violates this subsection is subject to fine as specified in s. 429.19.

(3) Any facility which is affiliated with any religious organization or which has a name implying religious affiliation shall include in its advertising whether or not it is affiliated with any religious organization and, if so, which organization.

(4) A facility licensed under this part which is not part of a facility authorized under chapter 651 shall include the facility's license number as given by the agency in all advertising. A company or person owning more than one facility shall include at least one license number per advertisement. All advertising shall include the term "assisted living facility" or the abbreviation "ALF" before the license number.

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

And the title is amended as follows:

Delete line 294

and insert:

care in an assisted living facility; amending s. 429.47, F.S.; revising provisions relating to prohibited acts of an assisted living facility; authorizing such facility's owner to advertise to the public before obtaining a license while under construction or seeking licensure; amending s.

503718

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Wise) recommended the following:

Senate Amendment (with title amendment)

Between lines 3416 and 3417
insert:

Section 83. Subsections (3), (5), and (8) of section 429.52, Florida Statutes, are amended, present subsection (11) of that section is redesignated as subsection (12), and a new subsection (11) is added to that section, to read:

429.52 Staff training and educational programs; core educational requirement.—

(3) Effective January 1, 2004, a new facility administrator must complete the required training and education, including the competency test, within a reasonable time after being employed

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as an administrator, as determined by the department. Failure to do so is a violation of this part and subjects the violator to an administrative fine as prescribed in s. 429.19. Administrators licensed in accordance with part II of chapter 468 are exempt from this requirement. ~~Other licensed professionals may be exempted, as determined by the department by rule.~~

(5) Staff involved with the management of medications and assisting with the self-administration of medications under s. 429.256 must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff, and must complete 2 hours of continuing education training annually. ~~The department shall establish by rule the minimum requirements of this additional training.~~

(8) The department shall adopt rules related to these training requirements, the competency test, necessary procedures, and competency test fees and shall adopt or contract with another entity to develop a curriculum, which shall be used as the minimum core training requirements. The department shall consult with representatives of ~~stakeholder~~ associations and organizations representing assisted living facilities and agencies in the development of the curriculum.

(11) A trainer certified by the department must meet continuing educational requirements and other standards as set forth in rules adopted by the department. A trainer or trainee may be sanctioned pursuant to s. 430.081 for failing to comply with the standards set forth in the rules.

Between lines 3529 and 3530

insert:

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Section 87. Section 430.081, Florida Statutes, is created to read:

430.081 Sanctioning of trainers and trainees.—

(1) The Department of Elderly Affairs may sanction trainers and trainees for infractions involving any required training that the department has the authority to regulate under chapter 400, chapter 429, or chapter 430 in order to ensure that such trainers and trainees satisfy specific qualification requirements and adhere to training curricula that is approved by the department.

(2) Training infractions include, but are not limited to, falsification of training records, falsification of training certificates, falsification of a trainer's qualifications, failure to adhere to the required number of training hours, failure to use the required curriculum, failure to maintain the continuing education for the trainer's recertification, failure to obtain reapproval of a curriculum when required, providing false or inaccurate information, misrepresentation of the required materials, and use of a false identification as a trainer or trainee.

(3) Sanctions may be progressive in nature and may consist of corrective action measures; suspension or termination from participation as an approved trainer or trainee, including sitting for any required examination; and administrative fines not to exceed $1,000 per incident. One or more sanctions may be levied per incident.

========== 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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Delete lines 294 - 304

and insert:

care in an assisted living facility; amending s. 429.52, F.S.; revising provisions relating to staff training and educational requirements; requiring that a trainer who is certified by the department continue to meet continuing education requirements; amending s. 429.53, F.S.; revising provisions relating to consultation by the agency; revising a definition; amending s. 429.54, F.S.; requiring licensed assisted living facilities to electronically report certain data semiannually to the agency in accordance with rules adopted by the department; amending s. 429.71, F.S.; revising schedule of inspection violations for adult family-care homes; amending s. 429.915, F.S.; revising agency responsibilities regarding the issuance of conditional licenses; creating s. 430.081, F.S.; authorizing the Department of Elderly Affairs to sanction trainers and trainees for infractions involving required training under ch. 400, ch. 429, or ch. 430, F.S.; providing training infractions; providing for sanctions; repealing s.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Richter) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 2175 and 2176
insert:

(t)1. A pilot project for the construction of a nursing home, including up to 150 beds, which must be:

a. Located in planning subdistricts 4-1, 4-2, or 4-3 of the Agency for Health Care Administration;

b. Affiliated with an accredited nursing school offering a bachelor of science and a master of science degree program within an accredited private university; and

c. Constructed on university property or on property abutting the university.

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2. The nursing home, once licensed, must maintain an affiliation with the accredited private university and must employ or otherwise make positions available for the education and training of nursing students in long-term care or geriatric nursing. Notwithstanding any moratorium on the construction of nursing homes or the addition of beds, the project may proceed with the construction, licensure, and operation of the nursing home. Construction of the nursing home must begin by May 31, 2012.

====== 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 2091 - 2093

and insert:

Section 57. Paragraph (d) of subsection (1) and paragraph (m) of subsection (3) of section 408.036, Florida Statutes, are amended, and paragraph (t) is added to subsection (3) of that section, to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

Delete line 200

and insert:

review; exempting a nursing home to be constructed and affiliated with a private university from certificate-of-need requirements; amending s. 408.037, F.S.; revising

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Wise) recommended the following:

Senate Amendment (with title amendment)

Between lines 3336 and 3337
insert:
Section 80. Subsection (4) of section 429.275, Florida Statutes, is repealed.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 284
and insert:
care-related services; repealing s. 429.275(4), F.S., relating to the business practice and personnel

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records of assisted living facilities; deleting a provision that authorizes the department to establish requirements by rule; amending s. 429.28, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete line 3164
and insert:
per license, with an additional fee of $50 per resident

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 245 - 247
and insert:
services; eliminating the license fee for the


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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Gaetz) recommended the following:

Senate Amendment (with directory and title amendments)

Delete line 2584
and insert:
(1) In addition to the grounds provided in authorizing statutes, grounds that may be used by the agency for denying and revoking a license or change of ownership application include any of the following actions by a controlling interest:
(a) False representation of a material fact in the license application or omission of any material fact from the application.
(b) An intentional or negligent act materially affecting the health or safety of a client of the provider.


845588

(c) A violation of this part, authorizing statutes, or applicable rules.

(d) A demonstrated pattern of deficient performance.

(e) The applicant, licensee, or controlling interest has been or is currently excluded, suspended, or terminated from participation in the state Medicaid program, the Medicaid program of any other state, or the Medicare program.

(2) If a licensee lawfully continues to operate while a denial or revocation is pending in litigation, the licensee must continue to meet all other requirements of this part, authorizing statutes, and applicable rules and must file subsequent renewal applications for licensure and pay all licensure fees. The provisions of ss. 120.60(1) and 408.806(3)(c) shall not apply to renewal applications filed during the time period in which the litigation of the denial or revocation is pending until that litigation is final.

(3) An action under s. 408.814 or denial of the license of the transferor may be grounds for denial of a change of ownership application of the transferee.

(4) Unless an applicant is determined by the agency to satisfy the provisions in subsection (5), the agency shall deny any application for a license or license renewal based upon any of the following actions of an applicant, a controlling interest of the applicant, or any entity in which a controlling interest of the applicant was an owner or officer at the time of any of the following actions: ~~In addition to the grounds provided in authorizing statutes, the agency shall deny an application for a license or license renewal if the applicant or a person having a controlling interest in an applicant has been:~~


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(a) A conviction or ~~Convicted of, or enters~~ a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, chapter 893, 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, Medicaid fraud, Medicare fraud or insurance fraud, unless the sentence and any subsequent period of probation for such convictions or plea ended more than 15 years prior to the date of the application; or

(b) Termination ~~Terminated~~ for cause from the Medicare ~~Florida Medicaid~~ program or from any state Medicaid program ~~pursuant to s. 409.913~~, unless the applicant has been in good standing with a state ~~the Florida~~ Medicaid program or the Medicare program for the most recent 5 years and the termination occurred at least 20 years before the date of the application~~; or~~

~~(c) Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from the federal Medicare program or from any other state Medicaid program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application~~.

(5) For any application subject to denial under subsection (4), the agency may consider mitigating circumstances as applicable, including, but not limited to:

(a) Completion or lawful release from confinement, supervision, or sanction, including any terms of probation, and full restitution;

(b) Execution of a compliance plan with the agency;

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(c) Compliance with any integrity agreement or compliance plan with any other government agency;

(d) Determination by any state Medicaid program or the Medicare program that the controlling interest or entity in which the controlling interest was an owner or officer is currently allowed to participate in the state Medicaid program or the Medicare program, either directly as a provider or indirectly as an owner or officer of a provider entity;

(e) Continuation of licensure by the controlling interest or entity in which the controlling interest was an owner or officer, either directly as a licensee or indirectly as an owner or officer of a licensed entity in the state where the action occurred;

(f) Overall impact upon the public health, safety, or welfare; or

(g) Determination that license denial is not commensurate with the prior action taken by the Medicare or state Medicaid program.

Upon consideration of the circumstances listed in this subsection, the agency shall grant the license, with or without conditions, grant a provisional license for a period of no more than the licensure cycle, with or without conditions, or deny the license.

(6) In order to ensure the health, safety, and welfare of

====== 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 2581 - 2582


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and insert:

Section 70. Section 408.815, Florida Statutes, is amended to read:

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

And the title is amended as follows:

Delete line 228

and insert:

408, F.S.; amending s. 408.815, F.S.; requiring that the agency deny any application for a license or license renewal of an applicant, a controlling interest of the applicant, or any entity in which a controlling interest of the applicant was an owner or officer during the occurrence of certain actions; authorizing the agency to consider certain mitigating circumstances; authorizing the

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Between lines 4121 and 4122
insert:

Section 107. This act does not reset the licensure fees, including the total fee, which have been adjusted by the Consumer Price Index since 1998. In addition to the Consumer Price Index adjustment, the per bed fee shall be increased by $9 to neutralize the elimination of the Limited Nursing Services specialty license fee.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

Delete line 376

and insert:

prescription drugs by blood establishments; providing that the act does not reset the licensure fees, including the total fee, which are adjusted by the Consumer Price Index; increasing the per bed fee to neutralize the elimination of the Limited Nursing Services specialty license fee; providing


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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Margolis) recommended the following:

Senate Amendment

Delete lines 1444 - 1448

and insert:

2. For persons under 21 years of age who are fragile, the requirements include a minimum combined average of licensed nurses, respiratory therapists, respiratory care practitioners, and certified nursing assistants of 5 hours of direct care per resident per day for each nursing home facility. Up to 1.5 hours of certified nursing assistant care per resident per day may be counted in determining the minimum direct care hours required.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Delete lines 2923 - 2926

and insert:

for the use of a drug. The agency shall accept from prescribers or pharmacists electronic requests for any drug requiring prior authorization and may post prior authorization criteria and protocol and updates to the list of drugs that are subject to prior authorization on an Internet website without amending its rule or engaging in additional rulemaking.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Joyner) recommended the following:

Senate Amendment (with title amendment)

Between lines 3593 and 3594
insert:

Section 90. Section 456.0635, Florida Statutes, is amended to read:

456.0635 Health care ~~Medicaid~~ fraud; disqualification for license, certificate, or registration.—

(1) ~~Medicaid~~ Fraud in the practice of a health care profession is prohibited.

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue ~~or renew~~ a

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license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant~~, has been~~:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction ~~21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396~~, unless the sentence and any subsequent period of probation for such conviction or plea ~~pleas~~ ended: ~~more than 15 years prior to the date of the application;~~

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.

Notwithstanding s. 120.60, for felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the board, or the department if there is no board, may not approve or deny the application for a license, certificate, or registration until the final resolution of the case;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such


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conviction or plea ended more than 15 years before the date of the application;

(c) ~~(b)~~ Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) ~~(c)~~ Has been terminated for cause, pursuant to the appeals procedures established by the state ~~or Federal Government~~, from any other state Medicaid program ~~or the federal Medicare program~~, unless the applicant has been in good standing with a state Medicaid program ~~or the federal Medicare program~~ for the most recent 5 years and the termination occurred at least 20 years before ~~prior to~~ the date of the application; or~~.~~

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to applicants for initial licensure or certification who were enrolled in an educational or training program on or before July 1, 2010, which was recognized by a board or, if there is no board, recognized by the department, and who applied for licensure after July 1, 2010.

(3) The department shall refuse to renew a license, certificate, or registration of any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under:

chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction since July 1, 2010.

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1, 2010.

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years.

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application.

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

For felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the department may not approve or deny the application for a renewal of a license, certificate, or registration until the final resolution of the case.

(4) ~~(3)~~ Licensed health care practitioners shall report allegations of health care ~~Medicaid~~ fraud to the department,


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regardless of the practice setting in which the alleged Medicaid fraud occurred.

(5) ~~(4)~~ The acceptance by a licensing authority of a candidate's relinquishment of a license which is offered in response to or anticipation of the filing of administrative charges alleging health care ~~Medicaid~~ fraud or similar charges constitutes the permanent revocation of the license.

Section 91. Subsection (6) of section 456.036, Florida Statutes, is amended to read:

456.036 Licenses; active and inactive status; delinquency.—

(6)(a) Except as provided in paragraph (b), a delinquent licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent licensee to become active or inactive before the expiration of the current licensure cycle renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

(b) A delinquent licensee whose license becomes delinquent before the final resolution of a case under s. 456.0635(3) must affirmatively apply by submitting a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which the case achieves final resolution by order of the court. Failure by a delinquent licensee to become active or inactive before the expiration of that licensure cycle renders

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the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

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

And the title is amended as follows:

Delete line 309

and insert:

applicants; amending s. 456.0635, F.S.; revising the grounds under which the Department of Health or corresponding board is required to refuse to admit a candidate to an examination and to refuse to issue or renew a license, certificate, or registration of a health care practitioner; providing an exception; amending s. 456.036, F.S.; requiring a delinquent licensee whose license becomes delinquent before the final resolution of a case regarding Medicaid fraud to affirmatively apply by submitting a complete application for active or inactive status during the licensure cycle in which the case achieves final resolution by order of the court; providing that failure by a delinquent licensee to become active or inactive before the expiration of that licensure cycle renders the license null; requiring that any subsequent licensure be as a result of applying for and meeting all requirements imposed on an applicant for new licensure; amending s. 483.035, F.S.; providing for a

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Altman) recommended the following:

Senate Amendment

Delete lines 385 - 390
and insert:
(1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. For residents of a facility licensed under part II of chapter 400, the provisions of s. 400.0255 are the exclusive procedures for all transfers and discharges.

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 Budget Committee

BILL:	CS/SB 1736
INTRODUCER:	Health Regulation Committee and Senator Latvala
SUBJECT:	Health Care
DATE:	April 21, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HR	**Fav/CS**
2.	Kynoch	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill repeals obsolete and redundant provisions, defines and corrects references to the Joint Commission, updates references to a variety of organizations and state agencies to reflect current titles or responsibilities related to facilities regulated by the Agency for Health Care Administration (AHCA), and streamlines reporting by licensed facilities and state agencies.

The bill makes the following substantive changes:

- Revises provisions affecting nursing homes as follows:
  - Expands the authorized staffing of a geriatric outpatient clinic in a nursing home to include a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, or physician;
  - Eliminates the requirement for a resident care plan to be signed by certain persons;
  - Authorizes a $1,000 fine per day if a nursing home fails to impose a moratorium on new admissions when the facility has not complied with the minimum-staffing requirements;
  - Eliminates the requirement for a newly hired nursing home surveyor to observe a facility's operations as a part of basic training;
  - Removes the one-year exception for the annual assessment related to Medicaid overpayments for leased nursing homes since the provision has expired;

  - Eliminates the requirement that an "incident" be reported within one-day and only requires reporting if the investigation, which must be completed within 15 days, indicates the incident qualifies as an adverse incident;
  - Requires the AHCA to adopt rules for minimum staffing requirements for nursing homes that serve persons under 21 years of age;
  - Eliminates the reporting of staffing ratios, staff turnover, and staff stability; and
  - Eliminates the monthly reporting of any notice of claims or liability claims filed against the facility;
- Revises provisions affecting assisted living facilities (ALFs) as follows:
  - Repeals the limited nursing services (LNS) specialty license and authorizes LNS to be provided by appropriately licensed persons in an ALF with a standard license;
  - Increases the per-bed fee for a standard-licensed ALF for beds that are not designated for recipients of optional state supplementation payments (OSS), to offset the loss of revenue that is currently generated from the fees associated with the LNS specialty license. The maximum amount that an ALF is required to pay for the standard license fee is increased;
  - Requires additional monitoring, either onsite or by a desk review, for an ALF that has been cited with a class I or class II deficiency. The bill repeals the requirement for additional monitoring inspections of an ALF licensed with an extended congregate care (ECC) specialty license;
  - Requires all ALFs to report electronically to the AHCA, at least semiannually, certain aggregated data related to the residents and staff of the facility;
  - Modifies the AHCA's consultation responsibilities;
  - Eliminates the monthly reporting of any notice of claims or liability claims filed against the facility; and
  - Exempts certain referrals activities from prohibitions against patient brokering;
- Authorizes home health agencies and nurse registries to provide small token items of minimum value (up to $10 individually) to referring entities without penalty;
- Authorizes an administrator of a nurse registry to manage up to five nurse registries;
- Exempts a nurse registry from the prohibition on remuneration if it does not bill Medicaid;
- Expands the definition of a portable equipment provider within the requirements for a health care clinic license to include a portable *health service* or equipment provider;
- Provides additional exemptions for licensure and regulation as a health care clinic for the following:
  - Pediatric cardiology or perinatology clinic facilities;
  - Certain corporate entities with $250 million or more in annual sales of health care services provided by licensed health care practitioners;
  - Certain publicly traded entities; and
  - Entities that employ at least a certain number of health care practitioners if the entity bills for medical services under a single corporate tax identification;
- Enhances the general licensing provisions of part II of ch. 408, F.S., to:
  - Provide that the license renewal notice that the AHCA sends is a *courtesy* notice;
  - Authorize the AHCA to impose an administrative fine, not to exceed $500 per violation, for violations that do not qualify within the classification scheme of class I – class IV violations;

  - Authorize the AHCA to extend the license expiration date for up to 30 days and impose other conditions during that extension period in order to accomplish the safe and orderly discharge of clients or residents; and
  - Prohibit activities related to altering, defacing, or falsifying a license certificate;
- Authorizes the AHCA to impose an administrative fine for class IV violations that are uncorrected or repeated by a licensed intermediate care facility for developmentally disabled persons;
- Requires a Medicaid claim for a prescription drug billed as a 340B prescribed medication to meet certain requirements;
- Authorizes group or individual health plans to offer rewards and incentives for persons participating in voluntary wellness or health improvement programs;
- Includes licensed orthotists and prosthetists in the definition of a health care provider under ch. 766, F.S., related to medical malpractice; and
- Requires a community blood center to disclose certain information on its website; exempts certain blood establishments from licensure as a prescription drug manufacturer and registering products; and enables certain community blood centers to obtain a permit to lawfully engage in the wholesale distribution of certain prescription drugs.

This bill is revenue neutral to the AHCA. The repeal of the LNS specialty license is projected to reduce revenues biennially. However, the biennial increase in the per-bed licensure fee for all ALF non-OSS beds is expected to offset the lost revenue. The Department of Health is able to absorb the workload associated with facility peer review of agendas and minutes within existing resources. There is no fiscal impact on the Department of Children and Family Services.

This bill amends the following sections of the Florida Statutes: 83.42, 154.11, 381.06014, 394.4787, 394.741, 395.002, 395.003, 395.0161, 395.0193, 395.1023, 395.1041, 395.1055, 395.10972, 395.2050, 395.3036, 395.3038, 395.602, 400.021, 400.0234, 400.0239, 400.0255, 400.063, 400.071, 400.0712, 400.111, 400.1183, 400.141, 400.142, 400.147, 400.19, 400.23, 400.275, 400.462, 400.484, 400.506, 400.509, 400.606, 400.607, 400.915, 400.925, 400.931, 400.932, 400.967, 400.9905, 400.991, 400.9935, 408.033, 408.034, 408.036, 408.037, 408.043, 408.05, 408.061, 408.07, 408.10, 408.804, 408.806, 408.8065, 408.809, 408.813, 408.815, 409.91196, 409.912, 429.07, 429.11, 429.17, 429.195, 429.255, 429.294, 429.41, 429.53, 429.54, 429.71, 429.915, 430.80, 440.13, 483.035, 483.051, 483.294, 499.003, 499.005, 499.01, 626.9541, 627.645, 627.668, 627.669, 627.736, 641.495, 651.118, 766.1015, 766.202, and 817.505.

The bill repeals the following sections of the Florida Statutes: 112.0455(10)(e) and (12)(d), 383.325, 395.1046, 395.3037, 400.145, 400.148, 400.179(2)(e), 408.802(11), 429.12(2), 429.23(5), 429.28(3), and 440.102(9)(d).

The bill reenacts the following section of the Florida Statutes: 400.464 and 400.506(6)(a).

II. Present Situation:

Health Care Licensing

The AHCA regulates over 41,000 health care providers under several regulatory programs based upon individual licensing statutes and the general licensing provisions in part II of ch. 408, F.S. The health care providers include:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act, as provided under ss. 112.0455 and 440.102, F.S.;
- Birth centers, as provided under ch. 383, F.S.;
- Abortion clinics, as provided under ch. 390, F.S.;
- Crisis stabilization units, as provided under parts I and IV of ch. 394, F.S.;
- Short-term residential treatment facilities, as provided under parts I and IV of ch. 394, F.S.;
- Residential treatment facilities, as provided under part IV of ch. 394, F.S.;
- Residential treatment centers for children and adolescents, as provided under part IV of ch. 394, F.S.;
- Hospitals, as provided under part I of ch. 395, F.S.;
- Ambulatory surgical centers, as provided under part I of ch. 395, F.S.;
- Mobile surgical facilities, as provided under part I of ch. 395, F.S.;
- Health care risk managers, as provided under part I of ch. 395, F.S.;
- Nursing homes, as provided under part II of ch. 400, F.S.;
- Assisted living facilities, as provided under part I of ch. 429, F.S.;
- Home health agencies, as provided under part III of ch. 400, F.S.;
- Nurse registries, as provided under part III of ch. 400, F.S.;
- Companion services or homemaker services providers, as provided under part III of ch. 400, F.S.;
- Adult day care centers, as provided under part III of ch. 429, F.S.;
- Hospices, as provided under part IV of ch. 400, F.S.;
- Adult family-care homes, as provided under part II of ch. 429, F.S.;
- Homes for special services, as provided under part V of ch. 400, F.S.;
- Transitional living facilities, as provided under part V of ch. 400, F.S.;
- Prescribed pediatric extended care centers, as provided under part VI of ch. 400, F.S.;
- Home medical equipment providers, as provided under part VII of ch. 400, F.S.;
- Intermediate care facilities for persons with developmental disabilities, as provided under part VIII of ch. 400, F.S.;
- Health care services pools, as provided under part IX of ch. 400, F.S.;
- Health care clinics, as provided under part X of ch. 400, F.S.;
- Clinical laboratories, as provided under part I of ch. 483, F.S.;
- Multiphasic health testing centers, as provided under part II of ch. 483, F.S.; and
- Organ, tissue, and eye procurement organizations, as provided under part V of ch. 765, F.S.

The general licensing provisions contain standards for licensure application requirements, ownership disclosure, staff background screening, inspections, and administrative sanctions. Each provider type has an authorizing statute (as listed above) that includes unique provisions for licensure beyond the general licensing provisions. If a conflict exists between the general

licensing provisions and the authorizing statute, s. 408.832, F.S., provides that the general licensing provisions prevail.

There are several references in the authorizing statutes that conflict or duplicate regulations in the general licensing provisions, including references to the classification of deficiencies, penalties for an intentional or negligent act by a provider, provisional licenses, proof of financial ability to operate, inspection requirements, and plans of corrections from providers.

Nursing homes provide long-term and sub-acute care to persons in need of 24-hour nursing services or significant supportive services. Nursing home residents are generally frail, physically and psychosocially compromised, heavily dependent upon others for basic care and sustenance, and in some cases near the end of their lives. When residents live in an environment where they are totally dependent on others, they are especially vulnerable to abuse, neglect, and exploitation.

The quality of care and quality of life for residents of nursing homes have been a concern for decades. Nursing home regulation has evolved over the past 20 years at the state and federal levels. In February 2001, the Committee on Health, Aging and Long-Term Care in the Florida Senate published Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*.[1] This report lays out the historical landscape and challenges of long-term care in Florida as it existed in the early part of this decade. Generally, the nursing home system in Florida was near crisis with increasing litigation and adverse judgments, spiraling liability insurance premiums or the inability to obtain liability coverage from regulated carriers, financial instability of nursing homes, and concerns regarding the quality of care that patients were receiving and prospective care based on increasingly more complex resident needs.
Chapter 2001-45, Laws of Florida (L.O.F.), stemming in part from the Interim Project Report 2001-025, represented a significant overhaul of the long-term care system in Florida. Among other things, this law established a monthly reporting requirement of liability claims filed against nursing homes. This data, as well as other data related to nursing homes was included in a Semi-annual Report on Nursing Homes that the AHCA was required to submit to the Governor and Legislature. This statutory reporting obligation in s. 400.195, F.S., expired on June 30, 2005. Cumulative data is reported on the AHCA's website that reflects trending information on the number of claims filed statewide monthly and quarterly.[2]

Assisted Living Facilities

An assisted living facility provides housing, meals, personal care services, and supportive services to older persons and disabled adults who are unable to live independently. ALFs are intended to be an alternative to more restrictive, institutional settings for individuals who need housing and supportive services, but who do not need 24-hour nursing supervision. Generally, an ALF provides supervision, assistance with personal care services, such as bathing, dressing, eating, and assistance with or administration of medications.

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[1] The Florida Senate Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*, may be found at <http://www.flsenate.gov/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-025hc.pdf> (Last visited on March 19, 2011).
[2] *See:* <http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/NH_Chart.pdf> (Last visited on March 19, 2011).

As of December 2009, there were 2,830 ALFs licensed with a standard license by the AHCA in this state, for a total of 80,539 beds.[3] In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide LNS, limited mental health services,[4] and ECC services. As of September 2009, there were 475 ALFs licensed with a standard license only, for a total of 32,356 beds.[5]

LNS Specialty License

An LNS license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license. As of December 2009, there were 977 ALFs licensed with an LNS specialty license.[6]

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules,[7] may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community. A nursing assessment, that describes the type, amount, duration, scope, and outcomes or services that are rendered and the general status of the resident's health, is required to be conducted at least monthly on each resident who receives a limited nursing service.

An LNS licensee is subject to monitoring inspections by the AHCA or its agents at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.[8]

The biennial fee for an LNS license is $296 per license with an additional fee of $10 per resident based on the total licensed resident capacity of the facility.[9] Ostensibly, this fee covers the additional monitoring inspections currently required of facilities with an LNS license.

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[3] Source: The AHCA 2010 Bill Analysis & Economic Impact Statement for SPB 7018, on file with the Senate Health Regulation Committee.

[4] An ALF that serves three or more mental health residents must obtain a limited mental health specialty license. A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives OSS.

[5] Source: The AHCA in an email to committee professional staff dated September 23, 2009.

[6] *Id*, fn 5. The AHCA does not track the number of LNS beds.

[7] Rule 58A-5.031, F.A.C. The additional nursing services that might be performed pursuant to the LNS license include: conducting passive range of motion exercises; applying ice caps or collars; applying heat, including dry heat, hot water bottle, heating pad, aquathermia, moist heat, hot compresses, sitz bath and hot soaks; cutting the toenails of diabetic residents or residents with a documented circulatory problem if the written approval of the resident's health care provider has been obtained; performing ear and eye irrigations; conducting a urine dipstick test; replacing an established self-maintained indwelling urinary catheter, or performing an intermittent urinary catheterization; performing digital stool removal therapies; applying and changing routine dressings that do not require packing or irrigation, but are for abrasions, skin tears and closed surgical wounds; caring for stage 2 pressure sores, (care for stage 3 or 4 pressure sores are not permitted); caring for casts, braces and splints, (care for head braces, such as a halo, is not permitted); assisting, applying, caring for, and monitoring the application of anti-embolism stockings or hosiery; administering and regulating portable oxygen; applying, caring for, and monitoring a transcutaneous electric nerve stimulator (TENS); performing catheter, colostomy, and ileostomy care and maintenance; conducting nursing assessments; and, for hospice patients, providing any nursing service permitted within the scope of the nurse's license, including 24-hour nursing supervision.

[8] s. 429.07(3)(c), F.S.

[9] s. 429.07(4)(c), F.S., as adjusted per s. 408.805(2), F.S.

Licensure Fees

The biennial licensure fees for the ALF standard license and specialty licenses are found in s. 429.07(4), F.S. This section refers to the general health care licensure provisions in part II of ch. 408, F.S. Section 408.805, F.S., provides for licensure fees to be adjusted annually by not more than the change in the Consumer Price Index (CPI) based on the 12 months immediately preceding the increase. The following chart reflects the licensure fees contained in s. 429.07(4), F.S., and the adjusted licensure fees based on the CPI that are currently in effect, for licenses expiring on or after August 1, 2010.[10]

Fee Description	Per s. 429.07(4), F.S.	CPI adjusted (current fee)
Standard ALF Application Fee	$300	$366
Standard ALF Per-Bed Fee (non-OSS)	$50	$61
Total Licensure fee for Standard ALF	$10,000	$13,443
ECC Application Fee	$400	$515
ECC Per-Bed Fee (licensed capacity)	$10	$10
LNS Application Fee	$250	$304
LNS Per-Bed Fee (licensed capacity)	$10	$10

Senate Interim Project Report 2010-118

During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the licensure structure for ALFs. The recommendations in the resulting report are to repeal the LNS specialty license and authorize a standard-licensed ALF to provide the nursing services currently authorized under the LNS license; require an additional inspection fee, adjusted for inflation, for a facility that indicates that it intends to provide LNS; require each ALF to periodically report electronically information, as determined by rule, related to resident population, characteristics, and attributes; authorize the AHCA to determine the number of additional monitoring inspections required for an ALF that provides LNS based on the type of nursing services provided and the number of residents who received LNS as reported by the ALF; and repeal the requirement for the AHCA to inspect *all* the ECC licensees quarterly, instead targeting monitoring inspections for those facilities with residents receiving ECC services.

Liability Claims Reporting

Chapter 2001-45, L.O.F.,[11] also established a monthly reporting requirement of liability claims filed against assisted living facilities. Cumulative data is reported on the AHCA's website that reflects trending information on the number of claims filed statewide monthly and quarterly.[12]

[10] Found on the AHCA website at: <http://ahca.myflorida.com/MCHQ/LONG_TERM_CARE/Assisted_living/alf/ALF_fee_increase.pdf>, (Last visited on March 19, 2010).

[11] s. 36, ch. 2001-45, L.O.F., creating s. 400.423, F.S.

[12] *See*: <http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf> (Last visited on March 19, 2011).

Adult Family-Care Homes

An adult family-care home is a full-time family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. The adult family-care home provider must live in the home. Adult family-care homes are licensed and regulated under part II of ch. 429, F.S., part II of ch. 408, F.S., and Chapter 58A-14, F.A.C., unless the person who owns or rents the home provides room, board, and personal services for not more than two adults who do not receive optional state supplementation, or for only his or her relatives. A frail elder is a functionally impaired person who is 60 years of age or older and who has physical or mental limitations that restrict the person's ability to perform the normal activities of daily living and impede the person's capacity to live independently.

Federally Qualified Health Centers

Federally Qualified Health Centers (FQHCs)[13] are also referred to as rural health clinics. They are certified by the CMS to participate in the Medicare and Medicaid programs and receive federal grant funding. They primarily operate in areas designated as rural areas, having a shortage of personal health services, and having medically underserved populations.

Since 1981, the Florida Association of Community Health Centers, Inc. (FACHC) has been the leading state advocate for community-based health care programs. Focusing on Florida's Federally Qualified Community Health Centers, the Association plays a vital role in educating federal, state and local policymakers about issues relating to health care and the role of the health centers. The primary mission of FACHC is to improve access to quality health services by bringing together agencies, legislators and key persons able to affect health care services.[14]

[13] *See:* 42 C.F.R. 491.
[14] For additional information *see:* <http://www.fachc.org/about-welcome.php>, (Last visited on March 19, 2011).

Wellness or Health Improvement Programs

Chapter 626, F.S., governs the practices of insurance agents and the operations of insurance companies.[15] Section 626.9541, F.S., defines unfair methods of competition and unfair or deceptive acts or practices. The section specifies 32 different acts that qualify under the definition.[16] Among the prohibited acts relating to rates that may be charged to policyholders are: "unfair discrimination," which is defined as knowingly making an unfair discrimination between individuals of the same actuarially supportable class in the amount of premium charged for a policy, or in the benefits payable under the contract, or in the terms and conditions of the contract;[17] and "unlawful rebates," which prohibits paying, directly or indirectly, any valuable consideration or inducement not specified in the contract.[18]

Blood Establishments[19]

A blood establishment is defined in s. 381.06014, F.S., to mean any person, entity, or organization, operating within Florida, which examines an individual for the purpose of blood donation or which collects, processes, stores, tests, or distributes blood or blood components collected from the human body for the purpose of transfusion, for any other medical purpose, or for the production of any biological product.

The State of Florida does not issue a specific license as a blood establishment. Florida law[20] requires a blood establishment operating in Florida to operate in a manner consistent with the provisions of federal law in Title 21 Code of Federal Regulations (C.F.R.) parts 211 and 600-640, relating to the manufacture and regulation of blood and blood components. If the blood establishment does not operate accordingly and is operating in a manner that constitutes a danger to the health or well-being of blood donors or recipients, the AHCA or any state attorney may bring an action for an injunction to restrain such operations or enjoin the future operation of the establishment.

Federal law classifies blood establishments as follows:[21] community (non-hospital) blood bank ("community blood center"), hospital blood bank, plasmapheresis center, product testing laboratory, hospital transfusion service, component preparation facility, collection facility, distribution center, broker/warehouse, and other. Community blood centers are primarily engaged in collecting blood and blood components from voluntary donors to make a safe and adequate supply of these products available to hospitals and other health care providers in the

[15] *See* ss. 626.011 through 626.99296, F.S.
[16] *See* s. 626.9541(1)(a) through (ff), F.S.
[17] *See* s. 626.9541(1)(g), F.S.
[18] *See* s. 626.9541(1)(h), F.S.
[19] During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the regulation of blood banks (a.k.a. community blood centers). For additional information refer to Interim Report 2010-119 available at: <http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-119hr.pdf> (Last visited on April 8, 2010).
[20] s. 381.06014, F.S.
[21] A description of these classifications may be found at: <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/ucm055484.htm> (Last visited on April 8, 2010).

community for transfusion. Blood establishments that focus on the collection of plasma that is not intended for transfusion, but is intended to be sold for the manufacture of blood derivatives[22] routinely pay donors.

Community blood centers in Florida are licensed as clinical laboratories by the AHCA, unless otherwise exempt.[23] As a part of the clinical laboratory license, the facility is inspected at least every two years. The AHCA may accept surveys or inspections conducted by a private accrediting organization in lieu of conducting its own inspection. The clinical laboratory personnel are required to maintain professional licensure by the Department of Health (DOH). Community blood centers must also have appropriate licenses issued by the DOH and must comply with laws related to biomedical waste[24] and radiation services.[25]

Currently, there are six not-for-profit corporations and one for-profit corporation that operate community blood centers in Florida. Several hospital-owned blood centers operate in this state as well, primarily collecting for their own use. At least one community blood center that does not have a fixed location in Florida, collects blood and blood components using a mobile blood-collection vehicle from volunteer donors and distributes blood and blood components to health care providers in Florida.

Human blood and blood products are characterized as both "biologics,"[26] for purposes of regulation under the Federal Public Health Service Act, as amended, and also as "drugs," subject to regulation under applicable provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act).[27] Some of the community blood centers are licensed by the DOH as a prescription drug wholesaler since they purchase and distribute prescription drugs, such as blood, blood components, blood derivatives, and other prescription drugs used in the collection, processing, and therapeutic activities conducted by the community blood centers.[28]

The Florida Drug and Cosmetic Act (the Act),[29] as well as federal law,[30] prohibits the sale, purchase or trade (wholesale distribution) of a prescription drug that was purchased by… a health care entity. A community blood center is a health care entity,[31] however, some of the

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[22] Blood derivatives are classified as prescription drugs.
[23] Rule 59A-7.019, F.A.C., and part I of ch. 483, F.S., related to Health Testing Services.
[24] Rule ch. 64E-16, F.A.C., Biomedical Waste, and s. 381.0098, F.S.
[25] Rule ch. 64E-5, F.A.C., Control of Radiation Hazards. If a blood center irradiates blood products using radioactive materials, the location in which this occurs must be licensed. If a blood center irradiates blood products using a machine, then the community blood center must register the machine.
[26] The term "biologics" or "biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product,… applicable to the prevention, treatment, or cure of a disease or condition of human beings.
See: <http://www.law.cornell.edu/uscode/42/usc_sec_42_00000262----000-.html> (Last visited on April 8, 2010).
[27] The FDA "CPG 230.120 – Human Blood and Blood Products as Drugs" "Inspections, Compliance, Enforcement, and Criminal Investigations" available at:
< http://www.fda.gov/ICECI/ComplianceManuals/CompliancePrograMManual/ucm073863.htm> (Last visited on April 8, 2010). Blood and blood components intended for further manufacture into products that meet the device definition are biological devices.
[28] Ch. 499, F.S., related to Drugs, Devices, and Cosmetics.
[29] s. 499.005(21), F.S.
[30] 21 U.S.C. 353(c)(3)(A)(ii)(l) (Section 503(c)(3)(A)(ii)(l) of the FD&C Act).
[31] A health care entity is defined as a closed pharmacy or any person, organization, or business entity that provides

community blood centers in this state are licensed as prescription drug wholesalers in order to purchase and distribute certain prescription drugs that are needed by community blood centers and hospitals to deliver health care services that are traditionally performed by, or in cooperation with, community blood centers. For example, some community blood centers offer hospitals the full range of blood-related products, such as albumin (to replace fluid), Rh Immune Globulin (to prevent incompatible maternal-fetal blood admixture), and erthropoietin (to stimulate the production of red blood cells), as well as trained personnel and expertise in handling those products. The Act and licensure of community blood centers under the Act are at odds with providing critical health care services by community blood centers.[32]

In November 2008, the FDA's rule to address this dilemma in federal law became effective.[33] That rule provides for exceptions to authorize a registered blood establishment that qualifies as a health care entity to sell, purchase, or trade certain prescription drugs that would otherwise be prohibited. The DOH suggested that the authorizations in the federal rule should be included in the Act, but could be more narrowly crafted to limit the sale, purchase, or trade of these prescription drugs *to a health care entity* to avoid unintended consequences or the opportunity for community blood centers to compete in the marketplace as a prescription drug wholesaler.

The DOH notes that blood establishments have not been permitted under the Act as a prescription drug manufacturer and have not registered the prescription drugs that they manufacture (the blood and blood components) with the DOH, notwithstanding the fact that blood establishments are considered manufacturers of prescription drugs under federal law. The distribution of the prescription drugs that blood establishments manufacture have been exempted from the definition of wholesale distribution under s. 499.003(53)(d), F.S., for years. This situation applies to the community blood centers as well as other types of blood establishments, such as the establishments that collect plasma from paid donors.

III. Effect of Proposed Changes:

Sections 2, 4, 13, 18, 32, 34, 35, 64, 75, 78, 80, and 88 repeal the following sections of the Florida Statutes:

- s. 112.0455(10)(e) and (12)d), F.S., to remove an obsolete provision concerning drug testing within the Drug-Free Workplace Act. The Division of Statutory Revision requested clarification of this provision. Also this bill repeals a monthly reporting requirement for a laboratory to notify the AHCA of statistical information regarding drug testing;
- s. 383.325, F.S., related to public access to governmental inspection reports for birth centers, since this is required in the general licensing provisions in part II of ch. 408, F.S.;
- s. 395.1046, F.S., related to the AHCA's investigation procedures for complaints against a hospital for violations of the access to emergency services and care provisions under

diagnostic, medical, surgical, or dental treatment or care, or chronic or rehabilitative care, but does not include any wholesale distributor or retail pharmacy licensed under state law to deal in prescription drugs. See s. 499.003(23), F.S. The federal definition, found at 21 C.F.R. § 203.3(q), is similar.

[32] The DOH indicated in an email to Florida Senate Health Regulation Committee staff, dated November 12, 2009, that at the present time, they are not aware of any serious abuses or action by the licensed community blood centers that may pose a public health threat.

[33] The final rule in Vol. 73, No. 197 of the Federal Register on page 59496, published on October 9, 2008, is available at: <http://edocket.access.gpo.gov/2008/pdf/E8-24050.pdf> (Last visited on April 8, 2010).

s. 395.1041, F.S. Complaint procedures exist in the general licensing provisions in part II of ch. 408, F.S. The federal process for emergency access complaints dictates that access to emergency services and care complaints be handled similarly to routine complaints;

- s. 395.3037, F.S., related to definitions of Department and Agency as they pertain to stroke centers. These terms are already defined in s. 395.002, F.S., which provides definitions for all of ch. 395, F.S.;
- s. 400.145, F.S., related to release of nursing facility records since the Federal Health Insurance Portability and Accountability Act (HIPAA), governs release of medical records.
- s. 400.148, F.S., related to the obsolete Medicaid "Up-or-Out" Quality of Care Contract Management Program;
- s. 400.179(2)(e), F.S., related to a one-year exemption to nursing home leasehold bond payments;
- s. 408.802(11), F.S., related to the general licensure provisions, to delete reference to private review agents. The regulation of private review agents was repealed by the Legislature in 2009;
- s. 429.12(2), F.S., related to change of ownership for assisted living facilities, since this is addressed under the general licensing provisions in part II of ch. 408, F.S.;
- s. 429.23(5), F.S., to repeal the requirement for an assisted living facility to report monthly to the AHCA any liability claim filed against it, which is currently published in the aggregate on the AHCA's website;
- s. 429.28(3), F.S., to eliminate duplicative provisions related to inspections and monitoring facilities that have been cited with violations. The provision requiring the AHCA to determine whether an ALF licensee is adequately protecting residents' rights in its biennial survey is transferred to s. 429.07, in another section of this bill; and
- s. 440.102(9)(d), F.S., to remove a monthly reporting requirement for a laboratory to notify the AHCA of statistical information regarding drug testing under workers' compensation provisions.

Sections 3, 6, 19, 48, 54, 60, 87, 89, 94, 95, 96, 97, 98, and 100 amend the following sections of the Florida Statutes to update the name of certain accrediting organizations, including the Joint Commission:

- s. 154.11, F.S., related to facilities owned and operated by the board of trustees of each public health trust;
- s. 394.741, F.S., related to providers of behavioral health care services;
- s. 395.3038, F.S., related to stroke centers;
- s. 400.925, F.S., related to home medical equipment providers;
- s. 400.9935, F.S., related to health care clinics;
- s. 408.05, F.S., related to health care quality measures that are reported by the AHCA;
- s. 430.80, F.S., related to the teaching nursing home pilot project;
- s. 440.13, F.S., related to workers' compensation;
- s. 627.645, F.S., related to health insurance;
- s. 627.668, F.S., related to insurance coverage for mental and nervous disorders;
- s. 627.669, F.S., related to insurance for substance abuse impaired persons;
- s. 627.736, F.S., related to personal injury protection automobile insurance;
- s. 641.495, F.S., related to health maintenance organizations and prepaid health clinics; and

- s. 766.1015, F.S., related to boards or other groups established for quality improvement purposes.

Section 1 amends s. 83.42, F.S., to clarify that state law on evictions under the landlord tenant act does not apply to nursing home transfers and discharges.

Section 5 amends s. 394.4787, F.S., to correct a cross-reference concerning licensure of a specialty psychiatric hospital.

Section 7 amends s. 395.002, F.S., to redefine the term "accrediting organizations" as it relates to hospitals and other licensed facilities to delete the list of four organizations that are identified in statute. The term is redefined to mean nationally recognized or approved accrediting organizations whose standards incorporate comparable licensure requirements as determined by the AHCA. In addition, the following obsolete definitions are repealed: "initial denial determination," "private review agent," "utilization review," and "utilization review plan."

Section 8 amends s. 395.003, F.S., to remove obsolete language concerning emergency departments located off-site from a licensed hospital.

Section 9 amends s. 395.0161, F.S., to allow for payment of the per-bed licensure inspection fee and lifesafety inspection fee at the time of licensure renewal.

Section 10 amends s. 395.0193, F.S., related to peer review of physicians within hospitals and licensed facilities, to correct references to the Division of Medical Quality Assurance of the DOH.

Section 11 amends s. 395.1023, F.S., related to reporting actual or suspected cases of child abuse, abandonment, or neglect by hospitals and licensed facilities, to clarify that references to the Department mean the Department of Children and Family Services (DCF).

Section 12 amends s. 395.1041, F.S., to remove obsolete language pertaining to services within a hospital's service capability. The Division of Statutory Revision requested clarification of this provision.

Section 14 amends s. 395.1055, F.S., to require that the AHCA's rulemaking concerning licensed facility beds conform to standards specified by the AHCA, the Florida Building Code, and the Florida Fire Prevention Code.

Section 15 amends s. 395.10972, F.S., to update the reference to the current name of the Florida Society for Healthcare Risk Management and Patient Safety.

Section 16 amends s. 395.2050, F.S., to update the reference to the current name of the Centers for Medicare and Medicaid Services.

Section 17 amends s. 395.3036, F.S., to correct a cross-reference concerning the confidentiality of records and meetings of corporations that lease public health care facilities. The Division of Statutory Revision requested clarification of this provision.

Section 20 amends s. 395.602, F.S., to eliminate one of the conditions that qualifies a hospital as a rural hospital. This condition is a hospital in a constitutional charter county with a population of over 1 million persons that has imposed a local option health service tax, in an area that was directly impacted by a catastrophic event on August 24, 1992, for which the Governor of Florida declared a state of emergency, has 120 beds or less that serves an agricultural community with an emergency room utilization of no less than 20,000 visits, and a Medicaid inpatient utilization rate greater than 15 percent. No hospitals meet this condition.

Section 21 amends s. 400.021, F.S., to expand the definition of a geriatric outpatient clinic in a nursing home, to add that it may be staffed by a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, or physician. Currently, the definition of a geriatric outpatient clinic provides that it is to be staffed by a registered nurse or a physician assistant.

The bill also amends the definition of a resident care plan to remove the requirement that the resident care plan be signed by the director of nursing or alternate and the resident or the resident's designee or legal representative.

Section 22 amends s. 400.0234, F.S., to the availability of nursing home records for investigation of resident's rights to conform to other amendments in the bill.

Section 23 amends s. 400.0239, F.S., to delete an obsolete reference to the Medicaid "Up or Out" Quality of Care Contract Management Program.

Section 24 amends s. 400.0255, F.S., to correct an obsolete cross-reference to an administrative rule concerning fair hearings requested by nursing home residents. This correction was requested by the Joint Administrative Procedures Committee.

Section 25 amends s. 400.063, F.S., to eliminate a cross-reference in the procedures for resident protection and relocation accounts, since the section of law that is referenced was repealed. The Division of Statutory Revision requested clarification of this provision.

Section 26 amends s. 400.071, F.S., to repeal disclosure of certain information related to the closure of other licensed facilities in which the nursing home licensure applicant held a controlling interest. The bill amends s. 400.111, F.S., to require certain disclosures to replace these requirements. This section also repeals the requirement for a nursing home licensure applicant to identify the number of beds and number of Medicare and Medicaid certified beds since this is required in the general licensing provisions in s. 408.806(1)(d), F.S.

Section 27 amends s. 400.0712, F.S., to make technical changes to move into another subsection the authority for a nursing home to request an inactive license for a portion of its beds and to provide a cross-reference to the general licensure provisions in part II of ch. 408, F.S.

Section 28 amends. s. 400.111, F.S., to require disclosure of certain information concerning other licenses that a controlling interest has held when requested by the AHCA instead of a mandatory submission for all nursing home licensure applications.

Section 29 amends s. 400.1183, F.S., to repeal the requirement for a nursing home to report to the AHCA upon relicensure information concerning grievances received by the facility; instead, requiring the nursing home to maintain a log of the grievances for the AHCA's inspection.

Section 30 amends s. 400.141, F.S., to authorize a nursing home with a standard licensure status or one that has been awarded a Gold Seal, to provide respite care for a maximum of 14 days per stay pursuant to an abbreviated plan of care. The abbreviated plan of care must, at a minimum, include nutritional requirements, medication orders, physician orders, nursing assessments, and dietary preferences. A contract must be executed for each person admitted under the respite care program that specifies the services to be provided and the charges for those services. This contract may be used for subsequent admissions for that person within one year after the date of execution. A respite resident may receive a total of 60 days of respite care within a 12-month period. A prospective respite resident must provide medical information from one of the specified practitioners along with an order for respite care. Provisions are made for the respite resident to use his or her personal medications and the nursing home must arrange for transportation to certain health care services to ensure continuity of care and services while the resident is receiving the respite care. A person admitted to the nursing home under the respite care program is exempt from requirements related to discharge planning and is covered by certain residents' rights.

A nursing home is required to maintain complete clinical records on each resident that are readily accessible and systematically organized.

The bill eliminates the nursing home reporting requirements pertaining to staffing ratios, staff turnover, and staff stability.

The bill eliminates the requirement for a licensed nursing facility to disclose, within 30 days after the nursing home executes an agreement with a company to manage the nursing home, certain information related to the closure of other licensed facilities in which the management company held a controlling interest.

The bill requires the AHCA to fine a nursing facility $1,000 if it fails to impose a moratorium on new admissions when the facility has not complied with the minimum-staffing requirements.

The bill repeals the requirement for a licensed nursing home to report to the AHCA information concerning filing for bankruptcy, divestiture of assets, or corporate reorganization. A similar provision is amended into the general licensing provisions in s. 408.810, F.S., in this bill.

The authority for a nursing facility to charge for copying a resident's records is transferred from another section law which is repealed in this bill.

Section 31 amends s. 400.142, F.S., to eliminate the requirement for the AHCA to adopt rules related to nursing facility staff implementing an order to withhold or withdraw cardiopulmonary resuscitation inasmuch as statutory provisions exist in s. 401.45, F.S., for emergency medical responders.

Section 33 amends s. 400.147, F.S., to remove the 1-day notification requirement to the AHCA when a risk manager in a nursing home receives an incident report. The risk manager for the nursing home is only required to report to the AHCA if, after the investigation, it is determined that the incident was an adverse incident. The investigation must be completed within 15 days.

This section also repeals the requirement for a licensed nursing home to report to the AHCA, monthly, any notice of claims against the facility for violation of a resident's rights or negligence. This information has been required to be submitted since 2001. It was included in the AHCA's Semi-Annual Report on Nursing Homes, which is repealed in another section of this bill. Currently this information is published in the aggregate on the AHCA's website;

Section 36 amends s. 400.19, F.S., to authorize the AHCA to certify correction of a class III or class IV deficiency related to resident rights or resident care based on written documentation from the facility.

Section 37 amends s. 400.23, F.S., to update the reference to the current name of the Division of Children's Medical Services Network of the DOH. The Division of Statutory Revision requested clarification of this provision.

In addition, the bill requires the AHCA to adopt rules for minimum staffing requirements for nursing homes that serve persons under 21 years of age. These rules are to be adopted in collaboration with the DOH Division of Children's Medical Services Network and must require, at a minimum, 3.9 hours of direct care per resident per day for residents requiring skilled care and 5 hours of direct care per resident per day for residents who are fragile.

Section 38 amends s. 400.275, F.S., to eliminate the requirement for the AHCA to assign each newly hired nursing home surveyor to observe a facility's operations as a part of basic training. The AHCA nursing home staff must be qualified under the federal requirements for the Surveyor Minimum Qualifications Test.

Section 39 amends s. 400.462, F.S., to authorize home health agencies and nurse registries to provide small token items of minimal value (up to $10 individually) to referring entities without penalty. Examples of such items which are included in the bill are a plaque, certificate, trophy, or a novelty item that is intended solely for presentation or is customarily given away solely for promotional, recognition, or advertising purposes.

Section 40 amends s. 400.484, F.S., related to violations by home health agencies, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section.

Section 41 amends s. 400.506, F.S., to exempt a nurse registry from the prohibition on remuneration if it does not bill Medicaid. Also, the bill authorizes an administrator of a nurse registry to manage up to five nurse registries if all five have identical controlling interest and are located within one AHCA geographic service area or within an immediately contiguous county. However, if an administrator serves in that role for more than one nurse registry, the administrator must designate, in writing, a qualified alternate administrator at each licensed location to serve during the administrator's absence.

Section 42 amends s. 400.509, F.S., to exempt organizations which are under contract with the Agency for Persons with Disabilities and that provide companion services only for persons with developmental disabilities from registration with the AHCA as a homemaker/companion service provider.

Section 43 reenacts subsection (5) of s. 400.464, F.S., related to exemptions from licensure for certain home health agencies.

Section 44 reenacts s. 400.506(6)(a), F.S., related to licensure requirements for nurse registries.

Section 45 amends s. 400.606, F.S., to eliminate the requirement for an applicant for a hospice license to submit the projected annual operating cost of the hospice. Under the general licensing provisions, in part II of ch. 408, F.S., an applicant for licensure must submit information pertaining to the applicant's financial ability to operate.

Section 46 amends s. 400.607, F.S., to clarify the grounds for administrative action by the AHCA against a hospice and eliminate duplicative provisions found in the general licensing provisions in part II of ch. 408, F.S.

Section 47 amends s. 400.915, F.S., to correct an obsolete cross-reference to an administrative rule concerning the construction or renovation of a prescribed pediatric extended care center. This correction was requested by the Joint Administrative Procedures Committee.

Section 49 amends s. 400.931, F.S., to require an applicant that is located outside of the state to submit documentation of accreditation, or a copy of an application for accreditation, when applying for a home medical equipment provider license. The applicant must provide proof of accreditation that is not conditional or provisional within 120 days after the AHCA's receipt of the application for licensure or the application shall be withdrawn from further consideration. Further, the accreditation must be maintained by the home medical equipment provider in order to maintain licensure. The bill also repeals the option for an applicant for a home medical equipment provider license to submit a $50,000 surety bond in lieu of proof of financial ability to operate.

Section 50 amends s. 400.932, F.S., to clarify the grounds for administrative action by the AHCA against a home medical equipment provider.

Section 51 amends s. 400.967, F.S., related to violations by intermediate care facilities for developmentally disabled persons, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section. In addition, the bill requires the AHCA to impose an administrative fine not to exceed $500 for each occurrence and each day that an uncorrected or repeated class IV violation exists.

Section 52 amends s. 400.9905, F.S., to revise the definitions related to the health care clinic act. This includes an entity that contracts with or employs a person to provide portable *health care*

services or equipment to multiple locations, which bills third-party payors for those services, and that otherwise, meets the definition of a clinic.

The bill also exempts the following entities from the definition and regulation as a health care clinic:

- A pediatric cardiology or perinatology clinic facility that is a publicly traded corporation or that is wholly owned by a publicly traded corporation;
- Entities that are owned by a corporation that has $250 million or more in total annual sales of health care services provided by licensed health care practitioners if at least one of the owners is a Florida-licensed health care practitioner who is responsible for supervising the business activities and legally responsible for compliance with state law for purposes of this section of law;
- Entities that are owned or controlled, directly or indirectly, by a publicly traded entity with $100 million or more in total annual revenues derived from providing health care services by licensed health care practitioners who are employed with or contracted by the entity; and
- Entities that employ 50 or more health care practitioners who are licensed under ch. 458, F.S., related to the practice of medicine or ch. 459, F.S., related to the practice of osteopathic medicine, if the billing for medical services is under a single corporate tax identification number. If an entity that meets these criteria chooses to voluntarily submit an application for exemption from licensure, then certain information must be submitted with the application, which is detailed in the bill.

Section 53 amends s. 400.991, F.S., to repeal the option for an applicant for a health care clinic license to submit a $500,000 surety bond in lieu of proof of financial ability to operate. Another cross-reference is added to reflect an existing provision concerning proof of financial ability to operate for an applicant for a health care clinic license.

Section 55 amends s. 408.033, F.S., to authorize annual health care assessments to be paid concurrently with applicable licensure fees.

Section 56 amends s. 408.034, F.S., to correct a reference to the AHCA's authority to issue licenses to intermediate care facilities for developmentally disabled persons under part VIII of ch. 400, F.S., without the facility first obtaining a certificate of need as required by s. 408.036(1)(a), F.S.

Section 57 amends s. 408.036, F.S., to eliminate a cross-reference to an exception to the certificate-of-need requirements for a hospice. No exceptions are currently provided in s. 408.043, F.S. In addition, the bill repeals an annual report from the AHCA to the Legislature concerning the number of requests received for exemption from the certificate of need review.

Section 58 amends s. 408.037, F.S., to authorize an application for a certificate of need to include the audited financial statements of the applicant's parent corporation if the applicant does not have audited financial statements.

Section 59 amends s. 408.043, F.S., to remove the term "primarily" to clarify that a certificate of need is required to establish or expand an inpatient hospice facility unless the facility is licensed as a health care facility, such as a hospital or skilled nursing facility.

Section 61 amends s. 408.061, F.S., to remove an inappropriate reference to an administrative rule that describes data reporting.

Section 62 amends s. 408.07, F.S., to conform the definition of a rural hospital to the provisions related to licensure of rural hospitals in s. 395.602, F.S., as amended in this bill.

Section 63 amends s. 408.10, F.S., to eliminate the requirement for the AHCA to investigate consumer complaints related to health care facilities' billing practices and publish related reports.

Section 65 amends s. 408.804, F.S., related to the general licensing provisions. The act of, or causing another to alter, deface, or falsify a license certificate is a misdemeanor of the second degree. A licensee or provider who displays an altered, defaced, or falsified license certificate is subject to an administrative fine of $1,000 for each day of illegal display and a license or application for a license is subject to revocation or denial.

Section 66 amends s. 408.806, F.S., related to general licensing provisions, to require the AHCA to send a courtesy notice to the licensee 90 days before renewal. However, if the licensee does not receive the notice, it does not excuse the licensee's responsibility to timely submit the renewal application and fee. Submission of the renewal application, application fee, and any applicable late fees is required to renew the license.

Section 67 amends s. 408.8065, F.S., to modify the description of the financial statements that must be submitted for a home health agency, home medical equipment provide, or health care clinic to "projected" financial statements instead of "pro forma" financial statements.

Section 68 amends s. 408.809, F.S., to provide, in law, a schedule for background rescreening for persons who are required to be screened by July 31, 2015. The schedule is based on the recency the individual's last screening. Authority for the AHCA to adopt rules to establish the reschedule is repealed.

Section 69 amends s. 408.813, F.S., related to general licensing provisions, to authorize the AHCA to impose an administrative fine, not to exceed $500 per violation, for violations that do not qualify within the classification scheme of class I – class IV violations. Unclassified violations might include: violating any term or condition of a license; violating any provision of the general licensing provisions, authorizing statutes, or applicable rules; exceeding licensed capacity without authorization; providing services beyond the scope of the license; or violating a moratorium.

Section 70 amends s. 408.815, F.S., related to general licensing provisions, to authorize the AHCA to extend the license expiration date for up to 30 days and to impose other conditions during that 30-day extension in order to accomplish the safe and orderly discharge of clients. The authority to extend is at the discretion of the AHCA after considering the nature and number of clients, the availability and location of acceptable alternative placements, and the ability of the licensee to continue providing care to the clients. This authority does not create any right or entitlement to an extension of a license expiration date.

Section 71 amends s. 409.91196, F.S., related to Medicaid supplemental rebate agreements, to conform a cross-reference due to an amendment in another section of this bill.

Section 72 amends s. 409.912, F.S., to require a Medicaid claim for a prescription drug billed as a 340B prescribed medication to meet certain requirements and be billed at the actual acquisition cost.

Section 73 amends s. 429.07, F.S., to repeal the LNS specialty license and its requirements and the quarterly monitoring requirements related to ALFs that are licensed to provide ECC services. The bill requires an ALF that has been cited within the previous 24 months for a class I or class II violation to be subject to unannounced monitoring. This monitoring may occur through a desk review or onsite, unless a cited violation relates to providing or failing to provide nursing care. In that case, a registered nurse is required to participate in at least two onsite monitoring visits within a 12-month period. The monitoring requirement applies regardless of the status of the enforcement or disciplinary action for the cited violation.

The biennial facility per-bed licensure fee for a standard license is increased to $71 (an increase of $10) from the current per-bed licensure fee (CPI adjusted) of $61.

The bill clarifies that the AHCA's standard license survey must include private informal conversations with a sample of the residents at the ALF.

Section 74 amends s. 429.11, F.S., to remove language related to provisional licenses within the authorizing statutes for the ALFs since provisional licenses are authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 76 amends s. 429.17, F.S., to conform provisions related to the ALF licenses to the repeal of the LNS specialty license. This section of law is also amended to remove the requirement for a plan of correction as a part of issuing a conditional license for an ALF since this is authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 77 amends s. 429.195, F.S., to cross-reference s. 817.505, F.S., related to criminal prohibitions against referral kickbacks and similar activities for consistency. In addition, an exemption is provided related to prohibited conduct for:

- An individual with whom the ALF employs or contracts with to market the facility if the individual clearly indicates that he or she works with or for the ALF;
- A referral service that provides information, consultation, or referrals to consumers to assist them in finding appropriate care or housing options for senior citizens or disabled adults if such referred consumers are not Medicaid recipients; and
- A resident of an ALF who refers to the ALF a friend, family member, or other individual with whom the resident has a personal relationship, and the ALF is not prohibited from providing a monetary reward to the resident for making that referral.

Section 79 amends s. 429.255, F.S., to eliminate the authorization for an ALF to use volunteers to provide certain health-related services, including: administering medications, taking residents' vital signs, managing individual pill organizers for residents who self-administer medication, giving prepackaged enemas, observing residents and documenting observations on the resident's

record or reporting observations to the resident's physician, and performing all duties within the scope of their license or certification in a facility licensed to provide ECC services.

In addition, this section authorizes contracted personnel or facility staff who are licensed under the nurse practice act to provide LNS to residents in a standard-licensed ALF. The licensee is responsible for maintaining documentation of health-related services provided as required by rule and ensuring that staff are adequately trained to monitor residents who have received these health-related services.

Section 81 amends s. 429.294, F.S., to remove a cross-reference to a section of law that is repealed in this bill and to make grammatical clarifications.

Section 82 amends s. 429.41, F.S., to conform provisions related to rulemaking for ALFs to changes made in this bill and to repeal a requirement for the DOEA to submit proposed rules to the Legislature.

Section 83 amends s. 429.53, F.S., related to consultation by the AHCA pertaining to an ALF. The bill expands the staff who may provide consultation and eliminates the requirement for the AHCA to consult in areas that are beyond its jurisdiction and areas of expertise.

Section 84 amends s. 429.54, F.S., to require licensed ALFs to report electronically to the AHCA, semiannually, certain data related to the facility's residents and staffing. This data includes, but is not limited to the:

- Number of residents;
- Number of residents receiving LMH services;
- Number of residents receiving ECC services;
- Number of residents receiving LNS; and
- Professional personnel providing resident services.

The DOEA, in consultation with the AHCA, is required to adopt rules related to these reporting requirements.

Section 85 amends s. 429.71, F.S., related to violations by adult family-care homes, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section. The provisions within the section related to the plan of correction are removed since it is also addressed in the general licensing provisions.

Section 86 amends s. 429.915, F.S., to remove the requirement for a plan of correction as a part of issuing a conditional license for an adult day care facility since this is authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 90 amends s. 483.035, F.S., to add ARPNs to the list of exclusive use laboratory providers so that CLIA staffing requirements apply rather than other provisions of state law and rules which are more burdensome.

Section 91 amends s. 483.051, F.S., to define a nonwiaved laboratory as a laboratory that has not been granted a certificate of waiver by the CMS under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and the federal rules adopted thereunder. The bill clarifies that one of the conditions for licensure under state law is proof of a CLIA certificate or a copy of an application for a CLIA certificate. The bill also deletes the requirement that alternate site testing location must register when the clinical laboratory applies to renew its license. This will enable alternate sites to be used when needed.

Section 92 amends s. 483.294, F.S., to correct the inspection frequency for licensed multiphasic health testing centers to biennially, consistent with the general licensing provisions in part II of ch. 408, F.S.

Section 93 amends s. 626.9541, F.S., to authorize group or individual health plans to offer rewards and incentives to members participating in voluntary wellness or health improvement programs.

Section 99 amends s. 651.118, F.S., related to nursing homes in continuing care communities, to conform a cross-reference to changes made in another section of this bill.

Section 101 amends s. 766.202, F.S., to add licensed orthotists and prosthetists to the definition of a health care provider under ch. 766, F.S., related to medical malpractice.

Section 102 amends s. 817.505, F.S., to conform the prohibition against patient brokering to the exceptions authorized for ALFs in this bill in s. 429.195, F.S.

Section 103 amends s. 381.06014, F.S., to redefine "blood establishment" to clarify that a person, entity, or organization that uses a mobile unit and performs any of the activities under the definition of "blood establishment" is also a blood establishment. The term "volunteer donor" is created and is defined as a person who does not receive remuneration, other than an incentive, for a blood donation intended for transfusion and the product container of the donation from the person qualifies for labeling with the statement "volunteer donor" under federal regulations.

The bill prohibits a local government from restricting access to, or use of, a public facility or public infrastructure for collecting blood or blood components from voluntary donors based on whether the blood establishment is a for-profit or not-for-profit corporation. Additionally, the CS prohibits a blood establishment from using as the sole factor whether a hospital or other health care entity is a for-profit or not-for-profit corporation when the blood establishment sets the service fee (price) at which it will sell blood and blood components collected from voluntary donors to the hospital or other health care entity.

The bill requires a blood establishment that collects blood or blood components from volunteer donors to disclose information on its Internet website concerning its activities. A hospital that collects blood or blood components from volunteer donors for use in its own licensed facilities is not required to disclose this information. The disclosures may be cumulative for all blood establishments (branches) within the business entity. The information required to be disclosed includes:

- A description of the activities of the blood establishment related to collecting, processing, and distributing volunteer blood donations.
- The number of units that the blood establishment:
  - Produced (such as units that passed quality control and are available for use),
  - Obtained from other sources,
  - Distributed to health care providers that are located outside the state. However, if the blood center collects donations in a county outside Florida and distributes to health care providers in that county, then the distributions made to that county must be excluded. This distribution information must be the aggregate of health care providers that are located within the United States and its territories or outside the United States and its territories, and
  - Distributed to entities that are not health care providers. This information must be the aggregate of purchasers that are located within the United States and its territories or outside the United States and its territories.

  This information must be on the establishment's website by March 1 of each year reflecting data from the preceding calendar year;
- The blood establishment's policies pertaining to conflicts of interest, related-party transactions, and determining executive compensation. If any changes are made to any of these policies, the revised document must be on the blood establishment's website by the following March 1; and
- Either the most recent 3 years of a not-for-profit blood establishment's Form 990 that have been reported to the Internal Revenue Services, which must be posted within 60 calendar days after filing, or an audited or reviewed balance sheet, income statement, and statement of changes in cash flow, along with the expression of opinion on these statements from an independent certified public accountant, which must be posted within 120 days following the end of the fiscal year for a for-profit blood establishment and which must remain on the website for 36 months. However, hospitals that collect blood or blood components from volunteer donors are exempt from these financial disclosure requirements.

A blood establishment that fails to make the required disclosures on its website is liable for a civil penalty up to $10,000 per year, which is to be enforced by the Department of Legal Affairs (department). If multiple blood establishments, under the common control of one business entity, fail to meet the disclosure requirements, the civil penalty may only be assessed against one of the business entity's blood establishments. The department may terminate an action if the blood establishment agrees to pay a stipulated civil penalty or if the blood establishment shows good cause. The department is authorized to waive the civil penalty if the blood establishment shows good cause for the failure to disclose. All monies collected from such civil penalties must be deposited into the General Revenue Fund unallocated.

Section 104 amends s. 499.003, F.S., to revise the definition of a health care entity to authorize a blood establishment that collects blood or blood components from volunteer donors to be a health care entity and engage in the wholesale distribution of prescription drugs in accordance with the requirements contained in the bill related to the restricted prescription drug distributor permit for a blood establishment.

Section 105 amends s. 499.005, F.S., to remove the prohibition against the wholesale distribution of prescription drugs by a blood establishment that collects blood or blood

components from volunteer donors if the blood establishment is operating in compliance with the requirements contained in the bill related to the restricted prescription drug distributor permit for a blood establishment. This section mirrors federal law. The federal regulation (21 C.F.R. § 203.20) uses the same language prohibiting sales by health care entities and charitable organizations as does s. 499.005(21) of the bill. The federal regulation then provides exclusions in 21 C.F.R. § 203.22, which includes an exclusion stating that the prohibition does not apply to registered blood establishments that qualify as a health care entity.

Section 106 amends s. 499.01, F.S., to exempt a blood establishment that only manufactures blood and blood components from the requirements to be permitted as a prescription drug manufacturer and register the products it manufactures.

The bill also requires certain blood establishments to obtain a permit as a restricted prescription drug distributor in order to lawfully sell and distribute prescription drugs to another health care entity. The bill provides for certain restrictions on this authorization, including:

- The permit may be issued only to a blood establishment that is located in Florida;
- The permit may be issued to a blood establishment that collects blood and blood components from volunteer donors only or pursuant to an authorized practitioner's order for medical treatment or therapy;
- The distributions may be made only to a health care entity that is licensed as a closed pharmacy or provides health care services at the location where the health care entity receives the prescription drugs;
- The prescription drugs that may be distributed pursuant to the restricted prescription drug distributor permit are limited to:
  - A prescription drug that is indicated for a bleeding disorder, clotting disorder, or anemia;
  - A blood-collection container that is approved under s. 505 of the Federal FD&C Act related to new drugs;
  - A drug that is a blood derivative, or a recombinant or synthetic form of a blood derivative;
  - A prescription drug that is essential to services performed or provided by blood establishments and is authorized for distribution by blood establishments under federal law if it is identified in rules adopted by the DOH; or
  - To the extent it is permitted by federal law, a drug necessary to collect blood or blood components from volunteer blood donors; for blood establishment personnel to perform therapeutic procedures; and to diagnose, treat, manage and prevent any reaction of either a volunteer blood donor or a patient undergoing therapeutic procedures; and
- The blood establishment may only provide health care services that:
  - Are related to its activities as an FDA-registered blood establishment;
  - Consist of collecting, processing, storing, or administering human hematopoietic stem cells or progenitor cells; or
  - Consist of performing diagnostic testing of specimens if these specimens are tested together with specimens undergoing routine donor testing.
  - In addition, the CS provides that a blood establishment that is permitted as a restricted prescription drug distributor must comply with all the storage, handling, and recordkeeping requirements with which a prescription drug wholesale distributor must

comply. This includes providing pedigree papers[34] upon the wholesale distribution of these prescription drugs.

The DOH is authorized to adopt rules related to the distribution of prescription drugs by blood establishments.

Section 107 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill authorizes an ALF to provide LNS without obtaining an additional specialty license at a fee of $304 plus $10 per-bed fee based on the total licensed resident capacity of the facility. The per-bed licensure fee for all ALFs is increased $10 biennially for non-OSS beds to offset the loss of revenue currently generated from the LNS license and will be used to fund monitoring of any ALF that has been cited with a class I or class II deficiency. The maximum amount that an ALF is required to pay biennially for the licensure fees associated with the standard license is increased by $4,557 to accommodate the increased per-bed licensure fee increase.

Instead of paying $800 annually for a prescription drug wholesale distributor permit and a $150 fee for certification of a designated representative, a community blood center that intends to engage in the wholesale distribution of certain prescription drugs in order to provide health care services typically provided by blood establishments will pay a $600 fee biennially for a restricted prescription drug distributor permit.[35]

[34] A pedigree paper contains information required by s. 499.01212, F.S., regarding the sale and distribution of a prescription drug.
[35] *See* ch. 64F-12.018, F.A.C., Fees.

B. Private Sector Impact:

This bill streamlines regulations for 29 provider types regulated by the AHCA through repeal of obsolete or duplicative provisions in licensing laws and reform of regulations related to inspections, electronic publication of documents and reports, timeframes for reporting licensure changes, and financial information and bonds.

The bill does not require an ALF to provide LNS, but an ALF may choose to do so with appropriate nursing personnel without the requirement to obtain an additional specialty license. All ALFs are required to report electronically, at least semiannually, certain information about the facility's residents and professional staffing. Monitoring inspections will be tied to performance rather than requiring a set number of monitoring inspections for each specialty license.

Blood establishments that collect donations of blood and blood components from volunteer donors will need to ensure that pricing considerations for the sale of blood and blood components are not based solely on whether the customer is a for-profit corporation or not-for-profit corporation.

A blood establishment that collects donations of blood and blood components from volunteer donors, except certain hospitals, will be required to post certain information concerning its activities on its Internet website.

A blood establishment that chooses to engage in the wholesale distribution of certain prescription drugs may lawfully do so if it is permitted as a restricted prescription drug distributor and complies with the requirements of that permit.

C. Government Sector Impact:

Same as comment for the private sector impact.

This bill is revenue neutral to the AHCA. The repeal of the LNS specialty license is projected to reduce revenues biennially. However, the biennial increase in the per-bed licensure fee for all ALF non-OSS beds is expected to offset the lost revenue. The AHCA will be able to target its monitoring resources on facilities that have been cited for certain violations rather than whether a facility has a particular type of specialty license. This should generate efficiencies and focus resources on resident protection activities.

Further, the AHCA estimated in a similar bill in the 2010 Legislative Session, that $55,700 will be saved in certified mail costs as a result of the courtesy notice for license renewal.

The DOH has indicated it is able to absorb the workload associated with facility peer review of agendas and minutes within existing resources.

There is no fiscal impact on the Department of Children and Family Services.

The AHCA and the DOH are required to adopt rules, some of which require collaboration with other state agencies.

Governmental agencies may not limit the use of public infrastructure for the purpose of collecting voluntary donations of blood or blood components solely upon whether the corporation collecting the blood is for-profit or not-for-profit.

There will also be a reduction in revenues from the reduced permitting fees under the Florida Drug and Cosmetic Act, but since there are so few community blood centers in the state, the impact will be minimal. There are approximately six not-for-profit blood establishment organizations that are operating as community blood centers in Florida and one for-profit blood establishment organization.

VI. Technical Deficiencies:

The citation on line 3844 should be s. 400.141(1)(n)1, F.S., due to changes that were made in this bill.

VII. Related Issues:

The DCF noted in its bill analysis that in seven counties, the Sheriff's Office conducts the child protective investigation, not CDF. Accordingly, the DCF recommends the following amendment:
Strike lines 526 through 528 and insert:
Department <u>of Children and Family Services, or their authorized agent,</u> a staff physician to act a liaison between the hospital and the Department of Children and Family Services <u>or Sheriff's Office</u> which is investigating the

The bill amends s. 429.07(4), F.S., related to the biennial licensure fees for ALFs. It increases one fee and republishes other fees. The actual biennial fees currently assessed and collected by the AHCA are adjusted to the CPI periodically and are higher than the fees set forth in the statutes. By republishing the lower fees, it may nullify the CPI adjustments that have already occurred and reset the fees on July 1, 2011, the effective date of the bill, to the lower rate.

VIII. Additional Information:

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

CS by Health Regulation on March 22, 2011:
The CS made the following changes to the bill:

- Clarifies that state law on evictions under the landlord tenant act does not apply to nursing home transfers and discharges;
- Allows for payment of certain inspection fees and health care assessments concurrently at license renewal rather than at the time of the inspection;
- Allows home health agencies and nurse registries to provide small token items of minimal value (up to $10 individually) to referring entities without penalty;
- Exempts a nurse registry from the prohibition on remuneration if it does not bill Medicaid. Authorizes an administrator to manage up to five nurse registries under

certain conditions and requires a qualified alternate administrator to serve in the administrator's absence;
- Eliminates the requirement for a companion service provider that contracts with the APD to register as a homemaker/companion provider with the AHCA;
- Requires applicants that are located outside of the state to submit documentation related to accreditation when applying for a home medical equipment provider license;
- Exempts an entity that employs 50 or more health care practitioners who are licensed under ch. 458, F.S., or ch. 459, F.S., from the health care clinic licensure requirements if the entity bills for medical services under a single corporate tax identification number. Provides information that is to be submitted in a voluntarily submitted application for an exemption certificate;
- Repeals an annual report from the AHCA to the legislature concerning the number of requests received for exemptions from CON review;
- Authorizes an application for a CON to include the audited financial statements of the applicant's parent corporation if the applicant does not have audited financial statements;
- Clarifies terminology regarding the submission of "projected" financial statements rather than "pro forma" financial statements;
- Puts a schedule for background rescreening (for those grandfathered in last year) in the statutes to avoid rulemaking;
- Removes the language to transfer the FQHCs to the AHCA;
- Reinstates the current licensure fees for the facility component of the ALF licensure fees;
- Clarifies that resident interviews will occur during routine licensure inspections;
- Removes a fee for monitoring visits;
- Retains existing language regarding the sharing of inspection reports;
- Eliminates a reporting requirement for the DOEA to submit proposed rules to the legislature prior to adopting the rules;
- Adds ARNPs to the list of exclusive use laboratory providers so that CLIA staffing requirements apply rather than other provisions of state law and rules which are more burdensome;
- Provides a definition of a nonwaived laboratory to clarify the AHCA's responsibilities for issuing biennial licenses to nonwaived clinical laboratories;
- Provides exemptions from patient brokering and unlawful referrals for assisted living facilities under certain conditions; and
- Adds language from CS/SB 94 related to blood establishments requiring certain disclosures and authorizing certain blood establishment to be permitted to distribute certain prescription drugs to further their mission.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. (1) The Legislature finds that:

(a) Access to high-quality, comprehensive, and affordable health care for all persons in this state is a necessary state goal and teaching hospitals play an essential role in providing that access.

(b) Graduate medical education, provided by nonprofit independent colleges and universities located and chartered in this state which own or operate medical schools, helps provide the comprehensive specialty training needed by medical school

graduates to develop and refine the skills essential to the provision of high-quality health care for state residents. Much of that education and training is provided in teaching hospitals under the direct supervision of medical faculty who provide guidance, training, and oversight and serve as role models to their students.

(c) A large proportion of medical care is provided in teaching hospitals that serve as safety nets for many indigent and underserved patients who otherwise might not receive the medical help they need. Resident physician training that takes place in such hospitals provides much of the care provided to this population. Medical faculty, supervising such training and care, are a vital link between educating and training resident physicians and ensuring the provision of quality care for indigent and underserved residents. Physicians who assume this role are often called upon to juggle the demands of patient care, teaching, research, health policy, and budgetary issues related to the programs they administer.

(d) While teaching hospitals are afforded state sovereign immunity protections under s. 768.28, Florida Statutes, the nonprofit independent colleges and universities located and chartered in this state which own or operate medical schools and which enter into affiliation agreements or contracts with the teaching hospitals to provide patient services are not afforded the same sovereign immunity protections. The employees or agents of such nonprofit independent colleges and universities, therefore, do not have the same level of protection against liability claims as the employees and agents of teaching hospitals providing the same patient services to the same

patients.

(e) Nonprofit colleges and universities located and chartered in this state which own or operate medical schools and their employees and agents, which are not covered by the state's sovereign immunity protections, are disproportionately affected by claims arising out of alleged medical malpractice and other allegedly negligent acts. Given the recent growth in medical schools and medical education programs and ongoing efforts to support, strengthen, and increase physician residency training positions and medical faculty in both existing and newly designated teaching hospitals, this exposure and the consequent disparity in liability exposure will continue to increase. The vulnerability of these colleges and universities to claims of medical malpractice will only add to the current physician workforce crisis in this state and can be alleviated only through legislative action.

(f) Ensuring that the employees and agents of nonprofit independent colleges and universities located and chartered in this state which own or operated medical schools are able to continue to treat patients, provide graduate medical education, supervise medical students, engage in research, and provide administrative support and services in teaching hospitals is an overwhelming public necessity.

(2) The Legislature intends that:

(a) Employees and agents of nonprofit independent colleges and universities located and chartered in this state which own or operate medical schools who provide patient services as agents of a teaching hospital be immune from lawsuits in the same manner and to the same extent as employees and agents of

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teaching hospitals in this state under existing law, and that such colleges and universities and their employees and agents not be held personally liable in tort or named as a party defendant in an action while providing patient services in a teaching hospital, unless such services are provided in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) Nonprofit independent private colleges and universities located and chartered in this state which own or operate medical schools and which permit their employees or agents to provide patient services in teaching hospitals pursuant to an affiliation agreement or other contract be afforded sovereign immunity protections under s. 768.28, Florida Statutes.

(3) The Legislature declares that there is an overwhelming public necessity for extending the state's sovereign immunity to nonprofit independent colleges and universities located and chartered in this state which own or operate medical schools and provide patient services in teaching hospitals, and to their employees and agents, and that there is no alternative method of meeting such public necessity.

(4) The terms "employee or agent," "patient services," and "teaching hospital" as used in this section have the same meaning as defined in s. 768.28, Florida Statutes, as amended by this act.

Section 2. Subsection (11) of section 766.1115, Florida Statutes, is amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(11) APPLICABILITY.—This section applies to incidents

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occurring on or after April 17, 1992. This section does not:

(a) Apply to any health care contract entered into by the Department of Corrections which is subject to s. 768.28(10)(a).

(b) Apply to any affiliation agreement or other contract that is subject to s. 768.28(10)(f). ~~Nothing in this section in any way reduces or limits~~

(c) Reduce or limit the rights of the state or any of its agencies or subdivisions to any benefit currently provided under s. 768.28.

Section 3. Paragraph (b) of subsection (9) of section 768.28, Florida Statutes, is amended, and paragraph (f) is added to subsection (10) of that section, to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9)

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115; ~~,~~ any member of the Florida Health Services Corps, as defined in s. 381.0302, who provides uncompensated care to medically indigent persons referred by the Department of Health; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); ~~,~~ and any public defender or her or his employee or

agent, including, among others, an assistant public defender and an investigator.

(10)

(f) For purposes of this section, any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, or any of its employees or agents, and which has agreed in an affiliation agreement or other contract to provide, or permit its employees or agents to provide, patient services as agents of a teaching hospital, is considered an agent of the teaching hospital while acting within the scope of and pursuant to guidelines established in the contract. To the extent allowed by law, the contract must provide for the indemnification of the state, up to the limits set out in this chapter, by the agent for any liability incurred which was caused by the negligence of the college or university or its employees or agents. The contract must also provide that those limited portions of the college, university, or medical school which are directly providing services pursuant to the contract and which are considered an agent of the teaching hospital for purposes of this section are deemed to be acting on behalf of a public agency as defined in s. 119.011(2).

1. For purposes of this paragraph, the term:

a. "Employee or agent" means an officer, employee, agent, or servant of a nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, including, but not limited to, the faculty of the medical school, any health care practitioner or licensee as defined in s. 456.001 for which the college or

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university is vicariously liable, and the staff or administrators of the medical school.

b. "Patient services" mean:

(I) Comprehensive health care services as defined in s. 641.19, including any related administrative service, provided to patients in a teaching hospital or in a health care facility that is a part of a nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school pursuant to an affiliation agreement or other contract with a teaching hospital;

(II) Training and supervision of interns, residents, and fellows providing patient services in a teaching hospital or in a health care facility that is a part of a nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school pursuant to an affiliation agreement or other contract with a teaching hospital;

(III) Participation in medical research protocols; or

(IV) Training and supervision of medical students in a teaching hospital or in a health care facility owned by a nonprofit college or university that owns or operates an accredited medical school pursuant to an affiliation agreement or other contract with a teaching hospital.

c. "Teaching hospital" means a teaching hospital as defined in s. 408.07 which is owned or operated by the state, a county or municipality, a public health trust, a special taxing district, a governmental entity having health care responsibilities, or a not-for-profit entity that operates such facility as an agent of the state, or a political subdivision of

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the state, under a lease or other contract.

2. The teaching hospital or the medical school, or its employees or agents, must provide notice to each patient, or the patient's legal representative, that the college or university that owns or operates the medical school and the employees or agents of that college or university are acting as agents of the teaching hospital and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the teaching hospital, the college or university that owns or operates the medical school, or the employees or agents of the college or university, while acting within the scope of duties pursuant to the affiliation agreement or other contract with a teaching hospital, is by commencement of an action pursuant to the provisions of this section. This notice requirement may be met by posting the notice in a place conspicuous to all persons.

3. This paragraph does not designate any employee providing contracted patient services in a teaching hospital as an employee or agent of the state for purposes of chapter 440.

Section 4. This act shall take effect upon becoming a law, and applies to all claims accruing on or after that date.

================ 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 sovereign immunity; providing legislative findings and intent; amending s. 766.1115, F.S.; providing that specified provisions relating to

sovereign immunity for health care providers do not apply to certain affiliation agreements or contracts to provide certain comprehensive health care services; amending s. 768.28, F.S.; expanding the definition of the term "officer, employee, or agent" for purposes of provisions expanding sovereign immunity to include certain colleges and universities when providing patient services; providing that certain colleges and universities that own or operate a medical school or any of its employees or agents providing patient services pursuant to a contract with a teaching hospital are agents of the state and are immune from certain liability for torts; requiring the contract to provide for indemnification; providing that the portion of the not-for-profit entity deemed to be an agent of the state for purpose of indemnity is also an agency of the state for purpose of public-records laws; providing definitions; requiring that each patient, or the patient's legal representative, receive notice regarding the patient's exclusive remedy for injury or damage suffered; providing that an employee providing patient services is not an employee or agent of the state for purposes of workers' compensation; providing for application; providing an effective date.

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 Budget Committee

BILL:	CS/SB 1676
INTRODUCER:	Judiciary Committee and Senator Thrasher
SUBJECT:	Sovereign Immunity
DATE:	April 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	**Favorable**
2.	Munroe	Maclure	JU	**Fav/CS**
3.	Bradford	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill extends the waiver of sovereign immunity to any Florida not-for-profit college or university that owns or operates an accredited medical school or any of its employees or agents that have agreed in an affiliation agreement or other contract to provide patient services as agents of a public teaching hospital. The bill provides that the medical school or any of its employees or agents that have agreed in an affiliation agreement or other contract to provide patient services as agents of a public teaching hospital, are agents of the state and are immune from liability for torts in the same manner and to the same extent as the teaching hospital and its governmental owner or operator while acting within the scope of and pursuant to guidelines in the contract. The bill specifies additional requirements on the contract to clarify the applicability of the Public Records Law.

The bill also creates non-statutory provisions of law for legislative findings regarding the role of and the need for teaching hospitals and graduate medical education for Florida residents. The bill provides a legislative declaration that there is an overwhelming public necessity for the bill and that there is no alternative method of meeting such public necessity.

This bill has no fiscal impact on state or local government.

The bill takes effect upon becoming a law and applies to all claims accruing on or after that date.

This bill amends sections 766.1115 and 768.28, Florida Statutes.

II. Present Situation:

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state.

Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. Subsection (5) limits the recovery of any one person to $100,000 for one incidence and limits all recovery related to one incidence to a total of $200,000.[1] For purposes of this bill analysis, when the term "sovereign immunity" is used, it means the application of sovereign immunity and the limited waiver of sovereign immunity as provided in s. 768.28, F.S.

Where the state's sovereign immunity applies, s 768.28(9), F.S., provides that the officers, employees, and agents of the state that were involved in the commission of the tort are not personally liable to an injured party.[2] Sovereign immunity extends to all subdivisions of the state, including counties and school boards and any agents or employees of these governmental entities.[3] The waiver of sovereign immunity may be extended to parties by contract or agency.

[1] Section 1, ch. 2010-26, Laws of Florida, amended s. 768.28(5), F.S., effective October 1, 2011, to increase the limits to $200,000 for one person for one incidence and $300,000 for all recovery related to one incidence, to apply to claims arising on or after that effective date.

[2] Section 768.28(9)(a), F.S., provides that no officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, *unless* such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

[3] Section 768.28(2), F.S.

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[4] In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

> One who contracts to act on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.[5]

The Court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.[6] The Court explained:

> Whether [Children's Medical Services (CMS)] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. ("The [principal's] right to control depends upon the terms of the contract of employment....") . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[7] Manual and CMS Consultants Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.
>
> Our conclusion is buttressed by HRS's acknowledgment that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.[8]

The Court held that the physicians were agents of the state and were entitled to the waiver of sovereign immunity.[9]

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[4] *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).
[5] *Id*. (quoting the Restatement (Second) of Agency § 14N (1957)).
[6] *Id.*
[7] Florida Department of Health and Rehabilitative Services.
[8] *Stoll*, 694 So. 2d at 703.(internal citations omitted).
[9] *Id.* at 704.

The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without further action of the Legislature.[10]

In *Gerard v. Department of Transportation*, 472 So .2d 1170 (Fla. 1985), the Florida Supreme Court held that the recovery caps within s 768.28(5), F.S., did not prevent a plaintiff from seeking a judgment exceeding the recovery caps. However, the Court noted that:

> [e]ven if he is able to obtain a judgment against the Department of Transportation in excess of the settlement amount and goes to the [L]egislature to seek a claims bill with the judgment in hand, this does not mean that the liability of the Department has been conclusively established. The [L]egislature will still conduct its own independent hearing to determine whether public funds should be expended, much like a non-jury trial. After all this, the [L]egislature, in its discretion, may still decline to grant him any relief.[11]

The Florida Supreme Court has noted that a primary effect of the waiver of sovereign immunity is to "permit suits that had previously been prohibited. The right of the [L]egislature to waive sovereign immunity and to place conditions on the waiver is plenary under Article X, Section 13, Florida Constitution."[12]

Chapter 766, F.S., specifies requirements on medical malpractice actions. Section 766.1115, F.S., provides that certain health care providers who contract with the state are considered agents of the state, and thus entitled to the protection of sovereign immunity. The protection only applies where the contract and other requirements are met by health care providers under s. 766.1115, F.S.

Section 768.28(9)(b)2., F.S., defines the term "officer, employee, or agent" for purposes of the sovereign immunity statute. Several identified groups are included in the definition, including health care providers when providing services pursuant to s. 766.1115, F.S.

Florida law confers sovereign immunity to a number of persons who perform public services, including:

- Persons or organizations providing shelter space without compensation during an emergency.[13]
- A health care entity providing services as part of a school nurse services contract.[14]
- Members of the Florida Health Services Corps who provide medical care to indigent persons in medically underserved areas.[15]

[10] Section 768.28(5), F.S.
[11] *Gerard v. Department of Transportation*, 472 So. 2d 1170, 1173 (Fla. 1985).
[12] *Smith v. Department of Insurance*, 507 So. 2d 1080, 1089 (Fla. 1987).
[13] *See* s. 252.51, F.S.
[14] *See* s. 381.0056(10), F.S.
[15] *See* s. 381.0302(11), F.S.

- A person under contract to review materials, make site visits, or provide expert testimony regarding complaints or applications received by the Department of Health or the Department of Business and Professional Regulation.[16]
- Physicians retained by the Florida State Boxing Commission.[17]
- Health care providers under contract to provide uncompensated care to indigent state residents.[18]
- Health care providers or vendors under contract with the Department of Corrections to provide inmate care.[19]
- An operator, dispatcher, or other person or entity providing security or maintenance for rail services in the South Florida Rail Corridor, under contract with the Tri-County Commuter Rail Authority of the Department of Transportation.[20]
- Professional firms that provide monitoring and inspection services of work required for state roadway, bridge or other transportation facility projects.[21]
- A provider or vendor under contract with the Department of Juvenile Justice to provide juvenile and family services.[22]
- Health care practitioners under contract with state universities to provide medical services to student athletes.[23]

Public Records

The Public-Records Act is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record[24] must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency[25] records are to be available for public inspection.

The Florida Supreme Court has addressed the issue of when a private entity under contract with a public agency falls under the purview of the public records and meetings provisions. The Court looked to a number of factors that indicate a significant level of involvement by the public agency:

[16] *See* ss 455.221(3) and 456.009(3), F.S.
[17] *See* s. 548.046(1), F.S.
[18] *See* s. 768.28(9)(b), F.S.
[19] *See* s. 768.28(10)(a), F.S.
[20] *See* s. 768.28(10)(d), F.S.
[21] *See* s. 768.28(10)(e), F.S.
[22] *See* s. 768.28(11)(a), F.S.
[23] *See* s. 768.28(12)(a), F.S.
[24] Section 119.011(12), F.S., defines "public records" to include "all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[25] Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

> The factors considered include, but are not limited to: 1) the level of public funding; 2) commingling of funds; 3) whether the activity was conducted on publicly owned property; 4) whether services contracted for are an integral part of the public agency's chosen decision-making process; 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; 6) the extent of the public agency's involvement with, regulation of, or control over the private entity; 7) whether the private entity was created by the public agency; 8) whether the public agency has a substantial financial interest in the private entity; and 9) for who's benefit the private entity is functioning.[26]

One court noted a difficulty in determining which records are public records when a private corporation acts on behalf of the state:

> In holding that [a private corporation] is subject to the public records act because it is acting on behalf of the [government entity], we emphasize that we are not ruling that all of its records are public. Some of its records may be subject to statutory exemptions or to valid claims of privacy. Likewise, we cannot rule that every function of this corporation is performed on behalf of the [government entity]. While we have seen little evidence of functions that might fall outside the realm of public access, the trial court is free to review specific activities of the corporation on remand to determine whether they involve nongovernmental functions which fall outside the public disclosure requirements.[27]

III. Effect of Proposed Changes:

Section 1 creates 16 subsections of non-statutory law providing extensive legislative findings and intent to demonstrate that that there is an overwhelming public necessity for the sovereign immunity liability protection in the bill and that there is no alternative method of meeting such public necessity.

Section 2 amends s. 766.1115, F.S., to provide that any affiliation agreement or contract entered into by a medical school to provide comprehensive health care services to patients at public hospitals, which agreement or contract is subject to the waiver of sovereign immunity provisions in s. 768.28, F.S., is exempt from the provisions of s. 766.1115, F.S. – The Access to Health Care Act – which was created with legislative intent to ensure that health care professionals who contract to provide free quality medical services to underserved populations of the state as agents of the state are provided the waiver of sovereign immunity.

Section 3 amends the definition of "officer, employee, or agent" in s. 768.28(9)(b), F.S., to include a Florida not-for-profit college, university, or medical school and its employees, under certain circumstances.

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[26] *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group*, 596 So. 2d 1029, 1031 (Fla. 1992) (internal citations omitted)).

[27] *Sarasota Herald-Tribune Co. v. Community Health Corp., Inc.*, 582 So. 2d 730, 734 (Fla. 2d DCA 1991) (footnote omitted).

The bill creates s. 768.28(10)(f), F.S., to provide that any Florida not-for-profit college or university that owns or operates an accredited medical school or any of its employees or agents that have agreed in an affiliation agreement or other contract to provide patient services[28] as agents of a teaching hospital,[29] which is owned or operated by the state, a county, a municipality, a public health trust, a special taxing district, any other governmental entity having health care responsibilities, or a not-for-profit entity that operates such facilities as an agent of that governmental entity under a lease or other contract, are agents of the state and are immune from liability for torts in the same manner and to the same extent as a teaching hospital and its governmental owner or operator while acting within the scope of and pursuant to guidelines established in the contract.

Currently, the six teaching hospitals to which this bill would appear to apply are: Jackson Memorial in Miami, Mount Sinai Medical Center in Miami Beach, Shands Healthcare at the University of Florida in Gainesville, Shands Jacksonville Medical Center, Orlando Health in Orlando, and Tampa General Hospital.

The bill requires that the contract to provide patient services must provide for indemnification of the state by the agent for any liability incurred up to the limits set forth in ch. 768, F.S., to the extent caused by the negligence of the college, university, or medical school or its employees or agents. Subsection 728.28(5), F.S., limits the recovery of any one person to $100,000 for one incident and limits all recovery related to one incident to a total of $200,000.[30]

The bill specifies additional requirements for the contract to clarify the application of Public Records Laws. The contract must provide that those limited portions of the college, university, or medical school which are directly providing services pursuant to the contract and which are considered an agency of the state for purposes of s. 768.28, F.S., are acting on behalf of a public agency as defined in s. 119.011(2), F.S.[31]

The bill provides that an employee or agent of a college, university, or its medical school[32] is not personally liable in tort and may not be named as a party defendant in any action arising from the provision of any such patient services except as provided in s. 768.28(9)(a), F.S.[33]

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[28] The bill defines "patient services" as any comprehensive health care services; the training or supervision of medical students, interns, residents, or fellows; access to or participation in medical research protocols; or any related executive, managerial, or administrative services provided according to an affiliation agreement or other contract with the teaching hospital or its governmental owner or operator.

[29] Section 408.07(45), F.S., defines "teaching hospital" as any Florida hospital officially affiliated with an accredited Florida medical school which exhibits activity in the area of graduate medical education as reflected by at least seven different graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education or the Council on Postdoctoral Training of the American Osteopathic Association and the presence of 100 or more full-time equivalent resident physicians.

[30] Section 1, ch. 2010-26, Laws of Florida, amended s. 768.28(5), F.S. See *supra* note 1.

[31] See *supra* note 25.

[32] The bill defines "employee or agent of a college, university, or medical school" as an officer, a member of the faculty, a health care practitioner or licensee defined in s. 456.001, F.S., or any other person who is directly or vicariously liable.

[33] Section 768.28(2), F.S. See *supra* note 2.

The bill requires that the public teaching hospital, the medical school, or its employees or agents must provide written notice to each patient, or the patient's legal representative, that the medical school and its employees are agents of the state and that the exclusive remedy for injury or damage suffered as a result of any act or omission of the public teaching hospital, the medical school, or an employee or agent of the medical school while acting within the scope of her or his duties pursuant to the affiliation agreement or other contract is by commencement of an action pursuant to s. 768.28, F.S. In order for the hospital, the medical school, or its employees or agents to fulfill this requirement, the patient or his or her legal representative must acknowledge in writing his or her receipt of the written notice.

The bill provides that an employee providing patient services under s. 768.28(10)(f), F.S., is not made an employee for purposes of the state's workers' compensation statute by virtue of s. 768.28(10)(f), F.S.

Section 4 provides that the bill takes effect upon becoming a law and applies to all claims accruing on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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

D. Other Constitutional Issues:

If immunity from liability is legislatively accorded to a private entity, a potential constitutional challenge would be that the law violates the right of access to the courts. Article I, s. 21, of the Florida Constitution provides that the courts shall be open to all for redress for an injury. To impose a barrier or limitation on litigant's right to file certain actions, an extension of immunity from liability would have to meet the test announced by the Florida Supreme Court in *Kluger v. White*.[34] Under the test, the Legislature would have to provide a reasonable alternative remedy or commensurate benefit, or make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.

[34] 281 So. 2d 1 (Fla. 1973)

However, a substitute remedy does not need to be supplied by legislation that reduces but does not destroy a cause of action. When the Legislature extends sovereign immunity to a private entity, the cause of action is not constitutionally suspect as a violation of the access to courts provision of the State Constitution because the cause of action is not completely destroyed, although recovery for negligence may be more difficult.[35]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact on the private sector is indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address what will happen in cases in which a patient is unable to provide a written acknowledgment of having received the required notice (e.g., a patient who presents at the hospital emergency room seriously injured, unconscious, or otherwise incapacitated, and no legal representative is available).

On lines 278-292, it is not clear whether the college or university, the medical school, the employees or agents, or all of the above must enter into the affiliation agreement or contract with the governmental entity in order to invoke the provisions of the bill regarding immunity from liability for torts.

On lines 22-25 of the title, the bill states: "providing that the portion of the not-for-profit entity deemed to be an agent of the state for purpose of *indemnity* is also an agency of the state for purpose of public-records laws; providing definitions." The Legislature may wish to correct this title phrase to refer to the waiver of sovereign immunity granted to the college or university. To do so, the title may be revised on lines 22-25 to read: "providing that the portion of the not-for-profit entity deemed to be an agent of the state for purpose of *the extension of the waiver of sovereign immunity* is also an agency of the state for purpose of public-records laws; providing definitions."

[35] *See Id.* at 4.

Related Legislation

Similar provisions are in CS/CS/SB 1972 extending the waiver of sovereign immunity to a nonprofit independent college or university located and chartered in Florida which owns or operates an accredited medical school and its employees and agents when the employees or agents of the medical school are providing patient services at a teaching hospital that has an affiliation agreement or other contract with the medical school.

VIII. Additional Information:

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

CS by Judiciary on April 12, 2011:
The committee substitute specifies additional requirements for the contract between the college or university and the public teaching hospital. The contract between the college or university that owns or operates an accredited medical school and the public teaching hospital must provide that those limited portions of the college, university, or medical school which are directly providing services pursuant to the contract and which are considered an agency of the state for purposes of s. 768.28, F.S., are acting on behalf of a public agency as defined in s. 119.011(2), F.S. These contractual requirements clarify the application of the Public Records Laws to records held by the college or university that are subject to the contract.

B. Amendments:

None.

125572

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/13/2011	.	
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	.	

The Committee on Budget (Lynn) recommended the following:

Senate Amendment

Delete lines 39 - 41
and insert:
period. The department shall provide such information within 45 days after a request by an eligible nonprofit scholarship-funding organization, but may not release a taxpayer's information without the taxpayer's written consent. The information may be used by the

596146

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2011	.	
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The Committee on Budget (Flores) recommended the following:

Senate Substitute for Amendment (125572)

Delete line 41
and insert:
funding organization. For the information identified in subparagraph 3., the department shall first request the taxpayer's consent to the release of the information, and shall withhold the information pertaining to a taxpayer that objects to the release of the information. The information may be used by the

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Lynn) recommended the following:

Senate Amendment

Delete lines 39 - 41
and insert:
period. For the information identified in subparagraphs 1., 2., and 4., the department must provide such information within 45 days after a request by an eligible nonprofit scholarship-funding organization. For the information identified in subparagraph 3., the department shall first request the taxpayer's consent to the release of the information and grant the taxpayer a 45-day notice period to object to the release of the information. Information pertaining to a taxpayer that objects to the release of the information may not be released.

291624

After the 45-day notice period, the department shall release the information relating to any taxpayer that did not object. The information may be used by the

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 Budget Committee

BILL:	CS/SB 1388
INTRODUCER:	Education Pre-K Committee and Senator Flores
SUBJECT:	Department of Revenue
DATE:	April 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	**Fav/CS**
2.	Babin	Meyer, C.	BC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill allows nonprofit scholarship-funding organizations (SFOs) with $10 million of approved tax credit allocations in the prior year to obtain from the Department of Revenue the names and addresses of the 100 taxpayers having the greatest tax liability after all tax credits are applied. This applies to taxpayers making contributions for credits related to taxes for oil and gas production, direct pay permits, insurance premiums, and corporate income tax. An SFO would only be permitted to use the taxpayer information to raise funds for the Florida Tax Credit Scholarship Program.

Under the bill, a corporation may claim the tax credit for donations to an eligible SFO up to the full amount of its state corporate income tax and insurance premium tax, instead of up to 75 percent of its tax. Taxpayers are permitted to carry forward an unused tax credit for up to five years. Additionally, the bill removes the prohibition against taxpayers rescinding tax credits unless the taxpayer has rescinded credit less than once in the previous three tax years.

This bill substantially amends sections 213.053, 220.1875, and 1002.395 of the Florida Statutes.

II. Present Situation:

Florida Tax Credit Scholarship Program (FTC program)
Under the FTC program, tax credit scholarships were created to encourage private, voluntary contributions from corporate donors to nonprofit scholarship-funding organizations.[1] A corporation can receive a dollar for dollar tax credit against its state corporate income tax, insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders, and alcoholic beverage tax on beer, wine, and spirits for donations to private nonprofit scholarship-funding organizations.

Eligible Private Schools and Students
Private schools participating in the FTC program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private schools.[2] To be eligible for participation in the FTC program, a private school must demonstrate fiscal soundness and accountability.[3]

Under the program, SFOs provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act[4] or who qualifies for the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance to Needy Families Program (TANF), or the Food Distribution Program on Indian Reservations (FDPIR) [5] and:

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Is eligible to enter kindergarten or the first grade;
- Received a scholarship under the FTC program or from the state the previous school year; or
- Is placed, or during the previous state fiscal year was placed, in foster care.

A student does not lose his or her scholarship due to a change in the economic status of the student's parents unless the parent's economic status exceeds 230 percent of the federal poverty guidelines.[6] A sibling of a scholarship student who continues to participate in the program and resides in the same household as the student is considered to be a first-time FTC scholarship recipient, as long as the student's and the sibling's household income level does not exceed 230 percent of the federal poverty level.[7]

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[1] Sections 1002.395(1) and 1002.421, F.S. In 2010, the program was transferred from s. 220.187, F.S., to s. 1002.395, F.S., by ch. 2010-24, L.O.F.
[2] Sections 1002.395(8) and 1002.421, F.S.
[3] Section 1002.421, F.S.
[4] Section 1002.395(3)(b), F.S. The eligibility guidelines are available at: http://www.fns.usda.gov/cnd/governance/notices/iegs/IEGs10-11.htm.
[5] Children from households that receive benefits under SNAP (formerly the Food Stamp Program), TANF, or the FDPIR, are deemed "categorically eligible" for free school meals, thereby eliminating the need for households to submit an application for meal benefits. *Direct Certification in the National School Lunch Program: State Progress in Implementation, Report to Congress –Summary*, U.S. Department of Agriculture (USDA), October 2010, available at: http://www.fns.usda.gov/ora/menu/published/CNP/FILES/DirectCert2010Summary.pdf.
[6] Section 1002.395(3)(b)2., F.S.
[7] Section 1002.395(3)(b)3., F.S. The student must also meet one or more of the eligibility criteria.

Eligibility is contingent upon available funds.[8] The amount of the scholarship provided to any child for any single school year by any eligible SFO may not exceed the following limits:[9]

- For FY 2010-2011, the maximum scholarship amount is 60 percent of the Florida Education Finance Program (FEFP) unweighted full-time equivalent (FTE) amount for the fiscal year, for a scholarship awarded to a student for tuition and fees;[10] or
- $500 for a scholarship awarded to a student for transportation to a Florida public school that is located outside the district in which the student resides.

Scholarship Funding Organizations

An SFO must be a charitable organization exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code.[11] Scholarships must be provided for eligible students on a first-come, first-served basis, unless the student qualifies for priority consideration.[12] An SFO may not restrict or reserve scholarships for use at a particular private school or for the child of an operator or owner of a private school or SFO. A taxpayer making the contribution may not designate a specific child or group of children as the beneficiaries of the scholarship.[13] If the SFO has been in operation for three years and does not have any negative financial findings, the SFO may retain up to three percent of the taxpayer's contributions for reasonable and necessary administrative expenses.[14]

The Legislature initially capped the scholarship program at $50 million in tax credits per state fiscal year,[15] but subsequently expanded the cap to $88 million in 2003.[16] Beginning with FY 2008-2009, the cap was increased by $30 million to $118 million.[17] Until 2009, tax credits under the scholarship program were only available against the state's corporate income tax.

In 2009, the Legislature expanded the revenue sources against which tax credits can be claimed for donations to an SFO to include the premium tax under s. 624.509, F.S., which is imposed on insurance premiums written in Florida and paid by insurance companies to the Department of Revenue (DOR).[18]

[8] Section 1002.395(3)(b), F.S.
[9] Section 1002.395(12)(a), F.S. Beginning in FY 2011-2012, the percentage used to determine the maximum scholarship award increases by four percent in any fiscal year when the tax credit cap also increases, until it reaches a maximum of 80 percent. In that fiscal year and thereafter, the scholarship limit will be equal to 80 percent of the per FTE funding amount.
[10] While chapter 2010-24, L.O.F., increased the maximum household income threshold for renewing scholarship recipients and their siblings from 200 percent of the federal poverty level to 230 percent of that level, it reduced the maximum scholarship award available to the newly eligible scholarship recipients.
[11] Section 1002.395(2)(f), F.S.
[12] Sections 1002.395(6)(e) and (f), F.S.
[13] Section 1002.395(2)(e), F.S.
[14] Section 1002.395(6)(i), F.S.
[15] Chapter 2001-225, L.O.F.
[16] Section 9, ch. 2003-391, L.O.F.
[17] Chapter 2008-241, L.O.F.
[18] Section 624.51055, F.S., allows insurance companies to receive a credit of 100 percent of an eligible contribution to an eligible SFO against any tax due for a taxable year under the provisions of the insurance premium tax. However, the credit may not exceed 75 percent of the tax due.

In 2010, the Legislature added three new revenue sources by allowing taxpayers to receive credits for eligible contributions against: severance taxes on oil and gas production;[19] self-accrued sales tax liabilities of direct pay permit holders;[20] and alcoholic beverage taxes on beer, wine, and spirits.[21] The 2010-2011 fiscal year cap on tax credits authorized under the FTC program is $140 million.[22] In fiscal year 2011-2012 and thereafter, the cap will increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90 percent of the tax credit cap amount for that year. The tax credit cap amount is $175 million for the 2011-2012 state fiscal year.

The following summarizes information related to the tax credits approved by the DOR:[23]

Tax Year	Number of Approved Tax Credit Allocation Applications	Number of Taxpayers	Total Amount of Tax Credit Allocations Approved for All Taxpayers	Number of Small Businesses Approved for Tax Credit Allocations	Total Amount of Tax Credit Allocations Approved for Small Businesses[24]
2002-03	77	48	$47,686,000	4	$186,000
2003-04	114	56	$47,579,000	3	$79,000
2004-05	102	58	$47,560,000	2	$60,000
2005-06	126	79	$80,323,071	2	$4,000
2006-07	94	65	$87,123,000	1	$3,000
2007-08[25]	106	62	$85,611,140	0	$0
2008-09	125	75	$97,415,847	0	$0
2009-10	121	83	$111,773,617[26]	0	$0
2010-11	125	104	$139,777,856	0	$0
2011-12	19	19	$9,545,000	0	$0

The following reflects the credit allocations per SFO for 2007-2008, 2008-2009, 2009-2010, 2010-2011,[27] and 2011-2012:

[19] Section 211.0251, F.S., authorizes a credit of 100 percent of an eligible contribution to an SFO against any tax due under ss. 211.02 or 211.025, F.S., for oil or gas production. However, the credit may not exceed 50 percent of the tax due on the return the credit is taken.

[20] Section 212.1831, F.S., authorizes a credit of 100 percent of an eligible contribution against any state sales tax due from a direct pay permit holder (e.g., dealers who annually make purchases in excess of $10 million per year in any county and dealers who purchase promotional materials whose ultimate use is unknown at purchase) as a result of the direct pay permit held. *See* s. 212.183, F.S., and Rule 12A-1.0911, F.A.C.

[21] Section 561.1211, F.S., authorizes a credit of 100 percent of an eligible contribution to an SFO against tax due under ss. 563.05, 564.06, or 565.12, F.S., except for taxes imposed on domestic wine production. Further, the credit is limited to 90 percent of the tax due on the return on which the credit is taken.

[22] Section 1, ch. 2010-24, L.O.F., codified in s. 1002.395(5), F.S.

[23] E-mail, DOR, March 28, 2011, on file with the Senate Committee on Education Pre-K - 12.

[24] Until 2006, s. 220.187(3)(a), F.S., provided that five percent of the tax credit was reserved for small businesses as defined under s. 288.703(1), F.S. Chapter 2006-75, L.O.F., reduced the small business cap to one percent. The cap was subsequently repealed by ch. 2008-241, L.O.F.

[25] Effective for tax years beginning January 1, 2006, s. 220.187(5)(d), F.S., (currently s. 1002.395(5)(e), F.S.) permits a taxpayer to rescind all or part of its previously allocated tax credit. When approved, the rescinded allocation can be allocated to another taxpayer.

[26] Of the total amount of the allocation of tax credits, $15,130,000 was allocated to insurance companies based on 18 approved applications.

Credit Allocations per SFO 2007-2008[28]	
SFO	**TOTAL**
Academy Prep Foundation, Inc.	$0
Children First Central Florida[29]	$38,178,882
Florida School Choice Fund[30] (Florida P.R.I.D.E.)	$41,663,140
The Carrie Meek Foundation, Inc.	$1,875,000
Credit Carry Forward	$3,894,118
Total Allocations	$85,611,140
Credit Allocations per SFO 2008-2009[31]	
SFO	**TOTAL**
The Children's Cause, Inc.[32]	$0
Children First Florida (Children First Central Florida)	$42,317,008
Florida P.R.I.D.E.	$35,930,000
The Carrie Meek Foundation, Inc.	$3,010,000
Step Up for Students[33]	$7,001,750
Credit Carry Forward	$9,157,089
Total Allocations	$97,415,847
Credit Allocations per SFO 2009-2010[34]	
SFO	**TOTAL**
Children First Florida[35]	$14,406,666
Florida P.R.I.D.E.[36]	$7,431,666
The Carrie Meek Foundation, Inc.	$2,734,318
Step Up for Students	$64,909,850
Credit Carry Forward	$22,291,117
Total Allocations	$111,773,617
Credit Allocations per SFO 2010-2011[37]	
SFO	**TOTAL**
The Carrie Meek Foundation, Inc.	$3,186,666
Light Bearer's, Inc.	$0
Step Up for Students	$136,591,199
Total Allocations	$139,777,856
Credit Allocations per SFO 2011-2012[38]	
SFO	**TOTAL**
Step Up for Students	$9,545,000
Total Allocations	$9,545,000

[27] Data for applications for credit allocations current through February, 2010. The 2008-09 and 2009-10 applications are still open as of that date.
[28] E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2007. The allocation began January 1, 2007, for tax years beginning in calendar year 2007. The allocation is closed.
[29] Children First Central Florida was subsequently known as Children First Florida.
[30] Florida School Choice Fund was subsequently known as Florida P.R.I.D.E.
[31] DOR, March 1, 2010, for tax years beginning in 2008. The allocation began January 1, 2008, for tax years beginning in calendar year 2008. This allocation is closed.
[32] The Children's Cause was approved by the DOE for 2008-2009.
[33] The Florida School Choice Fund, Inc., d/b/a Step Up for Students, was approved effective July 1, 2009. The assets of Florida PRIDE and Children First Florida were transferred to Florida School Choice Fund, Inc.
[34] E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2009. The allocation began January 1, 2009, for tax years beginning in calendar year 2009. This allocation is closed.
[35] Children First Florida ceased to exist on July 1, 2009. The assets of Children First Florida were transferred to Step Up for Students.
[36] Florida PRIDE ceased to exist on July 1, 2009. The assets of Florida Pride have been transferred to Step Up for Students.
[37] E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2010. The allocation began January 1, 2010, for tax years beginning in calendar year 2010. The allocation is open.
[38] E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2011. The allocation began January 1, 2011, for tax years beginning in calendar year 2011. The allocation is open.

Currently, there are 1,073 participating private schools and 32,320 students receiving scholarships from two SFOs: Step Up for Students and the Carrie Meek Foundation, Inc.[39] The following data represents the number of students receiving FTC scholarships, by SFO, for the current year: Step Up for Students, 30,923 students (95.7 percent) and the Carrie Meek Foundation, Inc., 1,397 students (4.3 percent.) Five SFOs are eligible to participate in the FTC Scholarship program, Step Up For Students, Educate Today (serving the Tampa Bay area), The Carrie Meek Foundation (serving select areas of Miami-Dade County), and Lightbearers, Inc.(serving Volusia and Flagler counties).[40] Two SFOs no longer participate in the program: Academy Prep Foundation, Inc., and The Children's Cause, Inc.

Confidentiality of Taxpayer Information

Current law provides that all information contained in returns, report, accounts, or declarations received by DOR is confidential and exempt from public records inspection and copying requirements under s. 119.07(1), F.S. [41] This information may not be shared with parties outside DOR unless expressly authorized by statute. The law allows DOR to provide the Department of Education (DOE) and the Division of Alcoholic Beverages and Tobacco (ABT) in the Department of Business and Professional Regulation with confidential and exempt information related to the administration of the tax credit program.[42]

The law requires ABT, DOR, and DOE to develop a cooperative agreement and requires DOR to obtain prior approval from ABT before approving the tax credits, carryforwards, and rescindments related to alcoholic beverage taxes.[43] Additionally, the law directs DOR, ABT, and the State Board of Education to adopt rules necessary to administer their responsibilities.[44]

Any information and documentation provided to the DOE and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution remains confidential, in accordance with s. 213.053, F.S.[45]

III. Effect of Proposed Changes:

Contributions

A corporation can receive a dollar for dollar tax credit up to 75 percent of both its state corporate income tax and its insurance premium tax for donations to an eligible SFO.[46] Under the bill, this 75 percent limitation is removed for both corporate income tax and insurance premium tax, and thus, a corporation could claim the credit up to the full amount of the tax due under chapter 220, F.S., and s. 624.51055, F.S.

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[39] *Corporate Tax Credit Scholarship Program Quarterly Report*, Florida Department of Education, November 2010. Of the participating private schools, 79.3 percent are religious schools and 20.7 percent are non-religious schools. *See* https://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2010.pdf.

[40] *See https://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.*

[41] Section 213.053(8)(u), F.S.

[42] *Id.*

[43] Sections 1002.395(5)(b),(c), (e) and (13), F.S.

[44] Section 1002.395(13), F.S.

[45] Section 1002.395(6), F.S. (flush language beginning after subparagraph (6)(n)2.)

[46] Sections 220.1875 and 624.51055, F.S.

Carry Forward
Taxpayers are permitted to carry forward an unused tax credit when the credit cannot be used because of an insufficient tax liability.[47] The carry forward of unused credit is subject to DOR approval.[48] A taxpayer may only convey, assign, or transfer an approved tax credit or carry forward to another taxpayer when all the taxpayer's assets are also conveyed, assigned, or transferred. Under the bill, the time that a taxpayer can carry forward unused tax credit is increased to five years from three years.[49]

Rescindment of Approved Tax Credit
Within any state fiscal year, a taxpayer may rescind all or part of an approved tax credit.[50] The amount rescinded becomes available for that state fiscal year to another eligible taxpayer as approved by the DOR, *if the taxpayer has not previously rescinded any or all of its approved tax credits more than once in the previous three tax years*. The amount rescinded may be reallocated to other taxpayers on a first-come, first-served basis. Under the bill, the ability to rescind tax credit would no longer be contingent upon the taxpayer's rescindment history.

Confidentiality of Taxpayer Information
Florida's Taxpayer's Bill of Rights guarantees Florida taxpayers the right to have tax information kept confidential, unless otherwise specified by law.[51] Current law does not permit DOR to share any tax information with an SFO. Under s. 213.053, F.S., the DOR may disclose specified taxpayer information to governmental and nongovernmental agencies. However, most of these provisions relate to governmental agencies when performing their official duties.

The bill grants a new exception to the confidentiality requirement in s. 213.053, F.S., to allow SFOs with $10 million approved tax credit allocations in the prior year to obtain the names and addresses of the 100 taxpayers having the greatest tax liability after all tax credits are applied. This applies to taxpayers making contributions for credit related to taxes for oil and gas production, direct pay permits, insurance premiums, and corporate income tax. However, the bill includes an exception from the disclosure requirement for corporate income tax information that compromises an information-sharing agreement between the DOR and a federal government agency. Each SFO would be limited to one request for each tax year in any 12-month period. Taxpayer information for contributions for credit against taxes on alcoholic beverages is not affected by the bill.

An SFO would only be permitted to use the taxpayer information to raise funds for the FTC program. Currently, only one SFO, Step Up for Students, would be eligible to request the names and addresses of taxpayers.

[47] Section 1002.395(5)(c), F.S.
[48] *Id.*
[49] While some provisions of tax law limit a taxpayer's ability to carry forward unused tax credit to one year, other provisions permit taxpayers to carry forward unused tax credit for five years. *Compare* s. 220.1896(6), F.S., (Jobs for the Unemployed Tax Credit Program), *with* ss. 220.19(1), F.S., (Child Care Tax Credits), and 220.193(3)(d), F.S., (Renewable Energy Production Tax Credit), F.S.
[50] Section 1002.395(5)(e), F.S.
[51] Section 213.015(9), F.S.

Pursuant to current law, information would be disclosed under a written agreement between the DOR's executive director and the SFO. An SFO would be bound by the same confidentially requirements as the DOR. Breach of confidentiality is a first degree misdemeanor.[52]

The bill provides that taxpayer information would be provided for the most recent years it is available. Presumably, an SFO would be able to access only that information which was not confidential prior to the effective date of the bill, when a taxpayer had an expectation that it remain confidential.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The rescindment provisions of the bill may allow other taxpayers to use available tax credits.

The provisions removing the current credit limitation of 75 percent of a taxpayer's tax liability may allow some taxpayers to take more credit in a given year.

C. Government Sector Impact:

According to the official estimate adopted by the Revenue Estimating Conference on March 11, 2011, current projections and credits approved show SFOs are meeting the allotted cap. The estimate also notes that the provisions of the bill for sharing taxpayer information, claiming credit up to the full amount of the tax, and carrying forward unused tax credit are expected to have no fiscal impact.[53]

[52] Section 213.053(2)(b), F.S.
[53] *See* http://edr.state.fl.us/Content/conferences/revenueimpact/pdf/impact0311.pdf (pp. 129 and 130).

The DOR reports that the bill will have an insignificant impact on the operation of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Education Pre-K – 12 on March 30, 2011:

The committee substitute:

- Allows an insurance company to claim a tax credit up to the full amount of its insurance premium tax for donations to an eligible SFO by eliminating the current limitation to 75 percent of its tax liability; and
- Allows the Department of Revenue to provide the names and addresses of the 100 taxpayers having the greatest tax liability after all tax credits are applied to an SFO that had $10 million approved tax credit allocations in the prior year.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 1428
INTRODUCER:	Regulated Industries Committee and Senator Latvala
SUBJECT:	Veterinary Practice
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Frederick	DeLoach	BGA	**Favorable**
3.	Frederick	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill renames the term "limited service veterinary medical practice" to "limited service veterinary vaccination clinic." The bill redefines the term to mean veterinary practice in which a veterinarian performs vaccinations or immunizations on multiple animals at a temporary location. In effect, the bill will not permit "limited service veterinary vaccination clinics" to offer parasite removal services, which is a service currently permitted to be performed in a "limited service veterinary medical practice." The bill requires the board to establish by rule minimum standards for limited-service veterinary vaccination clinics. The rules must be consistent with the type of limited veterinary vaccination service provided.

This bill removes the authority for business professionals and health care professionals, including veterinarians, who are licensed in another state or in a foreign jurisdiction, are in Florida for a specific sporting event, and are employed or designated by the sport's team, to practice on animals used in the sport.

This bill substantially amends the following sections of the Florida Statutes: 455.2185, 456.023, 474.202 and 474.215.

II. Present Situation:

Veterinary Medical Practice

The Board of Veterinary Medicine (board) within the Department of Business and Professional Regulation (department) is the agency charged with the regulation of the practice of veterinary medicine under ch. 474, F.S., known as the Veterinary Medical Practice Act (act). The legislative purpose for the act is to ensure that every veterinarian practicing in Florida meets minimum requirements for safe practice and veterinarians who are not normally competent or who otherwise present a danger to the public are disciplined or prohibited from practicing in Florida.[1]

The department is responsible for the licensing of veterinarians, while the board[2] within the department is responsible for adopting rules to establish fees and implement the provisions of ch. 474, F.S.

For a person to be licensed as a veterinarian he or she must apply to the department to take a licensure examination. The department must license each applicant who the board certifies has:

- Completed the application form and remitted an examination fee set by the board.[3]
- Graduated from a college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education or graduated from a college of veterinary medicine listed in the American Veterinary Medical Association Roster of Veterinary Colleges of the World and obtained a certificate from the Education Commission for Foreign Veterinary Graduates.
- Successfully completed the examination provided by the department for this purpose, or an examination determined by the board to be equivalent.
- Demonstrated knowledge of the laws and rules governing the practice of veterinary medicine in Florida in a manner designated by rules of the board.[4]

The department is prohibited from issuing a license to any applicant who is under investigation in any state or territory of the United States or in the District of Columbia for an act which would constitute a violation of ch. 474, F.S., until the investigation is complete and disciplinary proceedings have been terminated.[5]

An unlicensed doctor of veterinary medicine who has graduated from an approved college or school of veterinary medicine and has completed all parts of the examination for licensure is

[1] Section 474.201, F.S.
[2] The board consists of seven members, who are appointed by the Governor, and are subject to confirmation by the Senate. Five members of the board must be licensed veterinarians and two members of the board must be laypersons who are not and have never been veterinarians or members of any closely related profession or occupation. *See* s. 474.204, F.S.
[3] For applicants taking the Laws and Rules examination that is not conducted by a professional testing service, the examination fee is $165.00, payable to the DBPR. For applicants taking the Laws and Rules examination that is conducted by a professional testing service, the examination fee is $151.50 payable to the department plus $13.50 payable to the testing service. Rule 61G18-12.002, F.A.C. The applicant for licensure must also pay an initial licensure fee of $200, if the person is licensed in the first 12 months of the biennium, or $100, if the person is licensed in the second 12 months of the biennium. Rule 61G18-12.007, F.A.C.
[4] Section 474.207, F.S.
[5] *Id.*

permitted, while awaiting the results of the examination for licensure or while awaiting issuance of the license, to practice under the immediate supervision of a licensed veterinarian. A person who fails any part of the examination may not continue to practice, except in the same capacity as other nonlicensed veterinary employees, until the person passes the examination and is eligible for licensure.[6]

An applicant may be eligible for temporary licensure if certain requirements are met. In order for the board to certify an applicant to the department for issuance of a temporary license to practice veterinary medicine, an applicant must demonstrate to the board that the applicant:

- Has filed an application for temporary licensure identifying the name and address of the owner of the animals to be treated, the type of animals to be treated and their injury or disease, the location the treatment is to be performed, and the names, addresses, and titles of all persons entering the state with the applicant to perform the treatment; or
- Has filed an application and is responding to an emergency for the treatment of animals of multiple owners.
- Has paid the temporary licensure fee.
- Holds an active license to practice veterinary medicine in another state of the United States and that any license to practice veterinary medicine that the person has ever held has never been revoked, suspended or otherwise acted against by the licensing authority.
- Is neither the subject of any pending prosecution nor has ever been convicted of any offense which is related to the practice of veterinary medicine; and
- Satisfies the qualifications for licensure by endorsement.[7]

A temporary license is valid for a period of 30 days from its issuance. A temporary license does not cover more than the treatment of the animals of the owner identified in the application. Upon expiration of the license, a new license is required.[8]

An applicant may also be eligible for licensure by endorsement if specific requirements are met. The department must issue a license by endorsement to any applicant who, upon applying to the department and remitting the requisite fee,[9] demonstrates to the board that she or he:

- Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of veterinary medicine in Florida; and
- Either holds, and has held for the 3 years immediately preceding the application for licensure, a valid, active license to practice veterinary medicine in another state of the United States, the District of Columbia, or a territory of the United States, provided that the requirements for licensure in the issuing state, district, or territory are equivalent to or more stringent than the requirements of ch. 474, F.S.; or meets the application and examination requirements under Florida law and has successfully completed a state, regional, national, or other

[6] *Id.*
[7] Rule 61G18-25.001, F.A.C.
[8] *Id.*
[9] The fee for licensure by endorsement is $500. Rule 61G18-12.011, F.A.C.

> examination which is equivalent to or more stringent than the examination given by the department.[10]

The department is prohibited from issuing a license by endorsement to any applicant who is under investigation in any state, territory, or the District of Columbia for an act which would constitute a violation of ch. 474, F.S., until the investigation is complete and disciplinary proceedings have been terminated.

Under s. 474.213, F.S., a person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. (maximum imprisonment of 5 years, maximum fine of $5,000, or penalties applicable for a habitual offender) if the person:

- Leads the public to believe that such person is licensed as a veterinarian, or is engaged in the licensed practice of veterinary medicine, without such person holding a valid, active license pursuant to ch. 474, F.S.;
- Uses the name or title "veterinarian" when the person has not been licensed pursuant to ch. 474, F.S.;
- Presents as her or his own the license of another;
- Gives false or forged evidence to the board or a member thereof for the purpose of obtaining a license;
- Uses or attempts to use a veterinarian's license which has been suspended or revoked;
- Knowingly employs unlicensed persons in the practice of veterinary medicine;
- Knowingly concealing information relative to violations of ch. 474, F.S.;
- Obtains or attempts to obtain a license to practice veterinary medicine by fraudulent representation;
- Practices veterinary medicine in Florida, unless the person holds a valid, active license to practice veterinary medicine pursuant to ch. 474, F.S.;
- Sells or offers to sell a diploma conferring a degree from a veterinary school or college, or a license issued pursuant to ch. 474, F.S., or procures such diploma or license with the intent that it shall be used as evidence of that which the document stands for by a person other than the one upon whom it was conferred or to whom it was granted; or
- Knowingly operates a veterinary establishment or premises without having a premise permit issued under s. 474.215, F.S.

Limited Service Veterinary Medical Practice

Section 474.202(6), F.S., defines the term "limited-service veterinary medical practice" to mean:

> offering or providing veterinary services at a location that has a primary purpose other than that of providing veterinary medical services at a permanent or mobile establishment permitted by the Board of Veterinary Medicine; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services.

[10] Section 474.217, F.S.

Section 474.202(9), F.S., defines the term "practice of veterinary medicine" to mean:

> diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

Section 474.215(7), F.S., requires the board to establish by rule minimum standards for limited-service veterinary medical practices. The rules cannot restrict limited service veterinary medical practices and must be consistent with the type of limited veterinary medical service provided. The board has defined by rule minimum standards to include vaccinations, immunizations and preventative procedures for parasitic control[11] on multiple animals at a temporary location and for a limited time.[12] The rule defines the term "limited time" as no more than once every two weeks and no more than four hours in any one day for any single location where a clinic is held.[13]

According to the department, anyone, such as a retailer, may obtain a permit for limited service veterinary medical permit, but a licensed veterinarian must perform the services. These limited service clinics are inspected on a random basis. There has been an issue with these clinics not notifying the department before the clinic is conducted.

Mobile veterinarian clinics are licensed, must have a premises permit for the mobile unit, and must be inspected prior to providing veterinarian services. A "mobile veterinary establishment" and "mobile clinic" is:

> a mobile unit which contains the same treatment facilities as are required of a permanent veterinary establishment or which has entered into a written agreement with another veterinary establishment to provide any required facilities not available in the mobile unit. The terms do not refer to the use of a car, truck, or other motor vehicle by a veterinarian making a house call.[14]

General Provisions for Business and Health Professionals

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department.

[11] According to the department, preventive services for parasitic control may require a prescription and testing to determine the health status of an animal.
[12] Rule 61G18-15.007, F.A.C.
[13] Rule 61G18-15.007(1), F.A.C.
[14] Section 474.202(7), F.S.

The general provisions for licensure, certification, education, examination, and penalties for the following medical professionals are provided under ch. 456, F.S. In addition, ch. 456, F.S., provides the authority of the following boards to regulate their respective professions.

Exemption for Out-of-state or Foreign Professionals

Sections 455.2185(1) and 456.023(1), F.S., permit professionals from another state, nation, or foreign jurisdiction who are licenses under ch. 455 and 456, F.S., respectively, to practice in Florida under limited circumstances. Such professionals are exempt from the license requirements under ch. 455 and 456, F.S., and the applicable professional practice act if that person:

- Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.
- Engages in the active practice of that profession outside the state.
- Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

Sections 455.2185(2) and 456.023(2), F.S., limit the practice of the professional to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or designated involves animals. Both sections practicing under authority of Sections 455.2185(2) and 456.023(2), F.S., also provide that these professionals do not have practice privileges in any licensed veterinary facility without the approval of that facility.

III. Effect of Proposed Changes:

Limited Service Veterinary Medical Practice

The bill amends s. 474.202(7), F.S., to rename the term "limited service veterinary medical practice" to "limited service veterinary vaccination clinic." It also redefines the term to mean veterinary practice in which a veterinarian performs vaccinations or immunizations on multiple animals at a temporary location. The bill requires the board to establish by rule, minimum standards for limited-service veterinary vaccination clinics. The rules must be consistent with the type of limited veterinary vaccination service provided.

The bill amends s. 474.215(7), F.S., to require the board to establish by rule, minimum standards for limited-service veterinary vaccination clinics. It deletes the provision that requires the board to establish by rules, minimum standards for limited-service veterinary medical practices. The rules must be consistent with the type of limited veterinary vaccination service provided.

Rule 61G18-15.007, F.A.C., permits "limited-service veterinary medical practices" to perform preventive procedures for parasitic control. In effect, the bill would delete the board's authority for this rule, and would not permit "limited service veterinary vaccination clinics" to offer parasite removal services, which is a service currently permitted to be performed in a "limited service veterinary medical practice."

The department indicated that this bill would not affect mobile veterinary clinics or veterinarians who make house calls.

Exemption for Out-of-state or Foreign Professionals

The bill amends s. 455.2185, F.S., to delete the authority of a business professional, who is licensed in another state or foreign jurisdiction, is in Florida for a specific sporting event, and is employed or designated by the sport's team, to practice on animals used in the sport.

The bill also amends s. 456.023, F.S., to delete the authority of a health care professional, who is licensed in another state or foreign jurisdiction, is in Florida for a specific sporting event, and is employed or designated by the sport's team, to practice on animals used in the sport.

The bill deletes the provisions in ss. 455.2185 and 456.023, F.S., that prohibit these professionals from practicing in veterinary facilities without the approval of the facility, which is consistent with the above changes that prohibit the professionals from practicing on animals used by the sporting teams while in Florida.

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:

Sports teams from out-of-state or from foreign jurisdictions that participate in sporting events involving animals in Florida may incur additional costs associated with hiring a Florida-licensed veterinarian for veterinary services.

C. Government Sector Impact:

Implementation of the bill requires the Board of Veterinary Medicine to establish, by rule, minimum standards for limited-service veterinary vaccination clinics. According to the Department of Business and Professional Regulation, these rules can be established

within existing resources. Additionally, implementation of the bill will require modifications to the department's LicenseEase computer system. These modifications include the creation of a limited service veterinary vaccination clinics license type and retirement of one existing license type. These changes can also be accomplished within 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.)

CS by Regulated Industries on March 29, 2011:
The committee substitute (CS) does not create s. 474.202(7), F.S., to define the term "limited service veterinary vaccination clinic." Instead, the bill amends s. 474.202, F.S., to rename the term "limited service veterinary medical practice" to "limited service veterinary vaccination clinic."

The CS amends ss. 455.2185 and 456.023, F.S., to delete the authority of a professional who is licensed in another state or foreign jurisdiction, is in Florida for a specific sporting event, and is employed or designated by the sport's team, to practice on animals used in the sport and use veterinary facilities.

B. Amendments:

None.

330626

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete line 81
and insert:
expert witness certificate within 10 business days after receipt

Delete line 171
and insert:
expert witness certificate within 10 business days after receipt

Delete line 233
and insert:
expert witness certificate within 10 business days after receipt

621466

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Budget (Hays) recommended the following:

Senate Amendment

Delete line 119
and insert:
(oo) Providing deceptive or fraudulent expert

Delete line 209
and insert:
(qq) Providing deceptive or fraudulent expert

Delete line 269
and insert:
(11) Providing deceptive or fraudulent expert

272724

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 557 - 558
and insert:
the presence of the claimant or the claimant's legal representative.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 46
and insert:
treating health care provider without the

122796

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 727 and 728
insert:

Section 15. Section 768.135, Florida Statutes, is amended to read:

768.135 Volunteer team physicians; immunity.—

(1) As used in this section, the term "volunteer team physician" means any person licensed to practice medicine pursuant to chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466:

(a) ~~(1)~~ Who is acting in the capacity of a volunteer team physician in attendance at an athletic event sponsored by a

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public or private elementary or secondary school; and

(b) ~~(2)~~ Who gratuitously and in good faith prior to the athletic event agrees to render emergency care or treatment to any participant in such event in connection with an emergency arising during or as the result of such event, without objection of such participant. ~~,~~

(2) A volunteer team physician is ~~shall~~ not ~~be held~~ liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment unless the ~~when such~~ care or treatment was rendered in a wrongful manner ~~as a reasonably prudent person similarly licensed to practice medicine would have acted under the same or similar circumstances~~.

(3) A practitioner licensed under chapter 458, chapter 459, chapter 460, or s. 464.012 who gratuitously and in good faith conducts an evaluation pursuant to s. 1006.20(2)(c) is not liable for any civil damages arising from that evaluation unless the evaluation was conducted in a wrongful manner.

(4) As used in this section, the term "wrongful manner" means in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, and shall be construed in conformity with the standard set forth in s. 768.28(9)(a).

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

And the title is amended as follows:

Delete line 59

and insert:

medical negligence claims; amending s. 768.135, F.S.;

122796

defining the term "volunteer team physician";
providing that a volunteer team physician is not
liable for civil damages unless treatment was rendered
in a wrongful manner; providing that certain
practitioners who conduct certain evaluations are not
liable for civil damages unless the evaluation was
conducted in a wrongful manner; defining the term
"wrongful manner"; providing an effective

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 Budget Committee

BILL:	CS/SB 1590
INTRODUCER:	Banking and Insurance Committee and Senators Hays and Gaetz
SUBJECT:	Medical Malpractice Actions
DATE:	April 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HR	**Favorable**
2.	Knudson/Arzillo	Burgess	BI	**Fav/CS**
3.	Bradford	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Senate bill 1590 revises statutes related to medical malpractice claims. The bill requires a physician, osteopathic physician, or dentist who provides expert testimony concerning the prevailing professional standard of care of a physician, osteopathic physician, or dentist to be licensed in this state or possess an expert witness certificate issued by the Department of Health (DOH). Florida licensed physicians and dentists will be subject to disciplinary action for offing false or misleading information as an expert witness, while physicians outside Florida will be subject to revocation of the expert witness certificate for offering such testimony.

The bill requires an insurance policy or self-insurance policy for medical malpractice coverage to clearly state whether or not the insured has the exclusive right of veto of any admission of liability or offer of judgment. The bill repeals the requirement that a self-insurance policy or insurance policy for medical malpractice must authorize the insurer to make this decision without the permission of the insured medical provider if the action is within the policy limits.

The bill exempts a licensed hospital from liability for the medical negligence of a health care provider with whom the hospital has contracted, unless the hospital expressly directs or exercise

actual control over the conduct that caused the injury. The exemption from liability does not apply to the negligent act of a hospital employee.

In a civil action involving the failure of a health care provider to order supplemental diagnostic tests, the bill requires the plaintiff to prove by clear and convincing evidence that the health care provider breached the prevailing professional standard of care.

The bill makes inadmissible all evidence related to an insurer's reimbursement policies or reimbursement determination regarding medical care provided to the Plaintiff. The bill also prohibits the introduction of federal standards and regulations into evidence to establish that the medical provider breached the prevailing professional standard of care.

The bill requires a claimant to submit, along with the other required information, an executed authorization form for the release of protected health information that is potentially relevant to the claim of personal injury or wrongful death when he or she notifies each prospective defendant of his or her intent to initiate litigation for medical negligence.

The bill authorizes a prospective defendant or his or her legal representative access to conduct ex-parte interviews of the claimant's treating health care providers without notice to, or the presence of, the claimant or the claimant's legal representative.

The bill requires the Board of Medicine to create by rule a standardized informed consent form setting forth the risks of cataract surgery. An executed informed consent form creates a rebuttable presumption that the physician properly disclosed the risks of cataract surgery in a civil action or administrative proceeding. Risks described in the signed informed consent form may not be classified as an "adverse incident" pursuant to s. 395.0197, F.S.

The Board Of Medicine (BOM) and the Board Of Osteopathic Medicine (BOOM) will be required to develop application forms and rules to administer the certification program for expert witnesses. Additional regulatory and enforcement activities may emerge as a result of the bill. According to DOH, this will require additional resources and budget authority, including 1 FTE and 2 OPS positions. The bill authorizes the BOM and the BOOM to establish an application fee not to exceed $50 for the expert witness certificate, which should be sufficient to cover the cost of this regulation.

This bill substantially amends the following sections of the Florida Statutes: 458.331, 459.015, 627.4147, 766.102, 766.106, and 766.206. The bill creates the following sections of the Florida Statutes: 458.3175, 459.0066, and 766.1065.

II. Present Situation:

Standard of Proof in Medical Malpractice Actions

In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that the death or injury resulted from the negligence of a health care provider, the claimant has the burden of proving by the greater weight of evidence that the alleged action of the health care provider represented a breach of the prevailing professional standard of care

for that health care provider. The prevailing professional standard of care is that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.[1] Nevertheless, s. 766.102(4), F.S., provides that the "failure of a health care provider to order, perform, or administer supplemental diagnostic tests shall not be actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care."
Greater weight of the evidence means the "more persuasive and convincing force and effect of the entire evidence in the case."[2] Consequently, other statutes, such as license disciplinary statutes, require a heightened standard of proof called "clear and convincing evidence." Clear and convincing evidence has been described as follows:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.[3]

Presuit Investigation[4]

Prior to the filing of a lawsuit, the person allegedly injured by medical negligence or a party bringing a wrongful death action arising from an alleged incidence of medical malpractice (the claimant) and the defendant (the health care professional or health care facility) are required to conduct presuit investigations to determine whether medical negligence occurred and what damages, if any, are appropriate.

The claimant is required to conduct an investigation to ascertain that there are reasonable grounds to believe that:

- A named defendant in the litigation was negligent in the care or treatment of the claimant; and
- That negligence resulted in injury to the claimant.

Corroboration of reasonable grounds to initiate medical negligence litigation must be provided by the claimant's submission of a verified written medical expert opinion from a medical expert.

Before the defendant issues his or her response, the defendant or his or her insurer or self-insurer is required to ascertain whether there are reasonable grounds to believe that:

- The defendant was negligent in the care or treatment of the claimant; and
- That negligence resulted in injury to the claimant.

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[1] S. 766.102, F.S.
[2] *Castillo v. E.I. Du Pont De Nemours & Co., Inc.*, 854 So. 2d 1264, 1277 (Fla. 2003).
[3] *Inquiry Concerning Davey*, 645 So. 2d 398, 404 (Fla. 1994)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).
[4] S. 766.203, F.S.

Corroboration of the lack of reasonable grounds for medical negligence litigation must be provided by submission of a verified written medical expert opinion which corroborates reasonable grounds for lack of negligent injury sufficient to support the response denying negligent injury.

These expert opinions are subject to discovery. Furthermore, the opinion must specify whether any previous opinion by that medical expert has been disqualified and if so, the name of the court and the case number in which the ruling was issued.

Qualification of Medical Expert[5] Witnesses

A person may not give expert testimony concerning the prevailing professional standard of care unless that person is a licensed health care provider and meets the following criteria:

- If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:
  - Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; or specialize in a similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients; and
  - Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:
    - The active clinical practice of, or consulting with respect to, the same or similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients;
    - Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same or similar specialty; or
    - A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same or similar specialty.
- If the health care provider against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness must have devoted professional time during the 5 years immediately preceding the date of the occurrence that is the basis for the action to:
  - The active clinical practice or consultation as a general practitioner;
  - The instruction of students in an accredited health professional school or accredited residency program in the general practice of medicine; or
  - A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the general practice of medicine.
- If the health care provider against whom or on whose behalf the testimony is offered is a health care provider other than a specialist or a general practitioner, the expert witness must have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:
  - The active clinical practice of, or consulting with respect to, the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered;

[5] S. 766.102(5), (9), and (12), F.S.

  - The instruction of students in an accredited health professional school or accredited residency program in the same or similar health profession in which the health care provider against whom or on whose behalf the testimony is offered; or
  - A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered.
- If the claim of negligence is against a physician licensed under chapter 458, osteopathic physician licensed under chapter 459, podiatric physician licensed under chapter 461, or chiropractic physician licensed under chapter 460 providing emergency medical services in a hospital emergency department, the court shall admit expert medical testimony only from physicians, osteopathic physicians, podiatric physicians, and chiropractic physicians who have had substantial professional experience within the preceding 5 years while assigned to provide emergency medical services in a hospital emergency department.

These provisions do not limit the power of the trial court to disqualify or qualify an expert witness on grounds other than the qualifications in this section (s. 766.102, F.S.). Relevant portions of the Florida Evidence Code provide requirements for expert opinion testimony.[6] The Florida Rules of Civil Procedure define "expert witness" as a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.[7]

The court must refuse to consider the testimony or opinion attached to any notice of intent or to any response rejecting a claim of an expert who has been disqualified three times.[8]

After Claimant's Presuit Investigation[9]

After completion of the presuit investigation and prior to filing a complaint for medical negligence, a claimant shall notify each prospective defendant by certified mail, return receipt requested, of intent to initiate litigation for medical negligence. Notice to each prospective defendant must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, and copies of all of the medical records relied upon by the expert in signing the affidavit. The requirement of providing the list of known health care providers may not serve as grounds for imposing sanctions for failure to provide presuit discovery.
A suit may not be filed for a period of 90 days after notice is mailed to any prospective defendant. The statue of limitations is tolled during the 90-day period. During the 90-day period, the prospective defendant or the defendant's insurer or self-insurer shall conduct a presuit investigation to determine the liability of the defendant. Each insurer or self-insurer shall have a procedure for the prompt investigation, review, and evaluation of claims during the 90-day period.

[6] Sections 90.702 and 90.704, F.S.
[7] Fla. R. Civ. P. 1.390(a).
[8] S. 766.206, F.S.
[9] S. 766.106, F.S.

Each insurer or self-insurer must investigate the claim in good faith, and both the claimant and prospective defendant must cooperate with the insurer in good faith. If the insurer requires, a claimant shall appear before a pretrial screening panel or before a medical review committee and shall submit to a physical examination. Unreasonable failure of any party to comply with this section justifies dismissal of claims or defenses. There is no civil liability for participation in a pretrial screening procedure if done without intentional fraud.

At or before the end of the 90 days, the prospective defendant or the prospective defendant's insurer or self-insurer shall provide the claimant with a response:

- Rejecting the claim;
- Making a settlement offer; or
- Making an offer to arbitrate in which liability is deemed admitted and arbitration will be held only on the issue of damages. This offer may be made contingent upon a limit of general damages.

The response shall be delivered to the claimant if not represented by counsel or to the claimant's attorney, by certified mail, return receipt requested. Failure of the prospective defendant or insurer or self-insurer to reply to the notice within 90 days after receipt shall be deemed a final rejection of the claim for purposes of this section.

Discovery and Admissibility of Evidence

Statements, discussions, written documents, reports, or other work product generated by the presuit screening process are not discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit screening process.[10]

Upon receipt by a prospective defendant of a notice of claim, the parties are required to make discoverable information available without undertaking formal discovery. Informational discovery may be used to obtain unsworn statements, the production of documents or things, and physical and mental examinations as follows:[11]

- Unsworn statements – Any party may require other parties to appear for the taking of an unsworn statement. Unsworn statements may be used only for the purpose of presuit screening and are not discoverable or admissible in any civil action for any purpose by any party.
- Documents or things – Any party may request discovery of documents or things. This includes medical records.
- Physical and mental examination – A prospective defendant may require an injured claimant to be examined by an appropriate health care provider. Unless otherwise impractical, a claimant is required to submit to only one examination of behalf of all potential defendants.

[10] S. 766.106(5), F.S.
[11] S. 766.106(6), F.S.

The examination report is available to the parties and their attorney and may be used only for the purpose of presuit screening. Otherwise the examination is confidential.

- Written questions – Any party may request answers to written questions.
- Medical information release – The claimant must execute a medical information release that allows a prospective defendant or his or her legal representative to take unsworn statements of the claimant's treating physicians that address areas that are potentially relevant to the claim of personal injury or wrongful death. The claimant or claimant's legal representative has the right to attend the taking of these unsworn statements.

The failure to cooperate on the part of any party during the presuit investigation may be grounds to strike any claim made, or defense raised in the suit.

Informed Consent

The doctrine of informed consent requires a physician to advise his or her patient of the material risks of undergoing a medical procedure.[12] Physicians and osteopathic physicians are required to obtain informed consent of patients before performing procedures and are subject to discipline for failing to do so.[13] Florida has codified informed consent in the "Florida Medical Consent Law," s. 766.103, F.S, in relevant part:

> (4)(a) **A consent which** is evidenced in writing and meets the requirements of subsection (3) shall, if validly signed by the patient or another authorized person, **raise a rebuttable presumption of a valid consent.**
> (b) A valid signature is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent. (emphasis added).

The Florida Supreme Court discussed the effect of the rebuttable presumption in the Medical Consent Law in *Pub. Health Trust of Dade County v. Valcin*, 507 So. 2d 596 (Fla. 1987). In that case, the patient signed two consent forms, one acknowledging that no guarantees had been made concerning the results of the operation and one stating that the surgery had been explained to her.[14] The patient argued that the doctor made oral representations that contradicted the consent forms and made other statements that were not addressed by the consent forms. The court found that such claims could overcome the presumption because no conclusive presumption of valid consent, rebuttable only upon a showing of fraud, will apply to the case. The alleged oral warranties, of course, if accepted by the jury may properly rebut a finding of valid informed consent.[15]

A second issue in Valcin was not related to informed consent, but concerned which type of presumption should apply when surgical records related to the surgery are unavailable or lost. There are two types of presumptions, a shift in the burden of producing or a shift in the burden of

[12] *See State v. Presidential Women's Center*, 937 So. 2d 114, 116 (Fla. 2006)("The doctrine of informed consent is well recognized, has a long history, and is grounded in the common law and based in the concepts of bodily integrity and patient autonomy").
[13] *See* ss. 458.331, F.S., and 459.015, F.S.
[14] *See Pub. Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 598 (Fla. 1987).
[15] *See id*. at 599.

proof.16 In the former, as applied to this case, the hospital would bear the initial burden of going forward with the evidence establishing its nonnegligence. If it met this burden by the greater weight of the evidence, the presumption would vanish, requiring resolution of the issues as in a typical case.17 The jury is never told of the presumption.

The second type of rebuttable presumption, as recognized in s. 90.302(2), F.S., affects the burden of proof, shifting the burden to the party against whom the presumption operates to prove the nonexistence of the fact presumed. When evidence rebutting such a presumption is introduced, the presumption does not automatically disappear. It is not overcome until the trier of fact believes that the presumed fact has been overcome by whatever degree of persuasion is required by the substantive law of the case. Rebuttable presumptions which shift the burden of proof are expressions of social policy, rather than mere procedural devices employed to facilitate the determination of the particular action. A section 90.302(2) presumption shifts the burden of proof, ensuring that the issue of negligence goes to the jury.[18]

Medical Malpractice Insurance Policies

Section 627.4147, F.S., provides that medical malpractice insurance policies must authorize the insurer or self-insurer to make decisions without the permission of the insured regarding any offer of admission of liability and for arbitration, settlement offer, or offer of judgment, if the offer is within the policy limits. The statute states that it is against public policy to give the insured exclusive right to veto the insurer or self-insurer's decision when the offer is within policy limits. However, malpractice insurance policies issued to licensed dentists provide dentists with an exclusive right to veto, as long as it is clearly stated in the policy, and the policy states that the insurer or self-insurer may not make admissions to liability and arbitration, settlement offer or offer of judgment that are outside the policy limits. Nevertheless, in both instances, the insurer or self-insurer must make a good faith admission of liability, settlement offer, or offer of judgment and it must be in the best interest of the insured.

Hospital Liability for Independent Contractors

Generally, a hospital may not be held liable for the negligence of independent contractor physicians to whom it grants staff privileges.[19] "Vicarious liability does not therefore necessarily attach to the hospital for the doctors' acts or omissions."[20]

The Florida Supreme Court has described the doctrine of vicarious liability:

> The concept of vicarious liability can be described as follows: A person whose liability is imputed based on the tortuous acts of another is liable for the entire share of comparative responsibility assigned to the other. Vicarious liability is often justified on the policy grounds that it ensures that a financially responsible party will cover damages. Thus, the vicariously liable party is liable for the entire share of the fault assigned to the active

[16] *See* ss. 90.302(1) and (2), F.S.
[17] *See Gulle v. Boggs*, 174 So.2d 26 (Fla.1965); C. Ehrhardt, *Florida Evidence* § 302.1 (2d ed. 1984).
[18] *See supra* note 19 at 600-01.
[19] *See Insinga v. LaBella*, 543 So. 2d 209 (Fla. 1989).
[20] *Pub. Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 601 (Fla. 1987).

> tortfeasor. The vicariously liable party has not breached any duty to the plaintiff; its liability is based solely on the legal imputation of responsibility for another party's tortuous acts. The vicariously liable party is liable only for the amount of liability apportioned to the tortfeasor. In sum, the doctrine of vicarious liability takes a party that is free of legal fault and visits upon that party the negligence of another.[21]

However, a hospital may be held vicariously liable for the acts of independent contractor physicians if the physicians act with the apparent authority of the hospital.[22] Apparent authority exists only if all three of the following elements are present: (a) a representation by the purported principal; (b) a reliance on that representation by a third party; and (c) a change in position by the third party in reliance on the representation.[23]

There are numerous cases in Florida appellate courts where courts have struggled over the issue of whether the hospital should be liable for the negligence of an independent contractor physician. Some cases involve the apparent authority issue. Others involve the issue of whether the hospital has a nondelegable duty to provide certain medical services. One court found that even where a physician is an independent contractor, however, a hospital that undertakes by [express or implied] contract to do for another a given thing is not allowed to ―escape [its] contractual liability [to the patient] by delegating performance under a contract to an independent contractor."[24]

In March 2003, the Florida Supreme Court issued its opinion in *Villazon v. Prudential Health Care Plan*, 843 So. 2d 842 (Fla. 2003). In *Villazon*, the court considered whether vicarious liability theories could make an HMO liable for the negligence of a physician who had a contract with the HMO. The court held that the HMO Act did not provide a cause of action against the HMO for negligence of the physician but that a suit could proceed under common law theories of negligence under certain circumstances.[25] It noted that the "existence of an agency relationship is normally one for the trier of fact to decide."[26] The court explained that the physician's contractual independent contractor status does not alone preclude a finding of agency and remanded the case for consideration of whether the insurer exercised sufficient control over the physician's actions such that an agency relationship existed or whether agency could be established under an apparent agency theory.[27]

Appellate courts in Florida have more recently examined the nondelegable duty issue, with differing opinions. As a result, the law is unsettled across the state regarding the liability of hospitals for the negligent acts or omissions of medical providers with whom they contract to provide medical services within the hospital, but over whom they do not have direct control of the manner in which the services are provided.

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[21] *American Home Assur. Co. v. National Railroad Passenger Corp.*, 908 So. 2d 459, 467-468 (Fla. 2005)(internal citations omitted).
[22] *See Stone v. Palms West Hosp.*, 941 So. 2d 514 (Fla. 4th DCA 2006).
[23] *See Roessler v. Novak*, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003).
[24] *Shands Teaching Hosp. and Clinic, Inc. v. Juliana*, 863 So. 2d 343, 349 n. 9 (Fla. 1st DCA 2003). *But see Jones v. Tallahassee Memorial Regional Healthcare, Inc*. 923 So. 2d 1245 (Fla. 1st DCA 2006)(refusing to extend the nondelegable duty doctrine to physicians).
[25] *See Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 852 (Fla. 2003).
[26] *See id*. at 853.
[27] *See id*. at 855-56.

In *Wax v. Tenet Health System Hospitals, Inc.*, 955 So.2d 1 (Fla. 4th DCA 2006)[28], the wife of a deceased patient brought a medical malpractice action against the surgeon who operated on her husband, the hospital where the surgery was completed and others. Specifically, for purposes of this analysis, the wife alleged that the hospital had a nondelegable duty to provide anesthesiology services and was directly liable for the negligence of the anesthesiologist with whom the hospital had contracted to provide services.[29] The *Wax* court agreed with the plaintiff that the statutory definition of hospital[30] and a specific regulation of hospitals established under statutory authority by the Agency for Health Care Administration (AHCA)[31] established that the hospital had an express legal duty to furnish anesthesia services to patients that were consistent with established standards.[32] The court found that the imposition of this duty on all surgical hospitals to provide non-negligent anesthesia services was important enough to be nondelegable without the express consent to the contrary of the patient.[33]

However, in *Tarpon Springs Hospital Foundation, Inc. v. Reth*, 40 So.3d 823 (Fla. 2nd DCA 2010), the Second District Court of Appeal considered the same argument of the plaintiff related to the identical statutes and rules as were presented to the Fourth District Court of Appeal in *Wax* and concluded that, while the hospital had a statutory obligation to maintain an anesthesia department within the hospital that is directed by a physician member of the hospital's professional staff, the statutes and rules do not impose a nondelegable duty to provide non-negligent anesthesia services to surgical patients of the hospital.[34]

Noting the conflict among the District Courts of Appeal regarding the applicability of the theory of nondelegable duty to the contractual relationship between hospital and medical provider in medical negligence claims, the Second District certified the conflict to the Florida Supreme Court for further review.[35] However, as of the date of this analysis, the Florida Supreme Court has not resolved the conflict.

Risk Management Programs

Pursuant to section 395.0197, Florida Statutes, each licensed facility (hospital, ambulatory surgical center, or mobiles surgical facility) must establish an internal risk management program. The risk management program must develop protocols to prevent adverse incidents and a system for investigating, analyzing, and reporting any adverse incidents that occur. The program must investigate and analyze the frequency and causes of adverse incidents to patients, develop

[28] The case was originally heard in 2006. Following the filing of a Motion for Rehearing and a Motion for Rehearing En Banc by appellees, both of which were denied, the Court realized that it failed to resolve all issues and delivered an opinion regarding the hospital's liability for the alleged negligence of the anesthesiologist. The opinion was issued on May 7, 2007. *See* Wax, 955 So.2d at 6.
[29] *See* Wax v. Tenet Health System Hospitals, Inc., 955 So.2d 1, 3, 6 (Fla. 4th DCA 2006).
[30] *See* s. 395.002(13)(b), F.S. (2005) defining "hospital" as an establishment that, among other things, regularly makes available "treatment facilities for surgery."
[31] Rule 59A-3.2085(4), F.A.C. states "[e]ach Class I and Class II hospital, and each Class III hospital providing surgical or obstetrical services, shall have an anesthesia department, service or similarly titled unit directed by a physician member of the organized professional staff."
[32] *See supra* note 22 at 8.
[33] *See supra* note 22 at 9.
[34] *See* Tarpon Springs Hospital Foundation, Inc. v. Reth, 40 So.3d 823, 823-24 (Fla. 2nd DCA 2010).
[35] *See id*. at 824.

appropriate measures to minimize the risk of adverse incidents, analyze patient grievances regarding patient care and medical services, inform patients of adverse incidents, and implement a system of reporting adverse incidents to the risk manager.

Each year, the licensed facility must submit an annual report to the Agency for Health Care Administration (AHCA) listing the total number of adverse incidents and detailed information regarding the incidents including the medical procedures causing the injuries, types of injuries caused, the license number of each health care professional directly involved in the adverse incident, and a description of all malpractice claims against the licensed facility. The report is exempt from the public records law[36] and is not discoverable or admissible in any civil or administrative actions unless used in a disciplinary proceeding by AHCA or the medical provider's licensing board. However, AHCA must publish a quarterly report on its website summarizing the adverse incident reports it has received, but that does not identify the patient, the facility where the incident occurred, or the health care practitioners involved.

III. Effect of Proposed Changes:

Sections 1, 4, and 6 create s. 458.3175, F.S., s. 459.0066, F.S., and s. 466.005, F.S., respectively, to authorize the Department of Health (DOH) to issue a certificate to a physician, osteopathic physician, or dentist who is licensed to practice in another state or a Canadian province authorizing that person to provide expert testimony in this state pertaining to medical negligence litigation. The expert witness certificate authorizes the physician, osteopathic physician or dentist to provide a verified written medical opinion for purposes of presuit investigation of medical negligence claims and provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state. An expert witness certificate is valid for 2 years.

To obtain an expert witness certificate, the physician, osteopathic physician, or dentist must submit a completed application and pay an application fee in an amount not to exceed $50. A certificate may not be issued to a physician or dentist who has had a previous expert witness certificate revoked by the department. The department must approve or deny the application within 7 business days after receipt of the completed application and fee; otherwise the application is approved by default. If a physician or dentist intends to rely on a certificate that is approved by default, he or she must notify the department in writing.

The expert witness certificate does not authorize the physician or dentist to practice medicine, osteopathic medicine or dentistry in this state. An out of state and Canadian physician, osteopathic physician, or dentist who obtains an expert witness certificate is not required to obtain a license to practice medicine in this state, or pay other fees, including the neurological injury compensation assessment.

Physicians Providing Misleading, Deceptive or Fraudulent Expert Witness Testimony

Sections 2, 5, and 7 amend s. 458.331, F.S., s. 459.015, F.S., and s. 466.028, F.S. respectively, to add that a physician or osteopathic physician providing misleading, deceptive, or fraudulent

[36] s. 119.07(1), F.S.

expert witness testimony related to the practice of medicine or dentist providing such testimony regarding dentistry is subject to denial of a license or other disciplinary action.

Informed Consent Form for Cataract Surgery

Section 3 and 8 amends s. 458.351, F.S., and s. 459.026, F.S., directing the BOM to create by rule a standardized informed consent form setting forth the risks of cataract surgery. The form will be used by physicians licensed under ch. 458, F.S., and osteopathic physicians licensed under ch. 459, F.S. The BOM is directed to consider information from physicians licensed and licensed osteopathic physicians prior to formally proposing the rule. The rules establishing the form must be proposed within 90 days of July 1, 2011.

The section also provides statutory guidelines regarding the contents and execution of the informed consent form. The patient (or a person authorized to give consent) and a witness must sign the form in order to execute the patient's informed consent. An executed informed consent form creates a rebuttable presumption that the physician properly disclosed the risks of cataract surgery in a civil action or administrative proceeding.

Risks described in the signed informed consent form may not be classified as an "adverse incident" pursuant to s. 395.0197, F.S.

Section 9 amends s. 627.4147, F.S., to repeal the requirement that a self-insurance policy or insurance policy that provides coverage for medical malpractice must authorize the insurer or self-insurer to determine, make, and conclude any offer of admission of liability and for arbitration, settlement offer, or offer of judgment if the offer is within the policy limits without the permission of the insured. The bill also repeals the statement that it is against public policy for an insurance or self-insurance policy to contain a clause giving the insured the exclusive right to veto an offer for admission of liability and for arbitration, settlement offer, or offer of judgment, when the offer is within the policy limits.

Instead, the bill requires a clause in all malpractice insurance policies that clearly states whether or not the insured has the exclusive right of veto if the offer is within policy limits. The policy must also prohibit the insurer or self-insurer from making or concluding, without the permission of the insured, any offer of admission of liability and for arbitration, settlement offer, or offer of judgment, if such offer is outside the policy limit. In current law, these provisions only apply policies covering licensed dentists.

Section 10 amends s. 766.102, F.S., regarding evidentiary rules and standards in medical malpractice claims.

Inadmissible Evidence – The bill makes inadmissible all evidence related to an insurer's reimbursement policies or reimbursement determination regarding medical care provided to the Plaintiff. The bill defines "insurer" to include all public and private insurers, including the Centers for Medicare and Medicaid Services. The "reimbursement determination" is defined as the insurer's determination of the amount the insurer reimburses a health care provider for health care services. "Reimbursement policies" are defined as the insurer's policies that governing its

decisions regarding health care coverage and method of payment and all data upon which these decisions are made.

The bill also makes inadmissible evidence regarding a health care provider's breach of or failure to comply with any federal requirement. This will prevent the introduction of federal standards and regulations to establish that the medical provider breached the prevailing professional standard of care.

Standard of Proof – The bill requires the plaintiff to prove by clear and convincing evidence that the health care provider breached the prevailing professional standard of care involving the failure of a health care provider to order supplemental diagnostic tests. The change places a more difficult burden of proof on the Plaintiff in these cases than under current law, which requires the claimant to prove a breach of the standard of care by the greater weight of the evidence.

Eligibility to Provide Expert Testimony – The bill states that a person may not give expert testimony concerning the prevailing professional standard of care unless that person's license is active and valid and the person has conducted a complete review of all medical records. In addition, this section requires a physician, osteopathic physician, or dentist who provides expert testimony concerning the prevailing professional standard of care of a physician, osteopathic physician or dentist to be licensed in this state or possess an expert witness certificate issued by the DOH.

Section 11 amends s. 766.106, F.S., to require a claimant to submit, along with the other required information, an executed authorization form for the release of protected health information that is potentially relevant to the claim of personal injury or wrongful death when he or she notifies each prospective defendant of his or her intent to initiate litigation for medical negligence. This expands the current requirement that the claimant provide a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, and copies of all of the medical records relied upon by the expert in signing the affidavit.

This section provides that notwithstanding the immunity from civil liability arising from participation in the presuit screening process that is currently afforded under the law, a licensed physician, licensed osteopathic physician, or licensed dentist who submits a verified written expert medical opinion is subject to denial of a license or disciplinary action for providing misleading, deceptive, or fraudulent expert witness testimony related to the practice of medicine, osteopathic medicine, or dentistry.

Unlike the current requirement to request permission from the plaintiff to perform an unsworn interview with the claimant's health care providers, the bill authorizes a prospective defendant or his or her legal representative access to interview the claimant's treating health care providers without notice to or the presence of the claimant or the claimant's legal representative. However, a prospective defendant or his or her legal representative who takes an unsworn statement from a claimant's treating physicians must provide reasonable notice and opportunity to be heard to the claimant or the claimant's legal representative before taking unsworn statements. Unsworn

statements are used for presuit screening and are not discoverable or admissible in a civil action for any purpose by any party.

Section 12 creates s. 766.1065, F.S., to establish an authorization form for the release of protected health information that is potentially relevant to the claim of personal injury or wrongful death. The bill sets forth the specific content of the form, including identification of the parties; authorizing the disclosure of protected health information for specified purposes; description of the information and the health care providers from whom the information is available; identification of health care providers to whom the authorization for disclosure does not apply because the health care information is not potentially relevant to the claim of personal injury or wrongful death; the persons to whom the patient authorizes the information to be disclosed; a statement regarding the expiration of the authorization; acknowledgement that the patient understands that he or she has the right to revoke the authorization in writing, the consequences for the revocation, signing the authorization is not a condition for health plan benefits, and that the information authorized for disclosure may be subject to additional disclosure by the recipient and may not be protected by federal HIPAA privacy regulations;[37] and applicable signature by the patient or his or her representative.

The bill provides that the presuit notice is void if this authorization does not accompany the presuit notice and other materials required by s. 766.106(2), F.S. If the authorization is revoked, the presuit notice is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on the applicable statute-of-limitations period is retroactively rendered void.

Section 13 amends s. 766.206, F.S., to authorize the court to dismiss the claim if the court finds that the authorization form accompanying the notice of intent to initiate litigation for medical negligence was not completed in good faith by the claimant. If the court dismisses the claim, the claimant or the claimant's attorney is personally liable for all attorney's fees and costs incurred during the investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the defendant or the defendant's insurer.

Section 14 amends s. 768.0981, F.S., to exempt a licensed hospital from liability for the medical negligence of a health care provider with whom the hospital has contracted, unless the hospital expressly directs or exercise actual control over the conduct that caused the injury. The exemption from liability does not apply to the negligent act of a hospital employee.

Section 15 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

[37] HIPAA is the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-194) and generally include the privacy rules adopted thereunder. With certain exceptions, the HIPAA privacy rules preempt contrary provisions in state law, unless the state law is more stringent than the federal rules. *See* 45 C.F.R. Part 164.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

D. Other Constitutional Issues:

Section 1 and section 3 of the bill change provisions relating to expert witnesses. Article V, s. 2(a), Fla. Const., provides that the Florida Supreme Court "shall adopt rules for the practice and procedure" in all courts. The Florida Supreme Court has interpreted this provision to mean that the court has the exclusive power to create rules of practice and procedure. Section 1 and section 3 provide requirements for expert witnesses who do not possess a Florida license. If a court were to find that any of these requirements encroached on the court's rulemaking power, it could hold the provisions invalid.

V. Fiscal Impact Statement:

A Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires physicians and dentists licensed in another state or Canada to pay a fee of not more than $50 to obtain an expert witness certificate in order to provide an expert witness opinion or provide expert testimony relating to the standard of care in a medical malpractice case involving a physician or dentist. The department estimates that during the first year there will be approximately 2,478 expert witness certificates applied for, thereby resulting in revenues of $123,900 to be deposited within the Medical Quality Assurance Trust Fund.

A party seeking to use an expert witness who is not a physician or osteopathic physician licensed in this state may only use an expert witness who has a certificate from the DOH. Proponents of the bill assert that this will help ensure that medical expert witness testimony is accurate. Opponents of the bill assert that this requirement, and the reduced timeframe in which substantial professional experience qualifies a person as an expert witness, might limit or delay a claimant’s ability to engage an expert witness to conduct a presuit investigation and proceed with a claim for medical negligence.

The specific HIPAA-compliant form will facilitate the release and disclosure of protected health information and more clearly protect persons who release that information. The defense will have an additional discovery tool with the authorization to conduct ex parte interviews of treating health care providers.

The changes to insurance and self-insurance policies provide physicians with greater control over the disposition of medical malpractice claims.

C. Government Sector Impact:

The DOH will be required to develop application forms and rules to administer the certification program for expert witnesses. Additional regulatory and enforcement activities may emerge as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on April 12, 2011

The Committee Substitute deleted all provisions of the bill to conform to its companion bill, HB 479. The Committee Substitute makes the following changes:

- Exempts a licensed hospital from liability for the medical negligence of a health care provider with whom the hospital has contracted, unless the hospital expressly directs or exercise actual control over the conduct that caused the injury.
- Requires the plaintiff to prove by clear and convincing evidence that the health care provider breached the prevailing professional standard of care involving the failure of a health care provider to order supplemental diagnostic tests.
- Makes inadmissible all evidence related to an insurer's reimbursement policies or reimbursement determination regarding medical care provided to the Plaintiff.
- Prohibits the introduction of federal standards and regulations into evidence to establish that the medical provider breached the prevailing professional standard of care.
- Requires the Board of Medicine to create by rule a standardized informed consent form setting forth the risks of cataract surgery. Risks described in the signed informed consent form may not be classified as an "adverse incident" pursuant to s. 395.0197, F.S.
- Creates a rebuttable presumption in a civil action that the physician properly disclosed the risks of cataract surgery or administrative proceeding when there is an executed informed consent form.
- Changes the authority to issue certificates from out of state expert witnesses from the BOM and BOOM to the Department of Health.

- Specifies the information that must be provided on the registration application for the out of state expert witness certificate.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 1594
INTRODUCER:	Budget Subcommittee on Finance and Tax, Regulated Industries Committee and Senator Sachs
SUBJECT:	Pari-mutuel Permitholders
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	**Fav/CS**
2.	Fournier	Diez-Arguelles	BFT	**Fav/CS**
3.	Fournier	Meyer, C.	BC	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 1594 (the bill) deletes the live racing requirements for greyhound permitholders. It extends the deadline for greyhound permitholders for applying to the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation (department) for the live racing dates, allowing greyhound permitholders time to amend their completed applications and remove or reduce their live racing schedule.

The bill pools the unused tax credits that result from some greyhound permitholders electing not to conduct live racing. These pooled credits are distributed on a pro rata basis to each greyhound permitholder that does conduct a full schedule of live racing, based on the permitholder's share of live and intertrack wagering handle.

The bill provides that greyhound permitholders may conduct intertrack wagering and, if applicable, operate slot machine gaming operations, regardless of whether they have run live greyhound racing. It provides that a greyhound permitholder may operate a cardroom, regardless

of live racing, if the greyhound permitholder has conducted ten years of live racing prior to application for the cardroom license.

This bill amends the following sections of the Florida Statutes: 550.002, 550.01215, 550.054, 550.0951, 550.09514, 550.105, 550.26165, 550.615, 550.6305, 551.104, 551.114, and 849.086.

II. Present Situation:

Background

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation provides regulatory oversight to pari-mutuel wagering activities, cardrooms located at pari-mutuel facilities, and slot machines located at pari-mutuel facilities located in Miami-Dade and Broward Counties. The mission of the division is the efficient, effective and fair regulation of authorized gaming at pari-mutuel facilities in Florida.[1]

The division's primary responsibilities include:

- Ensuring that races and games are conducted fairly and accurately;
- Ensuring the safety and welfare of racing animals;
- Collecting state revenue accurately and timely;
- Issuing occupational and permitholder operating licenses;
- Regulating pari-mutuel, cardroom, and slot machine operations;
- Ensuring that permitholders, licensees, and businesses related to the industries comply with state law; and
- Serving as the State Compliance Agency for the Compact between the Seminole Tribe of Florida and the State of Florida.

The division provides oversight to:

- 35 permitholders operating at 28 facilities:
  - 16 Greyhound
  - 3 Thoroughbred
  - 1 Harness
  - 6 Jai-Alai
  - 1 track offering limited intertrack wagering and horse sales
  - 1 Quarter Horse
- 23 Cardrooms operating at pari-mutuel facilities
- 5 Slot facilities located in Broward and Miami-Dade County pari-mutuel facilities.

[1] http://www.myflorida.com/dbpr/pmw/index.html (last visited February 28, 2011).

Greyhound Racing

Greyhound racing was authorized in Florida in 1931.[2] Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a "lure," which is usually a mechanical hare or rabbit. Racing greyhounds are those which are bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.[3]

Greyhound Racing Pari-Mutuel Facilities

Facility	Location	Cardroom	Slots
Daytona Beach Kennel Club	960 South Williamson Blvd. Daytona Beach, FL 32114	Yes	No
Derby Lane (St. Petersburg Kennel Club)	Post Office Box 22099 St. Petersburg, Florida 33742	Yes	No
Ebro Greyhound Park (Washington County Kennel Club)	6558 Dog Track Road Ebro, Florida 32437	Yes	No
Flagler Greyhound Track	Post Office Box 350940 Miami, Florida 33135	Yes	Yes
Jacksonville Kennel Club (racing at Orange Park)	Post Office Box 959 Orange Park, Florida 32067	No	No
Jefferson County Kennel Club	Post Office Box 400 Monticello, Florida 32345	Yes	No
Mardi Gras Racetrack	Post Office Box 2007 Hollywood, Florida 33022	Yes	Yes
Melbourne Greyhound Park	1100 North Wickham Road Melbourne, Florida 32935	Yes	No
Naples/Ft. Meyers Greyhound Track	Post Office Box 2567 Bonita Springs, Florida 34133	Yes	No
Orange Park Kennel Club	Post Office Box 959 Orange Park, Florida 32067	Yes	No
Palm Beach Kennel Club	1111 North Congress Avenue West Palm Beach, Florida 33409	Yes	No
Pensacola Greyhound Track	Post Office Box 12824 Pensacola, Florida 32591	Yes	No
Sanford Orlando/Penn Sanford	301 Dog Track Road Longwood, Florida 32750	No	No
Sarasota Kennel Club	5400 Bradenton Road	Yes	No

[2] *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.
[3] Section 550.002(29), F.S.

	Sarasota, Florida 34234		
St. Johns Kennel Club (racing at Orange Park)	Post Office Box 959 Orange Park, Florida 32067	Yes	No
Tampa Greyhound Track (racing at Derby Lane)	Post Office Box 8096 Tampa, Florida 33674	Yes	No

Full Schedule of Live Racing

Section 550.002(11), F.S., defines what constitutes a full schedule of live racing. Each type of permit has a different requirement.

FULL SCHEDULE OF LIVE RACING OR GAMES	
Type of Facility	**Full Schedule**
Greyhound Racing	100 live evening or matinee performances
Jai Alai[4]	100 live evening or matinee performances
Harness Racing	100 live regular wagering performances
Thoroughbred Racing	40 live regular wagering performances
Quarter horse Racing[5]	20 live regular wagering performances

A live performance must consist of no fewer than eight races or games conducted live for a minimum of three performances each week at the permitholder's facility.[6]

[4] Generally a jai alai fronton must conduct 100 performances to constitute a full schedule of games. However, two exceptions exist. 1) For a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its facility has been less than $4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of at least 40 live evening or matinee performances constitutes a full schedule of live games. 2) If the fronton operates slot machines in its facility, then the conduct of at least 150 performances constitutes a full schedule.

[5] For year 2011-2012, a full schedule of live racing for a quarter horse facility will be 30 live regular wagering performances. For every year after 2012-2013, a full schedule of live racing for a quarter horse facility will be 40 live regular wagering performances. If the quarter horse facility leases another track, the conduct of 160 events (or 20 performances) will constitute a full schedule of live racing. However, any quarter horse facility running live at its own track may agree to an alternate schedule of 20 live performances if the permitholder and either the Quarter Horse Racing Association or the horsemen's association representing the majority of the owners and trainers at the facility agree to the reduced racing schedule.

[6] Section 550.002(11), F.S.

Intertrack Wagering

Wagers on live races at other tracks are divided into categories called intertrack and simulcast wagering under the Florida Statutes. Intertrack wagering is defined as "a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal re-broadcast from, another in-state pari-mutuel facility."[7] Simulcast wagering, on the other hand, is defined as "broadcasting events occurring live at an in-state location to an out-of-state location, or receiving at an in-state location events occurring live at an out-of-state location, by the transmittal, retransmittal, reception, and re-broadcast of television or radio signals by wire, cable, satellite, microwave, or other electrical or electronic means for receiving or re-broadcasting the events."[8]

Intertrack and simulcast wagering transactions occur between guest and host tracks. The host track is defined as "a track or fronton conducting a live or simulcast race or game that is the subject of an intertrack wager."[9] A host track transmits signals to a guest track.

Simulcasting may only be accepted between facilities with the same class of pari-mutuel permits. For example, horseracing permitholders may only receive signals from other horseracing permitholders.

Simulcast and intertrack wagering have rules and regulations depending on the market area, which is the area within 25 miles of the track or fronton.[10] For example, guest tracks within the market area of the operating permitholder must receive consent from the host track to receive the same class signal.[11] However, in general, in order for the track or fronton to participate in intertrack or simulcast wagering, the track or fronton must be licensed by the division and must have conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers.[12]

Cardrooms

Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. A cardroom may be operated only at the location specified on the cardroom license issued by the division and such location may be only where the permitholder is authorized to conduct pari-mutuel wagering activities subject to its pari-mutuel permit. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e., where the facility has no stake in the outcome. Such activity is

[7] Section 550.002(17), F.S.
[8] Section 550.002(32), F.S.
[9] Section 550.002(16), F.S.
[10] Section 550.002(19), F.S.
[11] Section 550.615(4), F.S.
[12] Section 550.615(2), F.S.

regulated by the department and must be approved by ordinance of the county commission where the pari-mutuel facility is located.

Section 849.086(2)(a), F.S., defines an "authorized game" at a cardroom as a game or series of games of poker which are played in a non-banking manner.[13] Wagering may only be conducted using chips or tokens; the player's cash must be converted by the cardroom before the player may participate in a game of poker.[14] The cardroom operator may limit the amount wagered in any game.[15]

A cardroom may operate at the pari-mutuel facility for 18 hours per day on Monday through Friday and 24 hours on Saturday and Sunday and specified holidays.[16] Cardrooms may not be operated beyond the hour limitations regardless of the number of permits located at a single facility.[17]

In order to renew a cardroom operator license, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior to the initial application if the permitholder conducted a full schedule of live racing in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to the application. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.[18]

Slot Machines

During the 2004 General Election, the electors approved Amendment 4 to the Florida Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. On January 29, 2008, another referendum was held under the provisions of Amendment 4, in which the slot machines in Miami-Dade County were approved. Under the provisions of the amendment, seven pari-mutuel facilities are eligible to conduct slot machine gaming. Of the seven, five are operating slot machines.[19]

[13] A "banking game" is defined in s. 849.086(2)(b), F.S., as "a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers or in which the cardroom establishes a bank against which participants play."
[14] Section 849.086(8)(a), F.S.
[15] Section 849.086(8)(b), F.S.
[16] Section 849.086(7)(b), F.S.
[17] Section 849.086(7)(a), F.S.
[18] Section 849.086(5)(b), F.S.
[19] The Isle at Pompano Park, Mardi Gras Gaming, Gulfstream Park, Calder/Tropical Park, and Flagler Dog Track and Magic City are currently operating slot machines.

In addition to the seven locations authorized for slot machines under the Florida Constitution, on July 1, 2010, a statutory amendment expanded the locations that were authorized slot machine gaming to include pari-mutuel facilities located in a charter county or a county that has a referendum approving slots that was approved by law or the Constitution, provided that such facility has conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.[20] Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. Under the statutory provision, one additional facility became eligible for slot machine gaming, Hialeah Park (a quarter horse facility).[21] Hialeah Park has applied for a license to conduct slot machine gaming but is not currently operating slot machine gaming.

In order to conduct slot machine gaming, the slot machine applicant must conduct a full schedule of live racing the prior year.[22] Slot machine licensees are required to pay a licensure fee of $2.5 million for fiscal year 2010-2011. The annual slot machine licensure fee is reduced in fiscal year 2011-2012 to $2 million.[23]

In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.[24] If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.[25]

Purses

Section 550.09514, F.S., governs greyhound purse payments. Greyhound permitholders are required to pay a minimum purse payment plus a supplement payment of 75 percent of the daily license fees paid during the 1994-1995 fiscal year.[26]

Greyhound permitholders who conduct at least three live performances during a week must pay purses on wagers it accepts as a guest track on intertrack and simulcast greyhound races at the

[20] *See*, ch. 2010-29, L.O.F. and s 551.102(4), F.S.
[21] Currently the provision is being challenged as violating s. 23, Art. X, Florida Constitution. The trial court upheld the constitutionality in Leon County. That decision is on appeal to the First District Court of Appeal. *See* consolidated cases, *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D11-130 (Fla. 1st DCA) and *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D10-6780 (Fla. 1st DCA).
[22] Chapter 551.104(4)(c), F.S.
[23] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was $3 million.
[24] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.
[25] Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was $103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.
[26] Sections 550.09514(2)(a)-(b), F.S.

same rate it pays on live races. In addition, greyhound tracks pay one-third of any tax reduction on live and simulcast handle as purses.[27]

The division requires adequate documentation to ensure that the purses paid by greyhound permitholders on live racing does not fall below the amount paid in the 1993-1994 fiscal year.[28] During each race week, the permitholder is required to have a weekly report available to show the division staff and kennel operators the amount of purses paid on live racing, simulcast, and intertrack wagering.[29]

Each greyhound permitholder shall pay purse awards directly to the dog owners who have filed proper tax paperwork with the permitholder.[30]

In addition to paying purses on pari-mutuel activity, each greyhound permitholder is also required to pay 4 percent of the cardroom's monthly gross receipts to supplement greyhound purses.[31]

Greyhound Taxes and Credits[32]

Greyhound permitholders pay a tax on handle of 5.5 percent.[33] Each host greyhound track must also pay taxes on the greyhound broadcasts it sends to other tracks.[34] For the dog tracks located in three contiguous counties, the tax on handle for intertrack wagers is 3.9 percent.[35] However, each permitholder has a tax credit of $360,000 and pays no tax on handle until that credit is utilized.[36] For the three greyhound permitholders that conducted a full schedule of live racing in 1995, and are closest to another state that authorizes greyhound pari-mutuel wagering, the maximum tax credit per state fiscal year is $500,000.[37] Each permitholder, who cannot utilize the full tax exemption, may notify the division that the permitholder wishes to transfer their credits to another greyhound permitholder.[38] Each permitholder may only transfer credits once per year, and may only transfer credits to another greyhound permitholder who acted as a host track to the permitholder for intertrack wagering.

[27] Section 550.09514(2)(e), F.S.
[28] Section 550.09514(2)(d), F.S.
[29] Section 550.09514(2)(f), F.S.
[30] Section 550.09514(2)(g), F.S.
[31] Section 849.086(13)(d)1., F.S.
[32] In fiscal year 2009-2010, greyhound tracks generated over $290 million in total handle. The division collected over $5 million in taxes and fees, over $2.5 million of which was generated from live greyhound racing. Division of Pari-mutuel Wagering, *79th Annual Report*, Fiscal Year 2009-2010.
[33] Section 550.0951(3)(b)1., F.S.
[34] Section 550.09514(2)(c), F.S.
[35] Section 550.0951(3)(c)2., F.S.
[36] *See*, s. 550.09514(1), F.S.
[37] *Id*. The three tracks that receive a $500,000 credit are Jefferson County Kennel Club, Pensacola Greyhound Track, and Washington County Kennel Club (Ebro Greyhound Park).
[38] Section 550.0951(1)(b), F.S.

Occupational License Taxes

Each person connected with a racetrack or jai alai fronton must purchase an occupational license from the division.[39] This tax is in lieu of all license, excise, or occupational taxes to the state or any county or municipality, except that a municipality may levy a tax on persons conducting live racing or games within its corporate limits, not to exceed $150 per day for horseracing or $50 per day for greyhound racing or jai alai.[40]

III. Effect of Proposed Changes:

The bill deletes the live racing requirement for greyhound permitholders. The bill extends to August 31, 2011 the deadline for greyhound permitholders to apply for live performances, to give them time to amend their applications and reduce or remove their live racing performances. The bill removes all references that require a live schedule of racing for greyhound racing permitholders.

The bill provides that the $350,000 and $500,000 tax credits available to greyhound permitholders that are not available because some permitholders elect not to conduct live racing must be pooled. Each greyhound permitholder conducting a full schedule of live racing will be entitled to a pro rata share of tax credits available in the pool, based on the permitholder's share of live and intertrack wagering handle.

The bill deletes the provision that requires greyhound permitholders in a county where there are only two greyhound permitholders to pay an aggregate daily license fee tax equal to 75 percent of the daily license fees paid by such permitholders for the 1994-1995 fiscal year. Instead, all greyhound permitholders who conduct live racing must pay a daily license fee tax equal to 75 percent of the daily license fees paid by each permitholder for the 1994-1995 fiscal year.

The bill allows municipalities to impose the same tax on simulcasts, intertrack wagering, and cardroom games conducted within the jurisdiction as is currently imposed on horseracing, greyhound racing, or jai alai, up to the maximum of 100 days for greyhound racing facilities. This tax may not be extended to these activities if the facility where they are conducted has an existing agreement with the municipality.

The bill deletes the provision that prohibited intertrack wagering without consent to be conducted in any county where there are only two permits, one for greyhound racing and one for jai alai, except during live racing.

The bill provides that greyhound facilities may conduct intertrack wagering even if they do not conduct live racing in the prior year.

The bill provides that greyhound facilities may conduct slot machine gaming, if authorized, regardless of whether the facility has conducted live racing.

[39] Section 550.105(1),(2), F.S.
[40] Section 550.105(9), F.S.

The bill amends the requirements for a cardroom, and provides that a greyhound permitholder may operate a cardroom even if it did not run live racing, so long as the permitholder has conducted 10 years of live racing immediately preceding its application for a cardroom license or if the permitholder has converted its permit pursuant to s. 550.054(14), F.S. However, if no live racing occurs, no part of the cardroom receipts are required to be used to supplement purses.

Currently, there is one inactive greyhound permit in Key West, Florida. The inactive permit could, as a result of this bill, begin operations of intertrack wagering without opening a pari-mutuel track or conducting a single live race.[41] The track could not, however, open a cardroom.

The bill provides an effective date of July 1, 2011.

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 determined the impact of the tax credit pooling to be a $0.8 million reduction in cash and recurring General Revenue, and, beginning in FY 2012-13, a $0.3 million recurring reduction in revenue to the Principal State School Trust Fund because of loss in escheated tickets.

The bill also allows municipalities to impose the same tax on simulcasts, intertrack wagering, and cardroom games as they may currently impose on horseracing, greyhound racing, and jai alai, up to the maximum of 100 days for greyhound racing facilities. The Revenue Estimating Conference has not analyzed this provision.

[41] There are two greyhound permits operating at the Mardi Gras facility in Broward County. Under current law, one permit could reopen its facility back at the permitted location (in Miami-Dade County) and lease live racing back to the Mardi Gras facility. Under current law, the new facility could operate a cardroom and conduct intertrack wagering so long as live races occur either at the new facility or are continued to be leased back to the Mardi Gras facility. As a result of this bill, the new track would not be required to lease races or run any live races to operate a cardroom or intertrack wagering. However, it appears that in order for the track to be an "eligible facility" for the purpose of conducting slot machine gaming, the new facility would be required to run live races for two calendar years prior to applying for a slot machine license from the division. This bill does not change the definition of "eligible facility" in s. 551.102(4), F.S.

B. Private Sector Impact:

If greyhound facilities choose not to run pari-mutuel events, the dogs that normally run at those tracks will likely be unable to run in other events. Dog breeders, owners, and trainers could potentially be out of business or experience a decrease in business as a result of less greyhound racing in the state.

Opponents of the legislation also note that a pari-mutuel permitholder that no longer runs live racing at the facility will solely be operating a cardroom, intertrack wagering, and, if authorized, a slot machine facility. At the present time, the operation of cardrooms and slot machine gaming is contingent on the facility satisfying minimum racing requirements. This bill removes those requirements for greyhounds and allows the facilities to cease all live racing.

C. Government Sector Impact:

The department's analysis indicates that it may need fewer personnel to inspect the greyhound tracks if live racing is reduced.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill deletes the live racing requirements for greyhound permitholders but the full schedule of live racing or performance requirements for horse racing and jai alai still exist.

Revenue sharing with the Seminole Indian Compact relies on continued exclusivity of casino style and Class III gaming. Games legal as of February 1, 2010 have no impact on payments from the Tribe. Pari-mutuel wagering activities have no impact on payments from the Tribe. Because this bill provides flexibility in the minimum number of live racing for greyhound permitholders and does not authorize any new facilities or new gaming in the state, this bill should have no impact on revenue sharing with the Tribe.

VIII. Additional Information:

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

CS by Budget Subcommittee on Finance and Tax on April 13, 2011:
The CS deletes the tax rate reduction but allows existing tax credits to be pooled and redistributed among greyhound permitholders who continue to conduct a full schedule of live racing. The distribution will be based on each eligible permitholder's share of live and intertrack wagering handle during the preceding fiscal year. The CS also allows municipalities to impose the same tax on simulcasts, intertrack wagering, and cardroom games as they may currently impose on horseracing, greyhound racing, and jai alai, up to the maximum of 100 days for greyhound racing facilities.

CS by Regulated Industries on March 16, 2011:
The CS provides that tax credits may not be utilized unless the greyhound permitholder has conducted at least 100 live performances of eight races. The CS clarifies that greyhound permitholders do not have to get permission for intertrack wagering from other greyhound tracks in their market area. The CS provides that in order to conduct a cardroom, the greyhound permitholder must have conducted 10 years of live racing prior to application.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 822
INTRODUCER:	Judiciary Committee and Senator Bogdanoff
SUBJECT:	Expert Testimony
DATE:	April 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	**Fav/CS**
2.	Hendon	Sadberry	BJA	**Withdrawn**
3.	Hendon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill revises the standard for Florida courts to admit expert witness testimony so that it is in conformity with Federal Rule of Evidence 702 and the standard articulated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The bill provides additional criteria for a court to consider in determining whether an expert witness may testify in the form of an opinion or otherwise in a case:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods; and
- The witness has applied the principles and methods reliably to the facts of the case.

The bill requires Florida courts to interpret and apply requirements for the admissibility of expert witness testimony and the determination of the basis of an expert's opinion, in accordance with *Daubert* and subsequent U.S. Supreme Court decisions applying *Daubert*.[1] Currently, Florida courts employ the standard articulated in *Frye v. United States*, 293 F. 1010 (D.C. Cir. 1923), which requires the party who wants to introduce the expert opinion testimony into evidence to

[1] *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

show that the methodology or principle has sufficient reliability. Under the bill, *Frye* and subsequent Florida decisions applying or implementing *Frye* would no longer apply to a court's determination of the admissibility of expert witness testimony in the form of opinion and a court's determination of the basis of the expert's opinion. The bill would have a fiscal impact on the courts, the state attorneys, the public defenders and regional conflict counsel due to additional hearings and the hiring of additional experts.

The bill provides an effective date of July 1, 2011.

This bill amends sections 90.702 and 90.704, Florida Statutes.

II. Present Situation:

Expert testimony has been used to assist the trier of fact in both civil and criminal trials for a wide range of subjects, including polygraph examination, battered woman syndrome, child abuse cases, and serum blood alcohol. The Florida Rules of Civil Procedure define "expert witness" as a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.[2] Courts use expert witness testimony when scientific, technical, or other specialized knowledge may assist the trier of fact in understanding evidence or determining facts in issue during litigation. The Florida Evidence Code provides that the facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before trial.[3] If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence. The Florida Supreme Court has considered the issue of whether experts can testify on direct examination that they relied on the hearsay opinions of other experts in forming their opinions.[4] The Florida Supreme Court has held that an expert is not permitted to testify on direct examination that the expert relied on consultations with colleagues or other experts in reaching his or her opinion because it impermissibly permits the testifying experts to bolster their opinions and creates the danger that the testifying experts will serve as conduits for the opinions of others who are not subject to cross-examination.[5] The Court emphasized that its holding did not preclude experts from relying on facts or data that are not independently admissible if the facts or data are a type reasonably relied upon by experts in the subject.[6]

Frye Standard

To admit scientific testimony into evidence, Florida courts, use the standard governing the admissibility of scientific expert testimony imposed in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).[7] If the subject matter involves new or novel scientific evidence, the *Frye* standard requires the party who wants to introduce the expert opinion into evidence to show that the

[2] Fla. R. Civ. P. 1.390(a).
[3] Section 90.704, F.S.
[4] *Linn v. Fossum*, 946 So. 2d 1032 (Fla. 2006).
[5] *Id.* at 1033.
[6] *Id.*
[7] *Stokes v. State*, 548 So. 2d 188 (Fla. 1989).

methodology or principle has sufficient reliability. In *Frye*, the court held that the "principle or discovery" must be sufficiently established to "have gained general acceptance in the particular field in which it belongs."[8]

The Florida Supreme Court imposes four steps in its articulation of the *Frye* test:

1. The trial judge must determine whether such expert testimony will assist the jury in understanding the evidence or in determining a fact in issue.
2. The trial judge must decide whether the expert's testimony is based on a scientific principle or discovery that is "sufficiently established to have gained general acceptance in the particular field in which it belongs."
3. The trial judge must determine whether a particular witness is qualified as an expert to present opinion testimony on the subject in issue.
4. The judge may then allow the expert to render an opinion on the subject of his or her expertise, and it is then up to the jury to determine the credibility of the expert's opinion, which it may either accept or reject.[9]

The Florida Supreme Court noted that, under *Frye*, the court's inquiry focuses only on the general acceptance of the scientific principles and methodologies upon which an expert relies to give his or her opinion.[10] The *Frye* test is satisfied through the court's finding of proof of general acceptance of the basis of an expert's opinion.[11] Once the basis or foundation is established for an expert's opinion, the finder of fact may then assess and weigh the opinion for its value.[12] Florida courts continue to apply the *Frye* standard for determining the admissibility of scientific evidence.

The *Frye* test is not applicable to all expert opinion proffered for admissibility into evidence. If the expert opinion is based solely on the expert's experience and training, and the opinion does not rely on something that constitutes new or novel scientific tests or procedures, then it may be admissible without meeting the *Frye* standard.[13] By example, Florida courts admit medical expert testimony concerning medical causation when based solely on the expert's training and experience.[14] One court in determining the admissibility of medical expert testimony noted that *Frye* was not applicable to medical testimony (pure opinion) because the expert relied on his analysis of medical records and differential diagnosis rather than a study, test, procedure, or methodology that constituted new or novel scientific evidence.[15]

Florida Rules of Evidence

The Florida Evidence Code is codified in chapter 90, F.S. Section 90.102, specifies that the chapter replaces and supersedes existing statutory or common law in conflict with its

[8] *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).
[9] *Ramirez v. State*, 651 So. 2d 1164, 1166-67 (Fla. 1995).
[10] *Marsh v. Valyou*, 977 So. 2d 543, 548-49 (Fla. 2007).
[11] *Id*.
[12] *Id*.
[13] *Marsh*, 977 So. 2d at 548. *See also* Charles W. Ehrhardt, *Florida Evidence* s. 702.3 (2004 edition).
[14] *See, e.g., Cordoba v. Rodriguez*, 939 So. 2d 319, 322 (Fla. 4th DCA 2006); *Fla. Power & Light Co. v. Tursi*, 729 So. 2d 995, 996 (Fla. 4th DCA 1999).
[15] *Gelsthorpe v. Weinstein*, 897 So. 2d 504, 510-11 (Fla. 2d DCA 2005).

provisions.[16] The Florida Supreme Court regular adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. The Florida Evidence Code requires an expert to demonstrate knowledge, skill, experience, training, or education in the subject matter to qualify as an expert.[17] In a concurring opinion, one justice has argued that the Florida Supreme Court has "never explained how *Frye* has survived the adoption of the rules of evidence."[18] Justice Anstead also noted that the Florida Supreme Court has continued to apply *Frye* in determining the admissibility of scientific expert opinion testimony after the adoption of the Florida Rules of Evidence, but has done so without any mention that the rules do not mention *Frye* or the test set out in *Frye*.[19]

***Daubert* Standard**

The *Frye* standard was used in federal courts until 1993 when the U.S. Supreme Court issued its opinion in the case of *Daubert.*[20] The United States Supreme Court held that Federal Rule of Evidence 702 had superseded the *Frye* test, and it announced a new standard for determining the admissibility of novel scientific evidence.[21] Under the *Daubert* test, when there is a proffer of expert testimony, the judge as a gatekeeper must make "a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue."[22] The Court announced other factors that a court may consider as part of its assessment under the *Daubert* test for the admissibility of expert scientific testimony:

- Whether the scientific methodology is susceptible to testing or has been tested;
- Whether the theory or technique has been subjected to peer review and publication;
- Whether in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error; and
- The existence and maintenance of standards controlling the technique's operation.

Federal Rule of Evidence 702 was amended in 2000 to reflect *Daubert* and other decisions applying *Daubert*.[23] In *General Electric Co. v. Joiner*, the U.S. Supreme Court held that abuse of discretion is the appropriate standard of review for an appellate court to apply when reviewing a trial court's decision to admit or exclude evidence under *Daubert*.[24] In *Kumho Tire Co. v. Carmichael*, the Court held that a trial judge is not bound by the specific factors outlined in *Daubert*, but depending on the circumstances of the particular case at issue, the judge may consider other factors in his or her assessment under *Daubert*.[25] Additionally, the Court in *Kumho Tire Co.* held that the trial judge's obligation to be a gatekeeper is not limited to scientific testimony but extends to all expert testimony.[26]

[16] Section 90.102, F.S.
[17] Section 90.702, F.S.
[18] Justice Anstead concurring in *Marsh* 977 So. 2d at 551.
[19] *Id.*
[20] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
[21] *Id.*
[22] *Id.* at 592-93.
[23] Fed. R. Evid. 702, Advisory Committee Notes for 2000 Amendments.
[24] *General Electric Co. v. Joiner*, 522 U.S. 136, 139 (1997).
[25] *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-52 (1999).
[26] *Id.*

The *Weisgram v. Marley Co.* case, a part of the *Daubert* progeny, was a wrongful death action against a manufacturer of heaters in which the plaintiff introduced expert testimony that the alleged heater defect caused a house fire.[27] The Court held that a federal appellate court may direct the entry of judgment as a matter of law when the court determines that evidence was erroneously admitted at trial and the remaining evidence which was properly admitted is insufficient to support the jury verdict.[28] The plaintiffs obtained a jury verdict based on the expert testimony that the heater was defective and that the heater's defect caused the fire.[29] The Supreme Court affirmed the Court of Appeals' reversal of the jury verdict, finding that the expert testimony offered by the plaintiff was speculation under Federal Rule of Evidence 702 as explicated in *Daubert* regarding the defectiveness of the heater.[30] The Court found the plaintiff's fears unconvincing that "allowing [federal] courts of appeals to direct the entry of judgment for defendants will punish plaintiffs who could have shored up their cases by other means had they known their expert testimony would be found inadmissible."[31] The Court stated that *Daubert* put parties on notice regarding the exacting standards of reliability demanded of expert testimony.[32]

Other state courts have used the *Frye*, *Daubert*, and other tests in determining the admissibility of expert testimony regarding scientific, technical, or other specialized knowledge.[33] Advocacy groups and scholars differ on how many states still maintain the *Frye* standard and the number which have moved to the *Daubert* or a similar standard for determining the admissibility of scientific and evidence.[34]

III. Effect of Proposed Changes:

The bill revises the standard for Florida courts to admit expert witness testimony so that it is in conformity with Federal Rule of Evidence 702 and the standard articulated in *Daubert*. The requirements for a witness qualified as an expert by knowledge, skill, experience, training, or education to testify in the form of an opinion are revised to impose additional criteria for the admissibility of the testimony. The criteria include the following three-part test for a court's consideration to determine whether an expert witness may testify in the form of an opinion or otherwise in a case:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods; and
- The witness has applied the principles and methods reliably to the facts of the case.

The bill requires Florida courts to interpret and apply requirements for the admissibility of expert witness testimony and the determination of the basis of an expert's opinion, in accordance with

[27] *Weisgram v. Marley Co.*, 528 U.S. 440 (2000).
[28] *Id.* at 445-46.
[29] *Id.*
[30] *Id.* at 445-47.
[31] *Id.* at 455-56.
[32] *Id.*
[33] Comm. on Judiciary, The Florida Senate, *Analysis of Law Relating to Admissibility of Expert Testimony and Scientific Evidence*, 5 (Issue Brief 2009-331) (Oct. 2008).
[34] *Id.*

Daubert and subsequent U.S. Supreme Court decisions applying *Daubert.*[35] *Frye* and subsequent Florida decisions applying or implementing *Frye* would no longer apply to a court's determination of the admissibility of expert witness testimony in the form of opinion and a court's determination of the basis of the expert's opinion.

The bill amends s. 90.704, F.S., to specify that facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data.[36] With the bill's amendment to s. 90.704, F.S., the language of the section tracks Federal Rule of Evidence 703.

The bill provides an effective date of July 1, 2011.

Other Potential Implications:

There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S., and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, it may refuse to adopt the changes in the bill as a rule.[37]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[35] *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).
[36] *Linn*, 946 So. 2d at 1036-1037 (Florida Supreme Court acknowledging that s. 90.704, F.S., is modeled after Federal Rule of Evidence 703).
[37] *See, e.g., In re Florida Evidence Code*, 782 So. 2d 339 (Fla. 2000) (Florida Supreme Court adopting Evidence Code to the extent it is procedural and rejecting hearsay exception as a rule of court) and *compare with In re Florida Evidence Code*, 372 So.2d 1369 (Fla. 1979) (Florida Supreme Court adopting Florida Evidence Code to the extent it is procedural), *clarified, In re Florida Evidence Code*, 376 So. 2d 1161 (Fla. 1979).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is difficult to quantify the fiscal impact of the bill's change in evidentiary standards for the admission of expert opinions. It may result in a need for additional pre-trial hearings depending on the manner in which it is actually implemented by the courts that would increase legal costs to private litigants.

C. Government Sector Impact:

The change in standard to admit expert opinions in Florida courts would have a fiscal impact due to increased pre-trial hearings and hiring of expert witnesses. In criminal proceedings, the courts, the state attorneys, the public defenders, and the regional conflict counsels would incur additional costs. Additional hearings would be held to qualify experts requiring additional staff time from these offices. In addition, state attorneys, public defenders, and regional conflict counsel would need to hire experts to testify in hearings to qualify experts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 9, 2011:
The committee substitute removes *Weisgram v. Marley Co.*, 528 U.S. 440 (2000), as one of the U.S. Supreme Court decisions that Florida courts must use to interpret and apply requirements for the admissibility of expert witness testimony and the determination of the basis of an expert's opinion. The committee substitute amends s. 90.704, F.S., to specify that facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the resolving clause and insert:

That the following amendments to Sections 4 and 6 of Article VII and Section 27 of Article XII and the creation of Sections 32 and 33 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

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SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 ~~of this Article~~ shall have their homestead assessed ~~at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only~~ as provided in this subsection.

(1) Assessments subject to this subsection shall change ~~be changed~~ annually on January 1 ~~1st~~ of each year.~~; but those changes in assessments~~

a. A change in an assessment may ~~shall~~ not exceed the lower of the following:

1.~~a.~~ Three percent ~~(3%)~~ of the assessment for the prior year.

2.~~b.~~ The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or a

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successor index ~~reports~~ for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

b. The legislature may provide by general law that, except for changes, additions, reductions, or improvements to homestead property assessed as provided in paragraph (5), an assessment may not increase if the just value of the property is less than the just value of the property on the preceding January 1.

(2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

(3) After a ~~any~~ change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1 ~~1st~~ of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall ~~only~~ change only as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law.~~; provided,~~ However, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this subsection ~~amendment~~ are severable. If a provision ~~any of the provisions~~ of this subsection is ~~amendment shall be~~ held unconstitutional by a ~~any~~

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court of competent jurisdiction, the decision of the ~~such~~ court does ~~shall~~ not affect or impair any remaining provisions of this subsection ~~amendment~~.

(8)a. A person who ~~establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who~~ has received a homestead exemption pursuant to Section 6 ~~of this Article~~ as of January 1 of either of the 2 ~~two~~ years immediately preceding the establishment of a ~~the~~ new homestead is entitled to have the new homestead assessed at less than just value. ~~If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007.~~ The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and

multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner’s spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:


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(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law. However, ~~;~~ ~~but~~ those changes in assessments may ~~shall~~ not exceed 5 ~~ten~~ percent ~~(10%)~~ of the assessment for the prior year. The legislature may provide by general law that, except for changes, additions, reductions, or improvements to property assessed as provided in paragraph (4) an assessment may not increase if the just value of the property is less than the just value of the property on the preceding date of assessment provided by law.

(2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law. ~~;~~ However, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.


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(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law. However, ~~;~~ ~~but~~ those changes in assessments may ~~shall~~ not exceed 5 ~~ten~~ percent ~~(10%)~~ of the assessment for the prior year. The legislature may provide by general law that, except for changes, additions, reductions, or improvements to property assessed as provided in paragraph (5) an assessment may not increase if the just value of the property is less than the just value of the property on the preceding date of assessment provided by law.

(2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law. ~~;~~ However, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as

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provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:

(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.

(2) The installation of a renewable energy source device.

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of $25,000 ~~twenty-five thousand dollars~~ and, for all levies other than school district levies, on the assessed valuation greater than $50,000 ~~fifty thousand dollars~~ and up to $75,000 ~~seventy-five~~


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~~thousand dollars~~, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of 98 ~~ninety-eight~~ years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of Section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding $50,000 ~~fifty~~


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~~thousand dollars~~ to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age 65 ~~sixty-five~~ and whose household income, as defined by general law, does not exceed $20,000 ~~twenty thousand dollars~~. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related, the veteran was a resident of this state at the time of entering the military service of the United States, and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related, and a copy of the veteran's honorable discharge. If the property

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appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The legislature may, by general law, waive the annual application requirement in subsequent years. This subsection shall take effect December 7, 2006, is self-executing, and does not require implementing legislation.

(f) As provided by general law and subject to conditions specified therein, every person who establishes the right to receive the homestead exemption provided in subsection (a) within 1 year after purchasing the homestead property and who has not owned property in the previous 3 calendar years to which the homestead exemption provided in subsection (a) applied is entitled to an additional homestead exemption in an amount equal to 50 percent of the median just value for homestead property in the county where the property at issue is located in the calendar year immediately preceding the January 1 of the year the homestead is established for all levies other than school district levies. The additional exemption shall apply for a period of 5 years or until the year the property is sold, whichever occurs first. The amount of the additional exemption shall be reduced in each subsequent year by an amount equal to 20 percent of the amount of the additional exemption received in the year the homestead was established or by an amount equal to the difference between the just value of the property and the assessed value of the property determined under Section 4(d), whichever is greater. Not more than one exemption provided under this subsection shall be allowed per homestead property. The additional exemption shall apply to property purchased on or after January 1, 2011, if this amendment is approved at a

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special election held on the date of the 2012 presidential preference primary, or on or after January 1, 2012, if approved at the 2012 general election, but shall not be available in the sixth and subsequent years after the additional exemption is first received.

ARTICLE XII

SCHEDULE

SECTION 27. Property tax exemptions and limitations on property tax assessments.—The amendments to Sections 3, 4, and 6 of Article VII, providing a $25,000 exemption for tangible personal property, providing an additional $25,000 homestead exemption, authorizing transfer of the accrued benefit from the limitations on the assessment of homestead property, and this section, if submitted to the electors of this state for approval or rejection at a special election authorized by law to be held on January 29, 2008, shall take effect upon approval by the electors and shall operate retroactively to January 1, 2008, or, if submitted to the electors of this state for approval or rejection at the next general election, shall take effect January 1 of the year following such general election. The amendments to Section 4 of Article VII creating subsections (f) and (g) of that section, creating a limitation on annual assessment increases for specified real property, shall take effect upon approval of the electors and shall first limit assessments beginning January 1, 2009, if approved at a special election held on January 29, 2008, or shall first limit assessments beginning January 1, 2010, if approved at the general election held in November of 2008. ~~Subsections (f) and (g) of Section 4 of Article VII are repealed effective January~~

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~~1, 2019; however, the legislature shall by joint resolution propose an amendment abrogating the repeal of subsections (f) and (g), which shall be submitted to the electors of this state for approval or rejection at the general election of 2018 and, if approved, shall take effect January 1, 2019.~~

SECTION 32. Property assessments.—This section and the amendment of Section 4 of Article VII protecting homestead and specified nonhomestead property having a declining just value and reducing the limit on the maximum annual increase in the assessed value of nonhomestead property from 10 percent to 5 percent, if submitted to the electors of this state for approval or rejection at a special election authorized by law to be held on the date of the 2012 presidential preference primary, shall take effect upon approval by the electors and shall operate retroactively to January 1, 2012, or, if submitted to the electors of this state for approval or rejection at the 2012 general election, shall take effect January 1, 2013.

SECTION 33. Additional homestead exemption for owners of homestead property who recently have not owned homestead property.—This section and the amendment to Section 6 of Article VII providing for an additional homestead exemption for owners of homestead property who have not owned homestead property during the 3 calendar years immediately preceding purchase of the current homestead property, if submitted to the electors of this state for approval or rejection at a special election authorized by law to be held on the date of the 2012 presidential preference primary, shall take effect upon approval by the electors and operate retroactively to January 1, 2012, and the additional homestead exemption shall be available for


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properties purchased on or after January 1, 2011, or if submitted to the electors of this state for approval or rejection at the 2012 general election, shall take effect January 1, 2013, and the additional homestead exemption shall be available for properties purchased on or after January 1, 2012.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE VII, SECTIONS 4, 6
ARTICLE XII, SECTIONS 27, 32, 33

PROPERTY TAX LIMITATIONS; PROPERTY VALUE DECLINE; REDUCTION FOR NONHOMESTEAD ASSESSMENT INCREASES; ABROGATION OF SCHEDULED REPEAL.—

(1) In certain circumstances, the law requires the assessed value of homestead and specified nonhomestead property to increase when the just value of the property decreases. Therefore, this amendment provides that the Legislature may, by general law, provide that the assessed value of homestead and specified nonhomestead property will not increase if the just value of that property decreases, subject to any adjustment in the assessed value due to changes, additions, reductions, or improvements to such property which are assessed as provided for by general law. This amendment takes effect upon approval by the voters, if approved at a special election held on the date of the 2012 presidential preference primary and operates retroactively to January 1, 2012, or, if approved by the voters at the general election, takes effect January 1, 2013.

(2) This amendment reduces from 10 percent to 5 percent the limitation on annual increases in assessments of nonhomestead

real property. This amendment takes effect upon approval of the voters, if approved at a special election held on the date of the 2012 presidential preference primary and operates retroactively to January 1, 2012, or, if approved by the voters at the general election, takes effect January 1, 2013.

(3) This amendment also provides owners of homestead property who have not owned homestead property during the 3 calendar years immediately preceding purchase of the current homestead property with an additional homestead exemption equal to 50 percent of the median just value for homestead property in the county where the property at issue is located in the calendar year immediately preceding the first year of the additional exemption, for all levies other than school district levies; applies the additional exemption for the shorter of 5 years or the year of sale of the property; reduces the amount of the additional exemption in each succeeding year for 5 years by the greater of 20 percent of the amount of the initial additional exemption or the difference between the just value and the assessed value of the property; limits the additional exemption to one per homestead property; limits the additional exemption to properties purchased on or after January 1, 2011, if approved by the voters at a special election held on the date of the 2012 presidential preference primary, or on or after January 1, 2012, if approved by the voters at the 2012 general election; prohibits availability of the additional exemption in the sixth and subsequent years after the additional exemption is granted; and provides for the amendment to take effect upon approval of the voters and operate retroactively to January 1, 2012, if approved at the special election held on the date of

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the 2012 presidential preference primary, or on January 1, 2013, if approved by the voters at the 2012 general election.

(4) This amendment also removes from the State Constitution a repeal, scheduled to take effect in 2019, of constitutional amendments adopted in 2008 that limit annual assessment increases for specified nonhomestead real property.

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

And the title is amended as follows:

Delete everything before the resolving clause and insert:

A bill to be entitled

A joint resolution proposing amendments to Sections 4 and 6 of Article VII and Section 27 of Article XII and the creation of Sections 32 and 33 of Article XII of the State Constitution to allow the Legislature by general law to prohibit increases in the assessed value of homestead and specified nonhomestead property if the just value of the property decreases, reduce the limitation on annual assessment increases applicable to nonhomestead real property, provide an additional homestead exemption for owners of homestead property who have not owned homestead property for a specified time before purchase of the current homestead property, and application and limitations with respect thereto, delete a future repeal of provisions limiting annual assessment increases for specified nonhomestead real property, and provide effective dates.

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 Budget Committee

BILL:	CS/CS/SJR 658
INTRODUCER:	Judiciary Committee, Community Affairs Committee, and Senator Fasano
SUBJECT:	Homestead/Nonhomestead Property
DATE:	April 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Fav/CS**
2.	Munroe	Maclure	JU	**Fav/CS**
3.	Babin	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This joint resolution proposes an amendment to Article VII, section 4, of the Florida Constitution, to permit the Legislature to prohibit increases in the assessed value of homestead and certain non-homestead property if the just value of the property decreases.

This joint resolution reduces the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 5 percent.

This joint resolution creates an additional homestead exemption for new homestead owners.

This joint resolution removes the current automatic repeal of subsections (f) and (g) of section 4, Article VII, of the Florida Constitution[1], relating to assessments of certain non-homestead residential property by amending Article XII, section 27, of the Florida Constitution.

[1] Subsections (f) and (g) of Article VII, section 4, of the Florida Constitution have been renumbered since this repeal was inserted. The provisions referenced are currently in the Constitution as subsections (g) and (h), Article VII, section 4. For ease of reference, these provisions will be referred to as referenced in the repeal, subsections (f) and (g).

The joint resolution creates sections 32 and 33, Article XII, of the State Constitution, to provide when the amendments to Article VII sections 4 and 6, of the Florida Constitution prescribed herein shall take effect.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

This joint resolution creates sections 32 and 33, Article XII, of the Florida Constitution.

This joint resolution proposes amendments to sections 4 and 6, Article VII, and section 27, Article XII, of the Florida Constitution.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[2]

B.) Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.[3] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[4] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.[5] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[6] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents who are 62 years of age or older.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the

[2] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[3] The constitutional provisions in article VII, section 4, of the Florida Constitution, were implemented in part II of ch. 193, F.S.
[4] FLA. CONST. art. VII, s. 4(a).
[5] FLA. CONST. art. VII, s. 4(c).
[6] FLA. CONST. art. VII, s. 4(e).
[7] FLA. CONST. art. VII, s. 4(f).

property.[8] Certain working waterfront property is assessed based upon the property's current use.[9]

C.) Additional Assessment Limitations

Sections 4(g) and (h), Article VII, of the Florida Constitution[10], were created in January 2008, when Florida electors voted to provide an assessment limitation for residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units **must** be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature **may** provide that such property shall be assessed at just value after a change of ownership or control.[11]

Article XII, section 27, of the Florida Constitution, provides that the subsections (f), and (g), Article VII (creating limitations on annual assessment increases of specified non-homestead property) are repealed effective January 1, 2019 and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

D.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[12]

Homestead Exemption

Article VII, section 6, of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains thereon the permanent residence of the owner is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by schools.

Additional Homestead Exemption, Amendment 3 Proposed for 2010 Ballot *(2009 SJR 532)*

In 2009, the Legislature passed SJR 532 which was to go before the voters as Amendment 3 on the November 2010 ballot. Amendment 3 sought to reduce the annual assessment limitation from 10 to 5 percent and to provide an additional homestead exemption for "a person or persons" who have not owned a principal residence in the previous *eight* years. The additional homestead exemption would have been equal to *25 percent* of the just value of the homestead in the first

[8] FLA. CONST. art. VII, s. 4(i).
[9] FLA. CONST. art. VII, s. 4(j).
[10] See note 1, *infra*.
[11] FLA. CONST. art. VII, s. 4(g) and (h).
[12] FLA. CONST. art. VII, ss. 3 and 6.

year for all levies, up to *$100,000*. The amount of the additional homestead exemption was to decrease by 20 percent of the initial exemption during each of the succeeding five years, until it was no longer available in the sixth and subsequent years.[13]

However, in August 2010, the Florida Supreme Court removed Amendment 3 from the 2010 Ballot, on the grounds that the ballot title and summary were misleading and failed to comply with the constitutional accuracy requirement implicitly provided in Article XI, section 5(a), of the Florida Constitution.[14] The Court stated that the accuracy requirement is implicitly indicated in section 5(a) through the statement that the proposed amendment "shall be submitted to the electors at the next general election." Specifically, the Court stated that:

> Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.[15]

The Court further stated that the accuracy requirement is codified in Florida Statutes in s. 106.161(1), F.S., which in part provides that:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . .

In determining whether a ballot title and summary are in compliance with the accuracy requirement, courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.' "[16]

Based on this test, the Florida Supreme Court determined that the ballot title and summary for Amendment 3 were "neither accurate nor informative" and "are confusing to the average voter."[17] The Court supported its holding based on the following:

- Neither the title nor the summary provided notice that the additional exemption is only available for properties purchased on or after January 1, 2010. Stating that the "lack of an effective date renders it impossible for a voter to know which homeowners would qualify for the exemption."[18]
- The terms "new homestead owners" in the title coupled with "first-time homestead" in the summary are ambiguous as it conveys the message that to be eligible for the additional exemption, the property owner must have both not owned a principal residence during the preceding eight years *and* have never previously declared the property homestead.[19]

[13] Fla. CS for SJR 532, 1st Eng. (2009) (Senator Lynn and others)
[14] *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010).
[15] *Id.* at 657, citing *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (further reiterating that the accuracy requirement is codified in s. 106.161(1), F.S. (2009)).
[16] *Id.* at 659, citing *Florida Dep't of State v. Slough,* 992 So. 2d 142, 147 (Fla. 2008).
[17] *Id.* at 657 and 660.
[18] *Id.*
[19] *Id.*

- The use of both the terms "principal residence" and "first-time homestead" in the ballot title and summary is misleading.[20]
- There is a material omission in the ballot title and summary, as they fail to "note that the additional exemption is not available to a person whose spouse has owned a principal residence in the preceding eight years."[21]

"Save Our Homes" Assessment Limitation

The "Save Our Homes" provision in Article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of three percent or the percentage increase in the Consumer Price Index (CPI).[22] The Save Our Homes limitation was amended into the Florida Constitution in 1992, to provide that:

- All persons entitled to a homestead exemption under section 6, Article VII of the State Constitution, have their homestead assessed at just value by January 1 of the year following the effective date of the amendment.
- Thereafter, annual changes in homestead assessments on January 1 of each year could not exceed the lower of:
  - Three percent of the prior year's assessment, or
  - The percent change in the Consumer Price Index (CPI) for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
- No assessment may exceed just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d), of the Florida Constitution, to provide for the portability of the accrued "Save Our Homes" benefit. This amendment allows homestead property owners who relocate to a new homestead to transfer up to $500,000 of the "Save Our Homes" accrued benefit to the new homestead.

Section 193.155, Florida Statutes

In 1994, the Legislature enacted ch. 94-353, Laws of Florida, to implement the "Save Our Homes" amendment into s. 193.155, F.S. The legislation required all homestead property to be assessed at just value by January 1, 1994.[23] Starting on January 1, 1995, or the year after the property receives a homestead exemption (whichever is later), property receiving a homestead exemption must be reassessed annually on January 1 of each year. As provided in the "Save Our Homes" provision in Article VII, section 4(d), of the Florida Constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lower of:

- Three percent of the assessed value from the prior year; or

[20] *Roberts*, at 657 and 660.
[21] *Id.* at 657 and 661.
[22] FLA. CONST. art. VII, s. 4(d).
[23] *See Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994) (stating that "the clear language of the amendment establishes January 1, 1994, as the first "just value" assessment date, and as a result, requires the operative date of the amendment's limitations, which establish the "tax value" of homestead property, to be January 1, 1995").

- The percentage change in the CPI for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.[24]

Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds the just value, the assessed value must be lowered to just value of the property.

Rule 12D-8.0062, Florida Administrative Code (F.A.C.): "The Recapture Rule"

In October 1995, the Governor and the Cabinet adopted rule 12D-8.0062, F.A.C., of the Department of Revenue, entitled "Assessments; Homestead; and Limitations."[25] The administrative intent of this rule is to govern "the determination of the assessed value of property subject to the homestead assessment limitation under Article VII, section 4(c), of the Florida Constitution, and s. 193.155, F.S."[26]

Subsection (5) of Rule 12D-8.0062, F.A.C., is popularly known as the "recapture rule." This provision requires property appraisers to increase the prior year's assessed value of a homestead property by the lower of three percent or the percent increase in the CPI on all property where the value is lower than the just value. The specific language in Rule 12D-8.0062(5), F.A.C., which is referred to as the "recapture provision" states:

> (5) Where the current year just value of an individual property exceeds the prior year assessed value, the property appraiser is *required* to increase the prior year's assessed value ….[27]

Under current law, this requirement applies even if the just value of the homestead property has decreased from the prior year. Therefore, homestead owners entitled to the "Save Our Homes" cap whose property is assessed at less than just value may see an increase in the assessed value of their home during years when the just/market value of their property decreased.[28]

Subsection (6) provides that if the change in the CPI is negative, then the assessed value shall be equal to the prior year's assessed value decreased by that percentage.

[24] Section 193.155(1), F.S.

[25] While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12D-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.927, F.S. Section 195.027, F.S., provides that the Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and that the Legislature intends that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and that the administration will be uniform, just and otherwise in compliance with the requirements of general law and the constitution.

[26] Rule 12D-8.0062(1), F.A.C.

[27] Rule 12D-8.0062(5), F.A.C. (emphasis added).

[28] *Markham v. Dep't of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995) (stating that "subsection (5) requires an increase to the prior year's assessed value in a year where the CPI is greater than zero").

Markham v. Department of Revenue[29]

On March 17, 1995, William Markham, the Broward County Property Appraiser, filed a petition challenging the validity of the Department of Revenue's proposed "recapture rule" within Rule 12D-8.0062, F.A.C. Markham alleged that the proposed rule was "an invalid exercise of delegated legislative authority and is arbitrary and capricious."[30] Markham also claimed that subsection (5) of the rule was at variance with the constitution – specifically that it conflicted with the "intent" of the ballot initiative and that a third limitation relating to market value or movement[31] should be incorporated into the language of the rule to make it compatible with the language in Article VII, section 4(c), of the Florida Constitution.

A final order was issued by the Division of Administrative Hearings on June 21, 1995, which upheld the validity of Rule 12D-8.0062, F.A.C., and the Department of Revenue's exercise of delegated legislative authority. The hearing officer determined that subsections (5) and (6) of the administrative rule were consistent with Article VII, section 4(c), of the Florida Constitution. The hearing officer also held that the challenged portions of the rule were consistent with the agency's mandate to adopt rules under s. 195.027(1), F.S., since the rule had a factual and logical underpinning, was plain and unambiguous, and did not conflict with the implemented law.[32]

In response to the petitioner's assertion of a third limitation on market movement, the hearing officer concluded that the rule was not constitutionally infirm since there was no mention of "market movement" or "market value" in the ballot summary of the amendment nor did the petitioner present any evidence of legislative history concerning the third limitation.[33]

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to Article VII, section 4, of the Florida Constitution, to allow the Legislature to prohibit increases in the assessed value of homestead property and specified non-homestead property if the just value of the property decreases. This authority to limit increases in the assessed value of homestead and certain non-homestead property does not apply to the assessment of changes, additions, reductions, or improvements to homestead property as provided in (d)(5) of section 4, Article VII, of the Florida Constitution.

The joint resolution reduces the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 5 percent.

This joint resolution amends Article VII, section 6, of the Florida Constitution, to create an additional homestead exemption for specified homestead owners.

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[29] *Id.*
[30] *Id*.
[31] *Id.* at ¶ 21 (stating that "[t]his limitation, grounded on "market movement," would mean that in a year in which market value did not increase, the assessed value of a homestead property would not increase").
[32] *Id.* at ¶ 20.
[33] *Id.* at ¶ 22.

The joint resolution creates sections 32 and 33, Article XII, of the State Constitution, to provide when the amendments to Article VII, sections 4 and 6, of the Florida Constitution prescribed herein shall take effect.

The joint resolution amends section 27, Article XII of the Florida Constitution to delete language that would repeal subsections (f) and (g) of Section 4 of Article VII, effective January 1, 2019. Subsections (f) and (g) of Section 4, Article VII, Florida Constitution limit annual assessment increases for specified non-homestead real property.

Assessment Limitation on Homestead Property *(Recapture Rule)*

The joint resolution proposes an amendment paragraph 1 of subsection (d) in s. 4, Article VII, of the Florida Constitution, to authorize the Legislature to provide, by general law that an assessment may not increase if the just value of the property is less than the just value of the property on the preceding January 1. This authority to limit increases in the assessed value of homestead and certain non-homestead property does not apply to the assessment of changes, additions, reductions, or improvements to homestead property as provided in (d)(5) of section 4, Article VII, of the Florida Constitution.

The joint resolution also deletes obsolete language provided in paragraph 8 of subsection (d) in s. 4, Article VII, of the Florida Constitution.

The joint resolution creates section 32, Article XII, of the Florida Constitution, to provide that if approved by Florida voters with the 2012 presidential preference primary, the amendment shall take effect upon approval by the electors and operate retroactively to January 1, 2012, or if approved by the voters at the 2012 general election, this amendment will take effect on January 1, 2013.

Assessment Limitation on Specified Non-homestead Property

The joint resolution proposes to amend paragraph 1 of subsections (g) and (h) in s. 4, Article VII, to reduce the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 5 percent.

The joint resolution specifies that the Legislature may provide by general law that an assessment may not increase if the just value of the property is less than the just value of the property on the preceding date of assessment provided by law.

The joint resolution also creates section 32, Article XII, of the Florida Constitution, to provide that if approved by Florida voters with the 2012 presidential preference primary, the amendment shall take effect upon approval by the electors and operate retroactively to January 1, 2012, or if approved by the voters at the 2012 general election, this amendment will take effect on January 1, 2013.

Additional Homestead Exemption for Specified Homestead Owners

The joint resolution proposes to create subsection (f) in s. 6, Article VII, of the Florida Constitution. This amendment allows individuals who establish a right to receive a homestead exemption under s. 6(a), Article VII, of the Florida Constitution, within 1 year after purchasing the homestead property, and who have not received a homestead exemption in the past three years, to receive an additional homestead exemption. This exemption is equal to 50 percent of the just value of the homestead property on January 1 of the year of purchase, up to $200,000. The exemption applies for a period of five years or until the property is sold. The additional exemption is reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies.

The joint resolution also creates section 33, Article XII, of the Florida Constitution, to provide that if approved by Florida voters at a special election authorized by law to be held on the date of the 2012 presidential preference primary, this amendment shall operate retroactively to January 1, 2012, and the additional homestead exemption shall be available for properties purchased on or after January 1, 2011. If approved by Florida voters at the 2012 general election, this amendment shall take effect January 1, 2013, and the additional homestead exemption shall be available for properties purchased on or after January 1, 2012.

Amendment to Section 27 of Article XII of the Florida Constitution

The joint resolution amends section 27, Article XII of the Florida Constitution to delete language that would repeal subsections (f) and (g) of Section 4 of Article VII, effective January 1, 2019. Subsections (f) and (g) of Section 4 of Article VII, of the Florida Constitution limit annual assessment increases for specified non-homestead real property.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18, of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments

Section 1, Article XI, of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held for that purpose.

Section 5(d), Article XI, of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

Section 5(e), Article XI, of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

Section 5(a), Article XI, of the Florida Constitution, and s. 106.161(1), F.S., require constitutional amendments submitted to the vote of the people to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'"[34]

Equal Protection Clause

The United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction, the equal protection of law."[35] In the past, taxpayers have argued that disparate treatment in real property tax assessments constitutes an equal protection violation.[36] In these instances, courts have used the rational basis test to determine the constitutionality of discriminatory treatment in property tax assessments.[37] Under the

[34] *Roberts,* 43 So. 3d at 659, citing *Florida Dep't of State v. Slough,* 992 So.2d 142, 147 (Fla. 2008).
[35] U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.
[36] *Reinish v. Clark,* 765 So. 2d 197 (Fla. 1st DCA 2000) (holding that the Florida homestead exemption did not violate the Equal Protection Clause, the Privileges and Immunities Clause, or the Commerce Clause). *See also Lanning v. Pilcher,* 16 So. 3d 294 (Fla. 1st DCA 2009) (holding that the Save Our Homes Amendment of the State Constitution did not violate a nonresident's rights under the Equal Protection Clause). *See also Nordlinger v. Hahn,* 505 U.S. 1 (1992) (stating that the constitutional amendment in California that limited real property tax increases, in the absence of a change of ownership to 2 percent per year, was not a violation of the Equal Protection Clause).
[37] *Nordlinger,* 505 U.S. at 33-34, stating that a "classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose").

rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.[38]

It has been argued that the recapture rule provided in s. (5) of Rule 12D-8.0062, F.A.C., diminishes the existing inequity between property assessments over time.[39] To the extent that this view is adopted, taxpayers may argue that the elimination of the recapture rule creates a stronger argument for an Equal Protection Clause violation. If this argument is made, the court would need to determine whether the components of this joint resolution are rationally related to a legitimate state interest.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If approved by the voters, this joint resolution will provide ad valorem tax relief to homestead and specified non-homestead owners. Owners of specified residential rental and commercial real property may experience further reduction in tax assessments due to the five percent assessment limitation. This joint resolution will also have an effect on local government revenue.

B. Private Sector Impact:

Assessment Limitation on Homestead Property *(Recapture Rule)*
If approved by the voters, taxes will be reduced for those taxpayers whose homesteads are depreciating but are still assessed at less than just value. The joint resolution will redistribute the tax burden. It may benefit homestead property that has a "Save Our Homes" differential; however, non-homestead and recently established homestead property will pay a larger proportion of the cost of local services. To the extent that local governments do not raise millage rates, taxpayers may experience a reduction in government and education services due to any reductions in ad valorem tax revenues.

Assessment Limitation on Non-homestead Property
Owners of existing residential rental and commercial real property may experience property tax savings. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and will be at a competitive disadvantage compared to older properties with respect to their tax burden.

Additional Homestead Exemption for Specified Homestead Owners
If approved by the voters, specified homestead owners will experience temporary reductions in ad valorem taxes. The value of the reduction will decrease by one-fifth each year and will disappear in the sixth year after the homestead is established. During this

[38] *Id.*
[39] Walter Hellerstein et al., Shackelford Professor of Taxation, LEGAL ANALYSIS OF PROPOSED ALTERNATIVES TO FLORIDA'S HOMESTEAD PROPERTY TAX LIMITATIONS: FEDERAL CONSTITUTIONAL AND RELATED ISSUES, at 83 (on file with the Senate Committee on Community Affairs).

period, the ad valorem taxes levied on these specified homesteads will increase each year. Other property owners in the taxing jurisdiction will pay higher taxes if the jurisdiction adjusts the millage rate to offset the loss to the tax base.

C. Government Sector Impact:

Local governments may experience a reduction in the ad valorem tax base if this joint resolution is approved by voters. Since this amendment would require voter approval, the Revenue Estimating Conference has adopted an indeterminate negative estimate for SJR 658.

Additional Homestead Exemption for Specified Homestead Owners
Should this amendment be approved by the Florida voters, the Revenue Estimating Conference has determined that the statewide impact on non-school taxes for the additional homestead exemption for specified homestead owners would be as follows: [40]

2012 Effective Date		
FY 2012-13	FY 2013-14	Recurring Impact
-$55 million	-$110 million	-$221 million
2013 Effective Date		
FY 2013-14	FY 2014-15	Recurring Impact
-$65.6 million	-$129.1 million	-$192.7 million

Assessment Limitation on Non-homestead Property
The Revenue Estimating Conference has estimated the fiscal impact of the proposed amendment that reduces from 10 to 5 percent, the limitation on annual assessment increases applicable to non-homestead property, as follows (only non-school taxes are affected):

2012 Effective Date		
FY 2012-13	FY 2013-14	FY 2014-15
-$77.8 million	-$196.02 million	-$348.80 million
2013 Effective Date		
FY 2013-14	FY 2014-15	FY 2015-16
-$143.61 million	-$310.43 million	-$489.89 million

[40] Revenue Estimating Conference, *First-Time Homesteaders SJR 658 & HJR 381* (Mar. 23, 2011) (assuming that 36 percent of homesteaders will be first-time homesteaders, to account for the definition of first-time homebuyers).

Publication Requirements

Section 5(d), Article XI, of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.[41] The division has not estimated the full publication costs to advertise this constitutional amendment at this time.

VI. Technical Deficiencies:

Lines 352-353 of the committee substitute, creating section 32, should refer to the amendment of "…Section 4 of Article VII protecting homestead [*and specified non-homestead*] property having a declining just value…." The language referring to *specified non-homestead* appears to have been inadvertently omitted.

VII. Related Issues:

None.

[41] Florida Department of State, *Senate Joint Resolution 390 Fiscal Analysis* (Jan. 28, 2011) (on file with the Senate Committee on Community Affairs).

VIII. Additional Information:

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

CS/CS by Judiciary on April 12, 2011:
The committee substitute proposes an amendment to Article VII, section 4, of the Florida Constitution, to allow the Legislature to prohibit increases in the assessed value of a homestead property and certain nonhomestead property, in any year where the market value of the property decreases.

The committee substitute proposes an amendment to paragraph 1 of subsection (g) and (h) in s. 4, Article VII, of the Florida Constitution to reduce the annual assessment limitation on certain nonhomestead property from 10 to 5 percent.

The committee substitute makes technical corrections and provides conditional effective dates for the proposed amendments to the Florida Constitution depending on when the proposed amendments are submitted to Florida voters for their approval or rejection.

The committee substitute proposes the removal of language in s. 27, Article XII, of the Florida Constitution, that would have repealed subsections (f) and (g) of s. 4, Article VII of the Florida Constitution, which would limit the annual assessment increases for specified nonhomestead real property.

The committee substitute revises the ballot summary to conform to changes made in the committee substitute proposing amendments to the Florida Constitution.

CS by Community Affairs on March 14, 2011:
This committee substitute makes technical and clarifying amendments as recommended by the Department of Revenue.[42] Specifically the committee substitute:

- Changes references to "fair market" and "market" value to "just" value to make it consistent with provisions in the Florida Constitution and Florida Statutes.
- Changes the terms "an increase" to "a change" on line 49 of the joint resolution.
- Provides that the joint resolution has no effect on the assessment of changes, additions, reductions, or improvements to homestead property as provided in (d)(5) of section 4, Article VII, of the Florida Constitution.

B. Amendments:

None.

[42] *See* Florida Department of Revenue, *SJR 658 Fiscal Analysis,* at 3 (Feb. 11, 2011) (on file with the Senate Committee on Community Affairs).

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. If House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, is approved by a vote of the electors in the general election held in November 2012, subsection (3) of section 193.1554, Florida Statutes, is amended to read:

193.1554 Assessment of nonhomestead residential property.—

(3) Beginning in 2013 ~~2009~~, or the year following the year the property is placed on the tax roll, whichever is later, the property shall be reassessed annually on January 1. Any change

resulting from such reassessment may not exceed 5 ~~10~~ percent of the assessed value of the property for the prior year, except as provided in subsection (6).

Section 2. If House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, is approved by a vote of the electors in a special election held concurrent with the presidential preference primary in 2012, subsection (3) of section 193.1554, Florida Statutes, is amended to read:

193.1554 Assessment of nonhomestead residential property.—

(3) Beginning in 2012 ~~2009~~, or the year following the year the property is placed on the tax roll, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 5 ~~10~~ percent of the assessed value of the property for the prior year, except as provided in subsection (6).

Section 3. If House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, is approved by a vote of the electors in the general election held in November 2012, subsection (3) of section 193.1555, Florida Statutes, is amended to read:

193.1555 Assessment of certain residential and nonresidential real property.—

(3) Beginning in 2013 ~~2009~~, or the year following the year the property is placed on the tax roll, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 5 ~~10~~ percent of the assessed value of the property for the prior year, except as provided in subsection (6).

Section 4. If House Joint Resolution 381 or Senate Joint

Resolution 658, 2011 Regular Session, is approved by a vote of the electors in a special election held concurrent with the presidential preference primary in 2012, subsection (3) of section 193.1555, Florida Statutes, is amended to read:

193.1555 Assessment of certain residential and nonresidential real property.—

(3) Beginning in 2012 ~~2009~~, or the year following the year the property is placed on the tax roll, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 5 ~~10~~ percent of the assessed value of the property for the prior year, except as provided in subsection (6).

Section 5. If House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, is approved by a vote of the electors in the general election held in November 2012, section 196.078, Florida Statutes, is created to read:

196.078 Additional homestead exemption for a first-time Florida homesteader.—

(1) As used in this section, the term "first-time Florida homesteader" means a person who establishes the right to receive the homestead exemption provided in s. 196.031 within 1 year after purchasing the homestead property and who has not owned property in the 3 calendar years prior to such purchase to which the homestead exemption provided in s. 196.031(1)(a) applied.

(2) For purposes of this section, the date on which the deed or other transfer instrument was signed and notarized or otherwise executed shall be considered the date a property was purchased.

(3) Every first-time Florida homesteader is entitled to an

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additional homestead exemption in an amount equal to 50 percent of the median just value for homestead property in the county where the property at issue is located in the calendar year immediately preceding the January 1 of the year the homestead is established for all levies other than school district levies. The additional exemption applies for a period of 5 years or until the year the property is sold, whichever occurs first. The amount of the additional exemption shall be reduced in each subsequent year by an amount equal to 20 percent of the amount of the additional exemption received in the year the homestead was established or by an amount equal to the difference between the just value of the property and the assessed value of the property determined under s. 193.155, whichever is greater. Not more than one exemption provided under this subsection is allowed per homestead property. The additional exemption applies to property purchased on or after January 1, 2012, but is not available in the sixth and subsequent years after the additional exemption is first received.

(4) The property appraiser shall require a first-time Florida homesteader claiming an exemption under this section to submit, not later than March 1 on a form prescribed by the Department of Revenue, a sworn statement attesting that the taxpayer, and each other person who holds legal or equitable title to the property, has not owned property in the 3 calendar years prior to such purchase to which the homestead exemption provided by s. 196.031(1)(a) applied. In order for the exemption to be retained upon the addition of another person to the title to the property, the person added must also submit, not later than the subsequent March 1 on a form prescribed by the


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department, a sworn statement attesting that he or she has not owned property in the 3 calendar years prior to being added to the title to which the homestead exemption provided by s. 196.031(1)(a) applied.

(5) Sections 196.131 and 196.161 apply to the exemption provided in this section.

Section 6. If House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, is approved by a vote of the electors in a special election held concurrent with the presidential preference primary in 2012, section 196.078, Florida Statutes, is created to read:

196.078 Additional homestead exemption for a first-time Florida homesteader.—

(1) As used in this section, the term "first-time Florida homesteader" means a person who establishes the right to receive the homestead exemption provided in s. 196.031 within 1 year after purchasing the homestead property and who has not owned property in the 3 calendar years prior to such purchase to which the homestead exemption provided in s. 196.031(1)(a) applied.

(2) For purposes of this section, the date on which the deed or other transfer instrument was signed and notarized or otherwise executed shall be considered the date a property was purchased.

(3) Every first-time Florida homesteader is entitled to an additional homestead exemption in an amount equal to 50 percent of the median just value of the homestead property in the county where the property at issue is located in the calendar year immediately preceding the January 1 of the year the homestead is established for all levies other than school district levies.

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The additional exemption applies for a period of 5 years or until the year the property is sold, whichever occurs first. The amount of the additional exemption shall be reduced in each subsequent year by an amount equal to 20 percent of the amount of the additional exemption received in the year the homestead was established or by an amount equal to the difference between the just value of the property and the assessed value of the property determined under s. 193.155, whichever is greater. Not more than one exemption provided under this subsection is allowed per homestead property. The additional exemption applies to property purchased on or after January 1, 2011, but is not available in the sixth and subsequent years after the additional exemption is first received.

(4)(a) In 2012, the property appraiser shall require a first-time Florida homesteader claiming an exemption under this section to submit, not later than June 1 on a form prescribed by the Department of Revenue, a sworn statement attesting that the taxpayer, and each other person who holds legal or equitable title to the property, has not owned property in the 3 calendar years prior to such purchase to which the homestead exemption provided by s. 196.031(1)(a) applied.

(b) In 2013 and thereafter, the property appraiser shall require a first-time Florida homesteader claiming an exemption under this section to submit, not later than March 1 on a form prescribed by the Department of Revenue, a sworn statement attesting that the taxpayer, and each other person who holds legal or equitable title to the property, has not owned property in the 3 calendar years prior to such purchase to which the homestead exemption provided by s. 196.031(1)(a) applied.


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(c) In order for the exemption provided under this section to be retained upon the addition of another person to the title to the property, the person added must also submit, not later than the subsequent March 1 on a form prescribed by the department, a sworn statement attesting that he or she has not owned property in the 3 calendar years prior to being added to the title to which the homestead exemption provided by s. 196.031(1)(a) applied.

(5) Sections 196.131 and 196.161 apply to the exemption provided in this section.

Section 7. (1) In anticipation of implementing this act, the executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, to make necessary changes and preparations so that forms, methods, and data records, electronic or otherwise, are ready and in place if sections 2, 4, and 6 or sections 1, 3, and 5 of this act become law.

(2) Notwithstanding any other provision of law, such emergency rules shall remain in effect for 18 months after the date of adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

Section 8. If House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, is approved by a vote of the electors in a special election held concurrent with the presidential preference primary in 2012 or in the general election held in November 2012, section 218.12, Florida Statutes, is amended to read:

218.12 Appropriations to offset reductions in ad valorem tax revenue in fiscally constrained counties.—

(1)(a) Beginning in fiscal year 2008-2009, the Legislature shall appropriate moneys to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties, as defined in s. 218.67(1), which occur as a direct result of the implementation of revisions of Art. VII of the State Constitution approved in the special election held on January 29, 2008. The moneys appropriated for this purpose shall be distributed in January of each fiscal year among the fiscally constrained counties based on each county's proportion of the total reduction in ad valorem tax revenue resulting from the implementation of the revision.

(b) ~~(2)~~ On or before November 15 of each year, beginning in 2008, each fiscally constrained county shall apply to the Department of Revenue to participate in the distribution of the appropriation and provide documentation supporting the county's estimated reduction in ad valorem tax revenue in the form and manner prescribed by the Department of Revenue. The documentation must include an estimate of the reduction in taxable value directly attributable to revisions of Art. VII of the State Constitution for all county taxing jurisdictions within the county and shall be prepared by the property appraiser in each fiscally constrained county. The documentation must also include the county millage rates applicable in all such jurisdictions for both the current year and the prior year; rolled-back rates, determined as provided in s. 200.065, for each county taxing jurisdiction; and maximum millage rates that could have been levied by majority vote pursuant to s. 200.185.


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For purposes of this section, each fiscally constrained county's reduction in ad valorem tax revenue shall be calculated as 95 percent of the estimated reduction in taxable value times the lesser of the 2007 applicable millage rate or the applicable millage rate for each county taxing jurisdiction in the prior year.

(c) ~~(3)~~ In determining the reductions in ad valorem tax revenues occurring as a result of the implementation of the revisions to Art. VII of the State Constitution approved in the special election held on January 29, 2008, the value of assessments reduced pursuant to s. 4(d)(8)a., Art. VII of the State Constitution shall include only the reduction in taxable value for homesteads established January 1 of the year in which the determination is being made.

(2)(a) Beginning in the 2012-2013 fiscal year, the Legislature shall consider appropriating moneys to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties, as defined in s. 218.67(1), which occur as a direct result of the implementation of the revision of Art. VII of the State Constitution contained in House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session. The moneys appropriated for this purpose shall be distributed among the fiscally constrained counties based on each county's proportion of the total reduction in ad valorem tax revenue resulting from the implementation of the revision.

(b) On or before February 1 each year, each fiscally constrained county shall apply to the Executive Office of the Governor to participate in the distribution of the appropriation and provide documentation supporting the county's estimated

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reduction in ad valorem tax revenue to the Executive Office of the Governor.

Section 9. This act shall take effect upon becoming a law, except that the sections of this act which take effect upon the approval of House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, by a vote of the electors in a special election held concurrent with the presidential preference primary in 2012 shall apply retroactively to the 2012 tax roll if the revision of the State Constitution contained in House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, is approved by a vote of the electors in a special election held concurrent with the presidential preference primary in 2012; or the sections of this act which take effect upon the approval of House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, by a vote of the electors in the general election held in November 2012 shall apply to the 2013 tax roll if the revision of the State Constitution contained in House Joint Resolution 381 or Senate Joint Resolution 658, 2011 Regular Session, is approved by a vote of the electors in the general election held in November 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to ad valorem taxation; amending s. 193.1554, F.S.; reducing the amount by which any

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change in the value of nonhomestead residential property resulting from an annual reassessment may exceed the assessed value of the property for the prior year; amending s. 193.1555, F.S.; reducing the amount by which any change in the value of certain residential and nonresidential real property resulting from an annual reassessment may exceed the assessed value of the property for the prior year; creating s. 196.078, F.S.; providing a definition; providing a first-time Florida homesteader with an additional homestead exemption; providing for calculation of the exemption; providing for the applicability period of the exemption; providing for an annual reduction in the exemption during the applicability period; providing application procedures; providing for applicability of specified provisions; providing for contingent effect of provisions and varying dates of application depending on the adoption and adoption date of specified joint resolutions; authorizing the Department of Revenue to adopt emergency rules; providing for application and renewal of emergency rules; amending s. 218.12, F.S.; requiring the Legislature to consider appropriating funds to fiscally constrained counties to offset reductions in ad valorem tax revenue as the result of the implementation of certain revisions to the State Constitution; requiring application to the Executive Office of the Governor to participate in the distribution of such an appropriation; providing for


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certain contingent effect and retroactive application;
providing an effective date.

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 Budget Committee

BILL:	CS/SB 1722
INTRODUCER:	Judiciary Committee and Senator Fasano
SUBJECT:	Ad Valorem Taxation
DATE:	April 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Favorable**
2.	Munroe	Maclure	JU	**Fav/CS**
3.	Babin	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill provides statutory implementation of SJR 658 or HJR 381, should either joint resolution be approved by the voters. The bill reduces the limitation on annual assessment increases applicable to non-homestead property and certain residential and nonresidential property from 10 percent to 3 percent, except that changes, additions, and improvements begin being assessed at just value.

The bill also provides an additional homestead exemption for specified "first-time Florida homesteaders," as defined herein.
The bill requires an annual appropriation, beginning in the 2012-2013 fiscal year, to offset ad valorem revenue reductions experienced by fiscally constrained counties due to the constitutional revisions contained in the joint resolutions.

Upon voter approval of HJR 381 or SJR 658, this bill amends sections 193.1554, 193.1555, and 218.12, Florida Statutes.

Upon voter approval of HJR 381 or SJR 658, this bill creates section 196.078, Florida Statutes, and an undesignated section of law to provide emergency rulemaking authority to the Department of Revenue.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

B.) Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[3] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.[4] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[5] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[6] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[7] Certain working waterfront property is assessed based upon the property's current use.[8]

C.) Additional Assessment Limitations

Sections 4(g) and (h), Article VII, of the Florida Constitution, were created in January 2008, when Florida electors voted to provide an assessment limitation for residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in

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[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[2] The constitutional provisions in article VII, section 4 of the Florida Constitution, were implemented in Part II of ch. 193, F.S.
[3] FLA. CONST. art. VII, s. 4(a).
[4] FLA. CONST. art. VII, s. 4(c).
[5] FLA. CONST. art. VII, s. 4(e).
[6] FLA. CONST. art. VII, s. 4(f).
[7] FLA. CONST. art. VII, s. 4(i).
[8] FLA. CONST. art. VII, s. 4(j).

the prior year. However, residential real property containing nine or fewer units **must** be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature **may** provide that such property shall be assessed at just value after a change of ownership or control.[9]

Article XII, section 27 of the Florida Constitution, provides that the amendments creating a limitation on annual assessment increases in subsections (f) and (g)[10] are repealed effective January 1, 2019, and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

D.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[11]

Homestead Exemption

Article VII, section 6 of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains thereon the permanent residence of the owner is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by schools.

Additional Homestead Exemption, Amendment 3 Proposed for 2010 Ballot *(2009 SJR 532)*

In 2009, the Legislature passed SJR 532 which was scheduled to go before the voters as Amendment 3 on the November 2010 ballot. Amendment 3 sought to reduce the annual assessment limitation from 10 to 5 percent annually and to provide an additional homestead exemption for "a person or persons" who have not owned a principal residence in the previous *eight* years. The exemption was to be equal to *25 percent* of the just value of the homestead in the first year for all levies, up to *$100,000*. The amount of the additional homestead exemption decreased by 20 percent of the initial exemption each succeeding year for five years until it was no longer available in the sixth and subsequent years.[12]

However, in August 2010, the Florida Supreme Court removed Amendment 3 from the 2010 Ballot, on the grounds that the ballot title and summary were misleading and failed to comply with the constitutional accuracy requirement implicitly provided in Article XI, section 5(a) of the

[9] FLA. CONST. art. VII, s. 4(g) and (h).
[10] Subsections (f) and (g) of Article VII, section 4, of the Florida Constitution have been renumbered since this repeal was inserted. The provisions referenced are currently in the Constitution as subsections (g) and (h), Article VII, section 4.
[11] FLA. CONST. art. VII, ss. 3 and 6.
[12] Fla. CS for SJR 532, 1st Eng. (2009) (Senator Lynn and others).

Florida Constitution.[13] The Court stated that the accuracy requirement is implicitly indicated in section 5(a) through the statement that the proposed amendment "shall be submitted to the electors at the next general election." Specifically, the Court stated that:

> Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.[14]

The Court further stated that the accuracy requirement is codified in Florida Statutes in s. 106.161(1), F.S., which in part provides that:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . .

In determining whether a ballot title and summary are in compliance with the accuracy requirement, courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public'."[15]

Based on this test, the Florida Supreme Court determined that the ballot title and summary for Amendment 3 were "neither accurate nor informative" and "are confusing to the average voter."[16] The Court supported its holding based on the following:

- Neither the title nor the summary provided notice that the additional exemption is only available for properties purchased on or after January 1, 2010. Stating that the "lack of an effective date renders it impossible for a voter to know which homeowners would qualify for the exemption."[17]
- The term "new homestead owners" in the title coupled with "first-time homestead" in the summary is ambiguous as it conveys the message that to be eligible for the additional exemption, the property owner must have both not owned a principal residence during the preceding eight years *and* have never previously declared the property homestead.[18]
- The use of both the terms "principal residence" and "first-time homestead" in the ballot title and summary is misleading.[19]
- There is a material omission in the ballot title and summary, as they fail to "note that the additional exemption is not available to a person whose spouse has owned a principal residence in the preceding eight years."[20]

[13] *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010).
[14] *Id.* at 657, citing *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (further reiterating that the accuracy requirement is codified in s. 106.161(1), F.S. (2009)).
[15] *Id.* at 659, citing *Florida Dep't of State v. Slough,* 992 So. 2d 142, 147 (Fla. 2008).
[16] *Id.* at 657 and 660.
[17] *Id.*
[18] *Id.*
[19] *Roberts*, at 657 and 660.
[20] *Id.* at 657 and 661.

2011 Regular Session: Senate Joint Resolution 658 and House Joint Resolution 381

A.) Senate Joint Resolution 658

Senate Joint Resolution (SJR) 658 proposes an amendment to Article VII, section 4 of the Florida Constitution, to allow the Legislature to prohibit increases in the assessed value of homestead and specified non-homestead property if the just value of the property decreases with some exceptions.

Senate Joint Resolution 658 proposes an amendment to Article VII, section 4 of the Florida Constitution to reduce the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 5 percent.[21] The amendment to Article VII, section 4 of the Florida Constitution if approved by Florida voters with the 2012 presidential preference primary, the amendment shall take effect upon approval by the electors and operate retroactively to January 1, 2012, or if approved by the voters at the 2012 general election, this amendment will take effect on January 1, 2013.

Senate Joint Resolution 658 also proposes an amendment to Article VII, section 6 of the Florida Constitution, to create an additional homestead exemption for specified homestead owners. This amendment allows individuals who establish a right to receive a homestead exemption under s. 6(a), Article VII of the Florida Constitution, within 1 year after purchasing the homestead property and who have not received a homestead exemption in the past three calendar years, to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property on January 1 of the year of purchase, up to $200,000 for a period of five years or until the property is sold. The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies.[22]The amendment to Article VII, section 6 of the Florida Constitution if approved by Florida voters at a special election authorized by law to be held on the date of the 2012 presidential preference primary, this amendment shall operate retrospectively to January 1, 2012, and the additional homestead exemption shall be available for properties purchased on or after January 1, 2011. If approved by Florida voters at the 2012 general election, this amendment shall take effect January 1, 2013, and the additional homestead exemption shall be available for properties purchased on or after January 1, 2012.

Senate Joint Resolution 658 proposes an amendment to section 27, Article XII of the Florida Constitution to delete language that would repeal subsections (f) and (g) of Section 4 of Article VII, effective January 1, 2019. Subsections (f) and (g) of Section 4 of Article VII, of the Florida Constitution, limit annual assessment increases for specified non-homestead real property. An effective date for this particular amendment is not specified. Therefore, the amendment, if approved by the voters, will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.[23]

[21] *See* CS/CS/SJR 658 (2011 Regular Session).
[22] *Id.*
[23] FLA. CONST. art. XI, s. 5(e).

B.) House Joint Resolution 381

HJR 381 makes similar amendments to sections 4 and 6 of Article VII of the Florida Constitution, but the reduction in non-homestead property annual assessment increases from 10 to 3 percent.[24]

III. Effect of Proposed Changes:

This bill provides statutory implementation of SJR 658 or HJR 381, should either joint resolution be approved by the voters. The bill provides separate amendments to each statute based upon when the joint resolution is approved by the voters, which may be: during a general election held in November 2012 *or* during a special election held concurrent with the presidential preference primary in 2012.

Assessment of Non-homestead Residential Property

Section 1. Upon voter approval of SJR 658 or HJR 381 during a *general election held in November 2012*, this section amends s. 193.1554, F.S., to reduce the limitation on annual assessment increases applicable to non-homestead residential property from 10 percent to 3 percent and provides for these provisions to begin in 2013, except as provided in s. 193.1555(6), F.S. Section 193.1555(6), F.S., provides for the assessment of residential non-homestead property at *just value* after changes, additions, or improvements are substantially completed, except for property damaged or destroyed by misfortune or calamity as specified in the subsection.

Section 2. Upon voter approval of SJR 658 or HJR 381 during *a special election held concurrent with the presidential preference primary in 2012*, this section amends s. 193.1554, F.S., to reduce the limitation on annual assessment increases applicable to non-homestead residential property from 10 percent to 3 percent and provides for these provisions to begin in 2012, except as provided in s. 193.1555(6), F.S.

Assessment of Certain Residential and Nonresidential Real Property

Section 3. Upon voter approval of SJR 658 or HJR 381 during a *general election held in November 2012*, this section amends s. 193.1555, F.S., to reduce the limitation on annual assessment increases applicable to certain residential and nonresidential property from 10 percent to 3 percent and provides for these provisions to begin in 2013, except as provided in s. 193.1555, F.S.

Section 4. Upon voter approval of SJR 658 or HJR 381 during a *special election held concurrent with the presidential preference primary in 2012*, this section amends s. 193.1555, F.S., to reduce the limitation on annual assessment increases applicable to certain residential and nonresidential property from 10 percent to 3 percent and provides for these provisions to begin in 2012, except as provided in s. 193.1555(6), F.S.

[24] *See* CS/CS/CS/HJR 381 (2011 Regular Session).

Additional Homestead Exemption for Specified Homestead Owners

Section 5. Upon voter approval of SJR 658 or HJR 381 during a *general election held in November 2012*, this bill creates s. 196.078, F.S., to provide an additional homestead exemption for specified homestead owners (defined in the bill as "first-time Florida homesteaders").

Specifically this section:

- Definition. Defines "first-time Florida homesteader" as a person who establishes the right to receive the homestead exemption provided in s. 196.031, F.S., within one year after purchasing the homestead property and who has not owned property in the previous three years to which the homestead exemption provided in s. 196.031(1)(a), F.S., applied.
- Amount of Exemption. Provides that every first-time Florida homesteader is entitled to an additional homestead exemption in an amount equal to 50 percent of the just value of the homestead property up to $200,000 for a period of five years or until the property is sold. The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies. Not more than one exemption shall be allowed per homestead property.
- Sworn Statement. Directs the property appraiser to require all first-time Florida homesteaders claiming the additional exemption under this section to submit a sworn statement on a form by the Department of Revenue no later than March 1, attesting that the taxpayer and each other person who hold legal/equitable title to the property has not owned property in the prior three years that received the homestead exemption provided in s. 196.031, F.S. In order for the exemption to be retained upon the addition of another person to the title of the property, that person must also submit a sworn statement as prescribed herein.

Sections 196.131 and 196.161, F.S., shall apply to the exemption provided in this section.

Section 6. Upon voter approval of SJR 658 or HJR 381 during a *special election held concurrent with the presidential preference primary in 2012*, this bill creates s. 196.078, F.S., to provide an additional homestead exemption for specified homestead owners (defined in the bill as "first-time homesteaders").

Similar to section 5 of the bill, this section:

- Definition. Defines "first-time Florida homesteader" as a person who establishes the right to receive the homestead exemption provided in s. 196.031, F.S., within one year after purchasing the homestead property and who has not owned property in the previous three years to which the homestead exemption provided in s. 196.031(1)(a), F.S., applied.
- Amount of Exemption. Provides that every first-time Florida homesteader is entitled to an additional homestead exemption in an amount equal to 50 percent of the just value of the homestead property up to $200,000 for a period of five years or until the property is sold. The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies. Not more than one exemption shall be allowed per homestead property.

- Sworn Statement. Directs the property appraiser to require all first-time Florida homesteaders claiming the additional exemption under this section to submit a sworn statement on a form by the Department of Revenue no later than March 1, attesting that the taxpayer and each other person who hold legal/equitable title to the property has not owned property in the prior three years that received the homestead exemption provided in s. 196.031, F.S. In order for the exemption to be retained upon the addition of another person to the title of the property, that person must also submit a sworn statement as prescribed herein.

Sections 196.131 and 196.161, F.S., shall apply to the exemption provided in this section.

Department of Revenue Emergency Rulemaking Authority

Section 7. Provides that in anticipation of implementing this act, the executive director of the Department of Revenue (DOR) is authorized to adopt emergency rules under ss. 120.536(1) and 120.54(4), F.S., in order to make the necessary changes and preparations so that forms, methods, and electronic or other data records are ready and in place if the relative provisions of this act become law.

The bill also states that, notwithstanding other provisions of law, such DOR emergency rules shall remain in effect for 18 months after the date of adoption and may be renewed thereafter during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

Fiscally Constrained Counties Appropriation

Section 8. Requires an annual appropriation, beginning in the 2012-2013 fiscal year, to offset ad valorem revenue reductions experienced by fiscally constrained counties due to the constitutional revisions contained in the joint resolutions.

Effective Date

Section 9. Provides that this act shall take effect upon becoming law, except that:

- Provisions of this act that take effect upon the approval of HJR 381 or SJR 658 by the electors at a *special election held concurrent with the presidential preference primary in 2012* shall apply retroactively to the 2012 tax roll if the revision of the State Constitution contained in HJR 381 or SJR 658 is approved in such special election.
- Provisions of this act that take effect upon the approval of HJR 381 or SJR 658 by the electors at a *general election held in November 2012* shall apply to the 2013 tax roll if the revision of the State Constitution contained in HJR 381 or SJR 658 is approved in such general election.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill seeks to implement the proposed constitutional amendments to sections 4 and 6 of Article VII, of the Florida Constitution, contained in HJR 381 or SJR 658, 2011

Regular Session, subject to voter approval. For these reasons, the bill does not fall under the mandate provisions in Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If HJR 381 or SJR 658 is approved by the voters, this bill will provide ad valorem tax relief to specified homestead owners. Owners of specified residential rental and commercial real property will experience further reduction in tax assessments due to the three percent assessment limitation. The provisions of this bill, as implemented by either joint resolution, will have an effect on local government revenue.

B. Private Sector Impact:

Assessment Limitation on Non-homestead Property and Residential & Nonresidential Property

If HJR 381 or SJR 658 is approved by the voters, owners of existing residential rental and commercial real property may experience property tax savings. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and will be at a competitive disadvantage compared to older properties with respect to their tax burden.

Additional Homestead Exemption for Specified Homestead Owners

If HJR 381 or SJR 658 is approved by the voters, specified homestead owners will experience temporary reductions in ad valorem taxes. The value of the reduction will decrease by one-fifth each year and will disappear in the sixth year after the homestead is established. During this period, the ad valorem taxes levied on the homestead will increase each year. Other property owners in the taxing jurisdiction will pay higher taxes to offset the loss to the tax base.

C. Government Sector Impact:

If HJR 381 or SJR 658 is approved by the voters and the provisions of this bill take effect, local governments may experience a reduction in the ad valorem tax base. The

revenue estimating conference adopted an indeterminate negative estimate for SJR 658 and HJR 381 since those amendments would require voter approval.

Additional Homestead Exemption for Specified Homestead Owners
Should this amendment be approved by the Florida voters, the Revenue Estimating Conference has determined that the statewide impact on non-school taxes for the additional homestead exemption for specified homestead owners would be as follows:[25]

2012 Effective Date		
FY 2012-13	FY 2013-14	Recurring Impact
-$55 million	-$110 million	-$221 million
2013 Effective Date		
FY 2013-14	FY 2014-15	Recurring Impact
-$65.6 million	-$129.1 million	-$192.7 million

Assessment Limitation on Non-homestead Property
The Revenue Estimating Conference has estimated the fiscal impact of the proposed amendment that reduces from 10 to 5 percent, the limitation on annual assessment increases applicable to non-homestead property, as follows (only non-school taxes are affected):

2012 Effective Date		
FY 2012-13	FY 2013-14	FY 2014-15
-$77.8 million	-$196.02 million	-$348.80 million
2013 Effective Date		
FY 2013-14	FY 2014-15	FY 2015-16
-$143.61 million	-$310.43 million	-$489.89 million

VI. Technical Deficiencies:

This bill implements the constitutional changes proposed in SJR 658. The non-homestead limitation in SJR 658 is changed from 10 percent to 5 percent. This bill, however, changes the non-homestead limitation from 10 percent to 3 percent. This bill or SJR 658 need to be changed so that the percentage change in both bills match.

The Department of Revenue states that the use of the term "purchasing" may give rise to multiple interpretations of what "purchasing" means which might cause some taxpayers to be

[25] Revenue Estimating Conference, *First-Time Homesteaders SJR 658 & HJR 381* (Mar. 23, 2011) (assuming that 36 percent of homesteaders will be first-time homesteaders, to account for the definition of first-time homebuyers).

excluded from the exemption by such interpretations. For these reasons, the Department recommends deleting the term "purchasing/purchased" and inserting "acquiring/acquired" on the following lines of the bill: line 91, line 108, line 137, and line 154.[26] For clarification of the amendment discussed above, the Department recommends inserting the following language on lines 93 and 139 of the bill after the period:

- "For purposes of this section, the date on which the deed or other transfer instrument was signed and notarized or otherwise executed shall be considered the date a property was acquired."

The Department has also made the following recommendations:

- On lines 108 and 154, insert the following for consistency with ss. 196.031(1)(a) and 193.155(7), F.S., and because the term "homestead's property just value" is not defined in bill:
  - "Except for owners of an estate held by the entireties or held jointly with the right of survivorship, the amount of the exemption may not exceed the proportionate assessed valuation of all owners who reside on the property."
- In terms of the Department's emergency rulemaking authority, add the terms "amended and repealed" on line 183, so that the Department may "renew, amend, and repeal" any emergency rule.
- Property exemptions are applied to the assessed value of the property, which may include any limitations or exemptions to the property's just value. For these reasons, clarification may be needed on lines 96 and 142 of the bill which states that the amount of the additional homestead exemption shall be "equal to 50 percent of the homestead property's just value on January 1 . . . ."

VII. Related Issues:

The bill requires an annual appropriation, beginning in the 2012-2013 fiscal year, to offset ad valorem revenue reductions experienced by fiscally constrained counties due to the constitutional revisions contained in the joint resolutions. Although, the Legislature may amend laws, one Legislature may not by law bind a future Legislature.[27]

VIII. Additional Information:

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

CS by Judiciary on April 12, 2011:
The committee substitute revises provisions relating to residential nonhomestead property to clarify an exception for just valuation. The committee substitute requires an requires an annual appropriation to offset ad valorem revenue reductions experienced by fiscally constrained counties due to the constitutional revisions contained in the joint resolutions.

[26] Florida Department of Revenue, *Fiscal Impact of SB 1722*, 6-7 (March 14, 2011) (on file with the Senate Committee on Community Affairs).
[27] *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821 (Fla. 1985).

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (4) and (26) of section 479.01, Florida Statutes, are amended to read:

479.01 Definitions.—As used in this chapter, the term:

(4) "Commercial or industrial zone" means a parcel of land designated predominantly for commercial or industrial uses under both the future land use map of the comprehensive plan and the land use development regulations adopted pursuant to chapter 163. If a parcel is located in an area designated for multiple uses on the future land use map of a comprehensive plan and the

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zoning category of the land development regulations does not clearly designate that parcel for a specific use, the area will be considered an unzoned commercial or industrial area if it meets the criteria of subsection (26).

(26) "Unzoned commercial or industrial area" means an area ~~a parcel~~ of land designated by the future land use map of the comprehensive plan for multiple uses that include commercial or industrial uses but are not specifically designated for commercial or industrial uses under the land development regulations, in which three or more separate and distinct conforming industrial or commercial activities are located.

(a) These activities must satisfy the following criteria:

1. At least one of the commercial or industrial activities must be located on the same side of the highway and within 800 feet of the sign location;

2. The commercial or industrial activities must be within 660 feet from the nearest edge of the right-of-way; and

3. The commercial industrial activities must be within 1,600 feet of each other.

Distances specified in this paragraph must be measured from the nearest outer edge of the primary building or primary building complex when the individual units of the complex are connected by covered walkways.

(b) ~~Certain activities, including, but not limited to,~~ The following are~~, may~~ not ~~be so recognized as~~ commercial or industrial activities:

1. Signs.

2. Agricultural, forestry, ranching, grazing, farming, and

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related activities, including, but not limited to, wayside fresh produce stands.

3. Transient or temporary activities.

4. Activities not visible from the main-traveled way.

5. Activities conducted more than 660 feet from the nearest edge of the right-of-way.

6. Activities conducted in a building principally used as a residence.

7. Railroad tracks and minor sidings.

8. Communication towers.

Section 2. Subsection (7) of section 479.02, Florida Statutes, is amended to read:

479.02 Duties of the department.—It shall be the duty of the department to:

(7) Adopt such rules as ~~it deems~~ necessary to administer ~~or proper for the administration of~~ this chapter~~, including rules which identify activities that may not be recognized as industrial or commercial activities for purposes of determination of an area as an unzoned commercial or industrial area~~.

Section 3. Section 479.106, Florida Statutes, is amended to read:

479.106 Vegetation management.—

(1) The removal, cutting, or trimming of trees or vegetation on public right-of-way to make visible or to ensure future visibility of the facing of a proposed sign or previously permitted sign shall be performed only with the written permission of the department in accordance with the provisions of this section.

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(2) Any person desiring to engage in the removal, cutting, or trimming of trees or vegetation for the purposes herein described shall apply for an appropriate permit by ~~make~~ written application to the department. The application for a permit must ~~shall~~ include one of the following, at the election of the applicant:

(a) A vegetation management plan consisting of a property sketch indicating the onsite location of the vegetation or individual trees to be removed, cut, or trimmed and describing the existing conditions and proposed work to be accomplished.

(b) Mitigation contribution to the Federal Grants Trust Fund pursuant to s. 589.277(2) using values of a wholesale plant nursery registered with the Division of Plant Industry of the Department of Agriculture and Consumer Services.

(c) A combination of both a vegetation management plan and mitigation contribution ~~the applicant's plan for the removal, cutting, or trimming and for the management of any vegetation planted as part of a mitigation plan~~.

(3) In evaluating a vegetation management plan or mitigation contribution, the department ~~As a condition of any removal of trees or vegetation, and where the department deems appropriate as a condition of any cutting or trimming, the department may require a vegetation management plan, approved by the department, which considers conservation and mitigation, or contribution to a plan of mitigation, for the replacement of such vegetation. Each plan or contribution~~ shall reasonably evaluate the application as it relates ~~relate~~ to the vegetation being affected by the application, taking into consideration the condition of such vegetation, and, where appropriate, may

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require a vegetation management plan to consider conservation and mitigation, or contribution to a plan of mitigation, for the cutting or removal of such vegetation. The department may approve ~~shall include~~ plantings that ~~which~~ will allow reasonable visibility of sign facings while screening sign structural supports. Only herbicides approved by the Department of Agriculture and Consumer Services may be used in the removal of vegetation. The department shall act on the application for approval of vegetation management plans, or approval of mitigation contribution, within 30 days after receipt of such application. A permit issued in response to such application is valid for 5 years, may be renewed for an additional 5 years by payment of the applicable application fee, and is binding upon the department. The department may establish special mitigation programs for the beautification and aesthetic improvement of designated areas and permit individual applicants to contribute to such programs as a part or in lieu of other mitigation requirements.

(4) The department may establish an application fee not to exceed $25 for each individual application to defer the costs of processing such application and a fee not to exceed $200 to defer the costs of processing an application for multiple sites.

(5) The department may only grant a permit pursuant to s. 479.07 for a new sign which requires the removal, cutting, or trimming of existing trees or vegetation on public right-of-way for the sign face to be visible from the highway when the sign owner has removed one ~~at least two~~ nonconforming sign ~~signs~~ of approximate comparable size and surrendered the permits for the nonconforming signs to the department for cancellation. For

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signs originally permitted after July 1, 1996, no permit for the removal, cutting, or trimming of trees or vegetation shall be granted where such trees or vegetation are part of a beautification project implemented prior to the date of the original sign permit application, when the beautification project is specifically identified in the department's construction plans, permitted landscape projects, or agreements.

(6) As a minimum, view zones shall be established along the public rights-of-way of interstate highways, expressways, federal-aid primary highways, and the State Highway System in the state, excluding privately or other publicly owned property, as follows:

(a) A view zone of 350 feet for posted speed limits of 35 miles per hour or less.

(b) A view zone of 500 feet for posted speed limits of more than 35 miles per hour.

The established view zone shall be within the first 1,000 feet measured along the edge of the pavement in the direction of approaching traffic from a point on the edge of the pavement perpendicular to the edge of the sign facing nearest the highway and shall be continuous unless interrupted by vegetation that has established historical significance, is protected by state law, or has a circumference, measured at 4 1/2 feet above grade, which is equal to or greater than 70 percent of the circumference of the Florida Champion of the same species as listed in the Florida Register of Big Trees of the Florida Native Plant Society. The sign owner may designate the specific location of the view zone for each sign facing. In the absence

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of such designation, the established view zone shall be measured from the sign along the edge of the pavement in the direction of approaching traffic as provided in this subsection.

(7) ~~(6)~~ Beautification projects, trees, or other vegetation shall not be planted or located in the view zone of legally erected and permitted outdoor advertising signs which have been permitted prior to the date of the beautification project or other planting, where such planting will, at the time of planting or after future growth, screen such sign from view. The department shall provide written notice to the owner at least 90 days before commencing a beautification project or other vegetation planting that may affect a sign, allowing such owner at least 60 days to designate the specific location of the view zone of such affected sign. A sign owner is not required to prepare a vegetation management plan or secure a vegetation management permit for the implementation of beautification projects.

~~(a) View zones are established along the public rights-of-way of interstate highways, expressways, federal-aid primary highways, and the State Highway System in the state, excluding privately or other publicly owned property, as follows:~~

~~1. A view zone of 350 feet for posted speed limits of 35 miles per hour or less.~~

~~2. A view zone of 500 feet for posted speed limits of over 35 miles per hour.~~

~~(b) The established view zone shall be within the first 1,000 feet measured along the edge of the pavement in the direction of approaching traffic from a point on the edge of the pavement perpendicular to the edge of the sign facing nearest~~


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~~the highway and shall be continuous unless interrupted by existing, naturally occurring vegetation. The department and the sign owner may enter into an agreement identifying the specific location of the view zone for each sign facing. In the absence of such agreement, the established view zone shall be measured from the sign along the edge of the pavement in the direction of approaching traffic as provided in this subsection.~~

(a) ~~(c)~~ If a sign owner alleges any governmental entity or other party has violated this subsection, the sign owner must provide 90 days' written notice to the governmental entity or other party allegedly violating this subsection. If the alleged violation is not cured by the governmental entity or other party within the 90-day period, the sign owner may file a claim in the circuit court where the sign is located. A copy of such complaint shall be served contemporaneously upon the governmental entity or other party. If the circuit court determines a violation of this subsection has occurred, the court shall award a claim for compensation equal to the lesser of the revenue from the sign lost during the time of screening or the fair market value of the sign, and the governmental entity or other party shall pay the award of compensation subject to available appeal. Any modification or removal of material within a beautification project or other planting by the governmental entity or other party to cure an alleged violation shall not require the issuance of a permit from the Department of Transportation provided not less than 48 hours' notice is provided to the department of the modification or removal of the material. A natural person, private corporation, or private partnership licensed under part II of chapter 481

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providing design services for beautification or other projects shall not be subject to a claim of compensation under this section when the initial project design meets the requirements of this section.

(b) ~~(d)~~ This subsection shall not apply to the provisions of any existing written agreement executed before July 1, 2006, between any local government and the owner of an outdoor advertising sign.

(8) ~~(7)~~ Any person engaging in removal, cutting, or trimming of trees or vegetation in violation of this section or benefiting from such actions shall be subject to an administrative penalty of up to $1,000 and required to mitigate for the unauthorized removal, cutting, or trimming in such manner and in such amount as may be required under the rules of the department.

(9) ~~(8)~~ The intent of this section is to create partnering relationships which will have the effect of improving the appearance of Florida's highways and creating a net increase in the vegetative habitat along the roads. Department rules shall encourage the use of plants which are low maintenance and native to the general region in which they are planted.

Section 4. Subsections (16) and (17) are added to section 479.16, Florida Statutes, to read:

479.16 Signs for which permits are not required.—The following signs are exempt from the requirement that a permit for a sign be obtained under the provisions of this chapter but are required to comply with the provisions of s. 479.11(4)-(8):

(16) Signs erected under the local tourist-oriented commerce signs pilot program under s. 479.263.

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(17) Signs not in excess of 32 square feet placed temporarily during harvest season of a farm operation for a period of no more than 4 months at a road junction with the State Highway System denoting only the distance or direction of the farm operation. The temporary farm operation harvest sign provision under this subsection may not be implemented if the Federal Government notifies the department that implementation will adversely affect the allocation of federal funds to the department.

Section 5. Section 479.263, Florida Statutes, is created to read:

479.263 Tourist-oriented commerce signs pilot program.—The local tourist-oriented commerce signs pilot program is created in rural areas of critical economic concern as defined by s. 288.0656(2)(d) and (e). Signs erected under this program do not require a permit under this chapter.

(1) A local tourist-oriented business that is a small business as defined in s. 288.703 may erect a sign that meets the following criteria:

(a) The signs are not more than 8 square feet in size or more than 4 feet in height.

(b) The signs are located only in rural areas along highways that are not limited access highways.

(c) The signs are located within 2 miles of the business location and at least 500 feet apart.

(d) The advertising copy on the signs consists only of the name of the business or the principal or accessory merchandise or services sold or furnished on the premises of the business.

(2) A business placing such signs under this section:

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(a) Must be a minimum of 4 miles from any other business placing signs under this program.

(b) May not participate in the logo sign program authorized under s. 479.261 or the tourist-oriented directional sign program authorized under s. 479.262.

(3) Businesses that are conducted in a building principally used as a residence are not eligible to participate.

(4) Each business using this program must notify the department in writing of its intent to do so before placing signs. The department shall maintain statistics of the businesses participating in the program. This program shall not take effect if the Federal Highway Administration advises the department in writing that implementation constitutes a loss of effective control of outdoor advertising.

(5) This section expires June 30, 2016.

Section 6. This act shall take effect July 1, 2011.

================ 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 transportation; amending s. 479.01, F.S.; redefining the terms "commercial or industrial zone" and "unzoned commercial or industrial area"; amending s. 479.02, F.S.; deleting obsolete provisions; amending s. 479.106, F.S.; revising requirements for an application for a permit to remove, cut, or trim trees or vegetation around a

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sign; requiring that the application include a vegetation management plan, a mitigation contribution to a trust fund, or a combination of both; providing certain evaluation criteria; providing criteria for the use of herbicides; providing a time limit within which the Department of Transportation must act; providing that the permit is valid for 5 years; providing for an extension of the permit; reducing the number of nonconforming signs that must be removed before a permit may be issued for certain signs; providing criteria for view zones; requiring the department to provide notice to the sign owner of beautification projects or vegetation planting; amending s. 479.16, F.S.; exempting signs erected under the local tourist-oriented commerce signs pilot program from certain permit requirements; exempting certain temporary signs for farm operations from permit requirements; creating s. 479.263, F.S.; creating the tourist-oriented commerce signs pilot program; providing an effective date.

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 Budget Committee

BILL:	CS/SB 1570
INTRODUCER:	Transportation Committee and Senator Evers
SUBJECT:	Billboard Regulation
DATE:	April 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Favorable**
3.	Carey	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Senate Bill 1570 relates to the regulation of billboards and other forms of outdoor advertising. Generally, the bill makes changes which affect where signs may be located, their size, and how vegetation may be managed with respect to signs. More specifically, the bill:

- revises the definitions of "commercial or industrial zone" and "unzoned commercial or industrial area" as they apply to the permissible location of outdoor advertising;
- removes the Florida Department of Transportation's (FDOT, department) authority to adopt rules used in determining the designation of "commercial or industrial zone" and "unzoned commercial or industrial area;"
- provides for the voluntary submission of a vegetation management plan, mitigation contribution, or a combination when applying for a permit to clear vegetation to improve the visibility of a sign;
- directs FDOT to consider the condition of vegetation when evaluating vegetation management plans and limits application of herbicides to those approved by the Department of Agriculture and Consumer Services;
- reduces from at least two to one, the number of nonconforming signs that a sign owner must remove prior to being issued a permit to erect a new sign;

- establishes new criteria for the designation of view zones for billboards along certain highways;
- increases the size of hardship signs allowed in rural areas from 16 square feet to 32 square feet; and
- creates the tourist-oriented commerce sign pilot program in rural areas of economic concern.

This bill substantially amends the following sections of the Florida Statutes: 479.01, 479.02, 479.106, and 479.16.

This bill creates s. 479.263, F.S.:

II. Present Situation:

Control of Outdoor Advertising
Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-Aid Primary, Interstate and National Highway System (NHS) roads. The HBA allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the National Highway System.

- States have the discretion to remove legal nonconforming signs[1] along highways. However, the payment of just (monetary) compensation is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads.

- States and localities may enact stricter laws than stipulated in the HBA.

- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and Federal-Aid Primary highways, but billboards are allowed in segmented areas deemed un-scenic on those routes.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for

[1] A "legal nonconforming sign" is a sign that was legally erected according to the applicable laws or regulations of the time, but which does not meet current laws or regulations.

noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT) incorporating the HBA's required controls, FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices." Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations, and the 1972 agreement which includes definitions of certain relevant terms, such as "commercial and industrial zone" and "unzoned commercial and industrial areas."

Commercial and Industrial Areas
Outdoor advertising signs may legally be located in commercial or industrial areas. In conformance with the 1972 agreement, s. 479.01(4), F.S., also defines "commercial or industrial zone" as a parcel of land designated for commercial or industrial use under both the Future Land Use Map (FLUM) of the local comprehensive plan and the land development regulations adopted pursuant to ch. 163, F.S. This allows FDOT to consider both land development regulations and future land use maps in determining commercial and industrial land use areas.

Unzoned Commercial and Industrial Areas
If a parcel is located in an area designated for multiple uses on the FLUM, and the land development regulations do not clearly designate the parcel for a specific use, the area will be considered an unzoned commercial or industrial area and outdoor advertising signs may be permitted there provided three or more separate commercial or industrial activities take place. However, the following criteria must be met:

- One of the commercial or industrial activities must be located within 800 feet of the sign and on the same side of the highway,
- The commercial or industrial activity must be within 660 feet of the right-of-way, and
- The commercial or industrial activities must be within 1600 feet of each other.

Regardless of whether the criteria above are met, the following activities are specifically excluded from being recognized as commercial or industrial activities and therefore cannot be considered when determining whether a parcel is an unzoned commercial or industrial area:

- Signs;
- Agriculture, forestry, ranching, grazing, and farming;
- Transient or temporary activities;
- Activities not visible from the traveled way;
- Activities taking place more than 660 feet from the right of way;
- Activities in a building principally used as a residence;

- Railroad tracks and sidings; and
- Communication towers.

With the exception of communication towers, the exclusion of these activities is specifically required by the 1972 agreement between the State and USDOT.

Vegetation Management and View Zones for Outdoor Advertising
Section 479.106, F.S., addresses vegetation management and establishes "view zones" for lawfully permitted outdoor advertising signs on the interstates, expressways, federal-aid primary highways, and the State Highway System, excluding privately or other publicly owned property. The intent of the section is to create partnering relationships which will have the effect of improving the appearance of Florida's highways and creating a net increase in the vegetative habitat along the roads.[2]

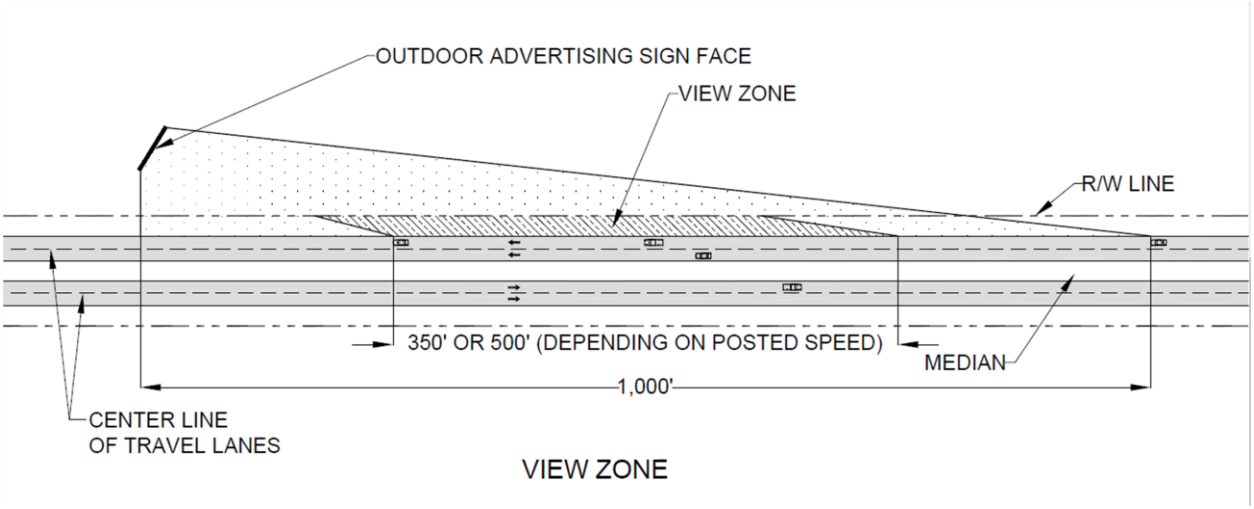
The section requires anyone desiring to remove, cut, or trim trees or vegetation on public right-of-way to improve the visibility or future visibility of a sign or future sign, to obtain written permission from FDOT. To receive a permit to remove vegetation, the applicant must provide a plan for the removal and for the management of any vegetation planted as the result of a mitigation plan. Rule 14-40.030, F.A.C., requires mitigation where:

- Cutting, trimming, or damaging vegetation permanently detracts from the appearance or health of trees, shrubs, or herbaceous plants, or where such activity is not done in accordance with published standard practices. This does not apply to invasive exotic and other noxious plants;
- Trees taller than the surrounding shrubs and herbaceous plants are permanently damaged or destroyed;
- Species of trees or shrubs not likely to grow to interfere with visibility are damaged or destroyed;
- Trees that are likely to interfere with visibility are trimmed improperly, permanently damaged, or removed; or
- Herbaceous plants are permanently damaged.

When the installation of a new sign requires the removal, cutting, or trimming of existing trees or vegetation on public right-of-way, FDOT may only grant a permit for the new sign when the sign owner has removed at least two non-conforming signs of comparable size and surrendered those signs' permits.

The measurements of a view zone are 350 feet, in areas where the posted speed limit is 35 miles per hour or less, and 500 feet, where the speed limit is over 35 miles per hour. These view zones are to be within the first 1,000 feet as measured along the edge of the pavement in the direction of approaching traffic from a point on the edge of the pavement perpendicular to the sign's edge facing the highway unless interrupted by naturally occurring vegetation. The following illustration taken from agency rule (Rule 14-40.030, F.A.C.) depicts a view zone for signs on one side of a roadway.

[2] Section 479.106(8), F.S.



Section 479.106, F.S., allows FDOT and sign owners to enter into agreements identifying the specific location of an outdoor advertising sign's view zone, and if no agreement is reached, then the view zone shall be measured as described above. For some signs viewed across the median (cross readers), part of the view zone may include the highway median.

Rural Areas of Critical Economic Concern
Rural Areas of Critical Economic Concern (RACEC) are defined in s. 288.0656, F.S., as rural communities, or a region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. The Governor may designate up to three RACECs, which allows the Governor to waive criteria of any economic development incentive. Florida's three designated RACECs include:

- Northwest Rural Area of Critical Economic Concern: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Washington counties, and the City of Freeport in Walton County.

- South Central Rural Area of Critical Economic Concern: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County).

- North Central Rural Area of Critical Economic Concern: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

III. Effect of Proposed Changes:

Section 1 amends. s. 479.01(4), F.S., regarding the definition of "commercial or industrial zone." The revision clarifies the definition, providing for the legal location of outdoor advertising on parcels of land that are designated *predominantly* for commercial or industrial use.

Subsection 479.01(26), F.S., is amended regarding the definition of "unzoned commercial or industrial zone." The revision broadens the application of the term to include an *area* of land,

rather than a *parcel* of land in which multiple commercial or industrial activities take place but for which the land development regulations do not specify.

The subsection is further amended to clarify the criteria by which the determination of whether an area may be considered an "unzoned commercial or industrial zone."

Section 2 amends s. 479.02, F.S., to revise the department's authority to adopt rules. Under the provisions of the bill, FDOT may not adopt rules identifying non-commercial or non-industrial activities for use in determining whether an area is an unzoned commercial or industrial area.

Section 3 amends multiple subsections of s. 479.106, F.S., relating to the management of vegetation affecting visibility of signs.

Subsection 479.106(1), F.S., which establishes that vegetation management may only be conducted with the written permission of the department, is amended by deleting the word "only."

Subsection 479.106 (2), F.S., is amended to delete an existing provision mandating the submission of a management plan when applying for a vegetation management permit. The bill replaces the mandate with an allowance for:

- submission of a vegetation management plan consisting of a depiction of the vegetation to be removed, cut, or trimmed and a description of the existing conditions and the work to be performed;
- a mitigation contribution to the tree planting program administered by the Department of Agriculture and Consumer Services Division of Forestry under s. 589.277, F.S.; or
- a combination of a vegetation management plan and mitigation contribution.

The decision to submit a management plan, mitigation contribution, or combination of both is to be made by the applicant.

Subsection 479.106(3), F.S., is amended to require FDOT to take into consideration the existing condition of the vegetation being affected by the plan when evaluating a vegetation management plan. The current requirement for a plan to include plantings to screen a sign's structural support, where applicable, is made permissive.

The bill provides that only herbicides approved by the Department of Agriculture and Consumer Services may be used in the management of vegetation.

Permit applications for vegetation management or mitigation must be acted on by FDOT within 30 days. An approved permit is valid for five years and may be renewed for an additional five years upon payment of the application fee.

Subsection 479.106(5), F.S., is amended to reduce from at least two to one, the nonconforming signs that must be removed prior to the department issuing a permit for a new sign that requires vegetation to be cleared.

A new *s. 479.106(6), F.S.*, is created to revise view zone requirements. Under the bill's provisions, the current dimensions for view zones are established as minimum dimensions. The current exception for view zone disruption, *i.e.*, allowable natural vegetation, is reduced to allow only vegetation that:

- has established historical significance;
- is protected by state law; or
- has a circumference of 70% or more of the circumference of the Florida Champion of that species when both are measured at 4 and ½ feet above grade.

Renumbered *subsection 479.106(7), F.S.*, is amended, allowing the specific location of a sign's view zone may be designated by the sign owner and the department must notify the owner within 90 days of any planting or beautification project that may affect a view zone. No less than 60 days are to be afforded to such affected sign owners to designate the view zone. Vegetation management plans and permits are not required due to implementation of beautification projects.

Section 4 of the bill amends s. 479.16, F.S., which establishes the conditions and criteria under which a sign does not require a permit. The revisions double the maximum size of signs for residential, farm operation, and certain small business signs which do not currently require permitting. Also, signs installed under the tourist-oriented commerce sign pilot program are included in the types of signs which do not require permitting.

Section 5 creates s. 479.263, F.S., to establish the tourist-oriented commerce signs pilot program in rural areas of critical economic concern as defined by ss. 288.0656(2)(d) and (e), F.S.[3] Signs created under the section do not require permits provided the sign advertises a small business as defined in s. 288.703, F.S.,[4] and:

- is not more than 32 square feet in size or 4 feet in height;
- is located in a rural area but not along a limited-access highway;
- is located within 2 miles of the business location and not less than 500 feet from another sign advertising the same business; and
- contains only the name of the business or the merchandise or services sold or furnished at the business.

[3] "Rural area of critical economic concern" means a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.
"Rural community" means:
1. A county with a population of 75,000 or fewer.
2. A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer.
3. A municipality within a county described in subparagraph 1. or subparagraph 2.
4. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in paragraph (c) and verified by the Office of Tourism, Trade, and Economic Development.

[4] "Small business" means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

Businesses placing such signs must not be located closer than 4 miles from another business placing such signs. Also, the business may not participate in both the tourist-oriented commerce signs pilot program created in this section and the logo sign program created in s. 479.261, F.S.

Section 6 establishes an effective date of July 1, 2011.

Other Potential Implications:
According to discussions with FDOT staff, the current provisions allowing signs up to 16 square feet to be placed in rural areas (s. 479.16, F.S.) were provisionally approved by USDOT with the caveat that such activity, which would otherwise be prohibited by the HBA, would be found acceptable due to the hardship imposed by the overarching prohibition. FDOT staff reported that the USDOT's provisional approval was conditioned on the limited geographic nature of the program and its maximum size allowance for signs so placed. Accordingly, concerns have been raised that the doubling of the maximum size allowance in Section 4, as well as the introduction of additional unpermitted signs of that size in Section 5, could result in FHWA determining that the State has failed to maintain adequate controls on outdoor advertising as required by the HBA.

The tourist-oriented commerce sign pilot program created by Section 5 of the bill introduces a number of potential concerns:

1. Although the program is identified as a pilot program, the bill does not provide a date certain on which the pilot program terminates. Further, the bill does not provide for the collection, collation, or analysis of any data, nor for the reporting of the pilot program's results.
2. Unlike the similar tourist-oriented directional sign program described in s. 479.262, F.S., the bill authorizes the placement of signs without deference to local governmental sign ordinances and controls.
3. The bill precludes businesses from placing signs under this program when also participating in the logo sign program. However, there is no preclusion for businesses placing signs under this program and the similar tourist-oriented directional sign program. The effect could theoretically result in an unanticipated proliferation of signs.
4. The bill excludes any business from participating in the program if it is located within 4 miles of another business that is participating.

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:

Owners of certain parcels of land affected by the definitional revisions may benefit from the expansion of allowed land uses to include the installation of outdoor advertising.

Owners of nonconforming signs who desire to erect additional signs will benefit by reducing, by half, the number of nonconforming signs that must be removed in order to receive a permit for new signs.

Certain small businesses in rural areas of critical economic concern may benefit from the allowance for additional signs advertising their products or services.

C. Government Sector Impact:

Should the FHWA determine the allowance of 32 square foot signs or any other provision of the bill results in a loss of effective control of outdoor advertising, section 131(b) of Title 23 USC, requires the withholding of up to 10% of federal highway funds (approximately $145 million). Further, if federal action results in the subsequent repeal of a provision, any signs legally erected under the provision would become legal nonconforming signs. The removal of such signs requires just (monetary) compensation.

VI. Technical Deficiencies:

Line 93: The purpose for removing the word "only" may produce confusion in its application. Absent a provision identifying when vegetation management activity may be performed *without* written permission, the removal could result in legal challenges. Staff recommends retaining the word "only" or clarifying when such activity could be performed without written permission.

Lines 100-101: The intent for supplanting "may" for "shall" in regards to the required vegetation management plan and mitigation is unclear. As currently drafted, this could be interpreted to mean that one, the other, or a combination must now be submitted. It could also be taken to mean that none of the choices are required to be submitted in the application for a permit, but *may* be submitted if the applicant chooses. If the former is the intent, staff recommends maintaining the word "shall" and restructuring paragraphs (a) through (c) to be delineated by semicolons and inserting the word "or" after each.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Transportation on March 16, 2011:
The committee substitute incorporated provisions that:

- remove the FDOT's authority to adopt rules used in determining the designation of "commercial or industrial zone" and "unzoned commercial or industrial area";
- provide for the voluntary submission of a vegetation management plan, mitigation contribution, or a combination when applying for a permit to clear vegetation to improve the visibility of a sign;
- direct FDOT to consider the condition of vegetation when evaluating vegetation management plans and limits application of herbicides to those approved by the Department of Agriculture and Consumer Services;
- reduce from at least two to one, the number of nonconforming signs that a sign owner must remove prior to being issued a permit to erect a new sign;
- establish new criteria for the designation of view zones for billboards along certain highways;
- increase the size of hardship signs allowed in rural areas from 16 square feet to 32 square feet; and
- create the tourist-oriented commerce sign pilot program in rural areas of economic concern.

B. Amendments:

None.

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 Budget Committee

BILL: CS/SB 1176

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Athletic Trainers

DATE: April 15, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	**Favorable**
2.	Boland	Maclure	JU	**Fav/CS**
3.	Hamon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill revises provisions governing the regulation of athletic trainers, as well as governing the availability of trainers as part of a program to address the prevention and treatment of injuries in school athletic activities.

With regard to the regulation of athletic trainers generally, the bill requires that athletic trainers must be certified by the Board of Certification, which is defined to mean the only nationally accredited certifying body for athletic trainers. This entity appears to be the Board of Certification of the National Athletic Trainers' Association. The bill also specifies that, in order to obtain licensure as an athletic trainer, an applicant must have current certification in cardiovascular pulmonary resuscitation with an automated external defibrillator. The bill makes conforming changes to the requirements for renewal of licenses, as well.

With regard to high school athletics, the bill encourages school districts to make available for schools that participate in sports licensed athletic trainers who are certified by the Board of Certification of the National Athletic Trainers' Association. In civil actions against a school district for negligence by an athletic trainer leading to injury or death, the bill creates a rebuttable presumption that a school district was not negligent in wrongful hiring if the school district made

a good faith effort to comply with the law on athletic trainers. This bill encourages the use of an entity that can coordinate placement of licensed, certified athletic trainers to provide a standard of care to prevent and rehabilitate high school sports-related injuries.

This bill substantially amends the following sections of the Florida Statutes: 468.701, 468.703, 468.707, 468.711, and 1012.46.

II. Present Situation:

Regulation of Athletic Trainers

Part XIII of ch. 468, F.S., governs regulation of athletic trainers. Among other things, this part prescribes requirements related to licensure by examination (s. 468.707, F.S.); fees (s. 468.709, F.S.); license renewal and continuing education (s. 468.711, F.S.); violations and penalties (s. 468.717, F.S.); and disciplinary actions (s. 468.719, F.S.). The term "athletic training" is defined as the recognition, prevention, and treatment of sports-related injuries.[1] Athletic trainers are required to be licensed and are eligible for licensure contingent upon:

- Completing the application and payment of fees;
- Having reached at least 21 years of age;
- Having passed an exam administered or approved by the Board of Athletic Training of the Department of Health;
- Holding a baccalaureate degree from an accredited college or university and current CPR certification; and
- Completing an approved athletic training curriculum and a continuing education course on HIV/AIDS.[2]

Practicing athletic training without a license constitutes a first-degree misdemeanor, punishable by up to one year in jail and up to a $1,000 fine.[3]

State law requires an athletic trainer to operate under a written protocol developed between the athletic trainer and a supervising physician, including a mandate that the athletic trainer timely notify the physician of new patient injuries.[4]

The Board of Athletic Training, Department of Health, is composed of nine members who are appointed by the Governor and confirmed by the Senate. Five of the members are required to be licensed athletic trainers; one must be a medical or osteopathic physician; one must be a chiropractic physician; and two are consumer-residents who are not affiliated with the industry or licensed health-care practice.[5] The board is authorized to adopt rules to implement the duties conferred upon it by provisions of part XIII, ch. 468, F.S. Those rules:

[1] Section 468.701(5), F.S.
[2] Section 468.707, F.S.
[3] Section 468.717, F.S.
[4] Section 468.713, F.S.
[5] Section 468.703, F.S.

> shall include, but not be limited to, the allowable scope of practice regarding the use of equipment, procedures, and medication, requirements for a written protocol between the athletic trainer and a supervising physician, licensure requirements, licensure examination, continuing education requirements, fees, records, and reports to be filed by licensees, protocols, and any other requirements necessary to regulate the practice of athletic training.[6]

School District Athletic Injury Prevention-and-Treatment Program

School districts are authorized to implement an athletic injuries prevention-and-treatment program, with a focus on employing and providing access to professionals trained in injury prevention and treatment.[7] It is the stated goal of the Legislature that school districts employ and have available a full time athletic trainer in each high school in the state.[8] To be qualified as an athletic trainer for purposes of the program, a person must be licensed as required by part XIII of ch. 468, F.S.[9]

National Athletic Trainers' Association

The National Athletic Trainers' Association (NATA) is a professional membership association for certified athletic trainers.[10] Originating in 1950, today the NATA reports that it has more than 30,000 members internationally. The national Board of Certification (Board), established in 1989, provides a certification program for entry-level athletic trainers. The Board began as a committee of NATA and then separately incorporated in 1989.[11] Certification includes application, payment of a fee, and a passing grade on the exam. Under the Florida Department of Health application and licensure requirements for athletic trainers, applicants are required to submit a certified copy of a National Athletic Trainers' Association Board of Certification certificate in order to obtain licensure in Florida.[12]

Sports-Related Injuries

According to the Centers for Disease Control and Prevention (CDC),[13] high school sports participation has increased from about 4 million student-athletes during the 1971-72 school year to approximately 7.2 million in 2005-06. An increased number of injuries have accompanied the growth in participation as follows:

> High school athletes account for an estimated 2 million injuries, 500,000 doctor visits, and 30,000 hospitalizations annually….During the 2005-06

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[6] Section 468.705, F.S.
[7] Section 1012.46(1), F.S.
[8] *Id*.
[9] Section 1012.46(2), F.S.
[10] National Athletic Trainers Association, *About the NATA*, http://www.nata.org/aboutNATA (last visited April 7, 2011).
[11] Board of Certification for the Athletic Trainer, *What is NATA*, http://www.bocatc.org/index.php?option=com_content&view=article&id=28&Itemid=30 (last visited April 7, 2011).
[12] Florida Dep't of Health, *Athletic Training and Licensure Requirements, available at* http://www.doh.state.fl.us/mqa/athtrain/at_lic_req.html, (last visited April 15, 2011).
[13] Center for Disease Control, *Sports-Related Injuries Among High School Athletes – United States 2005-06 School Year, available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5538a1.htm (last visited April 7, 2011).

> school year, researchers at a children's hospital in Ohio used an Internet-based data-collection tool to pilot an injury surveillance system…from a representative national sample of U.S. high schools.…which indicated that participation in high school sports resulted in an estimated 1.4 million injuries at a rate of 2.4 injuries per 1,000 athlete exposures (i.e., practices or competitions).[14]

The CDC reports the highest occurrence of injuries by sport, from most injuries to least injuries, as follows: football, wrestling, boys' soccer, girls' soccer, and girls' basketball.[15]

III. Effect of Proposed Changes:

This bill revises provisions governing the regulation of athletic trainers, as well as governing the availability of trainers as part of a program to address the prevention and treatment of injuries in school athletic activities.

Regulation of Athletic Trainers

The bill revises the qualifications of members of the Board of Athletic Training to specify that the five members who currently must be licensed athletic trainers also must be certified by the Board of Certification of its successor agency. The bill defines the Board of Certification to mean the only nationally accredited certifying board for athletic trainers. This appears to mean the Board of Certification of the National Athletic Trainers' Association.

The bill also revises the licensure requirements for athletic trainers to integrate provisions related to the Board of Certification. These changes appear to be designed, in part, to codify the Department of Health's current practice of requiring a national certification from the Board of Certification in order to obtain licensure as an athletic trainer in Florida.[16] Under the bill's revisions (italicized below), the department shall license each applicant who, among other things, has:

- Obtained a degree from a college or university accredited by an accrediting agency recognized and approved by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation, approved by the Florida Board of Athletic Training, *or recognized by the Board of Certification or its successor agency*;
- *If graduated after 2004*, completed an athletic training curriculum from a college or university accredited by *a program recognized by the Board of Certification or its successor agency*;
- Current certification in cardiovascular pulmonary resuscitation *with an automated external defibrillator (AED)* from the American Red Cross or the American Heart Association, or an equivalent certification as determined by the board; and

[14] *Id*.
[15] *Id*.
[16] See note 11.

- Passed the *Board of Certification's or its successor agency's* examination *and is certified by that entity*. (Current law requires an examination administered or approved by the Florida Board of Athletic Training.)

The bill eliminates a requirement that new applicants have completed a continuing education course on HIV (human immunodeficiency virus) and AIDS (acquired immune deficiency syndrome). However, the bill retains the requirement in existing law that applicants for renewal of an athletic training license must complete a continuing education course on HIV and AIDS as part of biennial renewal of a license.

Further, with regard to renewal of athletic training licenses and continuing education of athletic trainers, the bill specifies that a licensee's certificate in cardiovascular pulmonary resuscitation means resuscitation with an automated external defibrillator. Further, the bill adds a provision requiring that a licensee be currently certified by the Board of Certification or its successor agency. These renewal and continuing education changes conform to the changes specified in the initial licensure requirements, above.

School District Athletic Injury Prevention-and-Treatment Program

Current law provides that school districts may establish and implement an athletic injuries prevention and treatment program.[17] In connection with the program, this bill encourages school districts to make available at least one athletic trainer who is certified by the Board of Certification of the National Athletic Trainers' Association in each high school that participates in sports. The bill amends current language in s. 1012.46, F.S., that simply encourages school districts to employ and have available a person trained in prevention and treatment of injuries in athletic activities, to encourage instead the use of such a person who is certified by the Board of Certification. Whereas current statutory language says that it is the goal of the Legislature to have trainers employed in each high school in the state, the bill amends that language to specify that this is the goal of the Legislature only in regards to high schools that participate in sports.

The bill incentivizes the employment of a certified athletic trainer by offering a rebuttable presumption in favor of the school district, in actions for negligence causing injury or death, arising out of a trainer's actions. This rebuttable presumption is only available to the school district, however, if the school district made a good faith effort to comply with, among other things, the provisions requiring certification.

The bill sets forth a legislative intent to ensure a designated standard of care for the recognition, prevention, and rehabilitative treatment of high school athletic injuries in this state. To ensure compliance with this standard of care, the management and implementation of this program should be administered by an entity that has the ability to work with local facilities and school districts to coordinate the training, development, and placement of licensed athletic trainers who are certified by the Board of Certification.

The bill provides an effective date of July 1, 2011.

[17] Section 1012.46(1), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises statutory licensure and license-renewal requirements for athletic trainers. The changes may have a fiscal effect on athletic trainers.

Encouraging greater availability of athletic trainers in high schools may result in a reduction in student injuries and faster rehabilitation, therefore reducing medical costs over the long-term.

C. Government Sector Impact:

School districts may incur additional costs if they choose to employ athletic trainers; however, the bill does not making the employment of trainers mandatory.

VI. Technical Deficiencies:

The bill's title provides that it is an act relating to "high school athletic trainers." However, the bill's provisions also address the regulation of athletic trainers generally. Thus, the Legislature may wish to amend the title to provide that it is an act relating to "athletic trainers."

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on April 12, 2011:

The committee substitute amends the original bill in the following ways:

- Defines "Board of Certification" for purposes of the statutes governing regulation of athletic trainers;
- Revises licensure and license-renewal requirements for athletic trainers;
- Specifies that athletic trainers must be certified by the Board of Certification;
- Adds a requirement to current licensure and renewal requirements that licensees be certified with an automated external defibrillator;
- Removes a requirement in existing law that new applicants for licensure as an athletic trainer complete a continuing education course on HIV and AIDS; and
- Provides that certain members of the Board of Athletic Training must be certified by the Board of Certification.

B. Amendments:

None.

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 Budget Committee

BILL:	SB 1000
INTRODUCER:	Senator Wise
SUBJECT:	Interscholastic and Intrascholastic Sports
DATE:	April 7, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	**Favorable**
2.	Brown	Stovall	HR	**Favorable**
3.	Hamon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill removes from statute the two-year pilot program which provided for sports participation of private middle and high school students of three counties at public high schools within the residential zoning area and makes permanent its applicability statewide.

Student records relating to eligibility, compliance and participation in the program are required to be maintained by the athletic director at the participating Florida High School Athletic Association (FHSAA) member public school. A non-FHSAA private school is required to provide student records to the FHSAA upon request.

The bill limits participation of a non-FHSAA private school student at a public school to those students enrolled at private schools with a student population of no greater than 125 students.

This bill substantially amends the following section of the Florida Statutes: 1006.15.

II. Present Situation:

FHSAA

The Florida High School Athletic Association, established in law in s. 1006.20, F.S., is the governing body of Florida public school athletics. The FHSAA is organized by an executive director, a Board of Directors, a Representative Assembly, and Sectional Committees. Currently, the FHSAA governs 748 public and private member schools.[1] Section 1006.15, F.S., imposes

[1] http://www.fhsaa.org/about

general eligibility requirements for participating students, based on academic thresholds and satisfactory conduct and also addresses participation by private, charter, and home education students.

The Legislature grants the FHSAA authority to adopt bylaws. The FHSAA publishes its bylaws in a handbook, available online.[2]

Participation in Sports by Students at Schools They Are Not Attending

Home education students are authorized to participate in sports at the public school to which the student would be assigned, or a private school under certain conditions.[3] Charter school students are also authorized to participate in sports at the public school to which they would have been assigned.[4]

Pilot Program for Private School Students to Participate in Sports at Public Schools

The 2007 Legislature passed a law which implemented a two-year pilot program to enable middle and high private school students to participate in interscholastic or intrascholastic sports at public schools within the zoning area of the student. Participation was limited to students residing in Bradford, Duval, and Nassau counties.[5] The two years included in the program were the 2008-09 and 2009-10 academic years.[6]

The legislation required certain conditions for participation, including:

- The private school must be a non-FHSAA member that does not offer an interscholastic or intrascholastic program;
- The student meets conduct guidelines established by the FHSAA and participating district school boards;
- Transportation arrangements are to be borne by the parents. The public school, district school board, and the FHSAA are exempt from any related civil liability; and
- The private school student is limited to participation at one public school for each academic year.

In addition to requiring provision of a copy of the guidelines to the Governor, Senate President, and House Speaker, this legislation required the FHSAA and the district school boards to produce a report on specific information about the student participants and to make recommendations on program improvements.

[2] The handbook is available at the FHSA website, at: http://www.fhsaa.org/rules/fhsaa-handbook
[3] s. 1006.15(3)(c), F.S.
[4] s. 1006.15(3)(d), F.S.
[5] ch. 2008-228, L.O.F.
[6] s. 1006.15, F.S.

Program Report

The FHSAA provided a report, dated December 15, 2009, which detailed the following regarding interest and participation:

- As of the date of the letter, 23 students submitted the appropriate application form;
- Of those, 11 were middle school students and 12 were high school students;
- Of the 23, 11 were from Bradford county, 10 were from Duval county, and two were from Nassau county;
- Of the applicants, 15 were approved, two were denied, and six failed to provide additional information required for eligibility determinations; and
- Two students later transferred to the public school in which they participated.

The report also indicated that no problems existed other than coordination between start and end times of the schools and transportation. No recommendations were made regarding expansion or continuation of the program.[7]

III. Effect of Proposed Changes:

Section 1 amends s. 1006.15, F.S., to remove language which established the pilot program and tested private school student sports participation at public schools in certain circumstances. The bill expands the program's current limited application of Bradford, Duval, and Nassau counties to all counties. In addition to maintaining qualifying conditions, the bill addresses the keeping and production of participant student records.

Public schools at which the eligible private school student participates in sports are required to maintain student records of the private school students. A non-FHSAA private school is required to provide student records to the FHSAA upon request. It is up to the individual school to determine how these records are to be kept.

The bill limits participation of a non-FHSAA private school student at a public school to those students enrolled at private schools with a student population of no greater than 125 students.

The bill makes non-FHSAA member private school students eligible to participate in sports at public schools, just as home education students and charter school students are now. These students would be subject to the same standards as other participants.

Section 2 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

[7] Letter to the Governor, Dr. Roger Dearing, Executive Director, FHSAA (December 15, 2009).

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be local school costs associated with maintaining and providing records of students; however, these are expected to be insignificant.

According to the Florida Department of Education, there are 1,600 private schools with a student population of under 125 students. It is unknown how many students would pursue the option provided in this bill and how many would qualify as eligible; however, results of the pilot program suggest that relatively few students would participate.

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

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 Budget Committee

BILL:	CS/CS/SB 1254
INTRODUCER:	Budget Subcommittee on Education Pre-K-12 Appropriations, Education Pre-K-12 Committee and Senator Wise
SUBJECT:	Auditory-Oral Education Programs
DATE:	April 13, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	**Fav/CS**
2.	Armstrong	Hamon	BEA	**Fav/CS**
3.	Hamon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill allows a parent to enroll an eligible child who is deaf or hard of hearing in an auditory-oral education program at a school that meets specific accreditation or certification requirements. The level of services is determined by the child's individual educational (IEP) team or individualized family support (IFS) plan team. The student is eligible for services until the end of the school year in which he or she reaches the age of seven years or grade 2, whichever comes first. The bill also requires the Department of Education to review and revise the matrix of services, which is used to determine exceptional education cost factors.

The bill provides an additional option for parents of a child with a disability who is eligible for the voluntary prekindergarten program. Under the bill, the parent of a child who is deaf or hard of hearing and who has received an implant or assistive hearing device may choose Listening and Spoken Language specialists to provide specialized education services to the child in an appropriate acoustical environment. These specialized education services must be consistent with the child's individual educational plan. Additionally, the bill includes services provided by a certified Listening and Spoken Language specialist to the definition of specialized education services that are necessary for an exceptional student to benefit from education.

This bill substantially amends sections 1002.20, 1002.66, 1003.01 and 1011.62 and creates section 1002.391 of the Florida Statutes.

II. Present Situation:

Exceptional Education
Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.[1] As the state educational agency, the Department of Education (DOE) must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.[2]

Florida statutes defines "Special education services" that are necessary for an exceptional student to benefit from education and provides a list of specialized instructional services for children with disabilities from which a child's parent may select that are consistent with the child's individual educational plan.

Funding
Exceptional Student Education (ESE) programs and services are provided by federal, state, and local funds. Under the Individuals with Disabilities Education Improvement Act (IDEA), federal special education funds are distributed through state grant programs and discretionary grant programs. Part B of the law, the main program, authorizes grants to state and local education agencies to offset part of the costs of the education needs of children with disabilities, ages 3 through 21. It also authorizes pre-school state grants for children with disabilities, ages 3 through 5. Part C authorizes infant and toddler state grants for early intervention services, for infants and toddlers with disabilities from birth through 36 months.[3]

Beginning with the 1997-1998 school year, districts were required to complete a matrix of services for every exceptional student at least annually to calculate school district funding based on the intensity of services provided to ESE students.[4] In 2000, the Florida Education Finance Program (FEFP) for ESE programs was revised to require a matrix for exceptional students funded at the highest level of need, support levels 4 and 5.[5]

Consistent with the services identified through the IEP or IFS, the matrix is used to determine which one of the two cost factors would apply to each eligible exceptional education student and the support level needed. The matrix document contains checklists of services in each of the five

[1] 20 U.S.C. § 1400 et. seq., as amended by P.L. 108-446.
[2] 34 C.F.R. s. 300.149
[3] Part C is administered by the Florida Department of Health (DOH), pursuant to s. 391.308, F.S.
[4] Section 43, ch. 97-307, L.O.F.
[5] ch. 2000-171, L.O.F. Pursuant to s. 1011.62(1)(c), F.S., the Commissioner of Education must specify a matrix of services and intensity levels to be used by districts in the determination of the two weighted cost factors. Levels 1 through 3 represent the lowest level of service. For these students, school districts receive an ESE Guaranteed Allocation in addition to the base funding in the FEFP. The matrix is also used to determine the support levels for these students.

domains (curriculum and learning environment; social/emotional behavior; independent functioning; health care; and communication) and a special considerations section. The sum of these domain ratings and any special considerations points corresponds to one of the two cost factors.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) published two reports related to the use of the matrix. The 2003 report concluded that the matrix on which funding is based had not been effectively or consistently implemented by school districts.[6] To improve the accuracy of district application of the funding matrix and help ensure that state ESE funds are appropriately used, OPPAGA recommended that the DOE and the Florida Diagnostic Learning and Resources System provide additional training to district-level ESE directors on properly implementing the funding matrix. OPPAGA also recommended that the DOE create a stronger accountability system to ensure the accuracy of district classifications of students within the matrix, thereby ensuring correct district funding amounts.

Subsequently, OPPAGA noted that stronger accountability is still needed. Specifically, the report noted that the department had not made changes to its monitoring process to better ensure the accuracy of the highest funded matrix categories. Past department reviews indicate a potential for significant over-funding.[7] OPPAGA recommended that the DOE provide additional training for personnel who complete the training at the school site and that future editions of the matrix handbook provide needed levels of detail with examples to meet district needs.

Children with Hearing Impairments

Current law provides for a statewide program of universal hearing impairment screening, identification, and follow-up care for newborns and infants.[8] The law requires licensed hospitals or other state licensed birthing facilities to provide for universal hearing screening for all newborns, prior to discharge from the facility. In the instance of a home birth, the health care provider in attendance is responsible for referral for the hearing screening. The goal is to screen all newborns for hearing impairment in order to alleviate the adverse effects of hearing loss on speech and language development, academic performance, and cognitive development.

Children with disabilities, including those who are deaf or hard-of-hearing, may receive ESE services if they meet specific requirements. Educational options for students with hearing impairments have expanded significantly in the last 30 years in that students are increasingly attending traditional schools and being educated in general education classrooms. [9] Other developments have changed the classroom experiences of students with hearing impairments in the last three decades as well, including the evolution of implant technology and technologies such as visual or text communication devices and speech-to-print software.

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[6] *Special Report: Exceptional Student Education Population Grows Dramatically; More Accountability and Better Training Needed to Implement Funding Matrix*, OPPAGA Report No. 03-40, July 2003.
[7] *Steps Taken to Implement the Exceptional Student Education Funding Matrix, But More Monitoring Needed,* OPPAGA Report No. 08-24, April 2008.
[8] s. 383.145, F.S.
[9] *The Secondary School Experiences and Academic Performance of Students With Hearing Impairments*, U.S. Department of Education Institute of Education Sciences National Center for Special Education Research, February 2011.

For a student who is deaf or hard-of-hearing, the IEP or IFS team must consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.[10]

III. Effect of Proposed Changes:

Students

A parent would be permitted to enroll a child who is deaf or hard of hearing[11] in an auditory-oral education program, which is defined as a program that develops and relies solely on listening skills and uses an implant or assistive hearing device to rely on speech and spoken language skills as the method of communication. A child is eligible for the program if he or she is a resident of the state, has received an implant or assistive hearing device, and is between the ages of 3 and 7 or between the ages of 2 and 7, if the district serves children under 3. The level of services would be determined by the child's IEP or IFS team. The student would be eligible for services until the end of the school year in which he or she is seven years old or reaches grade 2, whichever comes first.

Providers

The bill permits a parent to enroll his or her child in a program at a public or private school that is accredited by OPTION Schools, Inc., or that has a supervisor or a majority of faculty who provides direct services and meet Listening and Spoken Language Specialists (LSLS) certification requirements.

OPTION Schools Inc. is an international coalition of schools offering auditory-oral education for children who are deaf or hard of hearing. To be eligible for membership, a school must meet the following criteria: [12]

- Support the philosophy of listening and spoken language education;
- Operate listening and spoken language classes for children who are deaf and hard of hearing in an exclusively auditory-oral environment; and
- Be approved, licensed, or accredited by a recognized agency.

Member schools may be accredited through the organization's accreditation process.[13] In the past two years, three schools have been accredited.[14] The Clarke School campus in Jacksonville and the Debbie School are certified by OPTION Schools, Inc., and are in the process of becoming accredited.[15]

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[10] Rule 6A-6.03028(3)(g)9., F.A.C.
[11] *See* Rule 6A-6.03013, F.A.C., and 20 U.S.C.A. § 1401(3)(A)(i).
[12] OPTION Schools, Inc., by-laws, as of March 3, 2011. *See* http://auditoryoralschools.org/gov.aspx.
[13] *OPTION Schools Accreditation, 2003*, on file with the committee.
[14] Sunshine Cottage School (Texas), Clarke East School (Boston), and Listen and Talk School (Seattle, Washington). The organization has certified 50 schools in the past. E-mail, March 15, 2011, on file with the committee.
[15] E-mail, March 15, 2011, on file with the committee. The Clarke Schools for Hearing and Speech provide children who are deaf and hard of hearing with listening, learning, and spoken language skills. *See* http://www.clarkeschools.org/about/welcome. The Debbie Institute, a division of the University of Miami Mailman Center

The AG Bell Academy for Listening and Spoken Language is an independently governed, subsidiary corporation of the Alexander Graham Bell Association for the Deaf and Hard of Hearing.[16] The academy certifies individuals as either LSLS auditory-verbal therapists or LSLS auditory-verbal educators.[17] To be eligible for certification, an applicant must meet the eligibility requirements (formal education, credential, professional experience, and post-graduate study), earn approved LSLS continuing education credits, and work with a LSLS-certified mentor before taking the LSLS written test.[18] In order to be certified, an applicant must have a master's degree, or international equivalent post-baccalaureate degree or diploma, in audiology, speech-language pathology, or education of the deaf and hard of hearing.[19] As of March 3, 2011, there were 15 LSLS certified professionals in Florida.[20]

The number of schools that will meet the accreditation or certification requirements is unknown. The bill does not require schools to meet these requirements. For the 2010-2011 school year, the DOE reported that six of 55 districts contracted with a private provider for an auditory-oral program.[21] Forty-five districts indicated that they did not have any staff members that meet the LSLS certification requirements.[22] According to the DOE, Clay and St. Johns County School Districts have a contract with the Clarke School.[23] Under the contract with St. Johns, the students were age two to nine. Eight of the nine students served were age 5 or younger. In Clay, 11 students were served (eight prekindergarten students, two kindergarten students, and one first grade student).

Specialized instructional services for children with disabilities

The bill provides an additional option for parents of a child with a disability who is eligible for the voluntary prekindergarten program. Under the bill, the parent of a child who is deaf or hard of hearing and who has received an implant or assistive hearing device may choose Listening and Spoken Language specialists to provide specialized education services to the child in an appropriate acoustical environment. These specialized education services must be consistent with the child's individual educational plan. Additionally the bill includes services provided by a certified Listening and Spoken Language specialist to the definition of specialized education services that are necessary for an exceptional student to benefit from education.

Matrix of Services

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for Child Development, is a center for early intervention research, training and service and offers an auditory-oral program. *See* http://pediatrics.med.miami.edu/debbie-school/education-services/auditory-oral-education-program.

[16] *See* http://agbell.org/NetCommunity/Document.Doc?id=298.

[17] *Id.*

[18] *Id.*

[19] *2011 Certification Handbook*, available at http://nc.agbell.org/NetCommunity/Document.Doc?id=638. An individual seeking certification must hold a current license or credential to practice audiology, speech-language pathology or education of the deaf or hard of hearing in their geographic locale.

[20] *See* http://agbell.org/NetCommunity/Page.aspx?pid=350.

[21] DOE, January 27, 2011, on file with the committee. The survey was conducted between January 17, 2011 and January 21, 2011.

[22] *Id.* One district reported that it had LSLS certified staff. Nine reported that it was unknown.

[23] DOE, January 20, 2011. The Clarke Schools for Hearing and Speech is an auditory/oral program, which teaches children to listen and speak, rather than use sign language. Clarke's Jacksonville campus provides a variety of programs and services for children from birth to age 7. *See* http://www.clarkeschools.org/

Under the bill, the Department of Education would review and revise the matrix of services, which is used to determine exceptional education cost factors. The changes would have to be implemented prior to the 2011-2012 school year.

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:

Private schools with auditory-oral programs that wish to be accredited by OPTION Schools, Inc., will incur the cost of membership and accreditation. The costs related to accreditation are approximately $5,000.[24] Accreditation must be renewed every 5 years.

Individuals who choose to be LSLS certified will incur costs. The LSLS certificate is valid for two years. The certification related fees include:[25]

Certification Related Fees	**Members**	**Non members**
Application and Certification[26]	$295	$395
Preliminary Review of Academic Background	$40	$40
Request for review of continuing education credits	$20	$20
Certification Renewal (every two years)	$120	$120

C. Government Sector Impact:

Public schools with auditory-oral programs that wish to be accredited by OPTION Schools, Inc., will incur the cost of membership and accreditation.

[24] E-mail, March 15, 2011, on file with the committee.
[25] *Id.*
[26] This includes one exam session.

The Department of Education's review of the descriptions of the services and supports included in the matrix of services may impact the FEFP cost factors over time. However, the overall fiscal impact is expected to be insignificant.

VI. Technical Deficiencies:

In public elementary schools, instructional personnel are not generally referred to as "faculty."

VII. Related Issues:

None.

VIII. Additional Information:

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

CS for CS by Budget Subcommittee on Education Pre-K - 12 Appropriations on April 13, 2011:
The committee substitute adds Listening and Spoken Language specialists and an appropriate acoustical environment for any child who is deaf or hard of hearing who has received an implant or assistive hearing device to the list of special educational services from which a child's parent may select that is consistent with the child's individual educational plan.

CS by Education Pre-K – 12 on March 17, 2011:
The committee substitute corrects a technical reference to the AG Bell Academy for Listening and Spoken Language.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 1696
INTRODUCER:	Budget Subcommittee on Education Pre-K-12 Appropriations, Education Pre-K – 12 Committee, and Senator Wise
SUBJECT:	Public School Accountability
DATE:	April 13, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	Matthews	ED	**Fav/CS**
2.	Armstrong	Hamon	BEA	**Fav/CS**
3.	Hamon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill is a comprehensive public school accountability package which will implement reforms in the following areas:

- Virtual Education—The bill requires school districts to provide students access to Florida Virtual School (FLVS) courses during and after the normal school day to provide uniformity among school districts and increase student access to the FLVS.
- Gift Ban—The bill prohibits school board members and their relatives from soliciting or accepting any gift in excess of $50 from any person, vendor, potential vendor, or other entity doing business with the school district.
- Voluntary Prekindergarten Program (VPK) and kindergarten screening—The bill requires a VPK provider that is on probation and who seeks a good cause exemption to administer the statewide VPK enrollment screening, which the Department of Education (DOE) must adopt, to newly admitted VPK students. The provider must pay for the screening. The bill also repeals a numeric limitation on providers who fail to meet the kindergarten readiness rate.

- Digital Curriculum—The bill authorizes school districts to implement a digital curriculum for students in grades 6-12. DOE would develop a model curriculum to serve as a guide.
- Career and Professional Academies—The bill specifies criteria for middle school career and professional academies relating to alignment to high school career and professional academies, an opportunity to earn an industry certification and partnerships with the business community.
- Student Assessment and School Accountability—The bill:
    - Repeals the requirement for certain middle school students to take the Algebra I end-of-course assessment (EOC) in 2010-2011;
    - Revises the middle school grading formula to add the performance of students in high school courses with statewide standardized assessments and students who earn designated industry certifications;
    - Requires passage of civics for middle school promotion;
    - Provides that a determination of school grades for the Opportunity Scholarship Program (OSP) will be based on statewide assessments alone;
    - Provides that for purposes of calculating the performance category under differentiated accountability, the school grade as determined by statewide assessments would be used in determining the appropriate performance category;
    - Provides for the assignment of scores from hospital/homebound students to be assigned to their home school;
    - Authorizes the Commissioner of Education to revise statewide testing dates; and
    - Provides for postsecondary preparatory courses for high school students with designated academic deficiencies.
- Supplemental Education Services (SES)—The bill provides that a school board may include in its district contract with a provider a requirement to use a uniform standardized assessment if the Department of Education is notified of its intent before services are provided to the student.
- Students with Disabilities—The bill:
    - Authorizes the waiver of certain EOC assessment requirements for students with disabilities;
    - Establishes training, accountability and reporting requirements for students who are restrained and secluded;
    - Provides that a McKay scholarship student who enters a Department of Juvenile Justice detention center for less than 21 days would not lose the scholarship; and
    - Adds listening and spoken language specialists to eligible instructional services for exceptional students.
    - Requires the Department of Education to review and revise the matrix of services for exceptional students for implementation before the beginning of the 2012-2013 school year.
- Budget Transparency—The bill requires school districts to post each proposed, tentative, and official budget on their websites and encourages school districts to provide additional information on their websites.

The bill substantially amends sections 1001.20, 1001.42, 1002.37, 1002.38, 1002.39, 1002.45, 1002.66, 1002.67, 1002.69, 1002.71, 1002.73, 1003.01, 1003.4156, 1003.428, 1003.491,

1003.493, 1003.573, 1003.575, 1008.22, 1008.30, 1008.33, 1008.331, 1008.34, 1011.01, 1011.03, 1011.62, and 1012.39 of the Florida Statutes.

This bill creates sections 1001.421, 1003.4203, 1003.4935, and 1011.035 of the Florida Statutes.

II. Present Situation:

Virtual Education

The Florida Virtual School (FLVS) offers individual course enrollments to all Florida students in grades 6 through 12, including public school, private school, and home education students.[1] School districts are required to provide students with access to enroll in courses available through the FLVS during or after the normal school day and through summer school enrollment.

Virtual education is also provided through school district virtual instruction programs.[2] Each school district is required to provide a full-time virtual instruction program for students in kindergarten through grade 12 and a full-time or part-time virtual instruction program for students in grades 9 through 12 enrolled in dropout prevention and academic intervention programs, Department of Juvenile Justice programs, core-curricula courses to meet class size requirements, or community colleges offering a school district virtual instruction program.[3]

According to the DOE, "anytime access" has been inconsistently implemented by school districts. Thus, students in some schools have not been allowed to take courses from FLVS, especially as part of their regular school-day curriculum. In these cases, student choice is limited.

Gift Ban

Public officers, employees of agencies, local government attorneys, and candidates for nomination or election are not allowed to accept anything of value, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney or candidate would be influenced by the gift.[4] School board members, as elected officials, are included in the definition of public officers.[5] In addition, school board members, school superintendents, and any business organization in which a school board member or school superintendent has any financial interest are prohibited from contracting with a school district for materials, supplies, and services needed.[6] School board members[7] must also report any gifts that exceed $100 in value, for which compensation was not "provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to $100 or less."[8]

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[1] *See* s. 1002.37, F.S.; *see also* Florida Department of Education, Florida Public Virtual Schools, *FLVS FAQ*, http://www.fldoe.org/Schools/virtual-schools/faqs.asp; last checked March 17, 2011. The FLVS is required to be administratively housed within the Office of Technology and Information Services (OTIS) in the DOE.
[2] s. 1002.45(1)(a), F.S.
[3] s. 1002.45(1)(b)2., F.S.
[4] s. 112.313, F.S.
[5] s. 112.313(1), F.S.
[6] s. 1001.42(12)(i), F.S.
[7] School board members are considered "reporting individuals" for purposes of filing full or limited public disclosure of their financial interests, s. 112.3148(2)(e), F.S.
[8] s. 112.3148(8)(a), F.S.

Voluntary Prekindergarten (VPK)
The 2004 Legislature established the Voluntary Prekindergarten Education (VPK) Program, a voluntary, free prekindergarten program offered to eligible four-year old children in the year before admission to kindergarten.

Within the first 30 days of an academic year, school districts must screen each kindergarten student to determine his or her readiness for kindergarten. From the results of this screening, the kindergarten readiness rate is calculated for each VPK provider.[9] If a provider falls below the minimum readiness rate for two consecutive years, the provider is placed on probation and is required to take certain corrective actions, including the use of a curriculum approved by the DOE.[10] If a provider remains on probation for two consecutive years without receiving a good cause exemption, the provider loses eligibility to deliver the VPK.[11] A good cause exemption may be granted for a provider that meets certain criteria established by the State Board of Education (SBE).[12]

Career and Professional Academies
The Career and Professional Education (CAPE) Act was enacted by the Florida Legislature to attract and retain targeted, high-value industries and to develop a knowledge-based workforce.[13] Each district school board must develop, in collaboration with the local workforce board and the area postsecondary institutions, a 5-year strategic plan to meet local and regional workforce demands through career academies.[14]

For each student enrolled in a career and professional academy who graduates with a standard high school diploma and who earns a certification included on the "Industry Certification Funding List," the district of instruction may earn 0.3 full-time equivalent (FTE) student membership for the following year's funding calculation in the Florida Education Finance Program (FEFP).[15] Industry certifications increased from 803 in 2007-2008 to 8,629 in 2009-2010.[16] Industry Certification bonus FTE funding in the FEFP is roughly $4 million for 2010-2011.

CAPE academy students perform better than other high school students and have higher grade point averages, lower absentee rates, fewer disciplinary actions, lower dropout rates, higher rates

[9] The kindergarten readiness rate is the percentage of students that participated in the provider's VPK program that are deemed ready for kindergarten. Currently, the readiness rate may not be set higher than a rate below which 15 percent of the VPK providers would fall. See s. 1002.69(6)(b), F.S.
[10] s. 1002.67(3)(c), F.S.
[11] s. 1002.69(7), F.S.
[12] A provider may receive an exemption if it can show learning gains of children served in the VPK program, if the provider has served at least twice the statewide percentage of children with disabilities or children identified as limited English proficient, and if the provider shows that local and state health and safety requirements are met. A provider must still take corrective actions after receiving a good cause exemption. See s. 1002.69(7)(b), F.S.
[13] ss. 1003.491-1003.494, F.S.
[14] s. 1003.491(2), F.S.
[15] s. 1011.62(1)(p), F.S. Certifications earned through dual enrollment are not eligible for additional FTE. The additional FTE may not exceed 0.3 per student (i.e., no repeat allocations for additional certifications).
[16] DOE presentation to the Senate Pre-K – 12 Education Appropriations Committee, March 15, 2010, on file with the committee.

of standard diplomas awarded, higher rates of enrollment in advanced courses, and higher eligibility rates for Bright Futures Scholarships.[17] While high school students have the option to earn industry certifications, there is little opportunity for students to earn rigorous industry certifications in the middle grades. Furthermore, middle school grades are determined solely on the results of statewide assessments without additional incentives to encourage more rigorous and engaging coursework, such as courses offered through a career and professional academy.

School Accountability

The school grades for public schools in Florida are determined each year based upon a point system of student achievement and annual learning gains.[18] Middle school grades are currently based upon student scores on the FCAT.

Beginning with the 2009-10 school year, the calculation for high school grades incorporated other factors in addition to student achievement and annual learning gains on statewide standardized assessments. These factors include a high school's graduation rate, a high school's graduation rate of certain at-risk students, postsecondary readiness, and student performance and participation in Advanced Placement, International Baccalaureate, dual enrollment, industry certification, and Advanced International Certificate of Education courses.[19]

The school grade is used to determine categories of differentiated accountability and eligibility for the Opportunity Scholarship Program (OSP). Differentiated accountability is a system of categorizing schools based upon student achievement and determining appropriate interventions. Each category is based upon the school's grade, progress towards adequate yearly progress under the federal No Child Left Behind requirements, and changes in student performance. School grades are also used to determine if a child is eligible for an Opportunity Scholarship. The OSP provides parents whose children are assigned to a school that has received an "F" twice in a 4-year period the opportunity to send their children to a higher performing public school.

Supplemental Education Services (SES)[20]

The No Child Left Behind Act (NCLB) in federal law prescribes that any public school that fails to make Adequate Yearly Progress (AYP) for two consecutive years must provide to students the following year both school choice with transportation and supplemental educational services from state-approved providers.[21] As part of the application process, current law requires SES providers to identify the specific assessment to be administered and to describe the procedures and timelines to be used to evaluate, monitor, and report each student's progress toward meeting the goals as stated on the student learning plan.[22] Providers must describe how diagnostic assessment data will be used to identify the student's knowledge and skills gaps and set measurable goals for the student learning plan. Concerns have been raised that there is not

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[17] *The Ninth Grade--A Precarious Time for the Potential Dropout. ERIC Digest No. 34*, available at http://www.ericdigests.org/pre-926/ninth.htm. See also http://www.edweek.org/rc/articles/2007/10/03/sow1003.h27.html.
[18] s. 1008.34(3), F.S.
[19] s. 1008.34(3)(b)2., F.S.
[20] *See* s. 1008.331(2), F.S.
[21] http://www.fldoe.org/faq/default.asp?ALL=Y&Dept=307&ID=831, Florida Department of Education, Bureau of Student Assistance.
[22] SES provider application, available at: http://www.fldoe.org/board/meetings/2008_02_19/Item%202%20Form%20SES%20100.pdf.

sufficient accountability in the SES provider program because the providers select and score the pre- and post-assessment tool to measure student progress towards the student learning plan.

Student Assessment

The Commissioner of Education is required to design and implement a statewide program of educational assessment and to establish schedules for the administration of the assessments and reporting of student test results. The schedule for reporting student test results on the FCAT is no later than the week of June 8 and for end-of-course assessment results no later than a week after the school district completes testing for each course.[23]

Beginning in the 2011-12 school year, entering ninth grade students must take and pass the statewide end-course-assessment (EOC) for Algebra I, to earn course credit.[24] Although students have been required to take and pass Algebra I to earn high school credit, students were not previously required to take and pass an EOC associated with the course.[25]

Beginning in the 2010-11 school year, there will no longer be a ninth grade Mathematics FCAT and beginning in the 2011-12 school year, there will no longer be a tenth grade Mathematics FCAT.[26] Because federal law requires that all public school students be tested in reading and mathematics at least once at the elementary, middle, and high school level,[27] students who earned high school credit for Algebra I while in middle school in the 2007-08 through 2009-10 school years would be required to take the Algebra I EOC, as the tenth grade Mathematics FCAT would no longer be administered.[28] Although students who take high school level courses in the middle grades will, most likely, enroll in sequentially more rigorous courses, some school districts raised concerns that the lapse in time between taking the course in middle school and sitting for the EOC assessment in high school would be unfair. In addition, these students will have already earned their course credit in Algebra I and do not need to pass the EOC assessment to earn course credit or graduate from high school. Accordingly, there were concerns that these students had no reason to perform well, yet their test results would be included in the school's grade. As a result, the Department of Education submitted a request to the U.S. Department of Education for a waiver from the federal law for the specific cohort of students who are affected. The waiver was granted on January 19, 2011.[29]

Students in grades 6 through 12 who score a Level 1 on FCAT Reading must be enrolled in and complete an intensive reading course the following year. The reading needs of a student that scores a Level II on FCAT Reading must be assessed to determine whether the student needs to be placed in an intensive reading course or a content area course in which reading strategies are delivered.

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[23] The Commissioner is also required to direct Florida school districts to participate in the administration of the National Assessment of Educational Progress (NAEP), or a similar national assessment program. See s. 1008.22(2), F.S.

[24] s. 1008.22(3)(c) 2.a.(I), F.S.

[25] s. 1008.22(3)(c)2.a.(I), F.S.

[26] s. 1008.22(3)(c)1., F.S.

[27] *See* s. 1111(b)(3)(C)(v)(I)(cc) of the Elementary and Secondary Education Act (ESEA), available at: http://www2.ed.gov/policy/elsec/leg/esea02/pg2.html.

[28] s. 1008.22(3)(c)2.a.(I), F.S.

[29] Letter to Commissioner of Education Eric Smith from the Assistant Secretary of the U.S. Department of Education, on file with the committee (Jan. 19, 2011). The DOE estimates that approximately 39,600 students completed Algebra I in the middle grades and will not take the 10th grade Mathematics FCAT.

In order for students to be promoted to high school, the student must successfully complete three middle school or higher courses in English, mathematics, science, and social studies, including one semester of civics education, and one course in career and education planning to be completed in grades 7 or 8.[30] Beginning in the 2012-13 school year, the required civics course must include an end-of-course assessment. By the 2014-15 school year, all students must pass the civics EOC assessment to pass the course and receive course credit.[31]

Students with Disabilities

Current law does not provide for an exemption for middle school students with disabilities from end-of-course assessments, however, the law does include a provision to waive end-of-course assessments for high school students with disabilities when the IEP committee determines that an end-of-course assessment cannot accurately measure the student's abilities, taking into consideration all allowable accommodations.

Section 1003.573, F.S., establishes documentation, reporting, and monitoring requirements for the use of seclusion and restraint by school districts on students with disabilities.

McKay Scholarship Program

Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school. [32] To be eligible for a McKay scholarship to attend a private school, a K-12 student with a disability[33] must have an individual education plan (IEP) and have spent the prior school year in attendance at a Florida public school.[34] Prior school year in attendance means that the student was enrolled and reported by a school district for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys in kindergarten through grade 12, which includes time spent in a Department of Juvenile Justice (DJJ) commitment program, if funded in the FEFP.[35]

For purposes of continuity of educational choice, the scholarship remains in force until the student returns to a public school, graduates from high school, or reaches the age of 22, whichever occurs first.[36] Under current administrative rule, a student who enters a DJJ detention center for less than 15 days is not considered to be returning to public school.[37]

[30] s. 1003.4156, F.S.
[31] s. 1008.22(3)(c), F.S.
[32] s. 1002.39, F.S.
[33] s. 1002.39(1), F.S.
[34] s. 1002.39(2), F.S. There are two exceptions to the requirement for prior year in attendance.
[35] *Id.*
[36] s. 1002.39(4), F.S.
[37] Rule 6A-6.0970(3), F.A.C.

Assistive Technology Devices[38]
Presently, certain agencies are required to enter into interagency agreements, as appropriate, to ensure the transaction of assistive technology devices in accordance with the student's individualized family support plan, individual support plan, or an IEP.[39] The interagency agreements help the agencies to coordinate services for students with disabilities, including a determination of the need for assistive technology, the content of the transition plan, and the post-school support required to meet the student's transition goals.[40]

Budget Transparency
District school boards are currently required to post a summary of their tentative budget online and advertise it in a newspaper of general circulation in the district.[41]

III. Effect of Proposed Changes:

Virtual Education
The bill requires school districts to provide students access to FLVS courses during and after the normal school day. This change provides uniformity among school districts and increases a student's access to the FLVS.

The bill amends the length of time a virtual instruction provider maintains its approved provider status. The bill changes the date of approval for virtual instruction providers to three school years after the date of approval. Because providers are currently approved in February, changing the length of approved provider status to correlate with the school year will prevent the loss of approved status in the middle of a school year.

The bill also eliminates the requirement that the FLVS be administratively housed within the DOE.

Gift Ban
The bill expands the current prohibition to include any gift in excess of $50 to a school board member, regardless of whether the gift was accepted to influence a school board member's vote. The bill also expands the gift ban to apply to the relatives of school board members.[42] A gift is

[38] Assistive technology devices are defined as manual and motorized wheelchairs, motorized scooters, voice-synthesized computer modules, optical scanners, talking software, Braille printers, environmental control devices for use by a person with quadriplegia, motor vehicle adaptive transportation aids, devices that enable persons with severe speech disabilities to, in effect, speak, personal transfer systems, and specialty beds, including a demonstrator, that a consumer purchases or accepts transfer of in this state for use by a person with a disability. See s. 427.802, F.S.
[39] The required agencies include the Department of Health, the Department of Education, and the Agency for Workforce Innovation. See s. 1003.575, F.S.
[40] Florida Department of Education, Technical Assistance Paper, The Transfer of Assistive Technology to Home, Other Districts, Other Schools, and Other Agencies (Dec. 2005), available at: http://www.fldoe.org/ese/pdf/y2006-6.pdf.
[41] s. 1011.03, F.S.
[42] Section 112.312(12), F.S., defines "relative" to mean: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the school board member, or any other natural person having the same legal residence as the school board member.

defined to include real property, personal property, preferential rate or terms on debt, forgiveness of indebtedness, transportation, food or beverage, membership dues, entrance fees, plants, flowers, or floral arrangements.

The bill prohibits school board members and their relatives from soliciting or accepting, directly or indirectly, any gift from any person, vendor, potential vendor, or other entity doing business with the school district. This change imposes stricter ethics requirements on school board members and their relatives.

Digital Curriculum
The bill authorizes school districts to implement a digital curriculum for students in grades 6-12. DOE would develop a model curriculum as a guide.

Voluntary Prekindergarten (VPK)
The bill requires the SBE to periodically review and revise the performance standards for statewide kindergarten screening and to align these standards to the standards for student performance on statewide assessments. The bill authorizes nonpublic schools to administer the kindergarten readiness screening to each kindergarten student in nonpublic school who was enrolled in VPK.

The bill requires a VPK provider to be placed on probation if it fails to meet the minimum kindergarten readiness rate established by the State Board of Education. Previously, a provider had to fail to meet the standards for two consecutive years. This change will require providers to begin corrective actions sooner and will thus improve the quality of VPK providers.

The methodology for calculating each VPK provider's readiness rate must include the percentage of students who meet all state readiness measures, and the DOE must adopt procedures for annually reporting the percentage of students who meet all kindergarten readiness measures. The bill eliminates a restriction placed on increasing the kindergarten readiness rate by removing the requirement that no more than 15 percent of the VPK providers can fall below the minimum readiness rate. Thus, readiness rates would no longer be tied to the number of VPK providers that fail to meet them, and the SBE can set the rate based on its determination of readiness.

The bill requires the DOE to adopt a statewide VPK enrollment screening to assess the readiness of each student for kindergarten upon the student's entry into a VPK program that is on probation and seeking a good cause exemption. A VPK provider that is seeking a good cause exemption must pay for the screening. Each parent enrolling a child in a VPK program must submit the child for the enrollment screening if required to do so by the provider. The department must adopt procedures for implementation of the VPK screening, costs associated with administration of the VPK screening, and determination of student learning gains as assessed by the VPK and kindergarten readiness screening.

The bill amends the criteria the SBE may use to grant good cause exemptions for public and private VPK providers by eliminating the exemption for providers serving at least twice the statewide percentage of children with disabilities or those identified as limited English proficient. Instead, good cause will be determined by learning gains through a VPK enrollment

screening and the statewide kindergarten screening. This change shifts the emphasis for a good cause exemption from simply the type of students a provider serves (inputs) to the extent of student learning gains (outputs).

Students with Disabilities
The bill authorizes the individual education plan (IEP) committee to waive the EOC assessment results for students with disabilities, if the IEP committee determines that the EOC assessment cannot accurately measure the student's abilities even after considering all allowable accommodations.[43] This exemption will allow middle grade students with disabilities the opportunity to pass a course and receive course credit without passing the EOC assessment; however, the student is still required to take the assessment. The bill requires any school with an IEP team to complete an assistive technology assessment within 60 school days of receiving a request to determine the most appropriate assistive technology needed to maintain or improve the functional capabilities of the student. The bill also adds listening and spoken language specialists to eligible instructional services for exceptional students.

Under the bill, the Department of Education (DOE) must establish by October 1, 2011, school district standards for documenting and reporting the use of manual restrains and seclusion. School districts would be required to provide training on the selective use of restraints and seclusion of students when appropriate, report incidents disaggregated by student ethnicity, frequency of repeat incidents for individual students, and the type of restraint used.

In addition, the bill requires the DOE to review and revise the provisions of the matrix of services for exceptional student education students for implementation by the beginning of the 2012-2013 school year. Any revision to the matrix may impact funding through the Florida Education Finance Program.

McKay Scholarship Program
The bill provides that a McKay scholarship student who enters a Department of Juvenile Justice detention center for less than 21 days would not lose the scholarship. This provision will prevent a student from losing their McKay scholarship for a temporary stay at a DJJ facility.

Career and Professional Academies
In an effort to engage students at an earlier age, prepare them for increasingly demanding coursework, and attain higher level industry certifications, the bill would expand CAPE opportunities, including attainment of industry certifications, to students in middle grades. The strategic 5-year plan developed and approved by school districts, workforce boards and agencies, and postsecondary institutions must include plans to implement career and professional academies at the middle grades. High school students who begin their career academy exposure in the middle grades would be prepared to earn additional and more demanding certifications at the high school level.

[43] To be eligible for this waiver, a student must be documented as having an intellectual disability, a hearing impairment, including deafness, a speech or language impairment, a visual impairment, including blindness, an emotional or behavioral disability, an orthopedic or other health impairment, an autism spectrum disorder, a traumatic brain injury, or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia.

The bill also specifies that a secondary school must discontinue enrollment for the CAPE academy the following year if the passage rate falls below 50 percent on the academy-related industry certification

Student Assessment

The bill authorizes the commissioner to direct school districts to participate in the administration of an international assessment, in addition to the administration of the National Assessment of Educational Progress (NAEP). This will authorize the commissioner to direct school district participation in assessments like the Program for International Student Assessment (PISA) and the Trends in International Mathematics and Science Study (TIMSS) assessment. The bill also provides the commissioner flexibility to adjust the administration of statewide assessments under exigent circumstances.

The bill eliminates the requirement that all students who took Algebra I in middle school during the 2007-08 through 2009-10 school years take the EOC assessment in the 2010-11 school year. These students are no longer required to take the EOC assessment because the DOE obtained a waiver from the U.S. Department of Education. Without removing this requirement, approximately 39,600 students will unnecessarily be required to take the Algebra I EOC assessment in May. The bill also authorizes middle school principals to determine whether a student that transfers to the middle school and has already completed a civics education course prior to transfer must take the civics education EOC assessment. The middle school principal must make this determination in accordance with SBE rules.

School Accountability

The bill requires the school grade for schools comprised of middle school grades 6 through 8 or grades 7 and 8, to include the performance of its students enrolled in Algebra I, geometry, and biology. The determination of middle school grades would also include middle school students' attainment of specific industry certifications, as data becomes available. This provision would encourage middle students to enroll in more challenging content and school districts to provide such offerings.

The bill also requires the achievement score and learning gains of a student designated as hospital or homebound to be assigned to that student's home school. A home school is defined as the school the student would be assigned if the student were not assigned to a hospital or homebound program. This provision would ensure that a school district retains its focus on helping these students succeed.

The bill changes how school grades are determined for purposes of differentiated accountability. The bill requires high school grades to be based solely upon the portion of school's grade derived from statewide assessments, including the FCAT and end-of-course assessments. The formula for calculating high school grades changed in the 2009-10 school year to incorporate other factors, including high school graduation rates and student participation and performance in industry certifications and in certain accelerated courses. Because of the additional factors included in the high school grading formula, the DOE will not be able to appropriately identify intervention options based on the school's performance levels until after the following school year begins. By changing the law to focus on statewide assessment results, which are provided before the end of the school year, a school may be more quickly and appropriately identified.

This allows the school districts to more timely provide the necessary type and intensity of intervention for schools in need of improvement.

The bill changes how school grades are determined for purposes of Opportunity Scholarship Program eligibility by solely using statewide assessments. Because incorporating the additional factors into the high school grading formula takes more time, a parent must wait until as late as November to determine if their child is eligible to participate in the OSP. Changing how the school grades are calculated for the OSP will allow parents to decide if they want their child to participate in the OSP before the school year begins.[44]

Supplemental Education Services (SES)
The bill provides that a school board may include in its district contract with a provider a requirement to use a uniform standardized assessment if the Department of Education is notified of such intent before services are provided to the student. This may promote consistency in establishing baseline student achievement information and subsequent learning gains achieved by students being served by SES providers.

Budget Approval
The bill removes the requirement that the commissioner review the annual operating budgets for district school boards and the Florida College System institutions. Some school districts have attempted to hold the commissioner and the DOE accountable when problems existed with their budgets because the budgets had, in theory, been reviewed and approved. By removing the requirement to review and approve, the school districts will be fully accountable for their budgets.

Budget Transparency
The bill requires district school boards to post on their websites each proposed, tentative, and official budget in terms that are easily understandable and in a manner that is easily accessible to the public.[45]

School boards are also encouraged to post timely information as to when a budget hearing will be conducted; each contract between the district school board and the teacher's union; contracts between the district school board and noninstructional staff; recommendations of the citizens'

[44] According to the DOE, prior to 2010, these grades have been available mid-summer, allowing time for parent notification and student transfers prior to the beginning of the following school year. Opportunity Scholarship Program eligibility for high schools was unclear as of the opening of the 2010-11 school year, since high school grades were not yet available due to changes in s. 1008.34, F.S. Attempts to identify eligible high schools based on statewide assessments led to some confusion among parents and district personnel, since some identified schools anticipated a performance grade category of "D" or above. Additionally, appropriate transfer schools (ones performing higher than the eligible school, but not less than performance grade category "C") could not be confidently identified. By specifying that high school grades will be based on statewide assessments, this language could allow identification of Opportunity Scholarship-eligible high schools to be made early enough to allow districts sufficient time for parent notification and student transfer. *See* Department of Education legislative bill analysis, on file with the committee.

[45] District school boards are currently required to post a summary of their tentative budget online and advertise it in a newspaper of general circulation in the district.

budget advisory committee; and current and archived video recordings of each district school board meeting and workshop.[46]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The cost of the VPK pre-enrollment screening will be incurred by private providers that are on probation.

C. Government Sector Impact:

According to the DOE, changes to school improvement categories under the bill may affect the number of schools that qualify for School Recognition Awards. In 2010-11 each qualifying school was awarded $75 per student for School Recognition, with total program funding at $119,824,250.[47]

In addition, the bill requires the DOE to review and revise the provisions of the matrix of services for exceptional student education students for implementation by the beginning of the 2012-2013 school year. Any revision to the matrix may impact funding through the Florida Education Finance Program; however, it is expected to be minimal.

VI. Technical Deficiencies:

None.

[46] These items are included to address some of the issues raised by the grand jury regarding the wasteful utilization of resources and contracts made by the Broward County School Board. *Final Report of the 19th Statewide Grand Jury in the Supreme Court of the State of Florida*, Case No: SC09-1910, at 3 and 24.
[47] *Id*.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by the Budget Subcommittee on Education Pre-K – 12 Appropriations on April 13, 2011:
The committee substitute:

- Removes provisions related to Virtual Education Funding;
- Adjusts the eligibility criteria for a waiver on reading intervention for students scoring level 1 and 2, to be granted only if student scored a 3 or higher in the preceding three years;
- Eliminates provision that a school receive a school grade of "F" if specified minimum proficiency standards in reading are not met;
- Adds listening and spoken language specialists to eligible instructional services for exceptional students;
- Establishes standards for reporting and monitoring the use of restraints and seclusion for students with disabilities and requires school districts to employ training in appropriate use;
- Requires the DOE to review and revise the matrix of services for exceptional students for implementation before the beginning of the 2012-2013 school year.
- Authorizes school districts to implement a digital curriculum for students in grades 6-12 and requires DOE to develop a model curriculum as a guide.
- Provides for postsecondary preparatory courses for high school students with designated academic deficiencies; and
- Authorizes the Commissioner of Education to extend the reporting schedule of assessment results under exigent circumstances.

CS by the Education Pre-K – 12 Committee on March 30, 2011:
The committee substitute:

- Removes comprehensive changes to the state instructional materials adoption process;
- Removes provisions for Florida College System institutions to offer elementary education in a charter school;
- Removes provisions relating to the class size categorical allocation;
- Removes the requirement for school districts to offer a digital curriculum to students in grades 5-12; and
- Removes the provision to establish a District Oversight Board for school districts with financial management deficiencies.

B. Amendments:

None.

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 Budget Committee

BILL:	SB 874
INTRODUCER:	Senator Hays
SUBJECT:	Public Records/Emergency Notification Information
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Favorable**
2.	Naf	Roberts	GO	**Favorable**
3.	Leadbeater	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill creates an exemption from public-records requirements for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address. The bill provides for retroactive application of the exemption, and for legislative review and repeal under the provisions of the Open Government Sunset Review Act.

The bill provides a statement of public necessity as required by the State Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 119.071 of the Florida Statutes.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I, of the State Constitution, provides that:

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

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record[1] must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency[2] records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public records" to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."[3] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[4]

Only the Legislature is authorized to create exemptions to open government requirements.[5] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[6] A bill enacting an exemption[7] may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.[8]

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[1] Section 119.011(12), F.S.
[2] Section 119.011(2), F.S., defines "agency" as "…any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[3] *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[4] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[5] Article I, s. 24(c) of the State Constitution.
[6] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[7] Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[8] Section 24(c), Art. I of the State Constitution.

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.[9] If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[10]

Open Government Sunset Review Act

The Open Government Sunset Review Act[11] sets forth a legislative review process for newly-created or substantially-amended public-records or public-meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public-records or public-meetings exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The Act also requires consideration of six questions regarding the scope of the exemption and related protections.[12]

Emergency Notifications

State agencies are required by law to have emergency plans in place in case of a natural disaster.[13] These emergency plans are not required to have any sort of associated notification system. The Department of Health has taken steps to keep the public health community informed of public health emergencies using the Florida Department of Health Emergency Notification System or FDENS.[14]

Sheriff's offices, universities, public utilities and other entities throughout Florida have in place emergency notification systems. For example, the Sumter County Sheriff's Office uses the CodeRED Emergency Notification System. It is a high-speed telephone communication service for emergency notifications that works off of a database compiled from the phone database maintained for the Sheriff's office by the purveyors of the CodeRED system. "This system

[9] Op. Att'y Gen. Fla. 85-62 (1985).
[10] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).
[11] Section 119.15, F.S.
[12] Section 119.15(6)(a), F.S.
[13] *See, e.g.*, s. 252.35, F.S.
[14] Florida Health Alert Network, http://www.doh.state.fl.us/fdens/index.html (last visited March 01, 2011).

allows [the Sumter County Sheriff's Office] to telephone all or targeted areas of the County in case of an emergency situation that requires immediate action (such as a boil-water notice, missing child or evacuation notices)."[15] Brevard County has in place a similar emergency alert notification system for natural emergencies.[16] Florida State University has a more comprehensive alert system that includes text messages, voice-mail messages, email messages, facebook messages, indoor and outdoor sirens, a hotline and more.[17]

A limited public records exemption already exists for persons requesting emergency assistance through E911. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.[18]

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S. to provide that any information furnished for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption applies to information held by an agency, before, on, or after the effective date of this exemption.[19]

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 creates an undesignated section of law providing a statement of Legislative intent supporting the constitutionally required public necessity statement. The bill states that using current technology, agencies may contact members of the public by a variety of electronic means, including cellular telephones and electronic mail, to alert them of imminent natural and manmade disasters, medical emergencies, criminal emergencies, and other dangerous conditions. Public safety is significantly enhanced through the use of such emergency notification programs, and expansion of such programs further increases public safety. The exemption is designed to alleviate concerns about disclosure of information in these circumstances that could be used for criminal purposes. Therefore, the bill states that the public-records exemption necessary for the effective implementation of and broad participation in emergency notification programs conducted by agencies.

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[15] Sumter County, Florida, Sheriff's Office, http://www.sumtercountysheriff.org/emergencymanagement/codered.asp (last visited March 01, 2011).
[16] Brevard County Emergency Management Office, http://embrevard.com/ (last visited March 01, 2011).
[17] Florida State University ALERT, Emergency Notification System, http://www.safety.fsu.edu/emergencymanagement/fsualert.html (last visited March 01, 2011) see generally, Florida Department of Law Enforcement, State Working Group On Domestic Preparedness Ad Hoc Committee on University and College Emergency Notification Systems, http://www.fdle.state.fl.us/Content/getdoc/c2c4f5df-1fa5-4b26-adad-4d3e23665c43/SWGUniversityCollegeEmergencyNotificationSystems.aspx.
[18] Section 365.171(12), F.S.
[19] The Supreme Court of Florida ruled that a public-records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

Section 3 provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

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

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

Breadth: A public records exemption must be no broader than necessary to accomplish the stated purpose of the law.[20] This bill does not specify what agencies[21] it applies to or what emergency notification programs it is intended to include. To survive constitutional scrutiny, the bill must be narrowly tailored to alleviate concerns about disclosure of information in these circumstances that could be used for criminal purposes.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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

[21] By default it will apply to "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Section 119.011, F.S.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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 Budget Committee

BILL:	SB 978
INTRODUCER:	Senator Flores
SUBJECT:	Individual Retirement Accounts
DATE:	April 20, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Favorable**
2.	O'Connor	Maclure	JU	**Favorable**
3.	Leadbeater	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

The bill provides that an Individual Retirement Account (IRA), exempt from creditors under current statute, would continue to be exempt if the original IRA were transferred into an inherited IRA. The bill provides that the amendments it makes are clarifying and apply retroactively.

The bill substantially amends section 222.21, Florida Statutes.

II. Present Situation:

Individual Retirement Accounts

An Individual Retirement Account (IRA) is a retirement savings account that provides tax benefits to the owner.[1] An IRA is defined as "... a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries."[2] The tax advantages of an IRA are that the contributions made to the IRA may be fully or partially deductable, and amounts in the IRA are either not taxed until distributed or not taxed at all.[3] There are two different types of IRAs: the traditional IRA and the Roth IRA. The traditional IRA allows the owner of the account to make tax deductable contributions to the account and defer paying taxes on the income until withdrawals are made from the IRA after retirement.[4] The Roth IRA allows an

[1] *See Internal Revenue Service Publication 590*: *Individual Retirement Arrangements (IRAs)* at 3 (2010), *available at* http://www.irs.gov/pub/irs-pdf/p590.pdf (last visited Mar. 24, 2011).
[2] 26 U.S.C. s. 408(a).
[3] *IRS Publication 59*, *supra* note 1, at 3.
[4] *Id.* at 7.

owner of the account to make non-tax deductible contributions into the account and make tax-free withdrawals from the account upon retirement.[5]

When the owner of an IRA dies, the IRA may be transferred to a named beneficiary.[6] If the beneficiary is the owner's spouse, the IRA is treated the same as the original account. However, if the beneficiary is someone other than the owner's spouse, the account is considered an Inherited IRA.[7] The benefactor has two options when inheriting an IRA: withdraw all of the funds from the original IRA within five years of the original owner's death; or transfer the funds to an inherited IRA and receive annual distributions over the remaining lifespan of the beneficiary.[8] The beneficiary of an Inherited IRA may not make contributions to the account, must make minimum withdrawals regardless of his or her age, and, unlike the original IRA, there is no penalty for making early withdrawals from the account.[9]

IRA Asset Protection

Although IRAs and other types of tax-deferred plans are established in accordance with the federal tax code, state laws may still affect these accounts.[10] State laws can affect IRAs, for example, in cases such as those involving trusts, real estate, or bankruptcy exemption.[11] The decision as to which state's law applies depends on the specific issue and whether it is based on the domicile of the IRA owner, the IRA beneficiary, or state law specified in the IRA agreement.[12]

Section 222.21(2)(a), F.S., provides protection from creditors for various assets, including IRAs. These protections also extend to bankruptcy proceedings. The applicable portion of the statute provides:

> (2)(a) Except as provided in paragraph (d), any money or other assets payable to an owner, a participant, or a beneficiary from, or any interest of any owner, participant, or beneficiary in, a fund or account is exempt from all claims of creditors of the owner, beneficiary, or participant if the fund or account is:
>
> 1. Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or governing instrument that has been preapproved by the Internal Revenue Service as exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable;

[5] *Id.* at 57.
[6] 26 U.S.C. s. 408(d)(3)(C)(ii).
[7] *Id.*
[8] 26 U.S.C. s. 401(a)(9).
[9] *IRS Publication 590*, *supra* note 1.
[10] Kristen M. Lynch and Linda Suzzanne Griffin, *The Robertson Case: A Beneficiary by Any Other Name is Still a Beneficiary*, The Florida Bar Journal, April 2010, Vol. 84, No. 4.
[11] *Id.*
[12] *Id.*

> **2.** Maintained in accordance with a plan or governing instrument that has been determined by the Internal Revenue Service to be exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable;…

As discussed in detail below, the Second District Court of Appeal recently held that the protections provided in s. 222.21(2)(a), F.S., do not extend to inherited IRAs.

Robertson v. Deeb

In 2009, the Second District Court of Appeal held in *Robertson v. Deeb* that an inherited IRA was a separate account from the original IRA and was thus not exempt from garnishment by a judgment creditor.[13]

In *Robertson*, a creditor had obtained a judgment against Robertson and served a writ of garnishment on the trustee of Robertson's inherited IRA, as he was the named beneficiary of his late father's IRA. Upon his father's death, Robertson was given the option of keeping the IRA in his father's name and withdrawing all the proceeds over the next five years, or transferring the funds into an inherited IRA and taking mandatory annual withdrawals for the remainder of his life expectancy. Robertson chose the latter. Robertson claimed that his beneficial interest in the IRA was exempt from garnishment pursuant to s. 222.21(2)(a), F.S., "because he is a 'beneficiary' of the 'fund or account' that qualified as an IRA when his father was alive."[14] The court ruled that section 222.21(2)(a), F.S., does not apply to inherited IRAs:

> ...because the plain language of that section references only the original 'fund or account' and the tax consequences of inherited IRAs render them completely separate funds or accounts.[15]

The court reasoned that since the inherited IRA was a brand new account different from the original IRA and an inherited IRA's tax status and structure is different from a traditional IRA, the exceptions in s. 222.21(2)(a), F.S., did not apply.

The decision in *Robertson* has been further applied in federal bankruptcy court in *In re: Ard*.[16] In the *Ard* case, the debtor had an inherited IRA similar to that in *Robertson*. The court noted that the outcomes involving inherited IRAs "turned on the particular language of each state's law applicable to the exemption of IRAs."[17] The bankruptcy court, pursuant to the decision in *Robertson*, ruled that s. 222.21(2)(a), F.S., did not apply to an inherited IRA and thus the inherited IRA was not exempt in federal bankruptcy proceedings.[18] The debtor was therefore required to turn the IRA over to the bankruptcy trustee.

[13] *Robertson v. Deeb*, 16 So. 3d 936 (Fla. 2nd DCA 2009).
[14] *Id*. at 938.
[15] *Id*.
[16] *In re: Ard*, 435 B.R. 719 (M.D. Fla. 2010).
[17] *Id*. at 722.
[18] *Id*. at 722.

III. Effect of Proposed Changes:

The bill contains "whereas" clauses to express the Legislature's intent that an inherited IRA, as defined in Internal Revenue Code of 1986, was intended to be exempt from the claims of creditors and that the decisions in *Robertson* and *In re: Ard* are contrary to the Legislature's intent in 2005.[19]

The bill amends s. 222.21(2)(c), F.S., to provide that an IRA exempt from creditors under s. 222.21(2)(a), F.S., would continue to be exempt if the original IRA were transferred into an inherited IRA. Under the proposed changes, when an owner of an IRA passes away, his or her named beneficiary would continue to enjoy the protection from creditors that the original owner enjoyed under s. 222.21(2)(a), F.S. This protection would most likely extend to protection in bankruptcy proceedings as well.

The bill contains language indicating the provisions are clarifying and shall apply retroactively to all inherited IRAs regardless of when an inherited IRA was created.

The bill provides that it takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill provides that it is intended to be clarifying and remedial in nature and shall apply retroactively. Retroactive application of legislation can implicate the due process provisions of the constitution.[20] As a general matter, statutes that do not alter vested rights but relate only to remedies or procedure can be applied retroactively.[21]

[19] In 2005, the Legislature amended s. 222.21, F.S., to add provisions exempting certain accounts and funds from claims of creditors. Chapter 2005-101, s. 1, Laws of Fla.
[20] *See State Department of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981).
[21] *See Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d. 494 (Fla. 1999). *See also City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986) (citations omitted) ("If a statute is found to be remedial in nature, it can and should be retroactively applied in order to serve its intended purposes.").

The Florida Supreme Court has ruled that statutes enacted soon after a controversy over the meaning of legislation may be considered a legislative interpretation of the original law and not substantive change:

> When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof. This Court has recognized the propriety of considering subsequent legislation in arriving at the proper interpretation of the prior statute.[22]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill removes a source for creditors to collect to satisfy a debt owed.

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.

[22] *Lowry v. Parole and Probation Commission*, 473 So. 2d 1248, 1250 (Fla. 1985) (internal citations omitted).

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 Budget Committee

BILL:	CS/SB 224
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Dean
SUBJECT:	Local Government Accountability
DATE:	April 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Favorable**
2.	McKay	Roberts	GO	**Fav/CS**
3.	Martin	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill provides minimum budgeting standards for counties, county officers, municipalities, and special districts. The bill requires the budget of each county, municipality, special district, water management district, school district, and certain county officers to be posted on the government entity's website. The bill requires counties, municipalities, and special districts to file their annual financial report and annual financial audit report with the Department of Financial Services (DFS) and the annual financial audit report with the Office of the Auditor General (OAG) within nine months of the end of the fiscal year. This bill also amends the reporting process used by the Legislative Auditing Committee ("LAC" or "Committee") and the Department of Community Affairs (DCA), to compel special districts to file certain required financial reports.

This bill substantially amends the following sections of the Florida Statutes: 11.40, 30.49, 112.63, 129.01, 129.02, 129.021, 129.03, 129.06, 129.07, 129.201, 166.241, 189.4044, 189.412, 189.418, 189.419, 189.421, 195.087, 218.32, 218.35, 218.39, 218.503, 373.536, 1011.03, 1011.051 and 1011.64.

II. Present Situation:

Local Government Budgets

The Florida Constitution specifically provides for four types of local governments: counties, municipalities, school districts, and special districts. Florida's 67 counties are subdivisions of the state that operate to provide a variety of core services through constitutional officers (county commissioners, sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the

court) pursuant to authority granted in the constitution, consistent with general law.[1] A municipality is a local government entity located within a county that is created to perform additional functions and services for the particular benefit of the population within the municipality. There are more than 400 municipalities in Florida, which exist pursuant to individual charters established by law and approved by the electorate in a referendum.

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[2] Counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.[3] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

Local government entities have the authority to raise revenues and spend funds, subject to certain restrictions on the ability to tax, borrow, and spend as provided in both the Florida Constitution and Florida Statutes. [5] The Florida Constitution limits the millage rate that local governments can levy in ad valorem taxes[6] and allows public access to public meetings and records.[7]
Section 166.241, F.S., specifies how local governments and local government officials may develop and maintain their budget each fiscal year.[8] The fiscal year for counties and municipalities begins on October 1 of each year and ends on September 30 of the following year.[9]

Florida Statutes also contain provisions designed to promote accountability and transparency in the budgetary process. Local governments are subject to financial reporting guidelines that are reviewed by the Legislature and by state agencies such as the DFS and DMS (DMS).[10]
Section 200.065(2)(d), F.S., currently requires local government entities that have taxing authority to provide notice of their adopted tentative budget in a newspaper of general circulation in the respective county.[11]

Currently, there are no statutory provisions requiring local government entities to publish budget information on their local government website. With the exception of Calhoun, Lafayette, and Union Counties, each county within the state of Florida has an official website. Those that do not have official websites do have websites for the county clerk, which can be used to publish county information.

[1] FLA. CONST. art. VIII, s. 1.
[2] FLA. CONST. art. VIII, s. 1(f).
[3] FLA. CONST. art. VIII, s. 1(g).
[4] FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021, F.S.
[5] *See* Art. VII, Fla. Const.
[6] FLA. CONST. art. VII, s. 9.
[7] FLA. CONST. art. I, s. 24.
[8] *See* s. 166.241, F.S.
[9] Section 129.04, F.S.
[10] Part III, Chapter 218; s. 112.63, F.S.
[11] Section 200.065(2)(d) and (3), F.S.

Municipal Budget Requirements

Section 166.241(2), F.S., provides that each municipality must annually adopt a budget by ordinance or resolution unless the municipality has a charter that specifies another method for adoption. The funds available from taxation and other sources must equal the total appropriations for expenditures and reserves.[12] Officers of a municipal government may not expend funds except according to the budgeted appropriations. A municipality may amend its budget up to 60 days following the end of the fiscal year under certain conditions.[13]

County Budget Requirements

Chapter 129, F.S., establishes a budget system that controls the finances of the boards of county commissioners of Florida counties. Pursuant to s. 129.01, F.S., each county is required to prepare, approve, adopt, and execute an annual budget each fiscal year for such funds as may be required by law or by sound financial practices and generally accepted accounting principles, which controls the levy of taxes and the expenditure of money for all county purposes during the ensuing fiscal year.[14] The budget is prepared by the board of county commissioners and must be balanced so that the total of the estimated receipts, including balances brought forward, equals the total of the appropriations and reserves.[15] The receipts portion of the budget must include 95 percent of all receipts reasonably anticipated from all sources, including taxes to be levied, and must include all balances estimated to be brought forward at the beginning of the fiscal year.[16]

Section 129.01, F.S., also specifies the budget requirements relating to reserves for contingencies and cash balances to be carried over for future costs, stating that any surplus to be carried over can be placed in any other county fund and budgeted as a receipt to such other fund. [17] However, a fund for debt services cannot be transferred to another fund, and a capital outlay reserve fund may not be transferred until the funded projects have been finished and paid for. In addition to these requirements, ch. 129, F.S., also contains other detailed provisions as to:

- Budget requirements for various funds;[18]
- Requirement that county officers submit budgets in sufficient detail and containing sufficient information;[19] and
- Requirements for the preparation, adoption;[20] and amendment of such budgets.[21]

Each board of county commissioners may designate a county budget officer to carry out the duties prescribed by statute as to county budgets. If such board fails to designate a different officer, the clerk of the circuit court or the county comptroller, if applicable, will be the budget

[12] Section 166.241(2), F.S.
[13] Section 166.241(3), F.S.
[14] Section 129.01(1), F.S.
[15] Section 129.01(2), F.S.
[16] Section 129.01, F.S.
[17] Sections 129.01 and 129.02(6), F.S.
[18] Sections 129.01 and 129.02, F.S.
[19] Sections 129.01 and 129.021, F.S.
[20] Section 129.03, F.S.
[21] Section 129.06, F.S.

officer.[22] County fee officers are also subject to reporting requirements.[23] County fee officers are defined in Florida Statutes as "those county officials who are assigned specialized functions within county government and whose budgets are established independently of the local governing body, even though said budgets may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved."[24] For example, each sheriff, clerk of the circuit court, property appraiser and tax collector has budget reporting requirements of their own in addition to the budget reporting requirements of the county.[25]

It is unlawful for the board of county commissioners to expend more than the amount budgeted for a fund absent a budget amendment. Any indebtedness contracted in excess of the amount budgeted is void and no suit for its collection may be maintained. A commissioner approving contracts for such amounts, and their surety company, may be liable for these debts.[26]

Sheriff Budget Requirements

Section 30.49, F.S., requires each sheriff to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30. The proposed budget must show the estimated amounts of all proposed expenditures for operating and equipping the sheriff's office and jail, excluding the cost of construction, repair, or capital improvement of county buildings during the fiscal year. The sheriff must itemize expenditures in accordance with the uniform chart of accounts prescribed by DFS, as: personal services, operating expenses, capital outlay, debt service, and non-operating disbursements and contingency reserves.

The Supreme Court of Florida has stated that "the internal operation of the sheriff's office and the allocation of appropriated monies within the six items of the budget is a function which belongs uniquely to the sheriff as the chief law enforcement officer of the county."[27] Therefore, although a county can increase or reduce by lump sums the items, a county cannot dictate how the money allocated to an individual item should be used.[28]

Supervisor of Elections Budget Requirements

Section 129.201, F.S., requires each supervisor of elections to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30. The supervisor of elections must itemize expenditures such as: personnel compensation, operating expenses, capital outlay, contingencies, and transfers.

[22] Section 129.025, F.S.
[23] *See* s. 218.35, F.S.
[24] Section 218.31(8), F.S.
[25] *See* ss. 30.49 (sheriffs' budgets), 218.35(2) (clerks of the court reporting requirements), 195.087 (property appraisers and tax collectors budget reporting requirements), F.S.
[26] Section 129.07, F.S. *See also*, *Edwards v. City of Ocala*, 58 Fla. 217, 50 So. 421 (1909) *and White v. Crandon*, 116 Fla. 162, 156 So. 303 (1934) (discussing county commissioner liability for misappropriation of funds).
[27] *Weitzenfeld v. Dierks*, 312 So.2d 194 (Fla. 1975); Fla. Atty. Gen. Op. 93-92 (December 17, 1993).
[28] *Id.*

The proposed budget must be submitted to the board of county commissioners or county budget commission to be included in the general county budget.[29]

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.[30] Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose.[31] A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.[32] A special district does not include:

- A school district;
- A community college district;
- A special improvement district (Seminole and Miccosukee Tribes under s. 285.17, F.S.);
- A municipal service taxing or benefit unit (MSTU/MSBU); or
- A political subdivision board of a municipality providing electrical service.[33]

Special districts have the same governing powers and restrictions as counties and municipalities.[34] Like other forms of local government, special districts operate through a governing board and can "enter contracts, employ workers . . . issue debt, impose taxes, levy assessments and . . . charge fees for their services".[35] Special districts are held accountable to the public, and are therefore subject to public sunshine laws and financial reporting requirements.[36]

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following characteristics:

- The membership of its governing body is identical to the governing body of a single county or municipality;
- All members of its governing body are appointed by the governing body of a single county or municipality;
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or municipality; and
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.[37]

[29] Section 129.201(7), F.S.
[30] Ch. 189, F.S., *see* s. 189.401, F.S.
[31] Section 189.403(1), F.S.
[32] *Id.*
[33] *Id.*
[34] Mizany, Kimia and April Manatt, WHAT'S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).
[35] *Id.* (alteration to original) (citation omitted).
[36] Presentation by Jack Gaskins Jr., from the Department of Community Affairs, Special District Information Program, SPECIAL DISTRICT BASICS PRESENTATION (May 2010) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.
[37] Section 189.403 (2) (a)-(d), F.S.

Section 189.403(3), F.S., defines an independent special district as a district that does not meet the statutory classifications of a dependent special district.[38] Independent special districts may encompass more than one county.[39] The public policy behind special districts is to provide an alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services."[40]

As of January 2011, there were approximately 1,625 special districts in the state of Florida: 618 dependent districts and 1,007 independent districts.[41] Examples of special districts in Florida include but are not limited to water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.[42]

A. Special District Information Program

The Special District Information Program (SDIP), administered by the DCA is designed to collect, update, and share detailed information on Florida's special districts with more than 685 state and local agencies.[43] The SDIP is also charged with assisting special districts to comply with Florida's local government financial reporting system. Specifically, the program:

- Provides technical assistance as it relates to the general requirements of Florida's special districts;
- Acts as a "one-stop shop" source of information about special districts; and,
- Promotes special district accountability by:
  - Monitoring important financial report filings;
  - Assisting state agencies and local governments in collecting delinquent reports;
  - Helping non-complying special districts come into compliance through technical assistance letters and telephone calls; and
  - When necessary, initiating legal enforcement.[44]

There are ten basic reporting requirements that each special district must follow under the Uniform Special District Accountability Act. All special districts must report it's:

- Creating document and boundary map;
- Registered agent and office;
- Annual fee and update;
- Regular public meeting schedule;
- Annual budget;
- Annual financial audit report;
- Annual financial report;
- Three retirement system reports;

[38] Section 189.403(3), F.S.
[39] *Id.*
[40] Section 189.402(3)-(4), F.S.
[41] Gaskins, *supra* note 36. Note: This number is subject to change daily.
[42] Florida Department of Community Affairs, OFFICIAL LIST OF SPECIAL DISTRICTS ONLINE, available online at http://www.floridaspecialdistricts.org/OfficialList/index.cfm (last visited on Jan. 10, 2010).
[43] Florida Department of Community Affairs, SPECIAL DISTRICTS INFORMATION PROGRAM, available online at http://www.floridaspecialdistricts.org (last visited on Sept. 21, 2010).
[44] *See* s. 189.412, F.S.

- Two bond reports; and
- Three public facilities reports.[45]

B. Special District Budget Requirements

The governing body of each special district is directed by statute to adopt a budget by resolution each fiscal year. The total funds available must equal the total of appropriated expenditures and reserves.[46] It is unlawful for any officer of a special district to spend district money in any fiscal year except pursuant to a budgeted appropriation. The proposed budget of a dependent special district shall be presented in accordance with generally accepted accounting principles, contained within the general budget of the local governing authority and be clearly stated as the budget of the dependent district. However, with the concurrence of the local governing authority, a dependent district may be budgeted separately.[47] The governing body of each special district at any time within a fiscal year, or within up to 60 days following the end of the fiscal year, may amend a budget for that year. The budget amendment must be adopted by resolution.[48]

All reports or information required to be filed with a local governing authority are filed with:

- The clerk of the board of county commissioners when the local governing authority is a county;
- The clerk of the county commission in each county when the district is a multicounty district; or
- At the place designated by the municipal governing body when the local governing authority is a municipality.[49]

Local Government Annual Financial Reports

Section 218.32 (1), F.S., requires local governments to submit an Annual Financial Report to the DFS covering their operations for the preceding fiscal year. DFS provides an electronic filing system for local governments to use that accumulates the financial information reported on the annual financial reports into a database.[50] This information is available to the public in an electronic format.

In order to improve government accountability by making financial information reported by Florida's local governments more comparable, and thereby enabling local taxpayers and local policy makers to better understand and evaluate local government service delivery and operations, all local governmental reports are required to follow accounting principles when preparing their Annual Financial Report.[51]

[45] Gaskins, *supra* note 36.
[46] Section 189.418(3), F.S.
[47] Section 189.418(4), F.S.
[48] Section 189.418(5), F.S.
[49] Section 189.418(7), F.S.
[50] Information obtained from the Florida Department of Financial Services website, Local Government Annual Reports, available online at http://www.myfloridacfo.com/sitePages/services/flow.aspx?ut=Local+Governments (last visited on Jan. 10, 2010).
[51] Section 218.33(2), F.S.

The submission deadline for the local government's annual financial report depends on whether or not the entity is required to have an annual audit.[52] If no audit is required then the entity's annual report deadline is April 30 of each year.[53] The deadline for entities that are required to provide an audit is no later than 12 months after the end of the fiscal year.[54] If DFS does not receive a completed annual financial report from a local government entity within the required period, the department must notify the LAC, which must then schedule a hearing.[55]

If the LAC determines that an entity should be subject to further state action, s. 11.40, F.S., provides that the committee must:

- In the case of a local government entity or a district school board, direct the Department of Revenue and the DFS to withhold any funds not pledged for bond debt service satisfaction until the local government entity or the district school board is in compliance. The committee must specify the date that action will begin and both departments must receive notification 30 days before the date the withheld funds would normally be distributed.
- In the case of a special district, the committee must notify the DCA and the department must offer assistance to the special district. If the district still fails to comply, the department must petition the circuit court in Leon County for a writ of certiorari and the court must award attorney costs and court fees to the prevailing party.[56]
- In the case of a charter school or charter technical career center, the committee must notify the appropriate sponsoring entity that may terminate the charter.[57]

Local Government Annual Financial Audit Reports

Section 218.39, F.S., provides that if a local government entity, district school board, charter school, or charter technical career center has been notified by the first day in any fiscal year that it will not be audited by the Auditor General, then each of the following entities must provide for an annual financial audit to be completed within 12 months after the end of the fiscal year. The audit must be conducted by an independent certified public accountant retained by the entity and paid for from public funds. The entities referenced in statute include:

- Each county, district school board, charter school, or charter technical center;[58]
- Any municipality with revenues or expenditures and expenses of more than $250,000;
- Any special district with revenues or expenditures and expenses of more than $100,000;
- Each municipality with revenues or expenditures and expenses between $100,000 and $250,000 that has not been audited within the 2 preceding fiscal years; and
- Each special district with revenues or expenditures and expenses between $50,000 and $100,000 that has not been audited within the 2 preceding fiscal years.

[52] Information obtained from the Florida Department of Financial Services, *see supra* note 50.
[53] Section 218.32(e), F.S.
[54] Section 218.32(d), F.S.
[55] Section 218.32(f), F.S.
[56] *See* also s. 189.421(3), F.S., providing that "[v]enue for all actions pursuant to this subsection shall be in Leon County."
[57] *See* s. 11.40(5)(a) –(c), F.S.
[58] Referring to charter schools established under s. 1002.33, F.S., and each charter technical center established under s. 1002.34, F.S.

Actuarial Reports

The "Florida Protection of Public Employee Retirement Benefits Act" located in part VII, of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. [59] The legislative intent of this Act is to "prohibit the use of any procedure, methodology, or assumptions, the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current tax payers."[60] The Division of Retirement (Division) within the Florida Department of Management Services (DMS) is primarily responsible for administering this Act and helping ensure that local governments maintain the necessary level of funding for public employee retirement systems and plans. In order to meet this requirement, each retirement system or plan is required to submit regularly scheduled actuarial reports to the Division for its review and approval.

If DMS determines that a local government entity's actuarial valuation of its retirement system or plan is incomplete, inaccurate, or not based on reasonable assumptions, the department can request additional information.[61] If, after a reasonable period of time, a satisfactory adjustment has not been made, the DMS may notify the Department of Revenue and the DFS of the noncompliance and those agencies may withhold any funds not pledged for satisfaction of bonds until such adjustment is made to the report. The affected governmental entity may petition for a hearing. If the entity failing to make the adjustment is a special district, DMS also notifies the DCA, which must proceed under the procedures prescribed in s. 189.421, F.S., which may result in a writ of certiorari with the circuit court.

III. Effect of Proposed Changes:

Section 1 amends s. 11.40, F.S., to clarify that the DCA can declare a special district inactive for failure to disclose financial reports.

Section 2 amends s. 30.49, F.S., to provide that each sheriff shall annually prepare and submit a proposed budget to the board of county commissioners. This section clarifies that "personnel services," "grants and aids" and "other uses" need to be itemized by the sheriff's office. It further specifies that expenditures need to be itemized at the sub-object code level in accordance with the uniform accounting system prescribed by the DFS.[62] The board or commission is precluded from changing any expenditure at the sub-object code level.

Section 3 amends s. 112.63, F.S., to provide that the failure of a special district to provide sufficient information to fulfill its actuarial reporting requirements despite requests from the DMS is considered a final agency action by the district. The DMS, Division of Retirement, can request that the DCA seek a writ of certiorari in accordance with the provisions set forth in s. 189.421(4), F.S.

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[59] Section 112.61, F.S.
[60] *Id.*
[61] Section 112.63(4), F.S.
[62] The Department of Financial Services website has additional information on state expenditure object codes at http://www.myfloridacfo.com/aadir/eocodespdf.htm. For local governments, the object and sub-object codes are listed in the three separate Uniform Accounting Manuals for counties, cities, and special districts, which can be found at http://www.myfloridacfo.com/aadir/localgov/ (website last visited on April 21, 2011).

Section 4 amends s. 129.01, F.S., to require boards of county commissioners to provide, at a minimum, that their budget show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit in detail consistent with the annual financial report required under s. 218.32(1), F.S. The bill also deletes redundant language.

Section 5 amends s. 129.02, F.S., to require financial reports for dependent special districts included in the county budget to show budgeted expenditures and revenues in detail consistent with the annual financial report required under s. 218.32(1), F.S. The amount of money available must equal the total appropriations for expenditures and reserves.

Section 6 amends s. 129.021, F.S., to correct a cross reference.

Section 7 amends s. 129.03, F.S., to require a county's tentative budget to be posted on the county's official website at least 2 days before the public hearing to consider such budget, and to require the county's final budget be posted on the website within 30 days after adoption.

Section 8 amends s. 129.06, F.S., to clarify the budget amendment authority of counties and to require that budget amendments authorized by resolution or ordinance, rather than statute, be posted on the county's website within 5 days after adoption.

Section 9 amends s. 129.07, F.S., to clarify language explaining that a board of county commissioners may not exceed budgeted appropriations, except as provided in s. 129.06, F.S.

Section 10 amends s. 129.201, F.S., to require each supervisor of elections to itemize expenditures according to the uniform chart of accounts prescribed by the DFS into the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses. The supervisor of elections must also furnish expenditures to the board at the subobject code level in accordance to the account system prescribed by the DFS. The board or commission may not amend, modify, increase, or reduce any expenditure at the sub-object code level.

Section 11 amends s. 166.241, F.S., to require municipalities to provide, at a minimum, that their budget show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit in detail consistent with the annual financial report required under s. 218.32(1), F.S. The bill requires the tentative and adopted budgets be published on the municipality's official website at least 2 days before the public hearing to consider the budget. If the municipality does not have an official website, the budget must be posted on the website of the county or counties in which the municipality is located. The final adopted budget must be posted on the municipality's official website within 30 days of adoption, or must be transmitted to the county for posting within a reasonable time established by the county. Certain budget amendments of the municipality must be posted within 5 days after adoption or must be transmitted to the county for posting within a reasonable time established by the county.

Section 12 amends s. 189.4044, F.S., to allow the DCA to declare any special district inactive if the district has not had a registered office and agent on file with the department for one or more years.

Section 13 amends s. 189.412(1), F.S., to require the DCA Special District Information Program to collect and maintain a special district noncompliance status report prepared by the LAC.

Section 14 amends s. 189.418, F.S., to require special districts to provide, at a minimum, that their budgets show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit in detail consistent with the annual financial report required under s. 218.32(1), F.S. It also requires tentative budgets to be posted on the special district's official website at least 2 days before the budget hearings and final adopted budgets within 30 days. If the special district does not have an official website, the budget must be posted on the website of the county or counties in which the special district is located. These new requirements do not apply to water management districts. Certain budget amendments of the special district must be posted on the special district's official website within 5 days after adoption, or transmitted as determined reasonable by the county or counties in which the special district is located. The bill specifies how a special district may amend its budget. The bill requires certain special districts to provide any budget information requested by the local governing authority.

Section 15 amends s. 189.419, F.S., to clarify what happens when an independent special district fails to file reports and information the district is required to file by statute. If the failure is not justified, the local general purpose government within which the independent district is located must notify the DCA which must proceed according to the procedures specified in s. 189.421, F.S., (see discussion of section 16 below). If a dependent special district fails to file required reports with the local governing authority, that authority must take whatever steps it deems necessary to enforce accountability including: withholding funds, removing governing board members at will, vetoing the special district's budget, conducting an oversight review process as specified in s. 189.428, F.S., or amend, merge, or dissolve the special district.

If a special district fails to file a required report with a state agency, the agency must notify the DCA, which shall send a certified technical assistance letter to the special district summarizing the requirements and encouraging the special district to take steps to prevent the noncompliance from reoccurring. If a special district fails to file actuarial reports or information under s. 112.63, F.S., then the appropriate state agency must notify the DCA which shall proceed according to s. 189.421(1), F.S. If a special district fails to file the annual financial report or annual financial audit report under ss. 218.32 and 218.39, F.S., respectively, then the state agency shall and the LAC may, notify the DCA, which shall proceed according to s. 189.421, F.S.

Section 16 amends s. 189.421, F.S., to provide that when a special district fails to file a report or information required under ch.189, F.S., or is unable to comply with the 60-day reporting deadline granted by the DCA, it must provide a written notice to the DCA stating: (1) the reason it is unable to comply with the deadline; (2) the steps it is taking to prevent the noncompliance from recurring; and (3) the estimated date that it will file the report with the appropriate agency.

If the written response refers to the annual financial report or annual financial audit report under ss. 218.32 and 218.39, F.S., then the DCA must forward the written response to the LAC, which, under s. 11.40(5)(b), F.S., will determine whether state action is needed and notify the DCA as to whether they should proceed according to s. 189.421, F.S. If the written response refers to

special district reports listed in s. 189.419 (1), F.S., then the DCA must forward the response to the local general-purpose government for its consideration in determining what actions to take. When the special district does not comply with its actuarial reporting requirements under s. 112.63, F.S., the DCA must forward the response to the DMS for its consideration in determining whether the special district should be subject to further action.

The additional 30-day extension provided in current law is deleted. The bill amends the law to specify that the failure of a special district to comply with actuarial reporting requirements, as well as specified financial reporting requirements, is deemed final action of the special district. The remedy for noncompliance is writ of certiorari. If the LAC or the DMS notifies the DCA that specific special districts have failed to file required reports the DCA must initiate a writ of certiorari in the circuit court within 60 days after receiving such notice (current law gives the DCA only 30 days).

Section 17 amends s. 195.087, F.S., to require each tax collector and property appraiser to post their final approved budget on the county's official website within 30 days after adoption of the county's budget. The bill also requires each county's official website to have a link to the tax collector or property appraiser's website where the final approved budget is posted. If the property appraiser or tax collector does not have an official website, the bill states that the final approved budget must be posted on the county's official website.

Section 18 amends s. 218.32, F.S., to require local governmental entities to file their audit with the DFS within 9 months after the end of the fiscal year, (instead of 12 months). Local governments not required to file audits must file annual financial reports no later than 9 months after the end of the fiscal year (instead of April 30 of each year). The bill also requires the DFS to file its report on local government entities that are not in compliance with s. 218.32, F.S., with the DCA Special District Information Program. The bill requires each local governmental entity's website to provide a link to the DFS website to view the entity's annual financial report submitted to the DFS. If the local government does not have an official website, then the county government's website must provide this required link.

Section 19 amends s. 218.35, F.S., to revise provisions specifying how a county fee officer is to prepare and submit a budget. In preparing the budget related to the clerk's duties for the commission, pursuant to s. 129.03, F.S., the bill requires that expenditures be itemized in accordance with the uniform accounting system prescribed by the DFS using the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses. The bill also requires the clerk of court to provide the board with all relevant and pertinent information as the board deems necessary, including expenditures at the subobject code level in accordance with the uniform accounting system prescribed by the DFS.

The bill requires fee officers to post the clerk of court's final approved budget on the county's official website within 30 days of adoption. The final approved budget of the clerk of the circuit court may be included in the county's budget.

Section 20 amends s. 218.39, F.S., to require certain counties, certain municipalities, certain special districts, district school boards, charter schools, and charter technical career centers, to file their annual financial audit report within 9 months after the end of the fiscal year (instead of

12 months). The bill specifies that the entity's revenues or total expenditures and expenses are as reported on the fund financial statements. The bill requires auditors to prepare auditing reports in accordance with the rules of the Auditor General. These reports must be filed with the Auditor General within 45 days after the delivery of the report to the audited entity but no later than 9 months after the end of the fiscal year.

The bill also requires the Auditor General to notify the LAC of any audit report that indicates an audited entity has failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports. It provides the LAC with the authority to direct a local governmental entity to provide a written statement concerning the lack of corrective action or describing corrective action that will be taken in the future. If the Committee determines that the written statement is not sufficient, it may require the entity to appear before the Committee.

The bill further authorizes the Committee to take certain actions prescribed in s. 11.40(5), F.S., against an audited entity that has failed to take full corrective action and for which there is no justifiable reason for the entity's inaction, or if the entity has failed to comply with the Committee's requests.

Section 21 amends s. 218.503, F.S., to clarify that a deficit in the fund financial statements of entities required to report under governmental financial reporting standards or on nonprofit financial statements shall constitute a financial distress indicator that shall subject the entity to review and oversight for financial emergency. The bill replaces the term "fixed or capital assets" with "property, plant, and essential equipment" as types of property that if necessary will not be considered resources available to cover the deficit.

Section 22 amends s. 373.536, F.S., to require water management districts to post their tentative budgets on their official website at least 2 days before budget hearings. The final adopted budget must be posted on the website within 30 days after adoption.

Section 23 amends s. 1011.03, F.S., to require district school boards to post a summary of their tentative budgets on the district's official website within 2 days before the budget hearing. The bill also states that the district school board's final adopted budget must be posted on the district's official website within 30 days after adoption, and any budget amendments must be posted on their official websites within 5 days after adoption.

Section 24 amends s. 1011.051, F.S., to amend accounting terminology.

Section 25 amends s. 1011.64, F.S., to amend accounting terminology.

Section 26 provides that this act shall take effect on October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(a), Article VII, of the State Constitution, prohibits any general law that would require cities and counties to spend funds or take action requiring the expenditure of funds unless the legislature determines that the law fulfills an important state interest and one of the following exceptions apply:

- Estimated funds are appropriated to cover the mandate;
- The legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate sufficient funds, by a simple majority vote of the governing body of each county or municipality;
- It is approved by a two-thirds vote of the membership in each house of the legislature;
- Similarly situated persons are all required to comply; or
- The law is required to comply with a federal requirement or for a federal entitlement.[63]

Subsection (d) of section 18 of Article VII, of the State Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact.[64] An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2011-2012 $1.9 million).[65]

Although there will be some costs to local government entities associated with posting budget information on their website, the costs probably do not rise to the level of a constitutional mandate. If it is determined that this bill has more than an insignificant fiscal impact (i.e. the costs exceed $1.9 million), the bill would require a finding of an important state interest and a two-thirds vote of the membership of each house of the Legislature to effectively bind cities and counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[63] FLA. CONST. art. VII, s. 18(a).
[64] FLA. CONST. art. VII, s. 18(d).
[65] Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.

B. Private Sector Impact:

This bill will provide easier access to local government annual financial reporting information for individuals, due to amendments to the reporting process and by providing such information through the government entity's official website.

C. Government Sector Impact:

This bill requires certain government entities to post annual financial reporting information on the entity's official website. It may also require programming changes to some local government accounting systems. The fiscal impact on local governments as a result of these requirements is unknown at this time.

The Department of Financial Services indicates in their analysis dated January 31, 2011, that programming changes to the department's Local Government Electronic Reporting system as a result of this bill will cost approximately $3,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on April 14, 2011:
The committee substitute clarifies how a special district may amend its budget.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 296
INTRODUCER:	Community Affairs Committee, Commerce and Tourism Committee, and Senator Wise
SUBJECT:	Household Moving Services
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	**Fav/CS**
2.	Gizzi	Yeatman	CA	**Fav/CS**
3.	Blizzard	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill requires movers and moving brokers to register with the Department of Agriculture and Consumer Services (department) biennially instead of annually and clarifies the definition of storage. The bill also preempts local government ordinances regulating movers of household goods or moving brokers that were enacted after January 1, 2011. The bill allows local government ordinances that were enacted prior to January 1, 2011, to remain in effect provided that such ordinances levy "reasonable" registration fees that do not exceed the cost of administrating such ordinance. In addition, registration and bonding may be required only of a mover or moving broker whose principal place of business is located in the jurisdiction having such ordinance.

The preemption provisions in this bill do not preempt a local government's authority to levy a local business tax.

The bill has no negative fiscal impact on state funds as a result of the staggered expiration date for the renewal period. The Revenue Estimating Conference adopted a positive fiscal impact of $100,000 on February 22, 2011.

This bill substantially amends the following sections of the Florida Statutes: 507.01, 507.03, 507.07, and 507.13.

II. Present Situation:

Federal law expressly permits states to regulate the intrastate transportation of household goods.[1] Chapter 507, F.S., under which household moving services are regulated, "applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state."[2]

Movers and Moving Brokers Registration

Section 507.01(9), F.S., defines "mover" to mean a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.[3] "Moving broker" is classified as a person who, for compensation, arranges for another person to load, transport, ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, internet website, or other means.[4]

Section 507.03, F.S., requires any "mover" or "moving broker" that wishes to do business in Florida to register annually with the Department of Agriculture and Consumer Services. In order to obtain a registration certificate, the mover or moving broker must file an application, pay a $300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.[5]

Failure to comply with these intrastate registration requirements may subject a mover or moving broker to a "cease and desist order and fines of up to $5,000."[6]

Insurance Coverage and Liability Limitations

Section 507.04, F.S., requires that movers and moving brokers maintain liability and motor vehicle insurance. A mover operating more than two vehicles is required to maintain liability insurance coverage in the amount of at least $10,000 per shipment, and the mover's liability must not be less than 60 cents per pound per article.[7] Movers operating two or fewer vehicles may maintain a performance bond or certificate of deposit in the amount of $25,000, in lieu of maintaining liability insurance.[8] All movers must maintain motor vehicle insurance coverage. The amount of coverage required is determined by the weight of the commercial motor vehicle.[9]

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[1] *See* 49 U.S.C. 14501(c)(2)(B).
[2] Section 507.02(2), F.S.
[3] Section 507.01(9), F.S.
[4] Section 507.01(10), F.S.
[5] Section 507.03(1), F.S.
[6] Florida Department of Agriculture and Consumer Services, *Intrastate Moving Information For Businesses*, available online at http://www.800helpfla.com/moving.html (last visited on April 7, 2011). *See also*, ss. 507.09 and 507.10, F.S.
[7] Section 507.04(1)(a) and (4), F.S.
[8] Section 507.04(1)(b), F.S.
[9] Section 507.04(2)(a)-(c), F.S.

Contractual provisions that limit a mover's liability for a shipper's goods are required to be disclosed by the mover in writing to the seller, along with the valuation rate "at the time that the estimate and contract for services are executed" and prior to providing any moving services.[10] Movers that offer valuation coverage must also inform the shipper "of the opportunity to purchase" such coverage in the disclosure.[11] However, any contract for moving services that seeks to limit a mover's liability beyond the minimum valuation rate of "60 cents per pound per article" is void under s. 507.04(4), F.S.

Violations and Penalties

Current law regulates movers and moving brokers by specifying certain contract, delivery, and storage requirements.[12] Furthermore, s. 507.07, F.S., prohibits certain acts by movers and moving brokers and makes it a violation for movers and moving brokers to:

- Conduct or engage in the business of moving without first being registered annually with the department.
- Knowingly make a false statement, representation, or certification of a document required to be submitted or retained.
- Misrepresent or deceptively represent: the contract for services or inventory of goods; the timeframe for delivery or storage of goods; the price, size, nature, extent, qualities, or characteristics of services offered; or a shipper's rights, privileges, or benefits.
- Fail to honor and comply with provisions of the contract for services.
- Withhold delivery of household goods against the wishes of the shipper and after the shipper has paid according to the estimate provided in the service contract.
- Include a contract provision purporting to waive or limit a shipper's right or benefit as provided in this chapter.
- Seek or solicit a waiver or acceptance from a shipper of a provision limiting a shipper's right or benefit.
- Solicit services without clearly disclosing the mover's fixed business address.
- Commit any other act of fraud, misrepresentation, or failure to disclose a material fact.
- Refuse or fail, after notice, to produce any document or record or disclose any information required to be produced or disclosed.
- Knowingly make a false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney.[13]

Movers that commit any of the above-listed prohibited acts may be subject to administrative, civil, or criminal penalties.[14] Violations under ch. 507, F.S., may also be deemed an unfair or deceptive act or practice, or an unfair method of competition in violation of the Florida

[10] Section 507.04(4), F.S.
[11] *Id.*
[12] *See* ss. 507.05 and 507.06, F.S.
[13] Section 507.07, F.S.
[14] *See* ss. 507.09, 507.10, and 507.11, F.S.

Deceptive and Unfair Trade Practices Act, subjecting a violator to a civil penalty of up to $10,000 per violation.[15]

Local Ordinances and Regulations

Currently, ch. 507, F.S., allows municipalities and counties to adopt local ordinances or regulations relating to the moving of household goods in addition to state regulations that are required by the statute.[16] Broward, Miami-Dade, Palm Beach, Hillsborough, and Pinellas counties currently have ordinances regulating household moving.[17] Movers or moving brokers whose principal place of business is located in a county or municipality that has such ordinances requiring local licensing or registration are required to obtain local registration in addition to registering with the state.[18] Florida law also allows for local taxes, fees, and bonding related to movers and moving brokers.[19]

Chapter 205, F.S., authorizes a local government to levy a business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction, called a local business tax.[20] The local business tax "does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection," which are "in addition to, but not in lieu of," the local business tax.[21]

According to the Federal Motor Carrier Safety Administration (FMCSA), Florida, California, New York, and New Jersey are "hot spots" for moving fraud.[22] The FMCSA has partnered with state attorneys general, local law enforcement agencies, and industry and consumer groups to oversee and prevent fraud in the moving industry.[23]

III. Effect of Proposed Changes:

This bill amends the requirements for household moving services and preempts certain local ordinances and regulations.

Section 1 amends s. 507.01, F.S., to narrow the definition of the term "storage" to mean the "temporary" warehousing of a shipper's goods while under the care, custody, and control of a mover. Many movers store a shipper's goods for a short period of time in order to combine loads from different shippers to reduce costs.

[15] Section 507.08, F.S.
[16] Section 507.13(1), F.S.
[17] Information received from the Department of Agriculture and Consumer Services (Feb. 4, 2011) (Information is on file with the Commerce and Tourism Committee).
[18] Section 507.03(4), F.S.
[19] *See* s. 507.13(1), F.S.
[20] Local business taxes were formerly known as "local occupational license taxes." *See* ch. 2006-152, Laws of Fla.
[21] *See* s. 205.022(5), F.S.
[22] *See* Federal Motor Carrier Safety Administration, *Background: The Regulation of Household Goods Movers*, http://www.protectyourmove.gov/about/background/background.htm (last visited April 8, 2011) (stating that to combat moving fraud "Florida's Attorney General has a compliant system, provides moving tips, and makes moving companies' business histories available to the public").
[23] *Id*.

Section 2 amends s. 507.03, F.S., to change the registration renewal requirement by providing for a biennial requirement instead of an annual requirement. This section also grants the department the authority to extend the registration expiration date up to 12 months in order to establish staggered expiration dates of movers to prevent the department from receiving an influx of registration renewals and to allow for more efficient processing of renewals. The registration fee will continue to be calculated at the rate of $300 per year.

Additionally, this section removes the requirement that movers and brokers obtain a local license or register locally, and deletes the provision requiring movers and moving brokers to pay for local license or registration fees in addition to the state registration fee.[24] However, movers and brokers are still required to pay the state registration fee required under s. 507.03, F.S.

Section 3 amends s. 507.07, F.S., to make technical changes to the language in order to comport with the amendments made in section 2 of the bill, which would require movers to register with the department biennially instead of annually.

Section 4 amends s. 507.13, F.S., to provide that ch. 507, F.S., shall preempt a local government ordinance or regulation that regulates transactions relating to movers of household goods or moving brokers.

However, ordinances enacted before January 1, 2011, or amendments to those ordinances, may remain in effect, provided such ordinances levy "reasonable" registration fees that do not exceed the cost of administering the ordinances. These existing ordinances apply only to a mover or moving broker if the mover or moving broker's principal place of business is located within the jurisdiction having such an ordinance.

This section also clarifies that the preemption does not apply to a local government's authority to levy a local business tax, pursuant to ch. 205, F.S.

Section 5 provides that this bill shall take effect on July 1, 2011, and shall apply retroactively to local ordinances or regulations adopted on or after January 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b), of the Florida Constitution, requires any general law that reduces a local government's authority to raise revenues in the aggregate, to be passed by a two-thirds vote of the membership of each house of the Legislature.[25] By limiting a local government's authority to levy registration fees, this bill will reduce a local government's revenue-raising authority.

Article VII, section 18(d), of the Florida Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact.[26] An insignificant fiscal impact means

[24] Note: Section 6 of the bill addresses local registration requirements of movers and moving brokers.
[25] FLA. CONST. art. VII, s. 18(b).
[26] FLA. CONST. art. VII, s. 18(d).

an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2011-2012 $1.9 million).[27]

The Revenue Estimating Conference has determined that the biennial registration requirements would have a proposed fiscal impact of $100,000 on the General Inspection Trust Fund within the department. The Revenue Estimating Conference states that the preemption of local fees will have an indeterminate fiscal impact on local governments.[28] If it is determined that the preemption of local fees has more than an insignificant fiscal impact, it will require a two-thirds vote of the membership of each house of the Legislature for passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Retroactive Application

Section 4 of this bill provides that this act shall not preempt an ordinance or regulation originally enacted by a county before January 1, 2011, or a subsequent amendment to such ordinance or regulation. This bill will therefore operate retroactively to January 1, 2011, and will affect local ordinances or regulations that were adopted between January 1, 2011, and July 1, 2011, which is the date the bill takes effect.

Pursuant to Florida case law, even when the Legislature clearly intends for a statute to apply retroactively, a court will reject such an application if the statute: impairs a vested right, creates a new obligation, or imposes a new penalty.[29] However, statutes that do not alter contractual or vested rights, and only relate to procedure can be applied retroactively.[30]

The Florida Supreme Court has recognized that a statute may be applied retroactively if it meets the following conditions.

- There is clear evidence that the Legislature intended to apply the statute retroactively.

[27] Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.
[28] Revenue Estimating Conference, *Fiscal Impact, General Household Moving Services* (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).
[29] *Menedez v. Progressive Express Ins. Co.,* 35 So. 3d 873 (Fla. 2010). *See also Metropolitan Dade County v. Chase Fed. Housing Corp.,* 737 So. 2d 494, 499 (Fla. 1999) (stating that "[t]he general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively).
[30] *Id.*

- Retroactive application is constitutionally permissible.[31]

In determining whether a retroactive application is constitutional, courts have generally held that due process considerations prevent retroactive legislation that impairs vested rights.[32] However the Supreme Court has determined that this general rule is not absolute, and that courts have identified factors "to balance the considerations permitting or prohibiting an abrogation of value."[33] In one case, the Supreme Court weighed the following three factors in considering the validity of retroactive legislation.

- The strength of the public interest served by the statute.
- The extent to which the right affected is abrogated.
- The nature of the right affected.[34]

Since the retroactive provisions in this bill are aimed at local governments and not private citizens, it is unlikely that it will create due process concerns.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Movers and moving brokers will be required to pay their registration fees with the Department of Agriculture and Consumer Services biennially instead of annually.

Current local government ordinances regulating movers of household goods or moving brokers that were enacted prior to January 1, 2011, must be "reasonable" and limited to the amount necessary to administer the ordinance or regulation.

B. Private Sector Impact:

This bill may reduce business costs on household movers and moving brokers by requiring current local registration fees to be "reasonable" and limited to the amount necessary to administer the ordinance or regulation. According to the Department of Agriculture and Consumer Services, there are currently 808 intrastate movers and 6 moving brokers in the State of Florida.[35]

This bill also reduces the state's administrative burden on intrastate movers by requiring registration biennially instead of annually.[36] The biennial registration renewal requirement at the current rate of $300 per year would require movers and moving brokers to pay $600 every two years instead of $300 per year.

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[31] *Metropolitan Dade County v. Chase Fed. Housing Corp.,* 737 So. 2d 494, 499 (Fla. 1999); *See also Promontory Enterprises, Inc. v. Southern Engineering & Contracting, Inc.,* 864 So. 2d 479 (Fla. 5th DCA 2004).
[32] *State Dept. of Transportation v. Knowles*, 402 So. 2d 1155, 1157 (Fla. 1981).
[33] *Id.*
[34] *Id.*
[35] Information received from the Department of Agriculture and Consumer Services (Feb. 4, 2011) (Information on file with the Senate Committee on Commerce and Tourism).
[36] Florida Department of Agriculture and Consumer Services, *Agency Analysis Senate Bill 296*, at 2 (Jan. 21, 2011) (on file with the Senate Committee on Commerce and Tourism).

C. Government Sector Impact:

The state preemption of new local ordinances or regulations adopted after January 1, 2011, could lead to a loss of revenue from registration fees. Local governments that are permitted to continue to regulate intrastate movers (i.e. they have ordinances that were adopted prior to January 1, 2011), may also experience a loss in revenue since they would be required to review their registration fees to ensure that they are "reasonable" and necessary to cover the administrative costs of the ordinance.[37]

The Revenue Estimating Conference has determined that the biennial registration requirements would have a positive fiscal impact of $100,000 on the General Inspection Trust Fund. The Revenue Estimating Conference further states that the preemption of local fees will have an indeterminate fiscal impact on local governments.[38]

The Department of Agriculture and Consumer Services has indicated that the preemption on local government ordinances as framed in the bill will not expand the duties or responsibilities of the department.[39]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Community Affairs Committee on April 11, 2011:
This CS clarifies that this Act shall apply retroactively to local ordinances or regulations adopted on or after January 1, 2011.

CS by Commerce and Tourism Committee on March 29, 2011:
This CS deletes previous sections 3 and 4 of the original bill as filed. These sections proposed to:

- Allow a mover to exclude liability for items packed by the shipper, if the shipper declined in writing to allow the mover to inspect the box or crate containing the items, and the mover declared his or her exclusion from such liability; and

[37] *Id.*
[38] Revenue Estimating Conference, *Fiscal Impact, General Household Moving Services* (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).
[39] Information received from the Department of Agriculture and Consumer Services (Feb. 7, 2011) (Information on file with the Senate Committee on Commerce and Tourism).

- Allow a mover to refuse to transport or ship any of a shipper's household goods, as long as the shipper is notified of, and acknowledges in writing, the mover's refusal.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 396
INTRODUCER:	Regulated Industries Committee, Community Affairs Committee, and Senator Bennett
SUBJECT:	Building Construction and Inspection
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Fav/CS**
2.	Oxamendi	Imhof	RI	**Fav/CS**
3.	Betta	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill provides that the Florida Building Code (code) is no longer required to be submitted to the Legislature for ratification before becoming effective. It also provides for a Florida supplement to the International Code Council's set of building codes containing Florida-specific codes.

The bill redefines the term "sustainable building rating" to include the International Green Construction Code (IGCC), makes conforming changes, and amends the membership composition requirements for the Florida Building Commission (commission). The bill also expands the categories of persons who may be certified as qualified for licensure by endorsement as a home inspector and requires at least 2 hours of hurricane mitigation training to be included as part of a home inspector's continuing education requirements.

The bill repeals the exemption that permits Division I contractors to perform both the inspection and repairs on a home. It permits persons who are not licensed as a landscape architect to submit landscape design plans to government agencies for approval. It permits individuals to qualify for a home inspector license if they possesses a Division I contractor license, a Division II certified air-conditioning license, and an electrical contractor license.

This bill replaces one of the public lodging industry seats on the Department of Health's advisory review board with a county or local building official and clarifies that the Habitat for Humanity exemption also applies to the rehabilitation of certain family residences. The bill creates a license classification for "glass and glazing contractor."

The bill amends the accessibility for handicapped persons in part II of ch. 533, F.S., to revise references to the current 2010 ADA Standards for Accessible Design standards and to conform the Florida-specific provisions to those standards.

It provides for state agency compliance with the 2011 version of the National Fire Protection Association standard (NFPA 58) for LP gas tank separation. The bill also requires compliance with the Florida Building Code when a roof is "replaced or recovered" and replaces specific references to energy efficiency requirements with a reference to the Florida Energy Efficiency Code for Building Construction.

The bill requires products advertised as hurricane windstorm or impact protection from wind-borne debris to be approved as such under Florida's product approval program and prohibits the commission from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements.

This bill substantially amends the following sections of the Florida Statutes: 120.80, 161.053, 255.252, 255.253, 255.257, 255.2575, 468.8316, 468.8319, 468.8323, 468.8324, 468.841, 481.329, 489.103, 489.105, 489.107, 489.141, 514.028, 527.06, 527.21, 553.502, 553.503, 553.504, 553.5041, 553.505, 553.506, 553.507, 553.509, 553.73, 553.74, 553.842, 553.909, and 627.711.

The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

The Florida Building Code

The purpose and intent of the Florida Building Codes Act located in part IV of ch. 553, F.S., is "to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single unified state building code," known as the "Florida Building Code" (code).[1]

Section 553.72, F.S., defines the code as a "single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state" which establishes minimum standards that shall be enforced by authorized state and local government enforcement agencies.

Florida Building Commission

The Florida Building Commission (commission) is established in ch. 553, F.S., within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the

[1] Section 553.72(1), F.S.

Governor and confirmed by the Senate.[2] The Commission is responsible for adopting and enforcing the code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare. [3] The commission is required to update the code triennially based upon the "code development cycle of the national model building codes, . . ."[4] Pursuant to s. 553.73, F.S., the commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the building code.[5]

Section 553.79(9), F.S., allows state agencies whose enabling legislation authorizes the enforcement of the code, to enter into agreements with other governmental units in order to delegate their code enforcement powers, and to utilize public funds for permit and inspection fees so long as the fees are not greater than the fees charged to others.

Home Inspector License

In 2007, the Legislature created the home inspection services licensing program under part XV, ch. 468, F.S.,[6] to provide, in part, for the licensure and regulation of private home inspectors by the Department of Business and Professional Regulation (department). The program provides licensing and continuing education requirements, including certificates of authorizations for corporations offering home inspection services to the public.

Section 468.8311(4), F.S., defines the term "home inspection services" to mean:

> a limited visual examination of one or more of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.[7]

Any person who wishes to be licensed as a home inspector must apply to the department for certification after he or she satisfies the statutory examination requirements provided in s. 468.8313, F.S.

Prior to practicing as a home inspector in Florida, s. 468.8313, F.S., requires an applicant to:

- Pass the required examination,
- Be of good moral character, and

[2] *See* s. 553.74(1)(a)-(w), F.S.
[3] Sections 553.73 and 553.74, F.S.
[4] Florida Building Commission, *Report to the 2009 Legislature*, at 2 (January 2009) (on file with the Florida Senate Committee on Regulated Industries).
[5] *See* ss. 553.76, 553.775, and 553.73(7), F.S., respectively.
[6] Chapter 2007-235, s. 2, L.O.F.
[7] Section 468.8311(4), F.S.

- Complete a course study of at least 120 hours that covers all of the following components of the home: structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure.[8]

An applicant for licensure must also submit to a criminal background check and maintain a commercial general liability insurance policy in an amount of not less than $300,000.[9] Section 468.8314, F.S., provides that the department shall certify any applicant for licensure who satisfies the examination requirements of s. 468.8313, F.S., and who passes the licensing exam, unless he or she has engaged in disciplinary actions as prescribed in s. 468.832, F.S.[10] This section also allows the department to certify an applicant by endorsement if he or she:

- Is of good moral character.
- Holds a valid home inspector license in another state or territory of the United States, whose educational requirements are substantially equivalent to those required herein.
- Has passed a substantially similar national, regional, state, or territorial licensing examination.[11]

Florida home inspector licensees are required to complete at least 14 hours of continuing education every two years prior to his or her application for license renewal.[12]

Energy Efficiency

The Florida Energy Conservation and Sustainable Buildings Act, located in ch. 255, F.S., declares that there is an important state interest in promoting the construction of energy-efficient and sustainable buildings.[13] To further this interest, s. 255.252, F.S., provides that it shall be the policy of the state that buildings constructed and financed by the state and the renovation of existing state facilities be designed and constructed to comply with:

- The U.S. Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- The Green Building Initiative's Green Globes rating system,
- The Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.[14]

These rating systems have been defined in s. 255.253(7), F.S., to mean "sustainable building rating."

For buildings occupied by state agencies, section 255.257, F.S., requires all state agencies to adopt the United States Green Building Council (USGBC) Leadership in Energy and

[8] *See* s. 468.8313(2), F.S.
[9] Sections 468.8313(6) and 468.8322, F.S.
[10] Section 468.8314(2), F.S.
[11] Section 468.8314(3), F.S.
[12] Section 468.8316(1), F.S.
[13] Section 255.2575(1), F.S.
[14] Section 255.252(3)-(4), F.S.

Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services for all new buildings and renovations to existing buildings.

Section 255.2575, F.S., further provides that:

> all county, municipal, school district, water management district, state university, community college, and Florida state court buildings shall be constructed to meet the United States Green Building Council (USCBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services.

International Green Construction Code (IGCC)

The International Green Construction Code (IGCC) establishes baseline green and sustainability "regulations for new and existing traditional and high-performance buildings related to energy conservation, water efficiency, building owner responsibilities, site impacts, building waste, and materials and other considerations."[15] The IGCC is sponsored and endorsed by the International Code Council (ICC), the American Institute of Architects, ASTM International, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the U.S. Green Building Council (USGBC), and the Illuminating Engineering Society (IES).[16]

The ICC recently revealed the latest version of the IGCC, Public Version 2.0, in December of 2010. [17] The ICC provides that the new code complements existing rating systems and guidelines by providing minimum baseline requirements along with a "jurisdictional electives" section of the code that allows jurisdictions to customize the codes beyond its baseline provisions.[18] The IGCC acts as a model code that becomes law after it is adopted by the state or local government entity that governs construction standards. To date, Rhode Island is the only state to adopt the ICGG as part of their Rhode Island Green Buildings Act in 2010.[19] The new Act "applies to any public project that is owned, leased or controlled by the State of Rhode Island."[20]

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[15] The International Code Council (ICC), The International Green Construction Code (ICGG) Brochure, *IGCC: A New Approach for Safe & Sustainable Construction*, available online at http://www.iccsafe.org/cs/IGCC/Documents/Media/IGCC_Flyer.pdf (last visited on Feb. 15, 2011).
[16] *Id.*
[17] News Release, The International Code Council (ICC), *Code Council Releases New IGCC Public Version 2.0* (Dec. 8, 2010) (on file with the Senate Committee on Community Affairs). Note that the initial public version of the code was released on March 15, 2010, after an eight month drafting period.
[18] The International Code Council (ICC) website, *see supra* fn. 14. *See also* News Release, The International Code Council (ICC), *New Construction Code Unveiled* (March. 15, 2010) (on file with the Senate Committee on Community Affairs).
[19] News Release, The International Code Council (ICC), *Rhode Island Recognized by International Code Council as First State to Adopt Green Construction Code* (Oct. 19, 2010) (on file with the Senate Committee on Community Affairs).
[20] *Id.*

Product Evaluation and Approval

Section 553.842, F.S., provides the commission with the authority to adopt rules to develop a product evaluation and approval system that applies statewide to operate in coordination with the code. Rules relating to product approval are contained in ch. 9N-3.006, F.A.C.[21]

The commission is authorized to enter into contracts to provide for administration of the product evaluation and approval system. The system must rely on national and international consensus standards whenever such standards are adopted into the code, to demonstrate compliance with code standards. Other standards which meet or exceed state requirements must also be considered.[22]

Subsection (5) of section 553.842, F.S., provides the methods that must be used by the commission for statewide approval of products, methods, or systems of construction.[23] These methods must be used by the commission to approve "panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components."[24]

The commission is required to maintain a list of the state-approved products, product evaluation entities, testing laboratories, quality assurance agencies, certification agencies, and validation entities.[25] The commission is also authorized to adopt a rule that identifies standards that are equivalent to or more stringent than those specifically adopted by the code, thereby allowing the use in this state of the products that comply with the equivalent standard.[26]

Section 553.8425, F.S, provides the methodology to be used for local product approval for products or systems of construction in order to demonstrate compliance with the structural windload requirements prescribed in the code.[27]

Uniform Mitigation Verification Form

Section 627.711, F.S., requires insurers to notify residential property insurance applicants or policyholders of premium insurance discounts, rates or credits that are available for windstorm mitigation fixtures or construction techniques located on the insured property. In factoring discounts for wind insurance, insurers must use the uniform mitigation verification inspection form adopted by the Financial Services Commission.[28]

[21] Florida Administrative Weekly & Florida Administrative Code, Rule List *available online at* https://www.flrules.org/gateway/result.asp (last visited on Feb. 21, 2011).
[22] Equivalence of standards for product approval are standards for products which meet or exceed the standards referenced in the Florida Building Code, and which are certified as equivalent for purposes of determining code compliance (Chapter 9N-3.015, F.A.C.).
[23] *See* s. 553.842(5)(a)-(b), F.S.
[24] *Id.*
[25] Section 553.842(13), F.S.
[26] Section 553.842(16), F.S.
[27] *See* s. 553.8425(1)(a)-(f), F.S.
[28] Section 627.711(2), F.S.

Under current law, an insurer must accept as valid, a uniform mitigation verification form that is signed by certain certified individuals outlined in s. 627.711(2), F.S.[29] One of the certified individuals outlined in s. 627.711(2), F.S., is a home inspector that is licensed under s. 468.8314, F.S., and who has completed at least 3 hours of hurricane mitigation training, including hurricane mitigation techniques and compliance with the uniform mitigation verification form, and completion of a proficiency exam. Pursuant to this section, the home inspector must complete at least 2 hours related to mitigation inspection and the uniform mitigation form, as part of their continuing education requirements provided in s. 468.8316, F.S.

Mechanical Equipment

The code requires roof-mounted equipment to be elevated from the roof surface. With respect to a roof-mounted air conditioner, the code requires that this equipment be elevated to a prescribed distance above the roof surface. The distance varies depending on the width of the air conditioning unit. For example, an 18 inch clearance is required for a roof-mounted air conditioning unit that is 24 to 36 inches in width.[30] According to the DCA, this requirement allows for maintenance of the roof surface beneath the equipment. Additionally, the code requires that all roof mounted mechanical equipment must be designed to withstand the forces exerted by wind. According to the DCA, this requirement originated with the model code that served as the foundation for the first edition of the code, the 2001 International Mechanical Code, and has been in effect in Florida since March 1, 2002.

During the 2010 Legislative Session, the Legislature created a new subsection (15) of s. 553.73, F.S., which provides that:

> An agency or local government may not require that existing mechanical equipment on the surface of a roof be installed in compliance with the requirements of the Florida Building Code until the equipment is required to be removed or replaced.[31]

Thermal Efficiency Standards-Appliance Requirements

Florida's Thermal Efficiency Code in s. 553.900, F.S., requires the DCA to provide a "statewide uniform standard for energy efficiency in thermal design and operation of all buildings statewide."[32] The standard is adopted into the code by the commission and is updated at least every three years to include "the most cost-effective energy-saving equipment and techniques available."[33] A schedule of increases in thermal efficiency is outlined in s. 553.9061, F.S. Subsection (2) of s. 553.9061, F.S., requires the commission to identify within the code the specified building options and elements that are available to meet energy efficiency goals.

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[29] *See* s. 627.711(2)(a)1.-6., F.S. (the additional certified individuals include: a building code inspector certified under s. 468.607, F.S.; a general building or residential contractor licensed under s. 489.111, F.S.; a professional engineer licensed under s. 471.015, F.S.; a professional architect licensed under s. 481.213, F.S.; or any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a uniform mitigation verification form).
[30] *See* Table 1509.7 in ch. 15, Florida Building Code (2007), including the 2009 supplements, relating to rooftop structures.
[31] Section 553.73(15), F.S. *See also* ch. 2010-176, s. 32, L.O.F..
[32] Section 553.900, F.S.
[33] Section 553.901, F.S.

Section 553.909, F.S., states that the Florida Energy Efficiency Code for Building Construction shall set the minimum energy requirements for commercial or residential swimming pool pumps, swimming pool water heaters, and water heaters used to heat portable water.

Section 553.909(3), F.S., currently provides minimum energy requirements for commercial and residential pool pumps and/or water motors that are manufactured on or after July 1, 2011. Subsection (4) of s. 553.909, F.S., requires residential pool pump motor controls that have a total horsepower of 1 HP or more to operate at a minimum of two speeds, with a low speed override capability being for a temporary period not to exceed one normal cycle or 24 hours, whichever is less. This subsection does not include the circulation speed for solar pool heating systems, which are permitted to run at higher speeds during periods of usable solar heat gain. Subsection (5) of s. 553.909, F.S., prohibits a portable electric spa standby power from being "greater than 5(v2/3) watts where V [equals] the total volume, in gallons, when spas are measured in accordance with the spa industry test protocol."

Department of Health Advisory Board

Chapter 514, F.S., provides statutory criteria pertaining to public swimming and bathing facilities. This chapter allows the Department of Health to adopt and enforce rules in order "to protect the health, safety, or welfare of persons using public swimming pools and bathing places."[34]

Section 514.028, F.S., allows the Governor to appoint certain specified members to an established advisory review board which shall recommend agency action on variance request, rule and policy development, and other technical review problems. The advisory review board must meet as necessary or at least quarterly, and must be comprised of the following individuals:

- A representative from the office of licensure and certification of the department.
- A representative from the county health departments.
- Three representatives from the swimming pool construction industry.
- Two representatives from the public lodging industry.[35]

Landscape Design

The Legislature added the regulation of landscape designers to part II of ch. 481, F.S., in 1998.[36] In general, part II, of ch. 481, F.S., provides for the regulation of landscape architects by the Board of Landscape Architecture within the Department of Business and Professional Regulation (DBPR). Prior to 1998, landscape designers were not regulated in Florida, except to the extent that they were not permitted to perform tasks of a landscape architect.[37] The Legislature in adopting ch. 1998-245, L.O.F., defined the term "landscape design" and provided an exemption from landscape architect license requirements for landscape designers.
Section 481.303(7), F.S., defines the term landscape design to mean:

[34] Section 514.021(1), F.S.
[35] Section 514.028(1)(a)-(d), F.S.
[36] Chapter 1998-245, s. 27, L.O.F.
[37] Fla. S. Comm. on Regulated Industries, CS/SB 1066 (1998) Staff Analysis 1 (on file with the Senate Committee on Community Affairs).

> consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.

Section 481.329, F.S., provides exceptions and exemptions from landscape architect license requirements. Subsection (5) of s. 481.329, F.S., provides that "nothing in this part prohibits any person from engaging in the practice of landscape design, as defined in s. 481.303(7)."

The National Fire Protection Association (NFPA) 58, Liquefied Petroleum Gas Code

The National Fire Protection Association (NFPA) is an international nonprofit organization that was established in 1896 to reduce the risks and effects of fires by establishing building consensus codes.[38] The NFPA 58, also known as the Liquefied Petroleum Gas Code, applies to "the storage, handling, transportation, and use of LP-Gas[es]," which is defined by the code to mean "gasses at normal room temperature and atmospheric pressure [that] liquefy under moderate pressure and readily vaporize upon release of the pressure."[39]

Section 527.06(3), F.S., provides the Department of Agriculture and Consumer Services (DACS), with the authority to adopt rules that are in substantial conformity with NFPA's published safety standards. Subsection (3), specifically provides that:

> Rules in substantial conformity with the published standards of the National Fire Protection Association shall be deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

The NFPA has recently published the 2011 edition of the NFPA 58, Liquefied Petroleum Gas Code. As a result, DACS has filed a Notice of Rule Development (Rule 5F-11.002) to adopt the 2011 edition of the NFPA 58, Liquefied Petroleum Gas Code.[40]

State agencies that currently enforce the LP gas container separation distances, adopt changes in the NFPA safety codes as standards evolve and technology changes.

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[38] National Fire Protection Association Website, *Overview*, available online at http://www.nfpa.org/categoryList.asp?categoryID=495&URL=About%20NFPA/Overview (last visited on March 4, 2011).
[39] National Fire Protection Association Website, *Document Scope of NFPA 58* available online at http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=58 (last visited on March 4, 2011).
[40] Florida Department of Agriculture & Consumer Services, *Senate Bill 960 Fiscal Analysis* (Feb. 14, 2011) (on file with the Senate Committee on Community Affairs).

Coastal Construction and Excavation

Section 161.053, F.S., within the Beach and Shore Preservation Act, provides for the protection of Florida beaches and coastal barrier dunes against "imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access." [41]

Section 161.053(1), F.S., directs the Department of Environmental Protection (DEP) to establish coastal construction control lines on a county basis along the state beaches in order to enforce the provisions of this Beach and Shore Preservation Act. Pursuant to this statutory authority, DEP's Coastal Construction Control Line Permitting Program establishes special siting and design criteria for construction and related activities occurring seaward of the coastal construction control lines adopted by the department.[42] The Department of Environmental Protection's permit criterion is guided by the coastal construction control and erosion projection requirements in s. 161.053, F.S.

Florida Statutes also provides exemptions from these requirements, one of which is provided in paragraph (11)(a) of s. 161.053, F.S. This paragraph states that:

> The coastal construction requirements defined in subsection (1) and the requirements of the erosion projections in subsection (5) do not apply to any modification, maintenance, or repair of any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure.

The commission is proposing to amend Rule 3109.1.1 of the Florida Building Code to limit the extent of the statutory exemption currently provided in paragraph (11)(a) of s. 161.053, F.S. Proposed through Modification # SP 4203, the commission's amendment would state (indicated by underlined text):

> Exception: The standards for buildings seaward of a CCL area do not apply to any modification, maintenance or repair of any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure, <u>except for substantial improvement of or additions to existing habitable structures</u>.[43]

[41] Sections 161.011 and 161.053(1)(a), F.S.
[42] Florida Department of Environmental Protection website, *The Coastal Construction Control Line Permitting (CCCL)*, available online at http://www.dep.state.fl.us/beaches/programs/ccclprog.htm#view_rules (last visited on March 8, 2011).
[43] Letter from David M. Levin, Attorney, Icard, Merrill, P.A., to Senator Michael Bennett, President Pro Tempore, the Florida Senate (Dec. 16, 2010) (on file with the Senate Committee on Community Affairs).

Statement of Estimated Regulatory Costs

Section 120.541, F.S., requires an agency to prepare a statement of estimated regulatory costs (SERC) prior to the adopting, amendment, or repeal of any agency rule that has an adverse economic impact on small businesses or that is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate.

Paragraph (2)(a) of s. 120.541, F.S., also requires an economic analysis of whether the proposed rule directly or indirectly is likely to have an adverse impact in excess of $1 million in the aggregate on economic growth, private-sector job creation or employment, private-sector investment, business competitiveness (including productivity, innovation, or ability of persons doing business in Florida to compete with out-of-state businesses or domestic markets). This paragraph also requires an economic analysis on whether the proposed rule directly or indirectly increases regulatory costs, including any transactional costs in excess of $1 million in the aggregate.

Subsection (3), of s. 120.541, F.S., provides that if the adverse impact or regulatory costs of an agency rule exceed any of the criteria established in paragraph (2)(a), then the rule must be submitted to the President of the Senate and the Speaker of the House of Representatives 30 days before the next regular legislative session, and may not take effect until ratified by the Legislature.

Alternate Power Generators for Elevators

During the 2006 Regular Session, s. 553.509(2)(a), F.S.,[44] was enacted to require that any person, firm, or corporation that owns, manages, or operates a residential multifamily dwelling, including a condominium, which is at least 75-feet high (high-rise residential buildings) and contains a public elevator, have at least one elevator capable of operating on alternate generated power. In the event of a general power outage, this elevator must ensure that residents have building access for an unspecified number of hours each day over a five-day period following a natural or manmade disaster, emergency, or other civil disturbance. The alternate generated power source must be capable of powering any connected fire alarm system in the building.

The alternate generated power requirements under current law do not apply to high-rise buildings that were in existence on October 1, 1997, or which were either under construction or under contract for construction on October 1, 1997.[45] Newly constructed residential multifamily dwellings meeting the criteria of this section must meet the engineering, installation, and verification requirements of s. 553.509(2), F.S., before occupancy.[46]

At a minimum, the elevator must be appropriately pre-wired and prepared to accept alternate generated power.[47] The power source must be capable of powering the elevator, a connected building fire alarm system, and emergency lighting in the internal lobbies, hallways, and other

[44] Chapter 2006-71, s. 12, Laws of Fla.
[45] Section 553.507, F.S., exempts such buildings, structures, and facilities from the provisions of ss. 553.501-553.513, F.S., the "Florida Americans with Disabilities Implementation Act."
[46] Section 553.509(2)(c), F.S.
[47] Section 553.509(2)(b), F.S.

internal public portions of the building. The dwellings must either have a generator and fuel source on the property or proof of a current guaranteed service contract providing such equipment and fuel source within 24 hours of a request. Proof of a current service contract for such equipment and fuel must be posted in the elevator machine room or other place conspicuous to the elevator inspector.

A person, firm, or corporation that owns, manages, or operates a building affected by this requirement must provide to the local building inspection agency verification of engineering plans for alternate generated power capability by December 31, 2006.[48] The local building inspectors must verify the installation and operational capability of the alternate generated power source and report to the county emergency management director by December 31, 2007.

The owner, manager, or operator of the high-rise residential building must keep written records of any contracts for alternative power generation equipment and fuel source.[49] Quarterly inspection records must be maintained and posted.[50] A written emergency operations plan for before, during, and after a natural or manmade disaster or other emergency situation must also be maintained.[51]

Certified elevator inspectors must confirm that all installed generators are in working order, the elevators have current inspection records posted, and a generator key is located near the generator.[52] If there is no installed generator, the inspector is required to confirm that the appropriate pre-wiring and switching capabilities are present and that the guaranteed contingent service contract is posted.

The October 2008 interim report prepared by the professional staff of the Senate Regulated Industries Committee also studied the extent of compliance with s. 553.509(2), F.S., and reviewed the problems that citizens and governmental agencies have had in implementing these requirements.[53] Senate professional staff recommended that the Legislature consider the repeal of s. 553.509(2), F.S. The repeal recommendation was based upon the following findings and conclusions:

- The requirement may pose a threat to public safety, i.e., the availability of emergency power for elevators during the five days after a declared state of emergency may encourage persons to stay in high-rise buildings and areas that are not safe and do not have the necessary infrastructure for safe habitation.
- The requirement does not have a clearly defined state or local agency that is responsible for its on-going enforcement.
- Enforcement of the requirement by a state agency would carry a fiscal burden without a clearly defined benefit that may outweigh the public safety concerns.
- The requirement does not appear to have any clearly defined impact on elevator safety.

[48] *Id.*
[49] Section 553.509(2)(b), F.S.
[50] Section 553.509(2)(d), F.S.
[51] *Id.*
[52] Section 553.509(2)(f), F.S.
[53] Comm. on Regulated Industries, The Florida Senate, *Review of Elevator Safety and Regulation* (Interim Report 2009-125) (Sept. 2008), *available at* http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-125ri.pdf.

- It is not clear what penalty, if any, should be imposed on building owners who cannot comply with the requirement because they cannot afford the expense.
- To the extent that an alternate emergency power for elevators provides a public benefit, the Florida Building Code currently requires emergency power for elevators in new high-rise residential construction.

Alternatively, the professional staff recommended that the Legislature could continue to require emergency generated power pursuant to s. 553.509(2), F.S., but, to ensure uniform compliance, provide funding for the Bureau of Elevator Safety within the Division of Hotels and Restaurants, Department of Business and Professional Regulation, for the enforcement of this provision.

Florida Accessibility Code Workgroup

The Florida Conflict Resolution Consortium and the commission's Florida Accessibility Code Workgroup collaborated with stakeholders to develop recommendations for amending the Florida accessibility code for building construction to conform to the relevant standards in the most recent U.S. Department of Justice's Americans with Disability Act (ADA) accessibility standards (ADAAG). They were tasked with integrating the relevant Florida standards in ss. 553.501-553.513, F.S., into the 2004 ADAAG as adopted by 28 CFR 36 and further additions proposed by the Department of Justice (DOJ). The workgroup focused on integrating Florida-specific requirements into ADA standards, and identifying changes to Florida law that are necessary to update references to section numbers in the 2010 ADA Standards. It also focused on clarifying Florida requirements in order to conform Florida's code to ADAAG rules in 28 CFR 35 and 28 CFR 36 as Revised September 15, 2010. The workgroup and the commission have identified several provisions in ch. 553, F.S., which need to be updated to reflect the 2010 ADA Standards for Accessible Design and to revise current terminology to reflect those updated standards.

III. Effect of Proposed Changes:

Section 1 creates s. 120.80(16)(d), F.S., to exempt the code from the estimated regulatory costs provisions in ss. 120.54(3)(b) and 120.541(3), F.S., and from the requirement that the code be submitted to the Legislature for ratification before it becomes effective.

Section 2 amends paragraph (11)(a) of s. 161.053, F.S., to prohibit the commission from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements for the modification or repair of existing structures within the limits of an existing foundation.

Sections 3 through 6 amend ss. 255.252(3), 255.253(7), 255.257(4), 255.2575(2), F.S., to delete references to the specified energy efficiency and sustainable materials rating standards, and to redefine the term "sustainable building rating" to include the International Green Construction Code (IGCC). Specifically, these sections substitute references to the individual green code ratings with the term "sustainable building rating."

Sections 7 and 33 amend ss. 468.8316 and 627.711, F.S., respectively, to require at least two hours of hurricane mitigation training to be included as part of a home inspector's required 14

hours of continuing education. The hurricane mitigation training must be approved by the Construction Industry Licensing Board.

Section 8 amends s. 468.8319, F.S., to remove an exemption that allows Division I contractors to do both the inspection and repairs to a home.

Section 9 amends s. 468.8323, F.S., to clarify that if it is "not" self evident, the home inspector shall report a reason why the system or component is significantly deficient or near end of its service life.

Section 10 creates s. 468.8324(1), F.S., to allow individuals with the following certifications and/or licenses to be licensed as a Florida home inspector, if the individual submits an application to the department postmarked on or before July 1, 2012. A person may qualify for a license if he or she:

- Possesses a one and two family dwelling inspector certification issued by the International Code Council or the Southern Building Code Congress International.
- Has been certified as a one and two family dwelling inspector by the Florida Building Code Administrators and Inspectors Board under part XII, of ch. 468, F.S.
- Possesses a Division I contractor license under part I, of ch. 489, F.S., a Division II certified air-conditioning license under part I of ch. 489, F.S., and an electrical contractor license under part II of ch. 489, F.S.

The bill also deletes the current qualifications for license as a home inspector to be submitted before March 1, 2011, in the current s. 468.8324(1), F.S., which includes the requirement of one of the following.

- A state or national certification with a proctored examination on home inspections, completion of at least 14 hours of verifiable education on home inspections.
- At least three years of experience verified through home inspection reports submitted by the applicant and completion of at least 14 hours of verifiable education on home inspections.

The bill also deletes s. 468.8324(1), F.S., which authorizes the DBPR to investigate the validity of the home inspection reports that are submitted to verify an applicant's three years of experience.

Section 11 amends s. 468.841(1), F.S., to provide that home inspectors licensed under part XV of ch. 468, F.S., are not required to comply with the license requirements for mold assessment in part XVI of ch. 468, F.S.

Section 12 amends subsection (5) of s. 481.329, F.S., to provide that nothing in part II, of ch. 481, F.S., which provides for the regulation of the practice of landscape architecture, shall prohibit a person engaging in the practice of landscape design from submitting such plans to government agencies for approval.

Section 13 amends s. 489.103(18), F.S., to clarify that Habitat for Humanity International, Inc., or its local affiliates are exempt from contracting licensing requirements for the rehabilitation of certain family residences.

Section 14 creates s. 489.105(3)(q), F.S., to define the term "glass and glazing contractor." Specifically, this section codifies the Construction Industry Licensing Board rule[54] for glass and glazing specialty contractors and allows licensed glass and glazing contractors to install hurricane shutters.

Sections 15 and 16 amend ss. 489.107 and 489.141, F.S., to make conforming changes to cross-references as a result of the creation of s. 489.105(3)(q), F.S., in section 13 of this CS.

Section 17 amends s. 514.028, F.S., to replace one of the two public lodging industry seats on the seven-member Department of Health advisory review board with a representative from county or local building department.

Section 18 creates s. 527.06(3)(b), F.S., to prohibit the DACS and other state agencies from requiring compliance with certain national standards for LP gas tanks unless they are in compliance with the minimum LP gas container separation distances included in the 2011 version of NFPA 58. This subsection would be deemed repealed on the last effective date of rules adopted by the commission as part of the department, the code, and the Office of State Fire Marshal as part of the Florida Fire Prevention Code of these minimum separation distances as contained in the 2011 edition of NFPA 58.

Section 19 amends s. 527.21(11), F.S., to specify that the definition for propane is defined by the NFPA 58, Liquefied Petroleum Gas Code.

Sections 20 through 28 amend the provisions related to accessibility for handicapped persons in part II of ch. 533, F.S., which consists of ss. 553.501-553.513, F.S., to revise references to the current 2010 ADA Standards for Accessible Design (ADA standards) and to conform the Florida Specific provisions to those standards.

Section 20 amends s. 553.502, F.S., to revise the statement of Legislative intent by updating the reference to the 2010 ADA Standards for Accessible Design (ADA standards). It also includes commercial facilities in the provision that part II of ch. 533, F.S., is not intended to diminish available defenses under the ADA.

Section 21 amends s. 553.503, F.S., which relates to the adoption of the federal standards to update the reference to the ADA Standards for Accessible Design.

Section 22 amends s. 553.504, F.S., which provides exceptions to the applicability of federal ADA standards, to update the reference to the ADA Standards for Accessible Design.

[54] *See* 61G4-15.018, F.A.C. The Construction Industry Contracting Board is within the Department of Business and Professional Regulation.

The bill amends s. 553.504(3), F.S., to update the reference to the ADA standard for exterior hinged doors.

The bill amends s. 553.504(4), F.S., to update the reference to the ADA accessibility standards for motel and hotel rooms. This provision requires additional guest rooms with special accessibility features beyond those required by the ADA. It references the ADA standard and deletes the Florida-specific standards for accessible guest rooms that require 19 inch high accessible toilet seats using 15 inch high toilets with 4 inch booster seats.

The bill amends s. 553.504(5), F.S., to update the reference to the ADA standard for bathing rooms and toilet rooms.

The bill repeals the following accessibility standards in the current s. 553.504, F.S. According to the commission, each of these Florida-specific standards is adequately addressed through the current ADA standards.

- Section 553.504(3), F.S., relating to the requirement for 29 inch door opening, excluding single-family homes, duplexes, and triplexes not covered by the ADA of 1990 or the Fair Housing Act. According to the commission, this provision has no effect because it is limited to federal buildings which the state is preempted from regulating under its accessibility standards.
- Section 553.504(4), F.S., relating to the Florida-specific requirement that the bottom landing on ramps must provide 72 inches of straight and level clearance rather than the ADA standards 60 inches of clearance.
- Section 553.504(5), F.S., relating to the following Florida-specific requirements:
  - Handrail extensions at top and bottom of ramps shall be 18 inches.
  - Curb ramps that are part of a means of egress must be 44 inches wide.
  - Curb ramps not protected by handrails must have the sides be flared with a slope no greater than a ratio of 1 to12. According to the commission, these standards exceed the ADA standards.
- Section 553.504(7), F.S., relating to the requirement for additional accessible seating spaces in assembly areas, public food service, and licensed beverage service establishments. According to the commission, studies indicate the number of wheelchair accessible areas provided under the current ADA standards amply address the demand for accessible seating.
- Section 553.504(8), F.S., relating to standards for designated aisle width between tables with end seating positions in restaurants. According to the commission, it cannot justify Florida-specific standards for aisle widths.
- Section 553.504(10), F.S., relating to the Florida-specific standards for detectable warning surfaces. According to the commission, use of the ADA standard should lead to the consistent application of the standard in the state.
- Section 553.504(11), F.S., to delete a cross-reference to Public Service Commission rules for placement of public telephones. According to the commission, the standards requirements for public telephones will be included in the code.
- Section 553.504(13), F.S., relating to the width of checkout aisles that are not required to be accessible. . According to the commission, it cannot justify Florida-specific standards for non-accessible checkout aisle widths.

- Section 553.504(14), F.S., relating to prohibition of turnstiles in locations that serve fewer than 100 persons. According to the commission, the ADA standards do not permit turnstiles in required accessible routes.

Section 23 amends s. 553.5041, F.S., to update the reference to the ADA standards for parking spaces for persons with disabilities. The bill also revises this section to use the terminology of the ADA standards. It amends s. 553.5041(3), F.S., to reference "designated accessible spaces" in place of the reference to parking spaces in employee and visitor parking areas. According to the commission, the number and placement of accessible parking spaces provided in s. 553.5041(4), and in the ADA standards referenced in this section should apply.

The bill amends s. 553.5041(5)(a), F.S., to provide that the placement of access aisles for parking spaces may require a disabled driver to wheel behind their own parked vehicle. According to the commission, the general prohibition of requiring travel behind park vehicles is to prevent injury to wheel chair bound persons who may not be seen by the drivers of parked vehicles. The commission believes that this concern is not applicable when the driver of a vehicle is wheeling behind the vehicle that he or she just parked.

The bill amends s. 553.5041(5)(b), F.S., to delete the requirement that accessible spaces must be located on the shortest safely accessible route to an accessible building entrance. According to the commission, the ADA standards require placement on the shortest accessible route and the addition of the term "safely" may prohibit compliance with the ADA standards.

The bill amends s. 553.5041(5)(c)1., F.S., to delete the requirement for the placement of accessible aisles adjacent to accessible parking spaces. According to the commission, this provision is duplicative of the ADA standards.

The bill amends s. 553.5041(5)(d), F.S., to delete the requirement relating to proximity of parallel on-street parking to the beginning or end of a block or adjacent to alley entrances. According to the commission, this provision may unnecessarily limit the placement of parallel parking spaces and may violate the ADA requirement for accessible parking on the shortest accessible route to a building's accessible entrances.

The bill deletes the current s. 553.5041(5)(e), F.S., which relates the slope and grade of the pavement where parallel parking is located. According to the commission, the slope and grade characteristics of parallel parking spaces on streets are dictated by the characteristics of the streets.

The bill deletes the current s. 553.5041(5)(f), F.S., which requires that curb ramps be placed outside parking spaces. According to the commission, this provision is addressed in the ADA standards.

The bill amends s. 553.5041(6), F.S., to provide that the parking space must be striped in a manner consistent with the standards of the controlling jurisdiction for other spaces. According to the commission, this provision would provide for the consistent application of the layout of parking spaces. The bill also decreases the height of parking signs for the disabled from a height

of at least 84 inches to a height of at least 60 inches. According to the commission, this provision is consistent with the ADA standards.

Section 24 amends s. 553.505, F.S., which identifies the locations that are subject to the accessibility standards in ss. 553.501-553.513, F.S., and are not subject to the ADA standards. It deletes the reference to parking spaces, parking lots, and other parking facilities being governed by s. 553.5041, when that section provides increased accessibility. According to the commission, the deleted provision is affirmatively addressed in s. 553.5041, F.S., as amended by this bill.

Section 25 amends s. 553.506, F.S., to update the reference to the ADA standards in regards to the powers of the commission.

Section 26 amends s. 553.507, F.S, to revise the language that establishes the applicability of the accessibility requirements in part II of ch. 553, F.S. The bill deletes the provision that limited the application of the accessibility standards in part II of ch. 553, F.S., to buildings, structures, and facilities that were either under construction or under contract for construction on October 1, 1997. It also deletes the exception for buildings, structures, or facilities that were in existence on October 1, 1997, unless they are one of the listed types of structures.

Section 27 amends s. 553.509, F.S., to update the reference to the ADA standards concerning the powers of the commission. It also creates ss. 553.509(1)(d)-(g), g., to expand the exception for locations that do not need to comply with the ADA standards for vertical accessibility to all levels of the location. The list is expanded to include:

- All play and recreation areas that meet the specified ADA standard.
- All employee areas that are exempted under the specified ADA standard.
- Facilities, sites, and spaces that are exempted by the specified ADA standards.

The bill also repeals the alternate power generators for elevators provisions in s. 553.509(2), F.S.

Section 28 provides that any building or facility that is designed to conform with the 2010 ADA standards also complies with the Florida-specific requirements in part II of ch. 553, F.S., until the Florida Accessibility Code for Building Construction is updated to implement the changes to 2010 ADA standards to part II of ch. 553, F.S.

Section 29 amends s. 553.73(1), F.S., to provide for a Florida supplement to the International Code Council's set of building codes, rather than being adopted by the commission as part of the code. This section also specifies the national codes to be used in forming the foundation for state building standards and codes, and allows the commission to approve technical amendments to the code once every three years rather than each year. The CS requires proposed amendments to base codes to provide a specific justification for why Florida is different from other areas that have adopted the base code.

This section also provides that a local government may not require mechanical equipment on the surface of a roof to meet code requirements until the "roof is replaced or recovered."

Section 30 amends s. 553.74(1)(v), F.S., to revise the membership of the 25-member commission. It expands the qualifications for the participating member who is a representative of the green building industry, to include "a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED)."

Section 31 amends s. 553.842, F.S., to require products advertised as hurricane, windstorm or impact protection from wind-borne debris during a hurricane or windstorm, actually be approved as such under Florida's product approval program in s. 553.842, F.S., or s. 553.8425, F.S. It also provides that any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without required approval is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of ch. 501, F.S.

Section 32 amends ss. 553.909(3), (4), and (5), F.S., to replace the specified energy efficiency requirements for commercial and residential pool pumps, motors, heaters and spas, with a reference to the Florida Energy Efficiency Code for Building Construction.

Section 34 provides that this act shall take effect on July 1, 2011.

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:

According to the DBPR, there are a total of 1,022 licensed inspectors and contractors that could qualify for licensure by grandfathering on or before July 1, 2012, under this bill. Allowing additional certified inspectors and contractors to be licensed as home inspectors may result in between 500 and 1,000 new licensees that would pay the licensing fee. Based on the projection of 500 additional biennial licenses, the department estimates that this CS will generate $165,000 in additional revenue for FY 2011-12 and $100,000 in additional revenue for FY 2013-14.

B. Private Sector Impact:

As a result of this CS, Division I contractors will no longer be permitted to perform both the inspection and repairs on a home. The CS permits persons who are not licensed as a landscape architect to submit landscape design plans to government agencies for approval.

This CS will not allow local governments to require mechanical equipment on the surface of a roof to abide by the Florida Building Code until the roof is "replaced or recovered."

This CS will also require that products advertised as hurricane, windstorm or impact protection actually be approved as such under Florida's product approval program.

The Department of Business and Professional Regulation noted that the bill should result in more bulk investors getting into the business and that should improve the financial position of condominium associations in which a significant number of units are unsold and unoccupied. The department also stated that the purchase of unsold inventory would have a positive effect on the depressed condominium market.

The bill repeals the alternate emergency generated power requirement for elevators in high-rise residential dwellings in s. 553.509(2), F.S. The repeal of this provision may save the owners of such building the costs of compliance with the requirement. It is estimated by industry representatives that the cost to engineer and install the appropriate generator wiring, coupling, and transfer switch is approximately $4,000 to $6,000 per location. Options to power an elevator by portable generator include purchase and guaranteed services contracts in which a second party provides the generator, maintenance, and servicing for a fee. Costs for purchasing a generator are dependent on each individual application. As an approximate general rule, standby generators cost $300 to $500 per kilo-watt. Thus, a 20 KW standby generator would cost between $6,000 and $10,000. A 100 KW generator would cost between $30,000 and $50,000. The cost of a guaranteed services contract would be subject to many variables and is unknown. However, it is likely to be considerably less than the cost of a purchased generator.

C. Government Sector Impact:

State agencies will be required to adopt the International Green Construction Code (IGCC) as a sustainable building rating system for all new buildings and renovations to existing buildings. In addition, all county, municipal, school district, water management district, state university, community college, and state court buildings will be required to comply with the International Green Construction Code (IGCC) as part of the sustainable building rating system.

The Department of Business and Professional Regulation estimated that there will be between 500 and 1,000 new home inspector licenses as a result of this CS, generating an increase in licensing revenue. Based on the projection of 500 additional biennial licenses, the department estimates that this CS will generate $165,000 in additional revenue for FY

2011-12 and $100,000 in additional revenue for FY 2013-14.[55] The department also states that this CS will cause additional calls to the call center per year. According to the department, the additional workload can be handled within existing resources.

As a result of this CS, the commission will be required to provide a Florida supplement to the International Code Council's set of building codes instead of adopting the codes as part of the code. The commission will also be prohibited from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements for the modification or repair of existing structures within the limits of an existing foundation.

The Department of Health will need to replace one of its public lodging industry seats on its advisory review board with a county or local building official.

This CS will require all state agencies to enforce the same LP gas container separation distances included in the 2011 version of NFPA 58.

The Department of Management Services estimates there will be an indeterminate positive impact on the cost of utilities as state facilities become more energy efficient. Conversely, the initial costs when renovations occur on state facilities will cost more to meet the energy efficiency standards.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Regulated Industries on March 16, 2011:
This committee substitute for committee substitute (CS/CS) differs from CS/SB 396 in that it:

- Amends s. 120.80(16)(d), F.S., to correct the cross-reference to s. 120.54(3)(b), F.S.;
- Amends s. 468.8324(1), F.S., to allow individuals to qualify for home inspector for individuals license if they possesses a Division I contractor license under part I of ch. 489, F.S., a Division II certified air-conditioning license under part I of ch. 489, F.S., and an electrical contractor license under part II of ch. 489, F.S. It also deletes the qualification provisions in the current ss. 468.8324(1), (2), and (3), F.S.;

[55] *Id.* at 3. The department states that applications cost $125, new licenses cost $200, and renewal licenses cost $200 each.

- Amends the following provisions related to accessibility for handicapped persons in part II of ch. 533, F.S.: ss. 553.502, 553.503, 553.504, 553.5041, 553.505, 553.506, 553.507, and 553.509, F.S.;
- Creates an unnumbered section of the Florida Statutes to provide that compliance with 2010 ADA standards also complies with the Florida-specific requirements in part II of ch. 553, F.S.;
- Does not amend ss. 553.909(3), F.S., to delete the term "pool"; and
- Amends s. 553.842, F.S., to provide a person who fails to obtain the required approval for windstorm products is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of ch. 501, F.S.

CS by Community Affairs on March 7, 2011:
This CS makes the following changes:

- Exempts the adoption of the code from the requirements that the code go back to the Legislature for adoption before it becomes effective.
- Redefines the term "sustainable building rating" to also include the International Green Construction Code (IGCC) and substitutes references to the individual "green" codes with the term "sustainable building rating."
- Allows Division I contractors and building officials to receive an endorsement to be a home inspector if they apply to the department before July 1, 2012.
- Requires specified hurricane mitigation training to be included as part of home inspectors' required 14 hours of continuing education.
- Removes an exemption that allowed Division I contractors to do both the inspections and the repairs.
- Prohibits anything in part II of ch. 481, F.S., from precluding a landscape designer from submitting landscape design plans to government agencies for approval.
- Clarifies that Habitat for Humanity is exempt from the contracting licensing requirements for *rehabilitation* of residences.
- Moves the provisions of a glass and glazing specialty contractor from DBPR rule to the statute and allows them the ability to install hurricane shutters to their existing license permitted activities.
- Replaces one of the public lodging seats on the Department of Health's advisory review board with a county or local building official.
- Prohibits the Department of Agriculture and Consumer services and other state agencies from requiring compliance with national LP gas tank standards unless they are in compliance with the minimum LP gas container separation distances included in the 2011 version of NFPA 58.
- Specifies that the definition for "propane" is as defined by the NFPA 58, Liquefied Petroleum Gas Code.
- Clarifies that a local government may not require that mechanical equipment on a roof meet the code requirements until the equipment or the roof is "removed, replaced or recovered."
- Requires products advertised as hurricane, windstorm or impact protection *actually be approved as such* under Florida's product approval program.
- Replaces the specific energy efficiency requirements for pool pumps, motors, heaters, and spas, with a reference to the Florida Energy Efficiency Code.

- Provides for a Florida supplement to the International Code Council's set of building codes that addresses provisions specific to Florida.
- Prohibits the commission from adopting rules that limit any of the exceptions or exemptions provided in paragraph (11)(a) of s. 161.053, F.S.
- Provides title amendments.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 1426
INTRODUCER:	Banking and Insurance Committee and Senator Hays
SUBJECT:	Repeal of Health Insurance Provisions
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	**Fav/CS**
2.	Brown	Stovall	HR	**Favorable**
3.	Frederick	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill eliminates the requirement that the Board of Directors of the Florida Health Insurance Plan (FHIP) submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an annual report, which is to include an independent actuarial study.

The bill eliminates the requirement that the Office of Insurance Regulation (OIR) submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an annual report, which summarizes the activities of the Small Employer Access Program (SEAP), including written and earned premiums, program enrollment, administrative expenses, and paid and incurred losses.

The bill provides an effective date of July 1, 2011.

This bill substantially amends section 627.6699(15), Florida Statutes.

This bill repeals section 627.64872(6), Florida Statutes.

II. Present Situation:

Florida Health Insurance Plan

In 1983, the Florida Legislature created the Florida Comprehensive Health Association (FCHA) as a high-risk insurance pool to cover individuals who were unable to purchase health insurance from the open market due to pre-existing conditions. The program is financed through premiums from the participants and assessments on insurance companies, but has been closed to new enrollment since 1991.[1]

In 2004, the Florida Legislature created the FHIP,[2] which was intended to replace the FCHA as the state's high-risk insurance pool.[3] The benefits provided by the FHIP are the same as the standard and basic plans for small employers.[4] The FHIP must also provide an option for the purchase of alternative coverage, such as catastrophic coverage which includes a minimum level of primary care coverage, and a high deductible plan that meets all the requirements for a health savings account. Eligibility for the plan is limited to individuals who have received two notices of rejection for coverage from health insurers and individuals covered under the FCHA at the time the FHIP was created.[5]

The FHIP was created to be run by a nine person Board of Directors, chaired by the Director of the OIR. Five board members would be appointed by the Governor and one member each would be appointed by the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer.[6] The Board is required to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an annual report which is to include an independent actuarial study that must contain five elements specifically enumerated in s. 627.64872(6)(a)-(e), F.S.

According to the OIR, funds for the start-up of the FHIP have not been appropriated, and as a result, the FHIP is not in operation.[7] Therefore, the requirement that a report be provided that details, among other data, the number of people covered and projected to be covered, is not needed.

Small Employers Access Program

In 1992, the Florida Legislature enacted the Employee Health Care Access Act (EHCAA).[8] The purpose of the act was to promote the availability of health insurance coverage to small

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[1] *See* Department of Financial Services website: myfloridacfo.com/consumers/InsuranceLibrary/Insurance/Residual_Markets/Residual_Markets – Florida_Comprehensive_Health_Association. htm; last visited March 12, 2011.
[2] Section 627.64872, F.S.
[3] *See* Department of Financial Services website:http://www.myfloridacfo.com/consumers/InsuranceLibrary/Insurance/Residual_Markets/Residual_Markets_-_The_Florida_Health_Insurance_Plan.htm; last visited March 12, 2011.
[4] *See* s. 627.6699(12), F.S.
[5] Section 627.64872(9), F.S.
[6] Section 627.64872(3), F.S.
[7] Florida Office of Insurance Regulation Bill Analysis for SB 1426 (March 9, 2011).
[8] Ch. 92-33, s. 117, L.O.F.

employers, regardless of claims experience or their employees' health status.[9] In 2004, the SEAP was created within the EHCAA.[10] The purpose of the SEAP was to provide additional health insurance options for small businesses consisting of up to 25 employees, including any municipality, county, school district, hospital located in a rural community, and any nursing home employer.[11] The OIR is required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives summarizing the activities of the program over the past year, including written and earned premiums, program enrollment, administrative expenses, and paid and incurred losses.[12]

According to OIR, the SEAP is not operational. The enacting legislation required a competitive bid for an insurer to administer the program. The OIR issued the required request for proposals in 2004, and no insurer submitted a bid. Therefore, the annual reporting requirement contained in the section is moot.[13]

III. Effect of Proposed Changes:

Section 1 repeals s. 627.64872(6), F.S., thereby eliminating the annual reporting requirement for the FHIP. The Board of Directors of the FHIP would no longer be required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 2 repeals s. 627.6699(15)(l), F.S., thereby eliminating the annual reporting requirement for the SEAP. The SEAP would no longer be required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 3 provides an effective date for the bill of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

[9] Section 627.6699(2), F.S.
[10] Ch. 2004-297, s. 24, L.O.F.
[11] Section 627.6699(15)(b), F.S.
[12] Section 627.6699(15)(l), F.S.
[13] Florida Office of Insurance Regulation Bill Analysis for SB 1426 (March 9, 2011).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Senate Banking and Insurance Committee on 3/16/2011:
The original bill would have removed only one of the five specified elements that are required to be contained in the annual report submitted by the Board of Directors of the FHIP. The original bill would have continued to obligate the Board to submit the remaining four elements in an annual report. The CS removes altogether the requirement that the Board submit an annual report.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 1574
INTRODUCER:	Military Affairs, Space, and Domestic Security Committee and Senator Latvala
SUBJECT:	Business Enterprise Opportunities for Wartime Veterans
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	**Fav/CS**
2.	McKay	Roberts	GO	**Favorable**
3.	Betta	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill expands the vendor preference in state contracting, which currently applies to qualified service-disabled veterans, to include certain businesses owned and operated by wartime veterans. This bill provides a definition of a "wartime veteran" to identify eligible veteran applicants. The bill requires applicants to provide documentation of wartime service from the U.S. Department of Veterans Affairs or the U.S. Department of Defense.

This bill substantially amends section 295.187, Florida Statutes.

II. Present Situation:

Minority and Service-Disabled Veteran Business Enterprise Certification Programs

The Office of Supplier Diversity (OSD) within the Department of Management Services (DMS) has the mission to improve business and economic opportunities for Florida's minority, women, and service-disabled veteran business enterprises.[1] Current law requires the DMS, through the

[1]DMS Office of Supplier Diversity website. Available at: http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd

OSD, to implement a minority business enterprise (MBE) certification program and a small service-disabled veteran business enterprise (SDVBE) certification program.[2] Minority-, women-, and service-disabled veteran-owned businesses that are certified through the OSD are eligible for benefits such as: first tier referrals to state agencies for contract opportunities; business development guidance from established corporations; participation at regional workshops, seminars, and corporate roundtables; and inclusion in an exclusive listing of state-certified minority business enterprises in an online directory.[3] During fiscal year 2009-10, the OSD certified 4,617 minority-, woman-, and service-disabled veteran-owned business enterprises statewide.[4]

The Florida Service-Disabled Veteran Business Enterprises Opportunity Act

The intent of the Florida Service-Disabled Veteran Business Enterprise Opportunity Act[5] (act) is to "rectify the economic disadvantage of service-disabled veterans, who are statistically the least likely to be self-employed when compared to the veteran population as a whole and who have made extraordinary sacrifices on behalf of the nation, the state, and the public, by providing opportunities for service-disabled veteran business enterprises as set forth in this section."

Section 295.187, F.S., creates the certification process within the DMS for SDVBEs. This section also creates a "tiebreaker" preference for SDVBEs by requiring a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified SDVBE, that are equal with respect to all relevant considerations including price, quality, and service, to award such procurement or contract to the certified SDVBE. However, if a certified SDVBE and one or more SDVBE or businesses eligible for another statutory vendor preference, such as an MBE, submit bids or proposals that are equal with respect to all relevant considerations including price, quality, and service, the state agency must award the contract or proposal to the business having the smallest net worth. In order to become certified as a SDVBE, the owners and the business must satisfy statutory eligibility requirements. In order to be considered a "service-disabled veteran" eligible for certification, the veteran must be a permanent resident of Florida who has a service-connected disability of 10% or greater as determined by the U.S. Department of Veterans Affairs or who was terminated from military service by reason of disability by the U.S. Department of Defense.

In order to be certified as a SDVBE, a business enterprise must be an independently owned and operated business that:

- Employs 200 or fewer permanent full-time employees.
- Together with its affiliates has a net worth of $5 million or less or, if a sole proprietorship, has a net worth of $5 million or less including both personal and business investments.
- Is organized to engage in commercial transactions.

[2] Sections 287.0943 and 295.187, F.S., require the DMS to implement the MBE and the SDVBE certification programs, respectively.
[3] OSD Annual Report for Fiscal Year 2009-10. Available at: http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/publications/annual_reports.
[4] Id.
[5] Section 295.187, F.S.

- Is domiciled in this state.
- Is at least 51 percent owned by one or more service-disabled veterans.
- Is managed and controlled by one or more service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.

Section 295.187, F.S., establishes a certification process administered by the DMS, in coordination with the Florida Department of Veterans' Affairs (DVA). The certification process requires applicants to submit documentation demonstrating that the business meets the above-listed requirements. Certification is renewed biennially and may be revoked for one year if the SDVBE fails to inform the DMS within 30 days of a change in circumstances that renders the business ineligible for certification.

Section 295.187, F.S., provides rule-making authority to the DVA, and requires the DVA to:

- Assist the DMS in establishing a certification procedure, which must be reviewed biennially and updated as necessary.
- Identify eligible service-disabled veteran business enterprises by any electronic means, including electronic mail, Internet website or by any other reasonable means.
- Encourage and assist eligible service-disabled veteran business enterprises to apply for certification under this section.
- Provide information regarding services that are available from the Office of Veterans' Business Outreach of the Florida Small Business Development Center to service-disabled veteran business enterprises.

This section also provides rule-making authority to the DMS, and requires the DMS to:

- Establish a certification procedure, which must be reviewed biennially and updated as necessary.
- Grant, deny, or revoke the certification of a SDVBE.
- Maintain an electronic directory of certified service-disabled veteran business enterprises for use by the state, political subdivisions of the state, and the public.

In addition, this section encourages political subdivisions of the state to offer a similar consideration to certified service-disabled veterans.

According to the DMS, there are currently 1,297 service-disabled veterans registered in the state procurement system, MyFloridaMarketPlace (MFMP), of which 170 are certified by the OSD.[6]

III. Effect of Proposed Changes:

This bill amends s. 295.187, F.S., to expand the Florida Service-Disabled Veteran Business Enterprise Opportunity Act to include certain businesses owned and operated by wartime veterans.

[6] Correspondence with DMS staff by Military Affairs, Space, and Domestic Security professional staff. April 1, 2011.

To support the expanded eligibility of the act, this bill:

- Renames the act as the "Florida Veteran Business Enterprise Opportunity Act."
- Expands the intent of the act to include recognizing wartime veterans and veterans of a period of war for their sacrifices.
- Requires wartime veteran applicants to provide documentation of wartime service from the U.S. Department of Veterans Affairs or the U.S. Department of Defense.
- Requires the DVA to assist the DMS in the expansion of the certification program.

In addition, this bill provides that a veteran is considered a "wartime veteran" if he or she meets the definition of a "wartime veteran" as used in s. 1.01(14), F.S.,[7] or the definition of a "veteran of a period of war," as used in 38 U.S.C. s. 1521.[8]

This bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may assist wartime veterans in competing for state contracts and procurements by expanding the SDVBE certification program to include wartime veterans.

[7] Section 1.01(14), F.S., defines the term "wartime veteran" as a veteran who has served in a campaign or expedition for which a campaign badge has been authorized or a veteran who has served during one of the following periods of wartime service: Spanish-American War; Mexican Border period; World War I; World War II; Korean Conflict; Vietnam Era; Persian Gulf War; Operation Enduring Freedom; Operation Iraqi Freedom.

[8] 38 U.S.C. s. 1521 defines "a veteran of a period of war" as a veteran who served in the active military, naval, or air service: for 90 days or more during a period of war; during a period of war and was discharged or released from such service for a service-connected disability; for a period of 90 consecutive days or more and such period began or ended during a period of war; or for an aggregate of 90 days or more in two or more separate periods of service during more than one period of war.

C. Government Sector Impact:

According to the DMS, this bill will increase the workload for the OSD in processing applications and educating constituents. The DMS indicates that this increase in workload can be handled within existing resources. In addition, the DMS will need to update the MyFloridaMarketPlace system to create an identifier for wartime veterans. The DMS states no additional appropriation is necessary to accommodate this change to MFMP. In the past, similar changes to the system have cost around $10,000.[9]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Military Affairs, Space, and Domestic Security on April 5, 2011:
The CS redefines the term "wartime veteran."

B. Amendments:

None.

[9] Correspondence with DMS staff by Military Affairs, Space, and Domestic Security professional staff. April 1, 2011.

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 Budget Committee

BILL:	CS/SB 858
INTRODUCER:	Agriculture Committee and Senator Hays
SUBJECT:	Agriculture
DATE:	April 19, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Spalla	AG	**Fav/CS**
2.	Wood	Yeatman	CA	**Favorable**
3.	Blizzard	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill includes the following provisions related to agriculture:

- Prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by best management practices, interim measures, or regulations adopted as rules under chapter 120, Florida Statutes.
- Prohibits counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the operation has a National Pollutant Discharge Elimination System permit, an environmental resource permit, a works-of-the-district permit, or implements best management practices. The bill provides an exception under specified circumstances for counties that adopted a stormwater ordinance before March 1, 2009, provided credits are given.
- Allows a county to enforce its wetland protection acts adopted before July 1, 2003.
- Creates the Agricultural Land Acknowledgement Act to ensure that agricultural practices will not be subject to interference by residential use of land contiguous to agricultural land.
- Requires an applicant for certain development permits to sign and submit an acknowledgement of certain contiguous sustainable agricultural lands as a condition of the political subdivision issuing the permits.

- Expands eligibility for exemption from a local business tax for persons who sell farm, aquacultural, grove, horticultural, floricultural, or tropical fish farm products.
- Expands the definition of "farm tractor" to include any motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.
- Reverses legislation enacted in 2005 to return tropical foliage to exempt status from the provisions of the License and Bond law.
- Exempts farm fences from the Florida Building Code and expands the definition of nonresidential farm buildings that are exempt from county or municipal codes and fees.
- Allows additional fiscally sound multi-peril crop insurers to sell crop insurance in Florida.
- Makes section 823.145, Florida Statutes, consistent with section 403.707, Florida Statutes, relating to the disposal of certain materials used in agricultural operations.

On February 24, 2011, the Revenue Estimating Conference reported there are five counties that currently charge stormwater assessments or fees on agricultural properties. The conference estimated that eliminating the assessments will have a total negative fiscal impact of $500,000 on the five counties in Fiscal Year 2011-2012. In addition, this bill will reduce revenues by $18,900 in the General Inspection Trust Fund within the Department of Agriculture and Consumer Services due to the elimination of the licensing requirements on sellers of tropical foliage.

This bill amends sections 163.3162, 205.064, 322.01, 604.15, 604.50, 624.4095 and 823.145 of the Florida Statutes.

This bill creates section 163.3163, Florida Statutes.

II. Present Situation:

Agricultural Lands and Practices Act

In 2003, the Legislature passed the Agricultural Lands and Practices Act, codified in s. 163.3162, F.S., to prohibit counties from adopting any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation on agricultural land if such activity is regulated through best management practices (BMPs), interim measures, or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, some counties had enacted measures to regulate various agricultural operations in the state which were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. While the Agricultural Land and Practices Act banned the adoption of future local government restrictive measures, it did not explicitly prohibit the enforcement of existing local government measures.

Stormwater Utility Fees

A number of counties have adopted stormwater utility fees to provide a funding source for stormwater management and water quality programs, and have imposed these fees on agricultural lands even though the land owner has a permitted stormwater management system or

has implemented BMPs. The revenue generated directly supports maintenance and upgrade of existing storm drain systems, development of drainage plans, flood control measures, water-quality programs, administrative costs, and sometimes construction of major capital improvements. Unlike a stormwater program that draws on the general tax fund or uses property taxes for revenue, the people who benefit from stormwater utility fees are the only ones who pay. This may create a duplicative financial burden for the agricultural operation that is already paying to manage its own permitted stormwater management system, yet has to pay again for a county program.

Right to Farm Act

Section 823.14, F.S., also known as the Florida Right to Farm Act (RTFA), has been law since 1979. In the RTFA, the Legislature recognized the importance of agricultural production to Florida's economy and the importance of the preservation of agriculture. It found that as Florida's population has grown, development of rural areas often places subdivision and multi-family dwellings near farming operations. The residents of these developments sometimes consider existing agricultural operations to be a noise, odor, or visual nuisance, even when the operations adhere to generally accepted agricultural practices. Some residents lodge complaints with local government, state agencies or other entities. In most cases where the Department of Agriculture and Consumer Services has responded to a complaint, a site visit has revealed that the operation is conducting its activities appropriately. The purpose of the RTFA was to protect reasonable agricultural activities on farm land from nuisance suits. Generally, no farm in operation for a year or more since its established date of operation, which was not a nuisance at the established date of operation, can be a public or private nuisance if the farm operations conform to generally accepted agricultural and management practices. If an existing farm's operations expand to a more excessive operation with regard to noise, odor, dust, or fumes, it can be considered a nuisance if it is adjacent to an established homestead or business as of March 15, 1982. Growers and farmers report that the RTFA has not stopped neighbors and local governments from leveling complaints and making attempts to obstruct agriculture operations. There is further conflict in some instances when there is a lack of record as to whether the farming operation or the urban area was in existence first.

Local Business Tax

Section 205.022, F.S., defines "person" to mean any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular. Section 205.064, F.S., provides an exemption from local business taxes to "natural persons" engaged in the selling of certain agricultural products. Currently, cities and one county are interpreting the term "natural person" to exclude corporations, partnerships and other non-natural persons for exemption purposes.

Dealers in Agricultural Products

The Agricultural License and Bond Law, ss. 604.15-604.34, F.S., gives market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and

sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults. In the 2005 Legislative Session, the definition of the term "agricultural products" was amended to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by the growers or groups of growers selling their own products; all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than $1,000 in product per month from Florida producers. Due to the manner by which the foliage business is conducted, the change has not been proven beneficial to the foliage industry and it has requested a reenactment of the exemption.

Nonresidential Farm Buildings

Sections 553.73 and 604.50, F.S., exempt nonresidential farm buildings located on a farm from the Florida Building Code and any county or municipal building code, making building permits unnecessary for such buildings. In 1974, the Legislature established statewide standards known as the State Minimum Building Codes, and in 1998, the Legislature created a statewide unified building code.[1] Nonresidential farm buildings have been exempt from building codes since 1998. In 2001, Attorney General Robert Butterworth opined:

> The plain language of sections 553.73(7)(c)[2] and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm.[3]

Despite the Attorney General Opinion, there have been instances of some counties and municipalities assessing fees and requiring permits for nonresidential buildings, even though the buildings are exempt from building codes and are not inspected.

Crop Insurance

Crop insurance is purchased by agricultural producers, to protect themselves against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the U.S., a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430). Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The

[1] Fla. Att'y Gen. Opinion 2001-71, 2001 WL 1194681 (Fla. A.G. 2001).
[2] The cited statute has since changed to s. 553.73(9)(c), F.S.
[3] Fla. Att'y Gen. Opinion 2001-71.

earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs.

Disposal of Agricultural Waste

Polyethylene plastic has long been used in numerous forms by the agricultural industry. Polyethylene mulch plastic is commonly disposed of by burning. Chapters 823 and 403, F.S., both regulate open burning of materials used in agricultural production. The Department of Environmental Protection does not require a permit for burning certain solid wastes if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders. Section 403.707(2)(e), F.S., provides an exemption for disposal of solid waste resulting from normal farm operations, including polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled. Section 823.145, F.S., under the Department of Agriculture and Consumer Services, differs in that it only lists mulch plastic as approved for open burning.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3162, F.S., to prohibit a county from enforcing any regulations on agricultural land if the activity is regulated by Best Management Practices, interim measures or regulations adopted as rules under chapter 120, F.S., by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program; or if the activity is regulated by the U.S. Department of Agriculture, the U.S. Army Corps of Engineers, or the U.S. Environmental Protection Agency.

This section prohibits a county government from charging an assessment or fee for stormwater management on a farm operation on agricultural land, if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit or implements best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program.

Under specified circumstances, this section allows a county to charge an assessment on a bona fide farm operation for water quality or flood control benefit if credits against the assessment are provided for implementation of one of the following.

- Best management practices.
- Stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit or works-of-the-district permit.
- Best management practices or alternative measures that the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than those provided by implementation of best management practices.

The powers of a county to enforce applicable wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003, are not limited by the provisions of the bill. It does not limit a county's powers to enforce wetlands, springs protection or stormwater ordinances, regulations, or rules pertaining to the Wekiva River Protection Area. In addition, it does not limit the powers of a county to enforce ordinances, regulations, or rules as directed by law or implemented consistent with the requirements of a program operated under a delegation agreement from a state agency or water management district. The provisions of this bill do not apply to a municipal services benefit unit established before March 1, 2009, predominantly for flood control or water supply benefits.

Section 2 creates s. 163.3163, F.S., to create the Agricultural Land Acknowledgement Act to ensure that generally accepted agricultural practices will not be subject to interference by residential use of land contiguous to sustainable agricultural land. This section defines the terms "contiguous," "farm operation," and "sustainable agricultural land." It requires that before a political subdivision issues a local land use permit for nonagricultural land contiguous to agricultural land, that as a condition of issuing the permit, the permit applicant must sign and submit to the political subdivision, in a format that is recordable, a written Acknowledgement of Contiguous Sustainable Agricultural Land. The acknowledgement must be filed and recorded in the official records of the county in which the political subdivision is located. It also authorizes the Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, to adopt rules to administer this section.

Section 3 amends s. 205.064, F.S., to exempt farms that operate as business entities other than sole proprietorships from being required to obtain a local business tax receipt to sell their own agricultural products.

Section 4 amends s. 322.01, F.S., to expand the definition of "farm tractor" to include any motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another. Under s. 322.04, F.S., the driver or operator of a "farm tractor" is exempt from obtaining a driver's license.

Section 5 amends s. 604.15, F.S., to revise the definition of "agricultural products" to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products such as license and bond laws.

Section 6 amends s. 604.50, F.S., to exempt farm fences from the Florida Building Code and farm fences and nonresidential farm buildings and fences from county or municipal codes and fees, except floodplain management regulations. It provides that a nonresidential farm building may include, but not be limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Section 7 amends s. 624.4095, F.S., to allow additional fiscally sound multi-peril crop insurers to meet the statutorily required capital and surplus requirements for admission into the state and allows the Office of Insurance Regulation latitude in considering financial accounting matters for crop insurers. It provides that gross written premiums for certain crop insurance not be included

when calculating the insurer's gross writing ratio. It requires that liabilities for ceded reinsurance premiums be netted against the assets for amounts recoverable from reinsurers, and requires that insurers who write other insurance products must disclose a breakout of the gross written premiums for federal multi-peril crop insurance.

Section 8 amends s. 823.145, F.S., to remove inconsistent statutory language relating to the materials used in agricultural operations that may be disposed of by open burning. The changes in this section would make s. 823.145, F.S., consistent with s. 403.707, F.S., which is administered by the Department of Environmental Protection.

Section 9 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill reduces the authority of counties and municipalities to collect stormwater fees and local business taxes. This bill falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate.

Subsection (d) of section 18 of Article VII, Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact. An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2009-2010 $1.88 million).

If it is determined that this bill has more than an insignificant fiscal impact, the bill will require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill removes tropical foliage from the definition of agriculture products and eliminates the requirements that those who sell tropical foliage are required to be

licensed. This will result in a cost savings to the dealers. Florida tropical foliage producers will see an increase in financial risk as a result of the exemption.

There should also be some undetermined financial relief to agricultural operations via specific exemptions from or reductions in stormwater assessments and municipal code requirements and fees for farm fences and certain farm buildings.

C. Government Sector Impact:

This bill will reduce revenues by $18,900 in the General Inspection Trust Fund within the Department of Agriculture and Consumer Services due to the elimination of the licensing requirements on sellers of tropical foliage.

The bill will limit the ability of local governments to collect stormwater assessments, fees, and local business taxes. This fee limitation will differ from county to county. On February 24, 2011, the Revenue Estimating Conference reported there are five counties that currently charge stormwater assessments or fees on agricultural properties. The conference estimated that eliminating the assessments will have a total negative fiscal impact of $500,000 on the five counties in Fiscal Year 2011-2012.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Agriculture Committee on March 7, 2011:
A technical change was recommended that did not change the substance of the original bill.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 1650
INTRODUCER:	Military Affairs, Space, and Domestic Security Committee and Senator Storms
SUBJECT:	Child Custody
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Maclure	JU	**Favorable**
2.	Fleming	Carter	MS	**Fav/CS**
3.	Daniell	Walsh	CF	**Favorable**
4.	Blizzard	Meyer, C.	BC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill provides that a parent's activation, deployment, or temporary assignment to military service and the resulting temporary disruption to the child may not be the sole factor in a court's decision to grant a petition for or modification of a permanent time-sharing agreement. Under current law, a court is prohibited from modifying time-sharing during the time a parent is away for military service, except to issue a temporary modification order if it is in the best interest of the child. There is no specific provision stating that military service cannot be the sole factor in granting a petition for modification.

The bill further provides that if such a temporary order is issued, the court must automatically reinstate the time-sharing order previously in effect before the military parent's activation, deployment, or temporary assignment to military service within 10 days after notification by that parent of his or her return from service unless resumption of the original order is no longer in the child's best interest. The bill also provides that the nonmilitary parent has the burden of proving that the original order is no longer in the child's best interest.

This bill substantially amends section 61.13002, Florida Statutes.

II. Present Situation:

Time-Sharing After Dissolution of Marriage

Chapter 61, F.S., is titled "Dissolution of Marriage; Support; Time-Sharing." The purposes of the chapter are described as follows:

- To preserve the integrity of marriage and to safeguard meaningful family relationships.[1]
- To promote the amicable settlement of disputes that arise between parties to a marriage.[2]
- To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.[3]

Upon dissolution of marriage, the parties develop a parenting plan approved by the court. The parenting plan must, at a minimum, describe in adequate detail:

- How the parents will share and be responsible for the daily tasks associated with the upbringing of the child.
- The time-sharing schedule arrangements that specify the time that the minor child will spend with each parent.
- A designation of who will be responsible for any and all forms of health care, school-related matters, including the address to be used for school-boundary determination and registration, and other activities.
- The methods and technologies that the parents will use to communicate with the child.[4]

Once the parenting plan and time-sharing schedule are approved by the court, modification requires a parent to show a substantial, material, and unanticipated change in circumstances and that the modification is in the best interests of the child.[5]

The Legislature has stated that it is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parents is dissolved.[6] It is also articulated public policy to encourage parents to share the rights and responsibilities, and joys, of childrearing.[7] There is no presumption in Florida for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.[8] Florida courts determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child.[9] To determine the best interests of the child, the court will consider a list of factors that is enumerated in statute, but is not exhaustive. Some of the factors include: 1) capacity of each parent to have a close parent-child relationship; 2) length of time the child

[1] Section 61.001(2)(a), F.S.
[2] Section 61.001(2)(b), F.S.
[3] Section 61.001(2)(c), F.S.
[4] Section 61.13(2)(b), F.S.
[5] Section 61.13(3), F.S.
[6] Section 61.13(2)(c)1., F.S.
[7] *Id.*
[8] *Id.*
[9] Section 61.13(3), F.S.

has lived in a stable environment; 3) moral fitness of the parents; 4) reasonable preference of the child; 5) evidence of violence, abuse, or neglect; and 6) developmental stages and needs of the child.[10]

Time-Sharing and Military Parents

In addition to the numerous factors that Florida courts take into account in every time-sharing determination, the Legislature has recognized the need to consider the unique circumstances of parents serving in the military regarding modification of time-sharing.[11] When a parent is unable to comply with a time-sharing schedule because of military service, courts are precluded from modifying the judgment or order as it existed on the date the parent left for service.[12] The court may, however, enter a temporary modification order only if there is clear and convincing evidence that such modification is in the best interests of the child.[13] Before entering a temporary order for modification, courts are required to consider and provide for as much contact between the military parent and his or her child and to permit liberal time-sharing periods during leave from military service.[14] Additionally, if a parent cannot comply with time-sharing because he or she is away for military service in excess of 90 days, the parent has the option to designate a family member to exercise time-sharing with the child on the parent's behalf.[15]

In the event that a temporary order to modify the time-sharing agreement is issued, the court is required to reinstate the order previously in effect upon the military parent's return from service. If good cause is shown, the court will hold an expedited hearing in custody and visitation matters and allow the military parent to appear remotely if military duties preclude him or her from appearing in person.[16]

III. Effect of Proposed Changes:

This bill provides that a parent's activation, deployment, or temporary assignment to military service and the resulting temporary disruption to the child may not be the sole factor in a court's decision to grant a petition for or modification of permanent time-sharing and parental responsibility. This provision clearly directs courts to look at the totality of the circumstances when evaluating the inability of military parents to fully comply with previously ordered time-sharing agreements due to their service obligations. Although current law prohibits courts from modifying time-sharing during the time a parent is away for military service, except to issue a temporary modification order if it is in the best interest of the child, there is no specific provision stating that military service cannot be the sole factor in granting a petition for modification. The bill emphasizes that a court should not find that continuing a current time-sharing agreement is against a child's best interest solely on the basis that the military parent is unable to be present during service.

[10] *See* s. 61.13(3)(a)-(t), F.S.
[11] Section 61.13002, F.S.
[12] Section 61.13002(1), F.S.
[13] *Id.*
[14] *Id.*
[15] Section 61.13002(2), F.S.
[16] Section 61.13002(5), F.S.

The bill further provides that if such a temporary order is issued, the court must automatically reinstate the time-sharing order previously in effect before the military parent's activation, deployment, or temporary assignment to military service within 10 days after notification by that parent of his or her return from service. Current law does not specify notification requirements on the part of a military parent returning from service or a set period of time within which the court must reinstate the previous time-sharing order. This provision in the bill will provide the military parent with a set time by which the court will restore the previous time-sharing agreement upon his or her notification of return from service, instead of having to wait an undetermined period of time. There is an exception if the court finds that resumption of the original order is no longer in the child's best interest.

The bill also provides that the nonmilitary parent has the burden of proving that the original order is no longer in the child's best interest. The statute in its current form does not specify who bears the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established. Thus, this provision is most likely intended to be a codification of current practice by specifying that the burden is on the parent who is asserting that the current time-sharing arrangement is no longer in the best interest of the child.

The bill provides an effective date of July 1, 2011.

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:

Parents who are away serving in the military will be more likely to maintain current time-sharing schedules with their children.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) reports that the bill's requirement that the court reinstate the time-sharing order previously in effect within 10 days after the

notification of that parent of his or her return from service will increase judicial workload, although the exact impact cannot be determined. The OSCA also notes that because the bill does not specify how the parent will notify the court, the ambiguity may result in the need for clarification by the court and require additional judicial workload.[17]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Military Affairs, Space, & Domestic Security Committee on March 30, 2011:
The committee substitute:

- Clarifies that the bill applies to the modification of permanent time-sharing orders; and
- Clarifies that if a temporary order is issued, the previous time-sharing order must be automatically reinstated within 10 days of notification by the military parent of his or her return.

B. Amendments:

None.

[17] Office of the State Courts Administrator, *Senate Bill 1650 Fiscal Analysis* (Mar. 8, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

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 Budget Committee

BILL:	CS/CS/SB 2076
INTRODUCER:	Budget Subcommitee on General Government Appropriations, Agriculture Committee, and Agriculture Committee
SUBJECT:	Department of Agriculture and Consumer Services
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Spalla	AG	**Fav/CS**
2.	Blizzard	DeLoach	BGA	**Fav/CS**
3.	Blizzard	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). The bill provides for the following.

- Deletes statutory references to the Division of Dairy Industry;
- Deletes the powers and duties for the Division of Dairy Industry;
- Adds powers and duties related to the regulation of dairy products to the Division of Food Safety;
- Exempts certain direct-support and citizen support organizations for the department from obtaining an independent audit;
- Allows the lead land manager, instead of the Department of Environmental Protection (DEP), to receive the proceeds from the sale of easements for the construction of electric transmission and distribution facilities on Board of Trustees-owned lands;
- Sets the annual financial audit threshold for the department's direct-support organizations and citizen support organizations to match those citizen organizations of the DEP;
- Establishes a Certified Pile Burner program in statute;

- Provides civil liability protection for the Certified Pile Burner Program;
- Allows the department to be cost-effective in the utilization of surplus funds for the purchase of firefighting equipment;
- Allows the department to obtain building permits to build wildfire equipment storage facilities using an alternate regulatory process;
- Specifies who shall be present on burn sites for authorized, non-certified burns;
- Revises the department's authority to enforce laws relating to commercial stock feeds and commercial fertilizer. Provides a limited exemption to counties that have existing ordinances regulating the sale of urban turf fertilizers;
- Requires payment for registration fees of anyone who produces, harvests, packs or repacks tomatoes and does not hold a food permit;
- Authorizes the Commissioner of Agriculture to create an Office of Energy and Water and designates the bureaus and positions that report to that office with regard to energy and water policy issues that affect agriculture;
- Deletes provisions that allow the department advisory committee members to receive reimbursement for per diem and travel costs;
- Increases the minimum requirements for certificates of insurance for pest control licensees;
- Establishes a new statutory section that allows a licensed pest control business to operate a centralized customer service center for multiple business locations owned by the same owner;
- Establishes a limited certification category authorizing persons to use nonchemical methods for controlling rodents in lieu of licensure;
- Increases minimum requirements for certificates of insurance for pest control licensees that provide wood destroying organism protection;
- Provides that late fees for pesticide registrations are not capped at $250;
- Requires that changes to pesticide labels submitted for registration be clearly marked, and that effective January 1, 2013, all pesticide registration fees be paid through the department's electronic commerce portal;
- Provides immunity from liability for damages resulting from exhibits and concessions at public fairs with certain exceptions;
- Adds the appointment of a non-voting youth member who is active in the Future Farmers of America or a 4-H Club to the Florida State Fair Authority; and
- Provides criminal charges for the theft of bee colonies owned by registered beekeepers.

This bill will increase revenues in the General Inspection Trust Fund within the department by an estimated $21,000 in the 2011-2012 fiscal year, from fees generated through the pest control customer contact centers and through the commercial wildlife management personnel limited certification. The department estimates expenditures associated with the inspection and licensing of these programs to be $16,957 in the 2011-2012 fiscal year. The consolidation of the Division of Dairy Industry into the Division of Food Safety provides a recurring cost savings of $239,496 in general revenue.

This bill amends sections 20.14, 193.461, 215.981, 253.02, 261.04, 482.051, 482.071, 482.226, 482.243, 487.041, 487.0615, 500.70, 527.22, 559.9221, 570.07, 570.0705, 570.074, 570.18, 570.23, 570.38, 570.382, 570.42, 570.50, 570.543, 571.28, 573.112, 576.091, 580.151, 581.186,

586.161, 590.015, 590.02, 590.125, 590.14, 599.002, 616.252, 812.014, and 812.015 of the Florida Statutes.

The bill creates sections 482.072 and 482.157, Florida Statutes.

The bill repeals the following sections of the Florida Statutes: 570.29(6), 570.40, 570.41, 570.954(3), and 597.005(4).

II. Present Situation:

Division of Dairy Industry

The Division of Dairy Industry is currently a separate entity within the Department of Agriculture and Consumer Services. It ensures that dairy products purchased by Florida consumers are wholesome, produced under sanitary conditions, and correctly labeled. The division regulates the production, transporting, processing, distribution, and labeling of milk and milk products. It establishes standards for these products, whether they originate in Florida or other states. The division enforces laws and rules that regulate standards for milk, milk products, ice cream and frozen desserts, and the interstate shipment of milk.

Tomato Food Safety

Legislation enacted in 2007,[1] which amended ch. 500 and 570, F.S., authorized the department to regulate food safety at tomato farms and packing houses. In 2010, the Legislature enacted legislation[2] creating s. 500.70, F.S., authorizing the department to adopt rules establishing food safety standards to safeguard the public health and promote the public welfare by protecting the consuming public from injury caused by the adulteration or the microbiological, chemical, or radiological contamination of tomatoes. The law also required the rules to apply to the producing, harvesting, packing, and repacking of tomatoes for sale for human consumption by a tomato farm, tomato greenhouse, or tomato packinghouse or repacker in this state. The law specifically authorized the rules to establish standards for:

- Registration with the department of persons who produce, harvest, pack or repack tomatoes in the state, such as farms, who do not hold a food permit issued under s. 500.12, F.S.
- Proximity of domestic animals and livestock to the production areas for tomatoes;
- Food safety-related use of water for irrigation during production and washing of tomatoes after harvest;
- Use of fertilizers;
- Cleaning and sanitation of containers, materials, equipment, vehicles, and facilities, including storage and ripening areas;
- Health, hygiene, and sanitation of employees who handle tomatoes;
- Training and continuing education of persons who produce, harvest, pack, or repack tomatoes in the state, and their employees who handle tomatoes; and

[1] Chapter 2007-067, L.O.F.
[2] Chapter 2010-25, L.O.F.

- Labeling and recordkeeping, including standards for identifying and tracing tomatoes for sale for human consumption.

Tomato farms are required to register with the department. There are currently 28 registered farms, some of which are multiple locations of the same company name. The department has the statutory authority to establish standards for registration and to set registration costs for the tomato food safety program, but it does not have statutory authority to require registration or payment of said registration costs.

Board of Trustees Lands

The Division of State Lands within the Department of Environment Protection serves as staff to the Board of Trustees of the Internal Improvement Trust Fund, which consists of the Governor and Cabinet. Currently, the proceeds of the sale of easements encumbering Board of Trustees lands managed by the department go to DEP. This bill allows the particular state agency that is the lead managing agency to receive the proceeds.

Prescribed Fire

Prescribed fire in Florida is a very important and valuable land management tool. The Florida Division of Forestry through the Forest Protection Bureau oversees one of the most active prescribed fire programs in the country. In an average year the division will issue 120,000 authorizations allowing people and agencies to prescribe burn their land. Currently, the power to authorize certain types of burning is preempted to the department, and people seeking to burn are often required to obtain an authorization to burn from both the department and a local government. Prescribed fire in Florida is governed by ch. 590, F.S., and Florida Administrative Code Chapter 5I-2.

In 2005 and 2006, the Division of Forestry, in cooperation with University of Florida's Institute of Food and Agricultural Sciences, developed a certification program for Florida Pile Burners. Florida Administrative Code Chapter 5I-2 outlines the steps necessary to become certified and also what is necessary to keep that certification. The purpose behind the development and implementation of the program was to raise the overall quality of the open burning program in Florida. Currently, the statutes do not specify who must be present on a burn site for authorized, non-certified burns. There is also not a provision for civil liability protection for the program. In addition, there is no statutory authority for the department to delegate its burn authorization authority for issuance of open burning authorizations to local governments. Some local governments have the interest and ability to implement a burn authorization program with guidance from the department.

Florida Building Code

With certain exceptions, each local government and each legally constituted enforcement district with statutory authority regulates building construction.[3] Therefore, the department must obtain building permits through local governments. The Florida Building Code has been revised several

[3] s. 553.80(1), F.S.

times in recent years and, according to the department, this has created confusion among local governments regarding code interpretation and led to a cumbersome and costly process for the department as they construct facilities for wildfire equipment in different parts of the state. The bill allows the department to obtain building permits using an alternative regulatory process that is a more efficient method of obtaining building permits in a shorter timeframe and at a lesser cost. Agencies currently using the alternate regulatory process are the Department of Corrections, the Department of Transportation, the Department of Children and Families, and the Department of Juvenile Justice.

Firefighting Equipment

Prior to 2006, when the law[4] was changed, the department had the authority to use monies acquired from the disposition of surplus firefighting equipment to reinvest in other firefighting equipment. Since 2006, the department has had to seek a special appropriation before the funds can be reinvested in other equipment. Also, current law[5] requires that all replaced equipment be reported for disposal within 45 days of being replaced. Additionally, current law[6] requires the Department of Management Services to approve the disposal of any motor vehicles or aircraft. Due to the very nature of emergency response, the department's equipment needs vary from year to year. Because funding for replacement equipment is inadequate, the department has requested the flexibility to retain replaced equipment to meet future emergency needs and for use as backup for the frontline equipment. The bill allows the department to retain the monies acquired from the sale of state-owned firefighting equipment and vehicles. The monies received are to be used for the acquisition of exchange and surplus equipment, and for necessary operating cost related to the equipment.

Agricultural Water Policy

The Commissioner of Agriculture has the authority to create an Office of Water Coordination[7] and to designate the bureaus and positions that report to that office regarding water policy and water issues that affect agriculture and are within the department's jurisdiction. The department established the Office of Agricultural Water Policy (OAWP) in 1995. The OAWP facilitates communication and coordination among federal, state, and local agencies, environmental representatives, and the agriculture industry on agricultural water resource issues, related to both quality and quantity. A primary function of the OAWP is to develop and assist with the implementation of Best Management Practices (BMPs), in order for agricultural producers to meet their obligation under the Florida Watershed Restoration Act to reduce agricultural pollutant loadings to impaired waters within a basin for which DEP has adopted a Basin Management Action Plan. The OAWP also facilitates and assists in the development of other watershed protection plans throughout the state, including the Lake Okeechobee, St. Lucie Watershed, and Caloosahatchee Watershed protection plans, among others. The OAWP is also very involved in Everglades restoration efforts and in other federal matters, such as the discussion/debate over EPA numeric nutrient criteria for Florida.

[4] Chapter 2006-122, s. 40, L.O.F.
[5] s. 287.16, F.S.
[6] s. 273.055, F.S.
[7] s. 570.074, F.S.

Florida's "Farm to Fuel" initiative seeks to enhance the market for and promote the production, and distribution of, renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. In the process, it is designed to give Florida agricultural producers alternative crops to grow to keep their farms and ranches viable. Current statute requires the department to coordinate with and solicit the expertise of the state energy office within DEP when developing and implementing this initiative. Because the state energy office is no longer in DEP, this requirement is no longer necessary in statute.

Per Diem and Travel Expenses for Advisory Committees

Section 112.061, F.S., establishes standard travel reimbursement rates, procedures, and limitations applicable to all public officers, employees, and authorized persons whose travel is authorized and paid by a public agency. This allows members of select statutorily created advisory councils to receive compensation for per diem and travel expenses. They organize and host the meetings of the councils, and have in the past been provided with per diem and travel expenses in accordance with these provisions. According to a September 11, 2007, response to a Joint Legislative Sunset Committee request, the department indicated that it had approximately 50 advisory boards, councils, or committees in Fiscal Year 2006-07 that incurred travel, staff, and other expenses totaling $220,067. Eliminating the requirement to pay for travel and per diem costs for the members of these numerous select advisory committees will provide a reduction in costs.

Pest Control

For structural pest control, the law provides that each pest control business location must be licensed by the department and that a Florida certified operator must be in charge of the pest control operations of the business location. Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving telephone calls and soliciting business. Allowing a licensed pest control business to operate a centralized customer service center for multiple business locations owned by the same owner will allow licensees a more efficient means of providing service to customers while still protecting customers through specific requirements for licensure and accountability.

A pest control business licensee may not operate a pest control business without carrying the required insurance coverage and furnishing the department with a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury: $100,000 each person and $300,000 each occurrence; and property damage: $50,000 each occurrence and $100,000 in the aggregate.[8] These minimum requirements for insurance coverage to conduct pest control business have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

[8] s. 482.071(4), F.S.

Currently, there is no provision for a limited certification for commercial wildlife trapper personnel to use nonchemical method to control rodents. For several years, the Florida Fish and Wildlife Conservation Commission has issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years, resulting in permitting being discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the department asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected.

To protect the health, safety and welfare of the public, a pest control licensee must give the department advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide notice by means of a telephone call and then follow up with a written confirmation providing the required information.

Pesticide Registration

Currently, each brand of pesticide distributed, sold, or offered for sale in the state must be registered biennially by the department.[9] The registrant must supply the department with such information as: the name and address of the registrant, the pesticide brand name, an ingredient statement, and a copy of the labeling. Registrants are required to pay a fee per brand of pesticide and another fee for each special local needs label and experimental use permit. The department may also assess a supplemental fee to offset the costs of testing for food safety for pesticide brands that contain an active ingredient for which the U.S. Environmental Protection Agency has established a food tolerance limit.[10] The department is authorized to assess late fees for registrations[11] that are not timely renewed. Fees collected through the pesticide registration program are deposited into the General Inspection Trust Fund and used to carry out the provisions of the registration program.

Florida Fair Authority

The Florida State Fair Authority (authority) is an instrument of the state, under the supervision of the Commissioner of Agriculture (Commissioner). The authority, composed of 21 members, is responsible for staging an annual fair to serve the entire state. The Commissioner, or his/her designee, serves as a voting member. There is also a member who serves as a member of the Board of County Commissioners of Hillsborough County, the district where the state fairgrounds are located. The Commissioner appoints the remaining members of the authority. Each member serves a 4-year term and may be appointed for more than one term.

[9]The registration requirement also applies to pesticide brands delivered for transportation or transported in intrastate commerce or between points within the state through any point out of the state.
[10] Per 40 C.F.R., part 180
[11] These include pesticide brands, special local need labels, and/or experimental use permits.

Apiary

Florida law currently provides criminal charges[12] for the theft of any commercially farmed animal, such as horses, cows, sheep, swine, or other grazing animals, including aquaculture. The bill amends current law to include the theft of bee colonies of registered beekeepers. Current law defines "farm theft" as the unlawful taking possession of any items that are grown or produced on land, owned, rented, or leased by another person.

III. Effect of Proposed Changes:

Section 1 amends s. 20.14, F.S., to delete a reference to the Dairy Industry.[13]

Section 2 amends s. 193.461, F.S., to clarify that the term "agricultural purposes" includes farm products, as defined in the Florida Right to Farm Act.

Section 3 amends s. 215.981, F.S., to exempt certain direct-support organizations and citizen support organizations for the department from obtaining an independent audit if they are not for profit and have annual expenditures of less than $300,000.

Section 4 amends s. 253.02, F.S., to require a grantee of easements for electrical transmission to pay the lead manager of a state owned land or, when there is no lead manager, the Department of Environmental Protection if suitable replacement uplands cannot be identified. The proceeds must be deposited into the managing agency's designated fund benefitting state conservation land management.

Section 5 amends s. 261.04, F.S., to delete provisions that authorize members of the Off-Highway Vehicle Recreation Advisory Committee to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory committee.

Section 6 amends s. 482.051, F.S., to authorize a rule change. In the event of an emergency requiring fumigation, pest control operators may provide emergency notice of the fumigation location to the department by facsimile or other form of electronic means.

Section 7 amends s. 482.071, F.S., to increase the minimum bodily injury and property damage insurance coverage required for a pest control business.

Section 8 creates s. 482.072. F.S., to allow the establishment, inspection, and regulation of centralized pest control customer contact centers. This allows licensed centers to solicit pest control business and to provide service to customers for one or more business locations. It provides for the biennial renewal of the license. It also establishes a licensure fee of at least $600, but not more than $1,000 and renewal fees of at least $600, but not more than $1,000. This section also provides for the expiration of a license not renewed within 60 days of a renewal deadline. A license automatically expires if a licensee changes its customer contact center business location and requires issuance of a new license upon payment of a $250 fee. It

[12] Grand theft of the third degree and a felony of the third degree, punishable by imprisonment not exceeding 5 years, $5,000 fine or, for habitual offenders, for a term of imprisonment not exceeding 10 years.
[13] Division of the Department of Agriculture and Consumer Services

authorizes the department to adopt rules establishing requirements and procedures for recordkeeping and monitoring customer contact center operations. It provides for disciplinary action for violations of chapter 482, F.S., or any rule adopted hereunder.

Section 9 creates s. 482.157, F.S., to establish a limited certification category for individual commercial wildlife trapper personnel engaged in the nonchemical control of wildlife to also control rodents, as defined in chapter 482, F.S. It requires an exam and establishes certification fees of at least $150, but not to exceed $300. This section also provides for recertification fees, classes, and late fees. The bill limits the scope of work permitted by certificate holders and clarifies those licensees and certificate holders who practice accepted pest control methods are immune from liability for violating animal cruelty laws. It also provides that this section does not exempt any person from the rules, orders, or regulations of the Florida Fish and Wildlife Conservation Commission.

Section 10 amends s. 482.226, F.S., to increase the minimum insurance requirements for a pest control licensee that performs wood-destroying organism inspections from $50,000 to $500,000 in the aggregate and from $25,000 to $250,000 per occurrence. This change reflects the current levels of insurance offered by liability insurers.

Section 11 amends s. 482.243, F.S., to delete provisions that authorize the members of the Pest Control Enforcement Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 12 amends s. 487.041, F.S., to provide that fees relating to the registration of pesticide brands are non-refundable. When a currently registered pesticide brand undergoes a label revision, the registrant must submit to the department a copy of the revised label along with a cover letter detailing the changes that were made to the label. It provides requirements for label revisions that must be reviewed by the U.S. Environmental Protection Agency. It also allows payments of pesticide registration fees to be submitted electronically, effective January 1, 2013.

Section 13 amends s. 487.0615, F.S., to delete provisions that authorize the members of the Pesticide Review Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 14 amends s. 500.70, F.S., to require persons who produce, harvest, pack, or repack tomatoes, but who do not hold a food permit, to register and submit an address for each company location annually by August 1. It authorizes the department to set by rule an annual registration fee not to exceed $500. It also requires that registration fees be deposited into the General Inspection Trust Fund.

Section 15 amends s. 527.22, F.S., to delete provisions that authorize the members of the Florida Propane Gas Education, Safety, and Research Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 16 amends s. 559.9221, F.S., to delete provisions that authorize the members of the Motor Vehicle Repair Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 17 amends s. 570.07, F.S., to revise the authority of the department to enforce laws relating to commercial stock feeds and commercial fertilizer. It provides a limited exemption to counties that have existing ordinances regulating the sale of urban turf fertilizers. It also revises the authority of the department regarding pollution control and the prevention of wildfires, in order to regulate open burning connected with land-clearing, agricultural, or forestry operations.

Section 18 amends s. 570.0705, F.S., to delete provisions that authorize the members of advisory committees appointed by the Commissioner of Agriculture to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory committees.

Section 19 amends s. 570.074, F.S., to rename the Office of Water Coordination to the Office of Energy and Water.

Section 20 amends s. 570.18, F.S., to eliminate references to the number of divisions in the department.

Section 21 amends s. 570.23, F.S., to delete provisions that authorize the members of the State Agricultural Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory councils.

Section 22 repeals subsection 570.29(6), F.S., relating to a reference to the Division of Dairy Industry in the department's list of divisions.

Section 23 amends s. 570.38, F.S., to delete provisions that authorize the members of the Animal Industry Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 24 amends s. 570.382, F.S., to delete provisions that authorize the members of the Arabian Horse Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 25 repeals s. 570.40, F.S., relating to the powers and duties of the Division of Dairy Industry.

Section 26 repeals s. 570.41, F.S., relating to the qualifications and duties of the director of the Division of Dairy Industry.

Section 27 amends s. 570.42, F.S., to delete provisions that authorize the members of the Dairy Industry Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 28 amends s. 570.50, F.S., to amend the powers and duties of the Division of Food Safety to include inspecting dairy farms and enforcing the provisions of Chapter 502, F.S. It authorizes the division to inspect milk plants, milk product plants, and plants engaged in the manufacture and distribution of frozen desserts and frozen desserts mix. It also authorizes the

division to analyze and test samples of milk, milk products, frozen desserts, and frozen desserts mix.

Section 29 amends s. 570.543, F.S., to delete provisions that authorize the members of the Florida Consumers' Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 30 repeals subsection 570.954(3), F.S., relating to the requirement that the department coordinate with and solicit the expertise of the state energy office within the DEP when developing and implementing its farm-to-fuel initiative.

Section 31 amends s. 571.28, F.S., to delete provisions that authorize the members of the Florida Agricultural Promotional Campaign Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 32 amends s. 573.112, F.S., to delete provisions that authorize the members of marketing order advisory councils appointed by the department to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 33 amends s. 576.091, F.S., to delete provisions that authorize the members of the Fertilizer Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 34 amends s. 580.151, F.S., to delete provisions that authorize the members of the Commercial Feed Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 35 amends s. 581.186, F.S., to delete provisions that authorize the members of the Endangered Plant Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 36 amends s. 586.161, F.S., to delete provisions that authorize the members of the Honeybee Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 37 amends s. 590.015, F.S., to delete a definition for "division," meaning the Division of Forestry, and inserting "department." It amends the definition of fire management to include prescribed burning assistance and provides definitions for "open burning" and "broadcast burning."

Section 38 amends s. 590.02, F.S., to provide that the Division of Forestry has the powers, authority, and duties to:

- Provide firefighting crews, who shall be under its control and direction;
- Authorize forest operations administrators to be certified as forestry firefighters; and
- Employ aviation managers, forest service training coordinators, and deputy chiefs of field operations who shall have Selected Exempt Service status.

The bill authorizes the department to:

- Enforce the Florida Building Code as it pertains to wildfire and law enforcement facilities under the jurisdiction of the department;
- Retain, transfer, warehouse, bid, destroy, scrap or otherwise dispose of surplus wildland firefighting equipment and vehicles;
- Retain all moneys received from the disposition of state-owned wildland firefighting equipment and vehicles. Monies received may be used to acquire exchange and surplus wildland firefighting equipment and for operating expenditures related to the equipment.

  The bill gives the division exclusive authority to require issue authorizations for broadcast burning, and agricultural and silvicultural pile burning. It preempts other governmental entities from adopting laws, regulations, rules, or policies pertaining to broadcast burning, or agricultural or silvicultural pile burning unless an emergency order has been declared. It authorizes the department to delegate its authority to a county or municipality to issue authorizations for the burning of yard trash and debris from land clearing operations.

Section 39 amends s. 590.125, F.S., to:

- Revise terminology for open burning authorizations; It adds definitions for "certified pile burner," "land-clearing operation," "pile burning," "prescribed burning," "prescription," and "yard trash."
- Specify purposes of certified prescribed burning;
- Require the authorization of the division for certified pile burning;
- Provide pile burning requirements;
- Limit the liability of property owners or their agents engaged in pile burning;
- Provide penalties for violations by certified pile burners;
- Authorize the division to adopt rules regulating certified pile burning;
- Revise notice requirements for wildfire hazard reduction treatments;
- Provide for approval of local government open burning authorization programs and program requirements;
- Authorize the division to close local government programs under certain circumstances and assume administration of those open burning authorization programs; and
- Provide penalties for violations of local government open burning requirements.

Section 40 amends s. 590.14, F.S., to authorize an administrative fine, not to exceed $1,000 per violation for violation of any Division of Forestry rule. It provides penalties for failure to comply with any rule or order adopted by the division and for knowingly making any false statement or representation on applications, records, plans, or any other required documents. It also provides legislative intent that a penalty imposed by a court be of a severity that ensures immediate and continued compliance with this section.

Section 41 repeals subsection 597.005(4), F.S., relating to provisions that authorize the members of the Aquaculture Review Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 42 amends s. 599.002, F.S., to delete provisions that authorize the members of the Viticulture Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 43 amends s. 616.17, F.S., to provide immunity from liability for damages resulting from exhibits and concessions at public fairs. It provides that this section does not apply if the personal injury, death or property damage was due to an act or omission that was committed by the fair association in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. This section does not apply to third parties providing exhibits or concessions.

Section 44 amends s. 616.252, F.S., to provide for appointment of a youth member who is an active member of the Florida Future Farmers of America or of a 4-H Club to serve on the Florida State Fair Authority as a non-voting member. It provides a term of one year for a youth member of the Authority and excludes youth members from compensation for special or full-time service performed on behalf of the Authority.

Section 45 amends s. 812.014, F.S., to provide penalties for the theft of bee colonies of registered beekeepers.

Section 46 amends s. 812.015, F.S., to amend the definitions of "farmer" and "farm theft."

Section 47 provides that this act shall take effect October 1, 2011.

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:

Please refer to Private Sector Impact and Government Sector Impact.

B. Private Sector Impact:

There are currently 28 registered tomato farms; some with multiple locations of the same company name. This bill authorizes the department to set by rule an annual registration fee not to exceed $500.

Pest control businesses that choose to obtain the license for a customer service center will incur a fee of at least $600, but no more than $1,000. Pest control businesses that do not currently have the proposed minimum insurance requirements will have to increase their insurance coverage from $50,000 to $500,000 in the aggregate and from $25,000 to $250,000 per occurrence.

Individuals who conduct wildlife management services and wish to obtain limited certification to control rodents will incur fees of at least $150, but not to exceed $300 associated with the limited certification.

Persons and companies registering pesticides will be required to pay current fees using the electronic commerce site. Some firms may have to adjust their registration processing to accommodate this change. Ultimately, the reduction in postage and paperwork should reduce their costs.

Persons serving on advisory committees for DEPARTMENT'S will be responsible for covering any travel expenses they incur while performing the duties associated with said service.

The bill provides civil liability protection to certified pile burners. Persons wishing to obtain an authorization for open burning will no longer be required to obtain two permits. Persons who fail to comply with rules adopted by the department relating to the Division of Forestry may be charged with civil or criminal charges.

C. Government Sector Impact:

Provisions in this bill will impact revenues to and expenditures by the Department of Agriculture and Consumer Services as shown in the following tables.

REVENUE	FY 2011-12	FY 2012-13	FY 2013-14
Food Safety			
Registration of Tomato Farms	$0	$2,500	$3,000
Pest Control Registration			
Customer Contact Center License*	$6,000	$0	$6,000
Limited Certification Wildlife			
Limited Certification Exam**	$15,000	$7,500	$7,500
Limited Certification Renewal***	$0	$7,500	$7,500
TOTAL:	**$21,000**	**$16,359**	**$21,000**

*Based on 10 licenses issued per year at $600 each, renewing biennially.
**Based on 100 exams the first year, 50 the second and third years, at $150 each.
***Based on 100 renewals at $75 each.

EXPENDITURES	FY 2011-12	FY 2012-13	FY 2013-14
Food Safety:			
Registration of Tomato Farms*	$0	$150	$175
Pest Control Registration:			
Inspections*	$15,860	$15,860	$15,860
License Issuance**	$1,097	$499	$1,595
TOTAL	**$16,957**	**$16,359**	**$ 17,455**

*FY 09-10 unit cost per inspection, 20 inspections at $793.
**FY 09-10 unit cost per license, 110 inspections at $9.97 the first year, 50 inspections the second year, and 160 inspections the third year.

Division of Dairy Industry

Consolidation of the Division of Dairy Industry into the Division of Food Safety within the department provides a recurring cost savings of $239,465 in general revenue. Inspections of dairy farms, milk plants, milk product plants, and other specified functions of the Division of Dairy Industry will continue to be conducted by the Division of Food Safety.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by General Government Appropriations on April 13, 2011:

The committee substitute provides for the following:

- Deletes Section 1, which repealed subsection 14.24(3), F.S., thereby allowing members of the Florida Commission on the Status of Women to continue to be reimbursed for per diem and travel expenses incurred while participating in business involving the commission.
- Exempts certain direct-support organizations and citizen support organizations for the Department of Agriculture and Consumer Services from obtaining an independent audit.
- Deletes glue boards from the list of acceptable nonchemical methods of trapping wildlife.
- Deletes Section 36, which authorized the department to enter into gas, oil, and other mineral leases on Board of Trustees owned lands leased to the department. It also required the Board of Trustees of the Internal Improvement Trust Fund, or its designee, to review proposed leases.
- Changes references to Florida Forest Services to division (Division of Forestry).
- Provides immunity from liability for damages resulting from exhibits and concessions at public fairs with certain exceptions.
- Changed the effective date of the act from October 1, 2011 to July 1, 2011.

CS by Agriculture Committee on April 4, 2011:

Committee Substitute for Senate Bill 2076 is different from Senate Bill 2076 in that it:

- Revises the Department of Agriculture and Consumer Services' authority to enforce laws relating to commercial stock feeds and commercial fertilizer by providing a limited exemption to counties that have existing ordinances regulating the sale of urban turf fertilizers.

- Deletes Section 6, which repealed subsection 472.007(5), F.S., thereby allowing members of the Board of Professional Surveyors and Mappers to continue to be reimbursed for per diem and travel expenses incurred while participating in business involving the board.

- Requires the Board of Trustees of the Internal Improvement Trust Fund, or its designee, to review oil, gas, and mineral leases that are created pursuant to s. 589.101, F.S.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 1332
INTRODUCER:	Banking and Insurance Committee and Senator Richter
SUBJECT:	Financial Institutions
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo/Johnson	Burgess	BI	**Fav/CS**
2.	Frederick	DeLoach	BGA	**Favorable**
3.	Frederick	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates mechanisms to protect state financial institutions from failure. Due to the increased number of failures of state financial institutions and the unique circumstances that have arisen due to these failures, the financial institutions code is amended in several ways. The bill permits the Office of Financial Regulation (office) to approve special stock offering plans, which is currently prohibited if the financial institution's stock falls below par value. Additionally, the bill authorizes the office to pre-approve shelf charters, which create a more efficient acquisition process for failing state financial institutions. The bill also allows the office to appoint provisional directors or executive officers, if the financial institution does not have the statutorily required amount of directors and/or executive officers. The bill changes examination requirements and other provisions for greater effectiveness of the office's regulation of financial institutions.

The bill implements several provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Wall Street Reform Act) passed by Congress on July 21, 2010.[1] The bill amends

[1] Public Law 111-203.

the financial institutions codes concerning interstate branching and banking, the use of credit ratings for evaluating investment risks, and derivative lending limits.

The bill amends the following sections of the Florida Statutes: 288.772, 288.99, 440.12, 440.20, 445.051, 489.503, 501.005, 501.165, 624.605, 626.321, 626.730, 626.9885, 655.005, 655.013, 655.044, 655.045, 655.41, 655.411, 655.414, 655.416, 655.417, 655.418, 655.4185, 655.419, 655.947, 657.038, 657.042, 657.063, 657.064, 658.12, 658.165, 658.28, 658.2953, 658.36, 658.41, 658.48, 658.53, and 658.67.

The bill creates section 655.03855, Florida Statutes.

The bill repeals the following sections of the Florida Statutes: 658.20(3), 658.295, 658.296, 658.65, 665.013(33), and 667.003(35).

II. Present Situation:

The Office of Financial Regulation is responsible for the regulation of state-chartered financial institutions pursuant to the provisions of the financial institutions codes.[2] The office does not have jurisdiction to regulate federally chartered or out-of-state chartered financial institutions. Since 2009, 45 Florida banks have closed, 29 of those in 2010 alone.[3]

Protection of Failing Financial Institutions

Undercapitalization of Financial Institutions

State financial institutions cannot issue stock at less than par value, and par value cannot fall below $1.[4] Any changes, increase or decrease, in capital stock must be approved by the office.[5] Par value of capital stock is the stock's face value and it sets the minimum price at which the financial institution may introduce shares. Historically, the market value of stock has not fallen below the par value. Recently, however, the falling values of stock have brought many state financial institutions below par value, but the office is unable to assist in raising stock prices because of its lack of statutory authority.

Shelf Charters

Currently, an individual can apply for prior approval with the office to become a director or executive officer of a financial institution.[6] The individual is required to submit an application and pay a filing fee of $7,500. Upon filing an application, the office must consider things such as the character and fitness of the applicant[7] and the applicant's expertise and ability to run a state

[2] Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.
[3] Federal Deposit Insurance Corporation, Failed Bank List, updated February 25, 2011, http://www.fdic.gov/bank/individual/failed/banklist.html (Last visited March 9, 2011).
[4] *See* s. 658.34, F.S.
[5] *See* s. 658.36, F.S.
[6] *See* s. 658.20(3), F.S.
[7] *See* s. 658.20(1)(a), F.S. ("Upon the filing of an application, the office shall make an investigation of: The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.")

financial institution.[8] Currently, business entities are not eligible for prior approval to merge or purchase a financial institution.[9] However, the ability of the office to allow prior approval of mergers and acquisitions of a failing financial institution would assist in the prevention of failures.

Provisional Directors and Executive Officers

Current law requires that a state financial institution maintain a minimum of five directors on its board of directors.[10] However, the financial institutions codes does not provide for enforcement of this requirement. While historically the statutorily required number of directors has not fallen below five, recently a state credit union was forced into conservatorship. Each of the credit union's board of directors resigned, but due to its lack of statutory authority, the office was unable to appoint directors and possibly prevent the conservatorship.

Examinations

The office is required to conduct an examination of each state financial institution every 18 months, but it may accept examinations by an appropriate federal regulator. In addition, the office is required to perform its own examination of each state financial institution every 36 months. Further, to ensure the safe and sound practice of state financial institutions, the office is permitted to perform examinations more frequently than every 36 months.[11] Therefore, the 36-month examination requirement creates duplication in the process because the federally performed exams are sufficient to be relied upon by the office, and the office maintains authority to perform examinations more frequently.

Definition of Related Interest

The financial institutions codes prevents executives and certain shareholders of a financial institution from unfairly acquiring loans and other financial assistance from their financial institution.[12] Nevertheless, many executives and stockholders have circumvented these laws by using relatives to obtain loans and other financial benefits. The current definition of related interest does not encompass family members, but rather is limited to those who control parts of

[8] *See* s. 658.21(4), F.S. ("The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial institutions; or any similar state or federal law. At least two of the proposed directors who are not also proposed officers shall have had at least 1 year direct experience as an executive officer, regulator, or director of a financial institution within 3 years of the date of the application.")

[9] This is called a "shelf charter" because the charter sits on "the shelf" until the applicant is in the position to acquire a failing institution.

[10] *See* ss. 657.021 and 658.33, F.S.

[11] See s. 655.005, F.S. ("'Unsafe or unsound practice' means any practice or conduct found by the office to be contrary to generally accepted standards applicable to the specific financial institution, or a violation of any prior order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the specific financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.")

[12] *See* ss. 657.039 and 658.48, F.S.

the financial institution. Therefore, the office is limited in its enforcement, and cannot regulate those in control of financial institutions that circumvent the regulation through family members.

Determination of Capital and Liabilities

Current law contains broad language for calculating capital and liabilities held by an individual or financial institution.[13] However, the proper determination of whether an amount should be included or excluded from the calculation may depend on the specific type of capital or liability. Consequently, the use of these amounts of capital and liabilities may misrepresent the financial condition of the individual or financial institution.

Dodd-Frank Wall Street Reform and Consumer Protection Act

The Wall Street Reform Act was enacted to address the catalysts of the recent financial crisis by promoting stability and transparency in the financial system. Although the Wall Street Reform Act is primarily aimed at large national financial institutions, some of its provisions affect the regulation of state financial institutions.

Interstate Banking and Branching

Currently, the only means of an out-of-state financial institution to establish its initial presence in Florida is through the merger or acquisition of an existing Florida financial institution that is more than three years old.[14] Restrictions also apply to the ownership of remote financial service units by non-Florida financial institutions.[15] The enactment of the Wall Street Reform Act by Congress requires open borders for financial institutions. The Wall Street Reform Act preempts the type of restrictions currently in place in State law; so, an out-of-state bank can now establish a de novo branch,[16] rather than merge or acquire a state financial institution.

Conversions, Mergers and Acquisitions

Section 612 of the Wall Street Reform Act prohibits the conversion of a state or federal institution if the financial institution is subject to a cease and desist order issued by the appropriate regulatory agency, whether state or federal. However, an exception exists that requires notice of an application of conversion to the appropriate state regulatory agency by the appropriate federal agency after the conversion. The federal regulatory agency is required to introduce a plan to address the matter causing the cease and desist order by the state regulatory agency. The Wall Street Reform Act intends to prohibit financial institutions from "forum shopping" for regulators that are more lenient.[17] Florida law currently allows for the conversion of a financial institution's charter subject to certain considerations, but those considerations do not include the existence of cease and desist orders or other regulatory suspensions.[18]

[13] *See* ss. 655.005, 658,038, 658.48, and 658.53, F.S.
[14] See s. 658.2953, F.S.
[15] See s. 658.65, F.S.
[16] Section 655.0385, F.S. defines de novo bank /branch as a bank/branch that is has been established no more than 2 years in the state.
[17] Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates, Dodd-Frank Act: Commentary and Insights, July 12, 2010.
[18] Section 655.411, F.S.

Lending Limits and Derivatives

Section 611 of the Wall Street Reform Act allows state financial institutions to engage in derivative transactions, only if the state in which the financial institution is chartered has enacted laws that take into consideration credit exposure to derivative transactions.[19] Current state law requires that financial institutions consider total liabilities of a person, including all loans endorsed or guaranteed. However, there is no requirement that the credit exposure of borrowers be considered in derivative transactions.

Credit Ratings

The Wall Street Reform Act eliminates the use of credit ratings for a determination of risk for investments.[20] The Wall Street Reform Act replaces the use of credit rating agencies with internal rating guidelines that each financial institution must develop to determine risk. Federal regulators no longer rely on credit rating agencies because of their conflicts of interest in determining credit rating grades.[21] However, state financial institutions are currently required to use credit ratings in assessing investment risks.[22]

III. Effect of Proposed Changes:

Protection of Failing Financial Institutions

Undercapitalization of Financial Institutions (Sections 12, 16, 25, and 27-28)

Although the market value of capital stock of financial institutions historically has not fallen below par value, this has been a growing problem for state financial institutions in recent years. The bill permits the office to approve special stock offering plans if the capital stock of a state financial institution falls below par value and it cannot reasonably issue capital stock to restore the value of the shares. The bill permits the office to approve a plan by a state financial institution that may call for stock splits, change voting rights, dividends, and the addition of new classes of stock. However, the plan must be approved by a majority vote of the financial institution's board of directors and holders of two-thirds of outstanding shares of capital stock. Nevertheless, the office is required to assess the fairness of benefits of the plan, and disallow a plan that would not effectively restore capital stock prices to sufficient levels. In emergency situations, a failing financial institution does not have to perform a vote for the plan to be approved by the office.[23]

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[19] Section 611, Dodd-Frank Wall Street Reform and Consumer Protection Act. Derivative is defined as a contract the value of which is based on the performance of an underlying financial asset, or other investment. It is not a stand-alone asset because it has no value of its own.

[20] Section 939, Dodd-Frank Wall Street Reform and Consumer Protection Act.

[21] American Bankers Association, Dodd-Frank Summary and Analysis, http://www.aba.com/regreform/default.htm (Last visited March 9, 2011).

[22] Sections 657.042 and 658.67, F.S. (None of the bonds or other obligations described in this section shall be eligible for investment by credit unions/any amount in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest classifications, or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a nationally recognized investment rating service, or any comparable rating as determined by the office.).

[23] *See* s. 655.4185, F.S.

Shelf Charters (Section 12)

Section 658.4185(3), F.S., is created to expand the prior approval privilege from only officers to business entities. The bill allows holding companies to apply for prior approval to merge or acquire control of a failing financial institution. The bill mandates that an entity must file an application for prior approval and submit the $7,500 filing fee. This expansion creates a new pool of potential buyers of failing banks, and increases the available equity capital in the bidding process used to procure failing institutions by the Federal Deposit Insurance Corporation's bid process.

Provisional Directors and Executive Officers (Section 3)

The bill creates s. 655.03855, F.S.,[24] which allows the office to temporarily place a provisional director, for reasonable compensation by the financial institution, onto a state financial institution's board. Additionally, the bill allows the appointment of a provisional director if the director(s) are not equipped to operate the financial institution in a safe and sound manner. Nevertheless, prior to the placement of a provisional director, the office must allow the financial institution 30 days to acquire the minimum number of directors. Allowing the placement of provisional directors avoids a possible conservatorship of the state financial institution. The appointment of a provisional director also assists the office in the prevention of failure of the financial institution because the bill requires the provisional director to submit reports, if directed by the office, concerning the condition of the state financial institution and any corrective actions the director believes should be taken.

Examination Requirements (Section 5)

The bill eliminates the required examination of state financial institutions by the office every 36 months. The bill requires that the office perform examinations every 18 months, but the office may accept examinations conducted by the appropriate federal regulatory agency. This eliminates unnecessary examinations by the office, and allows the office to target examination resources to those state financial institutions that are near failure, or operating in a risky manner.

Definition of Related Interest (Section 1)

The bill moves the definition of "related interest" to s. 655.005,.F.S., and expands the definition of "related interest" to include relatives and those who reside in the same household of one who is in control of a financial institution. Consequently, the office can ensure that executives and shareholders do not attempt to circumvent caps and limits on lending.

Determination of Capital and Liability (Sections 1, 15, and 27-28)

The bill specifies the types of capital and liabilities that a financial institution must use in order to calculate total amounts of capital and liability. This ensures that capital and liability calculations are fairly and accurately determined.

[24] *See* s. 658.20(3), F.S. for original language. This section was moved from s. 658.20(3), F.S. and amended to include holding companies.

Dodd-Frank Wall Street Reform and Consumer Protection Act

The bill makes the following conforming changes to comply with the Wall Street Reform Act.

Interstate Banking and Branching (Sections 6, 9. 12, and 22-24)

The Wall Street Reform Act requires that state regulators allow for de novo banking for out-of-state financial institutions. To conform, the bill allows an out-of-state financial institution to establish a de novo bank without merging or acquiring a state financial institution.[25] The bill also allows for the creation of additional branches in accordance with state law as if the out-of-state financial institution was chartered in Florida. The bill removes restrictions on the ability of out-of-state financial institutions to establish remote financial service units within Florida.

Conversions, Mergers and Acquisitions (Sections 6-13)

The Wall Street Reform Act prohibits state regulatory agencies from accepting the conversion of a charter of a federal financial institution when the converting financial institution is subject to regulatory action or a cease and desist order.[26] To conform, the bill amends s. 655.411, F.S., by requiring the applicant to prove that the resulting financial institution will comply with all regulatory actions in effect before the date of conversion and that the appropriate federal regulatory agency does not object to the conversion.

Lending Limits and Derivatives (Sections 16 and 27)

The Wall Street Reform Act requires that in order to participate in the derivatives market, a state financial institution must consider borrower exposure in the evaluation of its risk.[27] To conform, the bill adds the evaluation exposure to risk in derivative transactions.

Credit Ratings (Sections 16 and 30)

The Wall Street Reform Act disallows the use of credit ratings in determining investment risk by requiring financial institutions to develop their own risk evaluations. To conform, the bill requires that all financial institutions develop and use internal policies and procedures to determine risk of investments, and prohibits the financial institution from using credit ratings as the sole means of determining investment risk.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[25] *See* s. 613, Dodd-Frank Wall Street Reform and Consumer Protection Act.
[26] *See* s. 612, Dodd-Frank Wall Street Reform and Consumer Protection Act.
[27] *See* ss. 610, 611, and 614, Dodd-Frank Wall Street Reform and Consumer Protection Act.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may assist undercapitalized financial institutions in raising capital by authorizing the sale of stock below par value.

The shelf-charter provisions may increase the pool of potential buyers of troubled institutions and, therefore, avoid failures.

The streamlining of the examination process may reduce regulatory burden on financial institutions by eliminating potential duplication of effort by federal regulators.

C. Government Sector Impact:

According to the Office of Financial Regulation, no additional resources will be required to implement the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Senate Banking and Insurance Committee on 3/16/2011:
The Committee Substitute makes technical conforming and clarifying changes to the definition of "Banker's Bank" to create uniformity with federal regulations and other technical conforming changes.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 1316
INTRODUCER:	Budget Subcommittee on General Government Appropriations, Banking and Insurance Committee, and Senator Detert
SUBJECT:	Loan Processing
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Fav/CS**
2.	Frederick	DeLoach	BGA	**Fav/CS**
3.	Frederick	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill includes the following provisions relating to mortgage loan originators whose scope of work includes loan processing:

- Defines loan processing as it relates to mortgage lending.
- Allows licensed loan originators to work as contract loan processors or in-house loan processors.
- Authorizes the Nationwide Mortgage Licensing System and Registry to obtain independent credit reports on each of a mortgage lender's control persons and share those reports with the Office of Financial Regulation (office).
- Makes technical conforming changes to chapter 494, Florida Statutes, required by the federal Secure and Fair Enforcement Mortgage Licensing Act (SAFE) of 2008.

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.0011, 494.00255, 494.00331, 494.0038, 494.00421, 494.00612 and 494.0067.

II. Present Situation:

The federal Secure and Fair Enforcement Mortgage Licensing Act (SAFE) was enacted in July 2008.[1] Under the SAFE Act, a loan processor who performs clerical or support duties at the direction and supervision of a state licensed loan originator is not required to be licensed. In 2009, the Florida Legislature adopted the minimum standards of the SAFE Act.[2] The SAFE Act minimum standards adopted by the Florida Legislature did not distinguish between in-house loan processors and contract loan processors, as all loan processors are required to be licensed as loan originators under ch. 494, F.S. The definition of a loan originator under s. 494.001(14), F.S., includes "process[ing] a mortgage loan application." In-house and contract loan processors are captured under this provision. Licensure as a loan originator under ch. 494, F.S., and the SAFE Act includes pre-licensure education, testing, credit history screening, and criminal background checks. To renew a license, the licensee must pay a fee, meet continuing education requirements, and undergo a criminal background check on an annual basis. Section 494.00611, F.S., allows the department to not issue a loan originator license if the applicant has had a licensed revoked in any jurisdiction.

The SAFE Act also required the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry. Under the act, each mortgage lender must submit to the national mortgage licensing system and registry for the purpose of providing: uniform state licensing application and reporting requirements for residential mortgage loan originators; and a comprehensive database to find and track mortgage loan originators licensed by the states and mortgage loan originators that work for federally regulated depository institutions. Section 494.00612(e), F.S., allows the registry to obtain an independent credit report of a mortgage lender and provide the Office of Financial Regulation access to the reports.

In 2008, the U.S. Department of Housing and Urban Development (HUD) published its final rule amending parts of Regulation X of the Real Estate and Settlement Procedures Act (RESPA), substantially revising the Good Faith Estimate and required settlement disclosures.[3] The new Good Faith Estimate became effective January 1, 2010, and no longer requires the borrower's signature. Further, the HUD has indicated that the form cannot be altered to include a signature block.[4]

III. Effect of Proposed Changes:

This bill defines “contract loan processor” as a licensed loan originator under s. 494.00312 F.S., who is an independent contractor for a mortgage broker or a mortgage lender and has on file with the Office of Financial Regulation a letter of intent to engage only in loan processing. These requirements are consistent with the SAFE Act.

1 Title V of P.L. 110-289.

2 Ch. 2009-241.

3 RESPA: Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs, 73 Fed. Reg. 22, 68204 (November 17, 2008).

4 See "New RESPA Rule FAQs (Updated 4-2-10)," Page 10, Question 28, available on HUD's website: http://www.hud.gov/offices/hsg/rmra/res/respa_hm.cfm.

The SAFE Act provides that "[e]ach mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require."[5] Although the SAFE Act applies to individual loan originators, the national system is being designed so that the reports are submitted by the businesses on behalf of the loan originators. Florida's 2009 legislation implemented this requirement for mortgage brokers (businesses) at s. 494.004(3), F.S., but it did not address it in the mortgage lenders' counterpart statute, s. 494.0067, F.S.[6] This bill addresses this discrepancy with regard to compliance with the SAFE Act.

The bill authorizes the registry to obtain independent credit reports on each of a mortgage lender's control persons and share those reports with the office. This will allow the office to ensure those controlling persons have no discrepancies regarding their credit history.

The bill removes the requirement in s. 494.0038(3)(c), F.S., that the borrower must sign and date the good faith estimate of settlement charges upon receipt. This change will conform ch. 494, F.S., to the requirements of RESPA and changes made by the HUD to the good faith estimate form.

The bill provides an effective date of January 1, 2011.

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:

It is not known how many individuals currently licensed as loan originators will choose to practice as in-house loan processors and forgo the annual application fees and

5 Title V of P.L. 110-289 Sec. 1505(e).

6 Ch. 2009-241, L.O.F.

licensure requirements of loan originators. According to the Office of Financial Regulation, the number is estimated to be insignificant.

C. Government Sector Impact:

The Office of Financial Regulation reports that, between October 1, 2010, and March 2, 2011, it received 15,549 applications for licensure as a loan originator, including 275 from applicants who were known to be contracted loan processors and, therefore, not impacted by the bill. Of the remaining 15,274 individuals, it is unknown how many are actually in-house loan processors and may discontinue licensure as loan originators. According to the office, it is anticipated to be a small number of licensees and, therefore, the reduction in the amount of loan originator licensure revenue collected by the office would be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by General Government Appropriations on April 13, 2011
The committee substitute makes the following changes:

- Revises the definition of the term "borrower" to mean a person obligated to repay a mortgage loan and includes, but is not limited to, a coborrower or cosignor.
- Removes the licensure requirement for in-house loan processors.
- Changes the implementation date of the bill to July 1, 2011.

CS by Banking and Insurance on March 22, 2011

The CS makes the following changes:

- Clarifies the definition of "Contract Loan processor."
- Requires all loan processors take part in the national registry.
- Allows for the denial of a license if the applicant had a previous licensed revoked in another jurisdiction.

- Authorizes the registry to obtain independent credit reports on lender's control persons and share those reports with the Office.
- Changes the implementation date to January 1, 2012.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 380
INTRODUCER:	Children, Families and Elder Affairs Committee and Senator Wise
SUBJECT:	Certification of Child Welfare Personnel
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	**Fav/CS**
2.	McKay	Roberts	GO	**Favorable**
3.	Carpenter	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill amends legislative intent by eliminating the responsibility of the Department of Children and Family Services (DCF or department) to establish, maintain, and oversee child welfare training academies and by requiring that persons providing child welfare services earn and maintain a certification from a third party credentialing entity that is approved by DCF. The bill creates definitions for the terms "child welfare certification," "core competency," "pre-service curriculum," and "professional credentialing entity." The bill also provides requirements for a credentialing entity to secure DCF approval and requires the department to approve core competencies and related pre-service curricula. The use of the Child Welfare Training Trust Fund is amended, and the child welfare training academies are eliminated. The bill provides for entities to contract for training and grants reciprocity to individuals who hold certificates issued by the department for a specified period. The bill also eliminates the ability of the department to develop certification programs.

There is a positive fiscal impact to the state estimated to be a savings of approximately $530,194 in the first year and $423,394 in subsequent years in General Revenue and Trust Funds by eliminating a $600,000 child welfare training academy contract. The estimated costs to certify

DCF-employed Child Protective Investigators in Fiscal Year 2011-12 would be $69,806, with a recurring annual cost of $176,606.

	Fiscal Year 2011-12	Fiscal Year 2012-13
Cost of Child Welfare Training Academy	($600,000)	($600,000)
Initial and Ongoing Certification Costs for 1,241 Child Protective Investigators	$69,806	$176,606
Net Savings	($530,194)	($423,394)

The bill substantially amends ss. 402.40 and 402.731 of the Florida Statutes.

II. Present Situation:

Statewide Training

Currently, the department is required to establish, maintain, and oversee a comprehensive system of child welfare training, and all persons providing child welfare services are required to successfully complete the training program pertinent to their areas of responsibility.[1] The department is also authorized to create certification programs for its employees and service providers to ensure that only qualified employees, and service providers provide client services.[2] Core competencies have been established collaboratively by the department with the stakeholder community and, according to the department, community-based care (CBC) agencies and sheriffs' offices can supplement or augment the minimum curriculum standards to meet their local needs.

The department has the authority to develop rules[3] that include qualifications for certification, including training and testing requirements, continuing education requirements for ongoing certification, and decertification procedures to be used to determine when an individual no longer meets the qualifications for certification and to implement the decertification of an employee or agent.[4]

The department is also required to establish child welfare training academies to perform one or more of the following:

- Offer one or more of the developed training curricula;
- Administer the certification process;
- Develop, validate, and periodically evaluate additional training curricula determined to be necessary, including advanced training that is specific to a region or contractor, or that meets a particular training need; or
- Offer any additional training curricula.[5]

[1] *See* s. 402.40, F.S.
[2] *See* s. 402.731, F.S.
[3] *See* ss. 402.40 and 402.731, F.S. On October 14, 2010, a training and certification rule was adopted to carry out the provisions of ss. 402.40 and 402.731, F.S., and codify policy that has been in existence for the past ten years. The rule applies uniform, minimum, initial, and on-going training and certification standards to all DCF, community based care and sheriff's office employees working in child welfare. *See* 65C-33, FAC.
[4] *See* s. 402.731, F.S.
[5] *See* s. 402.40, F.S.

The department is required to solicit competitively all training academy contracts.[6]

Department rule defines "certification" as the process whereby an individual must demonstrate the knowledge, skills, abilities and priorities necessary to competently discharge the duties of a Florida child protection professional, as evidenced by the successful completion of all applicable classroom instruction, field training, testing, and job-performance requirements of his or her position classification.[7] Typically, each individual in a position requiring certification must be certified within one year of the date of hire, or within one year of having successfully completed a post-test or a waiver test, whichever is earlier. Certification is a condition of employment in those positions requiring certification. Absent special circumstances, certification is valid for a period of no longer than three years.[8]

Each type of child protection certification has a different training, testing, and certification requirement, all of which are established by the department. Currently, there are 11 types of certification designations for child protection professionals:

- Child Protective Investigator;
- Child Protective Investigations Supervisor;
- Child Protective Investigations Specialist;
- Child Protection Case Manager;
- Child Protection Case Management Supervisor;
- Child Protection Case Management Specialist;
- Child Protection Licensing Counselor;
- Child Protection Licensing Supervisor;
- Child Protection Licensing Specialist;
- Child Protection Specialized Services Professional; and
- Child Welfare Trainer.[9]

According to the department, during calendar year 2010, DCF initially certified 938 and recertified 1,239 child welfare professionals in the investigative, case management, and licensing specialties. Since there are approximately 1,475 child protective investigators (employed through either DCF or sheriff's offices) and 2,200 case managers statewide, more than half of the state's child welfare professionals (2,177 or 59%) who are required to be certified are currently certified. The remaining individuals are in the process of achieving certification because they are newly hired, or have not yet met minimum certification requirements.[10]

In addition, there are currently 344 child welfare professionals who have met certification requirements to be a Child Welfare Trainer. Community-based care agencies, sheriff's offices,

[6] *Id.* The department currently has contracts with the University of South Florida and Florida International University, to not only train and certify child welfare trainers, but also to track and document the certification and recertification of all child welfare staff, and to coordinate all registration for, and participation in, the pre-service training and testing of all newly hired child welfare staff.
[7] *See* Chapter 65C-33.001(3), F.A.C.
[8] *See* Chapter 65C-33.002(7), F.A.C.
[9] *See* Chapter 65C-33.002(4), F.A.C.
[10] Department of Children and Family Services. Department of Children and Families Staff Analysis and Economic Impact, SB 380, January 25, 2011.

or the department employs these staff; however, child welfare training may be only one of their job duties. Certified child welfare trainers teach the department-approved standard pre-service curriculum, and the content must be delivered in its entirety to all newly hired child protective investigative and case management staff statewide.[11] The intent of this model is it ensure that all necessary statutory, policy, procedural and best practice information is conveyed to child welfare personnel by qualified child welfare trainers and that minimum competency requirements are consistent statewide.[12]

The department reports[13] that CBCs and sheriff's offices are allowed to contract for or otherwise arrange for additional training or certifications from local or state providers. Funding is provided to regions, circuits, community-based care agencies, and sheriffs offices to deliver the department training curriculum to child welfare staff internally or through contract; however, those entities may add to the content to meet any local training need.

Child Welfare Certificate Offered by Schools of Social Work at State Universities

Many of the state's universities school of social work in offer a child welfare certificate. The department has developed partnerships with these entities in order to coordinate education and training requirements for those students earning social work degrees who want to work in child welfare. For example, the School of Social Work at Florida State University will allow students who successfully pass the pre-service DCF exam to waive the university required certificate exam. In addition, current employees of the department and the CBCs may be eligible to exempt the university internship requirement.[14]

Federal Requirements for Child Welfare Training

Federal regulations require states to prepare a five-year comprehensive Child and Family Services Plan (CFSP),[15] which lays the groundwork for a system of coordinated, integrated, and culturally relevant family-focused services in state child welfare agencies. The Annual Progress and Services Report (APSR) provides yearly updates on the progress made toward accomplishing the goals and objectives in the CFSP. Completion of the APSR satisfies federal regulations by providing updates on a state's annual progress for the previous fiscal year and planned activities for the upcoming fiscal year.[16,17]

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[11] *See* s.402.40, F.S.
[12] *Id.*
[13] Department of Children and Family Services. Department of Children and Families Staff Analysis and Economic Impact, SB 380, January 25, 2011.
[14] Florida State University, College of Social Work, Child Welfare Certificate Program. Available at: http://csw.fsu.edu/index.php?clickLink=child_REQ. (Last visited February 3, 2011).
[15] *See* 45 CFR 1357.15 and 1357.16.
[16] U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. Available at: http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2008/pi0803.htm#overview . (Last visited: February 2, 2011).
[17] In order to receive funds for FFY 2011, for Child Welfare Services (title IV-B), Child Abuse Prevention and Treatment Act (CAPTA), Chafee Foster Care Independence Program (CFCIP) and Education and Training Vouchers (ETV) programs, the APSR had to be submitted to the Children's Bureau by June 30, 2010.

A state's CFSP must include a staff development and training plan in support of the goals and objectives in the CFSP which addresses both of the title IV-B programs covered by the plan.[18] Training must be an on-going activity and must include content from various disciplines and knowledge bases relevant to child and family services policies, programs and practices.

Training activities in this plan must also be included in the department's Title IV-E training program.[19] These elements are required to receive federal funding. According to the department, failure to obtain approval prior to implementation of any changes to the training requirements could jeopardize those resources.[20]

Child Welfare Training Trust Fund

The Child Welfare Training Trust Fund was created to fund child welfare training, including securing consultants to develop the training system. The trust fund receives one dollar from certain noncriminal traffic infractions,[21] receives monies from an additional fee on birth certificates and dissolution of marriage filings,[22] and may receive funds from any other public or private source.[23]

The Florida Certification Board

The Florida Certification Board (FCB or Board) provides a number of certifications, including those for substance abuse counselors, prevention specialists, criminal justice professionals, mental health professionals, and behavioral health technicians in Florida. The Board does not offer or provide child welfare training.[24]

While the current training and certification program administered by the department meets the entry-level training and testing needs of CBC providers, the FCB's CBC partners indicated a desire to explore the development of an additional level of certification that is specific to child welfare case managers.[25] In response, the board added the Child Welfare Case Manager (CWCM) to its professional certification programs. The CWCM certification is a voluntary designation of professional competency.[26] The FCB reports that 193 individuals have an active CWCM certification, and almost all of those individuals are employed by CBCs.

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[18] *See* 45 CFR. § 1357.15(t).
[19] *See* 45 CFR 1356.60(b)(2).
[20] Department of Children and Family Services. Department of Children and Families Staff Analysis and Economic Impact, SB 380, January 25, 2011.
[21] *See* ss. 318.14(19)(b) and 318.18, F.S.
[22] *See* ss. 382.0255 and 28.101, F.S.
[23] *See* s. 402.40, F.S.
[24] The Florida Certification Board, Available at: http://www.flcertificationboard.org/. (Last visited February 2, 2011).
[25] *Id*. The FCB was approached in 2006 by Community Based Care of Seminole, Inc. and Big Bend Community Based Care, Inc. to explore the possibility of creating a Child Welfare Case Manager (CWCM) credential in the state of Florida.
[26] *Id.* In order to receive the CWCM, the Board reviews the application portfolio submitted by an applicant, administers the written exam when required, and issues the certification. The department sanctioned training is accepted by the FCB. There is a one time $150 certification fee, a $75 exam fee, and a $125 renewal fee due annually in October. Certified individuals must complete 20 CEUs annually in order to be recertified.

III. Effect of Proposed Changes:

Provisions in the bill eliminate the department's child welfare training program and instead require that individuals providing child welfare services earn and maintain a professional certification from a department approved certification entity. The bill also removes the ability of the department to create certification programs, so individuals wanting or needing child welfare certification will have to acquire that certification from a third-party credentialing entity that is approved by DCF.

The department reports that the Florida Certification Board is the only "professional credentialing entity" as defined in the bill currently in existence. The bill provides that credentialing entities shall grant reciprocity and award certification to individuals in good standing who hold certification issued by the department at no cost to the state or the individual for a period of no less than a year from the implementation of certification programs. However, it remains unclear what the consequences would be in a number of situations. For example:

- The board requires a minimum of a bachelor's degree in order to meet the requirements for certification.[27] This could subject those individuals currently employed who have no degree and are unable to earn a degree within the period of reciprocity to termination from employment and would prevent non-degreed individuals from being hired in the future.
- The board does not currently offer the variety of certifications that are offered by the department, including one for child protective investigators. It is unclear how those individuals would obtain the certifications required for employment in their specific practice areas.

While the bill provides that the department, the CBCs, and sheriff's offices may contract for training, currently, however, neither the Board nor any other organization offers child welfare or protective investigator training.

Eliminating the department training program would appear to have some impact on the partnerships the department has with schools of social work at universities.

The bill also broadens the use of the Child Welfare Training Trust Fund, from being used to fund a comprehensive system of child welfare training, including the development of the training and the establishment of training academies, to funding professional development. It is unclear what impact this will have on the trust fund.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

[27] The board requires a minimum of a bachelor's degree from an accredited college or university in a related or unrelated field. Related fields are social work, psychology, sociology, human services, counseling, child development, education, guidance counseling, public administration, public health administration, criminology, or criminal justice. The Florida Certification Board, Available at: http://www.flcertificationboard.org/. (Last visited February 2, 2011).

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

D. Other Constitutional Issues:

Article II, section 3 of the Florida Constitution creates the three branches of Florida's government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its constitutionally assigned powers to another branch.[28] Therefore, statutes granting power to the executive branch "must clearly announce adequate standards to guide in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion."[29] The Legislature may delegate some discretion in the operation and enforcement of the law, but it cannot delegate the power to say what the law is.[30]

The bill appears to require the credentialing entities to "establish professional requirements and standards applicants must achieve in order to obtain a child welfare certification," and the bill also deletes a provision authorizing the department to develop "rules that include qualifications for certification, including training and testing requirements." If the bill removes ascertainable minimal standards and guidelines set by the Legislature, and replaces them with the unfixed standards of a private entity, there may be a delegation issue, as such standards may not substitute for and supplant the Legislature's duty to determine the law.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Certification Board charges the individual applicant for the CWCM certification a certification fee, an exam fee if an exam is required, and an annual renewal fee. While the bill provides for reciprocity for a period of at least a year from the time of implementation of department approved certification programs, all child welfare staff

[28] *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 264 (Fla.1991).
[29] *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County,* 346 So.2d 53, 55-56 (Fla.1976).
[30] *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones,* 474 So.2d 359, 363 (Fla. 1st DCA 1985).

who are required to be certified will eventually have to have obtain, at cost to the individual or the employing entity, certification from a credentialing entity in order to continue to be employed. The bill does not specify who will assume the cost associated with the certification and renewal certification provided through the newly defined professional credentialing entity, but it would appear to be either the individual seeking certification or his or her respective employing agency.

The department estimates that the cost for certifying 2,200 CBC child welfare case managers in Fiscal Year 2011-12 to be $123,750, with an annualized cost of $288,750. In addition, there are 234 child protective investigators at seven contracted Sheriff's offices. The department estimates that the cost for certifying these investigators will be $13,162 for Fiscal Year 2011-12 and $30,712 in subsequent years.

C. Government Sector Impact:

While the provisions of the bill create an initial net savings, the long-term fiscal impact on government is unknown. The department has reported[31] that:

- The bill does not specify the entity responsible for the costs related to the development, maintenance, and delivery of the pre-service curricula. The department through a $675,782 contract with Florida International University currently provides these functions. This contract amount was included in the department's initial annual cost savings projection of $1.3 million.

- Currently the department provides a number of certifications not provided by any third-party entity, e.g., licensing staff. It is not known what the costs would be to develop a third-party credential for those child welfare specializations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It does not appear that the credentialing entities that must be approved by the department to supply the services required by the bill need to be selected by competitive solicitation. The services to be supplied by the entities pursuant to the requirements of this bill do not appear to be covered by the exemptions specified in Section 287.057(3)(f), F.S. The Legislature may wish to make clear what type of competitive process, if any, is required by this bill.

If more than one credentialing entity is allowed to provide the services required by the bill, more than one set of certification standards might be created.

[31] Department of Children and Families Staff Analysis and Economic Impact, CS/SB 380, March 28, 2011.

VIII. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 8, 2011:
Makes substantial changes to ss. 402.40 and 402.731, Florida Statutes, relating to child welfare training and supervision including:

- Provides that the department work in collaboration with child welfare stakeholders to ensure that child welfare staff have the knowledge and skills to competently provide child welfare services;
- Adds a definition for the terms "core competencies" and "pre-service curricula;
- Provides for the department to approve core competencies and related pre-service curricula;
- Provides that the development of pre-service curricula be a collaborative effort that includes third-party credentialing entities;
- Provides that community-based care agencies, sheriff's offices, and the department may contract for the delivery of pre-service and any additional child welfare training as long as the curriculum satisfies the approved core competencies;
- Provides that credentialing entities shall for a period of no less than a year from the implementation of certification programs grant reciprocity and award certification to individuals in good standing who hold certification issued by the department at no cost to the state or the individual;
- Restores the department's rulemaking authority; and
- Eliminates the ability of DCF to create certification programs.

B. Amendments:

None.

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 Budget Committee

BILL:	SB 2064
INTRODUCER:	Children, Families, and Elder Affairs Committee
SUBJECT:	Mental Health and Substance Abuse Treatment
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Favorable**
2.	O'Connor/Maclure	Maclure	JU	**Favorable**
3.	Carpenter	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill stems from an interim report of the Florida Senate Committee on Children, Families, and Elder Affairs relating to a forensic hospital diversion pilot program. The bill creates the Forensic Hospital Diversion Pilot Program which is to be implemented in Escambia, Hillsborough, and Miami-Dade counties by the Department of Children and Family Services (DCF or department), in conjunction with the First, Eleventh, and Thirteenth Judicial Circuits.

The purpose of the pilot program is to serve individuals with mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities. Eligibility for the pilot program is limited to persons who:

- Are 18 years of age or older;
- Are charged with a felony of the second or third degree;
- Do not have a significant history of violent criminal offenses;
- Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity pursuant to part II of ch. 916, F.S.;
- Meet public safety and treatment criteria established by DCF; and
- Otherwise would be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court to develop educational training for judges in the pilot program areas and authorizes the department to adopt rules. The bill also requires the Office of Program Policy Analysis and Government Accountability to evaluate the pilot program

and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012.

The bill also amends Florida's law relating to the involuntary commitment of a defendant who is adjudicated incompetent to provide that a defendant who is being discharged from a state treatment facility shall be provided with up to a seven-day supply of the psychotropic medications he or she is receiving at the time of discharge. The bill requires that the most recent formulary approved by the department be used when filling prescriptions for psychotropic medications prescribed to defendants being discharged from state treatment facilities.

Finally, the bill provides that county courts may order the conditional release of a defendant for purposes of outpatient care and treatment.

The bill makes conforming changes.

This bill has no direct fiscal impact on the Department of Children and Family Services and directs the department to use existing resources and to reallocate resources from forensic mental health programs or other adult mental health programs serving individuals involved in the criminal justice system. While the current forensic diversion pilot program has an average bed cost that is 19 percent less than the cost of a state forensic facility, the bill will require the department to close forensic facility beds in order to have the necessary resources for the pilot projects. In addition, the ability of state mental health treatment facilities to provide county detention facilities with up to a seven-day supply of the psychotropic medications for individuals discharged back to the community for trial is contingent on the funding appropriated for medication by the Legislature.

This bill substantially amends the following sections of the Florida Statutes: 916.106, 916.13, 916.17, and 951.23. The bill creates section 916.185, Florida Statutes.

II. Present Situation:[1]

Forensic Mental Health

On any given day in Florida, there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses or substance use disorders requiring immediate treatment are placed in a Florida jail.

Over the past nine years, the population of inmates with mental illnesses or substance use disorders in Florida prisons increased from 8,000 to nearly 17, 000 individuals. In the next nine years, this number is projected to reach more than 35,000 individuals, with an average annual increase of 1,700 individuals. Forensic mental health services cost the state a quarter-billion dollars a year and are now the fastest growing segment of Florida's public mental health system.

[1] The information contained in the Present Situation of this bill analysis is from an interim report by the Committee on Children, Families, and Elder Affairs of the Florida Senate. See Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Forensic Hospital Diversion Pilot Program* (Interim Report 2011-106) (Oct. 2010), *available at* http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-106cf.pdf (last visited Mar. 17, 2011).

Forensic Services

Chapter 916, F.S., called the "Forensic Client Services Act," addresses the treatment and training of individuals who have been charged with felonies and found incompetent to proceed to trial due to mental illness, mental retardation, or autism, or are acquitted by reason of insanity.

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed to trial due to mental illness or who have been adjudicated not guilty by reason of insanity. Persons committed under ch. 916, F.S., are committed to the custody of the Department of Children and Family Services (DCF or department).

Under the authority of ch. 916, F.S., DCF provides mental health assessment, evaluation, and treatment of individuals committed to DCF following adjudication as incompetent to proceed or not guilty by reason of insanity. These individuals are charged with a felony offense and must be admitted to a treatment facility within 15 days of the department's receipt of the commitment packet from the court.[2] Persons committed to the custody of DCF are treated in one of three forensic mental health treatment facilities throughout the state. These facilities contain a total of 1,700 beds and serve approximately 3,000 people each year. The cost to fund these beds is more than $210 million annually.[3]

Individuals admitted to state forensic treatment facilities for competency restoration receive services primarily focused on resolving legal issues, but not necessarily targeting long-term wellness and recovery from mental illnesses. Once competency is restored, individuals are discharged from state treatment facilities and generally returned to jails, where they are rebooked and incarcerated while waiting for their cases to be resolved. A sizable number of individuals experience a worsening of symptoms while waiting in jail, and some are readmitted to state facilities for additional treatment and competency restoration services.

The majority of individuals who enter the forensic treatment system do not go on to prison,[4] but return to court, and either have their charges dismissed for lack of prosecution or the defendant takes a plea such as conviction with credit for time served or probation.[5] Most are then released to the community, often with few or no community supports and services in place.[6] Many are subsequently rearrested and return to the justice and forensic mental health systems, either as the result of committing a new offense or failing to comply with the terms of probation or community control.[7]

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[2] *See* s. 916.107(1)(a), F.S.
[3] Comm. on Children, Families, and Elder Affairs, *supra* note 1.
[4] H. Richard Lamb et al., *Community Treatment of Severely Mentally Ill Offenders Under the Jurisdiction of the Criminal Justice System: A Review*, 50 PSYCHIATRIC SERV. 907-913 (July 1999), *available at* http://psychservices.psychiatryonline.org/cgi/content/full/50/7/907 (last visited Mar. 18, 2011).
[5] Interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Aug. 20, 2010).
[6] *Id.*
[7] *Id.*

Diversion

"Diversion is the process of diverting individuals with severe mental illness and/or co-occurring substance abuse disorders away from the justice system and into the community mental health system, where they are more appropriately served."[8] By providing more appropriate community-based services, diversion programs prevent individuals with mental illness and substance abuse disorders from becoming unnecessarily involved in the criminal justice system.[9] There are numerous benefits to the community, criminal justice system, and the diverted individual, including:

- Enhancing public safety by making jail space available for violent offenders;
- Providing judges and prosecutors with an alternative to incarceration;
- Reducing the social costs of providing inappropriate mental health services or no services at all; and
- Providing an effective linkage to community-based services, enabling people with mental illness to live successfully in their communities, thus reducing the risk of homelessness, run-ins with the criminal justice system, and institutionalization.[10]

In Florida, this approach is being tested in the Miami-Dade Forensic Alternative Center (MD-FAC), a pilot program implemented in August 2009 by DCF, the Eleventh Judicial Circuit of Florida,[11] and the Bayview Center for Mental Health. The pilot program was established to demonstrate the feasibility of diverting individuals with mental illness adjudicated incompetent to proceed to trial from state hospital placement to placement in community-based treatment and competency restoration services.[12]

"Admission to MD-FAC is limited to individuals who otherwise would be committed to DCF and admitted to state forensic hospitals."[13] In order to be eligible for MD-FAC, an individual must be charged with a less serious offense, such as a second or third degree felony. Following admission, individuals are initially placed in a locked inpatient setting where they receive crisis stabilization, short-term residential treatment, and competency restoration services.[14] As of September 2010, twenty-four individuals have been admitted to the pilot program and diverted from admission to state forensic facilities.[15] To serve these 24 people, MD-FAC operates 10

[8] The Supreme Court, State of Florida, *Mental Health: Transforming Florida's Mental Health System*, *available at* http://www.floridasupremecourt.org/pub_info/documents/11-14-2007_Mental_Health_Report.pdf (last visited Mar. 18, 2011).
[9] *Id.*
[10] Nat'l Mental Health Ass'n, TAPA Ctr. for Jail Diversion, Nat'l GAINS Ctr., *Jail Diversion for People with Mental Illness: Developing Supportive Community Coalitions*, (Oct. 2003), *available at* http://www.gainscenter.samhsa.gov/pdfs/jail_diversion/NMHA.pdf (last visited Mar. 18, 2011).
[11] MD-FAC is part of Eleventh Judicial Circuit Criminal Mental Health Project (CMHP). This CMHP runs four diversion programs (Pre-Arrest Diversion, Post-Arrest Misdemeanor Diversion, Post-Arrest Felony Diversion, and Forensic Hospital Diversion). Interview with Judge Steven Leifman, *supra* note 7. The Eleventh Judicial Circuit includes Miami-Dade County, which has one of the nation's largest percentages of mentally ill residents. Abby Goodnough, *Officials Clash Over Mentally Ill in Florida Jails*, N.Y. TIMES, Nov. 15, 2006, *available at* http://www.nytimes.com/2006/11/15/us/15inmates.html (last visited Mar. 18, 2011).
[12] Miami-Dade Forensic Alternative Ctr., *Pilot Program Status Report* (Aug. 2010) (on file with the Senate Comm. on Children, Families, and Elder Affairs).
[13] *Id.*
[14] *Id.*
[15] Additionally, three individuals who met criteria for admission to the program were subsequently admitted to a state hospital because of lack of bed availability at MD-FAC, i.e., the program was at or above capacity. On average, the program has diverted 2.2 individuals per month from admission to state forensic facilities. *Id.*

beds, with an average bed per day cost of $274.00 for a total cost of $1,000,100.[16] MD-FAC reports that increasing the bed capacity will decrease the average bed per day cost at MD-FAC to less than $230, with the possibility of further decreasing costs in the future.[17]

As a result of the MD-FAC program:

- The average number of days to restore competency has been reduced, as compared to forensic treatment facilities.[18]
- The burden on local jails has been reduced, as individuals served by MD-FAC are not returned to jail upon restoration of competency.[19]
- Because individuals are not returned to jail, it prevents the individual's symptoms from worsening while incarcerated, possible requiring readmission to state treatment facilities.[20]
- Individuals access treatment more quickly and efficiently because of the ongoing assistance, support, and monitoring following discharge from inpatient treatment and community re-entry.
- Individuals in the program receive additional services not provided in the state treatment facilities, such as intensive services targeting competency restoration, as well as community-living and re-entry skills.
- It is standard practice at MD-FAC to provide assistance to all individuals in accessing federal entitlement benefits that pay for treatment and housing upon discharge.

County Court Authority

As described above, ch. 916, F.S., allows the circuit court to order forensic commitment proceedings for a defendant adjudicated incompetent to proceed to trial. The Florida Supreme Court, in *Onwu v. State*, ruled that only the circuit court, and not the county court, has the authority to order forensic commitment of persons found incompetent to proceed to trial (ITP)

[16] *Id.*

[17] Staffing standards at MD-FAC allow for additional bed capacity without substantially increasing program staff or fixed costs. As a result, operations will become more efficient as program capacity is increased. *Id.*

[18]

Comparison of competency restoration services provided in forensic treatment facilities and MD-FAC (average number of days year to date, FY 2009-10):	**Forensic facilities**	**MD-FAC**	**Difference***
Average days to restore competency (admission date to date court notified as competent)	138.9	99.3	39.6 days (-29%)
Average length of stay for individuals restored to competency (this includes the time it takes for counties to pick up individuals)	157.8	139.6	18.2 days (-12%)

"The diminishing advantage of MD-FAC over forensic facilities in terms of average number of days to restore competency (39.6 day reduction) and overall average length of stay for individuals restored to competency (18.2 day reduction) relates to the fact that individuals enrolled in MD-FAC are not rebooked into the jail following restoration of competency. Instead, they remain at the treatment program where they are re-evaluated by court appointed experts while the treatment team develops a comprehensive transition plan for eventual step-down into a less restrictive community placement. When court hearings are held to determine competency and/or authorize step-down into community placements, individuals are brought directly to court by MD-FAC staff. This not only reduces burdens on the county jail, but eliminates the possibility that individuals will decompensate while incarcerated and require subsequent readmission to state treatment facilities. It also ensures that individuals remain linked to the service provider through the community re-entry and re-integration process." *Id.*

[19] MD-FAC program staff provides ongoing assistance, support and monitoring following discharge from inpatient treatment and community re-entry. Additionally, individuals are less likely to return to state hospitals, emergency rooms, and other crisis settings. *Id*

[20] Of the 44 individuals referred to MD-FAC to date, 10 (23 percent) had one or more previous admissions a state forensic hospital for competency restoration and subsequent readmission to the Miami-Dade County Jail. *Id.*

through ch. 916, F.S.[21] The Court noted that the county court may still commit misdemeanor defendants found ITP through the Baker Act.[22]

However, county court judges are without recourse when a misdemeanor defendant found ITP does not meet the criteria for Baker Act involuntary hospitalization, but may still pose a danger to himself or others in the future, and thus requires treatment. In this instance, the county court judge can conditionally release the defendant into the community, but has no authority to order any mental health treatment services. If the defendant receives mental health services while on conditional release, competency may be restored so that a plea can be entered within the year. It is reported that many misdemeanor defendant cases are dismissed by the end of the year because competency has not been restored. In other cases, by the end of the year, the individual has either disappeared or has been rearrested.[23]

Committee on Children, Families, and Elder Affairs' Review of the Forensic Hospital Diversion Pilot Program

During the 2011 interim, the Florida Senate Committee on Children, Families, and Elder Affairs studied forensic mental health in Florida and the benefits of a Forensic Hospital Diversion Pilot Program.[24] The recommendations identified by the interim report include:

- Expanding the forensic hospital diversion pilot program to other areas of the state (the department and representatives from the Office of the State Courts Administrator suggested pilots be implemented in Hillsborough and Escambia counties because they have the largest forensic need in the state);
- Providing program-specific training to judges in the pilot areas; and
- Authorizing county court judges to order involuntary outpatient treatment as a condition of release.

III. Effect of Proposed Changes:

This bill stems from an interim report of the Florida Senate Committee on Children, Families, and Elder Affairs relating to a forensic hospital diversion pilot program. The bill creates the Forensic Hospital Diversion Pilot Program to be implemented in Escambia, Hillsborough, and Miami-Dade counties by the Department of Children and Family Services (DCF or department), in conjunction with the First, Eleventh, and Thirteenth Judicial Circuits. The program is to be implemented within available resources and the bill authorizes DCF to reallocate resources from forensic mental health programs or other adult mental health programs serving individuals involved in the criminal justice system. The purpose of the pilot program is to serve individuals with mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities. In creating and implementing the program, DCF is directed to include a comprehensive continuum of care and services that use evidence-based

[21] *Onwu v. State*, 692 So.2d 881 (Fla. 1997).
[22] *Id.* Baker Act procedures are found in part I, ch. 394, F.S.
[23] Telephone interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Sep. 28, 2010).
[24] Comm. on Children, Families, and Elder Affairs, *supra* note 1.

practices and best practices to treat people who have mental health and co-occurring substance use disorders. The bill provides definitions for the terms "best practices," "community forensic system," and "evidence-based practices."

Eligibility for the pilot program is limited to persons who:

- Are 18 years of age or older;
- Are charged with a felony of the second or third degree;
- Do not have a significant history of violent criminal offenses;
- Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity pursuant to part II of ch. 916, F.S.;
- Meet public safety and treatment criteria established by DCF; and
- Otherwise would be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court, in consultation with the Supreme Court Mental Health and Substance Abuse Committee, to develop educational training for judges in the pilot program areas. The bill authorizes DCF to adopt rules to administer the program. The bill also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate the pilot program and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012. The OPPAGA is directed to examine the efficiency and cost-effectiveness of providing forensic services in secure, outpatient, community-based settings in the report.

The bill amends s. 916.13, F.S., relating to the involuntary commitment of a defendant who is adjudicated incompetent, to provide that a defendant who is being discharged from a state treatment facility shall be provided with up to a seven-day supply of the psychotropic medications he or she is receiving at the time of discharge. The defendant is to remain on the medications, to the extent it is deemed medically appropriate, in order to accommodate continuity of care and ensure the ongoing level of treatment that helped the defendant become competent. The bill requires that the most recent formulary approved by the department be used when filling prescriptions for psychotropic medications prescribed to defendants being discharged from state treatment facilities. The bill also amends s. 951.23, F.S., to require all county detention facilities, county residential probation centers, and municipal detention facilities filling prescriptions for psychotropic medications prescribed to defendants discharged from state treatment facilities to follow the formulary approved by DCF in order to conform to the changes made in s. 916.13, F.S.

Finally, the bill authorizes a county court to order the conditional release of a defendant for purposes of outpatient care and treatment only. The bill amends the definition of "court" in s. 916.106, F.S., to conform to this change.

The bill shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have not impact on municipalities and counties under the requirement of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides that the Forensic Hospital Diversion Pilot Program is to be implemented by the Department of Children and Family Services, in conjunction with the First, Eleventh, and Thirteenth Judicial Circuits in Escambia, Miami-Dade, and Hillsborough counties within available resources. The department is also authorized to reallocate resources from forensic mental health programs or other adult mental health programs serving individuals involved in the criminal justice system. While the current forensic diversion pilot program has an average bed cost that is 19 percent less than the cost of a state forensic facility, the bill will require the department to close forensic facility beds in order to have the necessary resources for the pilot projects. In addition, the ability of state mental health treatment facilities to provide county detention facilities with up to a seven-day supply of the psychotropic medications for individuals discharged back to the community for trial is contingent on the funding appropriated for medication by the Legislature. Current department practice provides for up to a 30-day supply of psychotropic medications to be sent to county detention facilities with the discharged individual

Local detention facilities prescribe medications based upon local formularies, which may differ from that of the department's forensic treatment facilities. There may be a fiscal impact on local detention centers, such as county jails, if these facilities are required to adhere to a medication formulary approved by the department rather than locally.

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

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 Budget Committee

BILL:	CS/SB 1158
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Garcia
SUBJECT:	Teaching Agency for Home and Community-based Care
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Fav/CS**
2.	Fernandez/O'Callaghan	Stovall	HR	**Favorable**
3.	Kynoch	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates a new section of law authorizing the Department of Elderly Affairs to designate a home health agency as a teaching agency for home and community-based care if the home health agency meets certain requirements. The bill also defines the term "teaching agency for home and community-based care."

The bill authorizes a teaching agency for home and community-based care to be affiliated with an academic health center in the state in order to foster the development of methods for improving and expanding the capabilities of home health agencies to respond to the medical, health care, psychological, and social needs of frail and elderly persons.

This bill has no fiscal impact on state or local government.

This bill creates section 430.81, Florida Statutes.

II. Present Situation:

Home Health Agencies

A "home health agency" is an organization that provides home health services and staffing services.[1] Home health services are health and medical services and medical supplies furnished to an individual in the individual's home or place of residence.[2] These services include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services;
- Dietetics and nutrition practice and nutrition counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.

A home health agency, as well as all of its related offices, must be licensed by the Agency for Health Care Administration (AHCA) in order to operate in the state.[3] The licensure requirements for home health agencies are found in the general provisions of part II of ch. 408, F.S., the specific home health agency provisions of part III of ch. 400, F.S., and ch. 59A-8 of the Florida Administrative Code. A home health agency license is valid for 2 years, unless sooner suspended or revoked.

To obtain a home health agency license, an applicant must submit, among other things, the following:

- An application under oath which includes the name, address, social security number and federal employer identification number or taxpayer identification number of the applicant and each controlling interest, and the name of the person who will manage the provider;
- The total number of beds requested;
- Proof of a certificate of authority in certain cases;
- An affidavit of compliance with the law;
- A description and explanation of any exclusions, suspensions, or terminations of the applicant from the Medicare, Medicaid, or federal Clinical Laboratory Improvement Amendment programs;
- Proof of the applicant's legal right to occupy the property;
- Information identifying the service areas and counties to be served and services to be provided;
- The number and discipline of professional staff to be employed;
- A business plan;
- Evidence of contingency funding;
- Proof of professional and commercial liability insurance of not less than $250,000 per claim;
- Proof of financial ability to operate; and

[1] Section 400.462(12), F.S.
[2] Section 400.462(14), F.S.
[3] Section 400.464(1) and (2), F.S.

- A licensure fee.[4]

Additionally, an applicant must comply with background screening requirements and pass a survey by the AHCA's inspectors.[5]

Prior to 2008, the AHCA saw significant growth in the number of applications and new licenses of home health care agencies.[6] The AHCA received 431 new licensure applications for home health agencies during 2007.[7] In 2008, the Legislature significantly strengthened the home health agency license requirements to address fraud and abuse in the Medicaid and Medicare programs. According to the AHCA, the new accreditation requirements have slowed the growth in new licenses, but the AHCA continues to receive a high volume of applications.[8] As of February 23, 2011, there were 2,317 licensed home health agencies in the state of Florida.[9]

Florida law prohibits unlicensed activity and authorizes the AHCA to fine unlicensed providers $500 for each day of noncompliance, and authorizes state attorneys and the AHCA to bring an action to enjoin unlicensed providers.[10] Unlicensed activity is a second-degree misdemeanor and each day of continued operation is a separate offense.[11]

The requirements for training of health care professionals are under the Department of Education (DOE) and the requirements for licensing and continuing education are determined by the Board of Nursing and other Boards under the Department of Health. Home health agencies are currently permitted under at s. 400.497(1), F.S., to train their own home health aides. However, home health agencies must become licensed by the DOE as a career education school in order to train any home health aides that will be employed by other home health agencies, to train certified nursing assistants, or others.[12]

Lead Agencies

The Department of Elder Affairs (DOEA or department) is created in s. 20.41, F.S. This section directs the department to plan and administer its programs and services through planning and service areas designated by the department. The department is designated as the state unit on aging as defined in the federal Older Americans Act (the act).[13]

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[4] *See* ss. 400.471, 408.806, 408.810, F.S.
[5] *See* s. 408.810(1), F.S., and ch. 59A-8.003, F.A.C.
[6] Comm. on Health Regulation, The Florida Senate, *Review Regulatory Requirements for Home Health Agencies* (Interim Project Report 2008-135) (Nov. 2007), *available at* http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-135hr.pdf (last visited April 8, 2011).
[7] Comm. on Health and Human Servs. Appropriations, The Florida Senate, *Bill Analysis and Fiscal Impact Statement CS/CS/SB 1986* (April 16, 2009), *available at* http://archive.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s1986.ha.pdf (last visited April 8, 2011).
[8] *Id*.
[9] Agency for Health Care Admin., *2011 Bill Analysis & Economic Impact Statement SB 1158* (rcv'd Mar. 22, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[10] Section 408.464(4)(b) and (f), F.S.
[11] Section 408.464(4)(e), F.S.
[12] *Supra* note 9.
[13] Section 20.41(5), F.S.

The department serves as the primary state agency responsible for administering human services programs for the elderly and for developing policy recommendations for long-term care;[14] recommends state and local level organizational models for the planning, coordination, implementation, and evaluation of programs serving the elderly population;[15] and oversees implementation of federally funded and state funded programs and services for the state's elderly population.[16]

Federal law directs the department to administer the act using Florida's 11 Area Agencies on Aging (AAA).[17] Contractual agreements to implement the department's programs are executed at three levels:

- Contracts between DOEA and the AAAs for each major program;
- Contracts between the AAAs and lead agencies or service providers; and
- Contracts between lead agencies and local service providers.

The department works closely with the 11 AAAs in Florida. The AAAs administer funds locally and contract with a variety of provider agencies to offer a wide array of services designed to address the needs of their senior constituencies. Some of the services offered through AAAs are congregate and home delivered meals; Senior Center activities and adult day care; case management; and information and referral.

A lead agency is an agency designated at least once every six years by an AAA as a result of a request for proposal process.[18] Lead agencies provide and coordinate services for elders in designated areas. There are 58 lead agencies serving all of Florida's 67 counties.[19] Lead agency providers are either non-profit corporations or county government agencies, and are the only entities that can provide fee-for-service case management on an ongoing basis.[20]

Teaching Nursing Home Pilot Project

Section 430.80, F.S., authorizes the implementation of a teaching nursing home pilot project. The statute defines a "teaching nursing home" as a nursing home facility licensed under ch. 400, F.S., which contains a minimum of 400 licensed nursing home beds; has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and has a contractual relationship with a federally-funded, accredited geriatric research center in Florida. Currently, there is no statute that provides a similar program for home and community-based care.

To be designated as a teaching nursing home, a nursing home licensee must:

[14] Section 430.03(1), F.S.
[15] Section 430.03(6), F.S.
[16] Section 430.03(7), F.S.
[17] 42 U.S.C. s. 3025, codified in s. 20.41, F.S.
[18] Section 430.203(9), F.S.
[19] Some lead agencies provide services in more than one county due to the scarcity of providers in some rural counties
[20] Dep't of Elder Affairs, *Elder Services Network Components and Their Roles, available a*t http://elderaffairs.state.fl.us/english/pubs/pubs/sops2007/Files/Elder%20Services%20Network%20Components%20and%20their%20roles.pdf (last visited April 8, 2011).

- Provide a comprehensive program of integrated senior services that include institutional services and community-based services;
- Participate in a nationally recognized accreditation program and hold a valid accreditation;
- Have been in business in Florida for a minimum of 10 consecutive years;
- Demonstrate an active program in multidisciplinary education and research that relates to gerontology;[21]
- Have a formalized contractual relationship with at least one accredited health profession education program located in Florida;
- Have senior staff members who hold formal faculty appointments at universities that have at least one accredited health profession education program; and
- Maintain insurance coverage or proof of financial responsibility in a minimum amount of $750,000.[22]

A teaching nursing home may be affiliated with a medical school in Florida and a federally funded center of excellence in geriatric research and education, in order to foster the development of methods for improving and expanding the capability of health care facilities to respond to the medical, psychological, and social needs of frail and elderly persons by providing the most effective and appropriate services.

Section 430.80, F.S., provides that the Legislature may appropriate funds to the nursing home facility designated as a teaching nursing home, and a teaching nursing home may not expend any funds received for any purpose other than operating and maintaining a teaching nursing home and conducting geriatric research.[23]

Academic Health and Science Centers

Academic Health and Science Centers in the State University System serve three primary purposes:

- Teaching students going into healthcare professions;
- Conducting research to advance healthcare knowledge; and
- Serving patients with healthcare problems.

These centers provide facilities, faculty and staff, curriculum, and health science students with the opportunity to train in the various health science areas and get practical experience in their disciplines during their training. Currently, there are two state Academic Health and Science Centers: University of Florida and the University of South Florida. [24] The health and science academic programs at the two universities include undergraduate, graduate, professional degree,

[21] Gerontology is defined as "the comprehensive study of aging and the problems of the aged." Merriam-Webster, *gerontology*, http://www.merriam-webster.com/dictionary/gerontology (last visited April 8, 2011).
[22] Section 430.80(3), F.S.
[23] Sections 430.80(5) and (7), F.S.
[24] There are four other medical education programs at state universities in Florida; however, they are not classified as academic health and science centers. These include Florida State University, Florida Atlantic University, University of Central Florida, and Florida International University.

and post-professional degree instruction. Besides instruction, they provide patient care and conduct research in the healthcare field.[25]

III. Effect of Proposed Changes:

This bill creates s. 430.81, F.S., which authorizes the Department of Elderly Affairs (DOEA or department) to designate a home health agency as a teaching agency for home and community-based care if the home health agency:

- Has been a not-for-profit, designated community care for the elderly lead agency for home and community-based services for more than 10 consecutive years;
- Participates in a nationally recognized accreditation program and holds valid accreditation;
- Has been in business in Florida for a minimum of 20 consecutive years;
- Demonstrates an active program in multidisciplinary education and research that relates to gerontology;
- Has a formalized affiliation agreement with at least one established academic research university with a nationally accredited health professions program in Florida;
- Has salaried academic faculty from a nationally accredited health professions program;
- Is a Medicare and Medicaid certified home health agency[26] that has participated in the nursing home diversion program for a minimum of 5 consecutive years; and
- Maintains insurance coverage pursuant to s. 400.141(1)(s), F.S.,[27] or proof of financial responsibility in a minimum amount of $750,000.

Proof of financial responsibility may include maintaining an escrow account[28] or obtaining and maintaining an unexpired, irrevocable, nontransferable, and nonassignable letter of credit issued by any bank or savings association authorized to do business in the state.[29] The bill provides that the letter of credit is to be used to satisfy the obligation of the home health agency to a claimant upon presentation of a final judgment against the facility or upon presentation of a settlement agreement signed by all parties to the agreement when the final judgment or settlement is a result of a liability claim against the home health agency.

The bill defines the term "teaching agency for home and community-based care" as "a home health agency that is licensed under part III of chapter 400 and has access to a resident population of sufficient size to support education, training, and research related to geriatric care."[30]

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[25] "Board of Governors, State University System of Florida Academic Health and Science Centers," Office of Program Policy Analysis and Government Accountability, Government Program Summaries. February 25, 2011.
[26] Home health agencies can become certified for Medicare and/or Medicaid, but they must meet the Medicare Conditions of Participation in 42 Code of Federal Regulations, Part 484 prior to certification. These federal regulations require applicants to comply with a complex comprehensive assessment prior to an initial certification survey.
[27] Section 400.141, F.S., relates to the administration and management of nursing home facilities.
[28] *See* s. 625.52, F.S.
[29] *See* Chapter 675, F.S.
[30] The AHCA has estimated that, based on the criteria required in the bill, there will be approximately 10 home health agencies that will qualify as a teaching agency for home and community-based care.

The bill also authorizes a teaching agency for home and community-based care to be affiliated with an academic health center in the state in order to foster the development of methods for improving and expanding the capabilities of home health agencies to respond to the medical, health care, psychological, and social needs of frail and elderly persons. A teaching agency for home and community-based care is to serve as a resource for research and for training health care professionals in providing health care services in homes and community-based settings to frail and elderly persons.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Board of Governors (board), the bill "appears to have little fiscal impact to the state universities." However, one of the bill's requirements (that the teaching agency must have salaried academic faculty from a nationally accredited health professions program) is not specific as to the source of the salary. According to the board, "it is not clear if that portion of the faculty member's time devoted to the teaching agency would be funded by the state university, from teaching agency funds, or a combination of

the two sources. Clarification of this point will be necessary to assess any potential costs to the universities."[31]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on March 28, 2011:
The committee substitute:

- Changes the governmental entity that is authorized to designate a home health agency as a teaching agency for home and community-based care (teaching agency) from the Agency for Health Care Administration (AHCA) to the Department of Elderly Affairs;
- Expands the eligibility criteria for becoming a teaching agency by removing the limitations that the home health agency serve a geographic area with a minimum of 200,000 adults age 60 or older and that the home health agency be in business in the state for a minimum of 30 consecutive years (the committee substitute changes it to 20 consecutive years); and
- Removes language authorizing AHCA to collect a fee of up to $250 from home health agencies seeking to become a teaching agency.

B. Amendments:

None.

[31] Board of Governors, *2011 Legislative Bill Analysis SB 1158* (Mar. 7, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

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 Budget Committee

BILL:	CS/SB 504
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Bogdanoff
SUBJECT:	Child Visitation
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Fav/CS**
2.	O'Connor	Maclure	JU	**Favorable**
3.	Carpenter	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill amends Florida's Keeping Children Safe Act to require probable cause of sexual abuse by a parent or caregiver in order to create a presumption of detriment to a child. The bill further provides that persons meeting specified criteria may not visit or have contact with a child without a hearing and order by the court, and in order to begin or resume contact with the child, there must be an evidentiary hearing to determine whether contact is appropriate. The bill provides that the court shall hold a hearing within seven business days of finding out that a person is attempting to influence the testimony of the child. The hearing is to determine whether visitation with the person who is alleged to have influenced the testimony of the child is in the best interest of the child.

This bill also amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in any proceeding pursuant to ch. 39, F.S.

This bill has no fiscal impact on state or local government.

This bill substantially amends section 39.0139, Florida Statutes.

II. Present Situation:

Supervised Visitation

Children involved in custody and visitation disputes are often considered "high risk" and can present emotional and behavioral difficulties later in life.[1] Research has shown that a child's long-term behavioral and emotional adjustment will be more positive if he or she has contact with both parents.[2]

Supervised visitation programs "emerged as a service necessary for families experiencing separation and divorce, when conflict between the parents necessitates an 'outside resource' to allow the child contact with a noncustodial parent."[3] These programs provide parents who may pose a risk to their children or to another parent an opportunity to experience parent-child contact while in the presence of an appropriate third party.[4] Supervision is available in a variety of ways: on-site visitation, off-site visitation at a neutral location, off-site visitation at the home of a relative or foster parent, or supervision of telephone calls between the parent and child.[5]

In addition to enabling and building healthy relationships between parents and children, other purposes of supervised visitation programs include:

- Preventing child abuse;
- Reducing the potential for harm to victims of domestic violence and their children;
- Providing written factual information to the court regarding supervised contact;
- Reducing the risk of parental kidnapping;
- Assisting parents with juvenile dependency case plan compliance; and
- Facilitating reunification, where appropriate.[6]

The use of supervised visitation programs has grown throughout the years. In 1995, there were 56 documented programs throughout the United States and by 1998, 94 programs had been identified.[7] In January 2005, the Florida Clearinghouse on Supervised Visitation started

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[1] Rachel Birnbaum and Ramona Alaggia, *Supervised Visitation: A Call for a Second Generation of Research*, 44 FAM. CT. REV. 119, 119 (Jan. 2006).
[2] *Id*.
[3] Wendy P. Crook et al., Institute for Family Violence Studies, Florida State University, *Florida's Supervised Visitation Programs: A Report from the Clearinghouse on Supervised Visitation*, 6 (Jan. 2007), *available at* http://familyvio.csw.fsu.edu/1996/BigDig1_2007.pdf (last visited Mar. 16, 2011).
[4] Nat Stern et al., *Visitation Decisions in Domestic Violence Cases: Seeking Lessons from One State's Experience*, 23 WIS. J.L. GENDER & SOC'Y 113, 114 (Spring 2008).
[5] Nancy Thoennes and Jessica Pearson, *Supervised Visitation: A Profile of Providers*, 37 FAM. & CONCILIATION COURTS REV. 460, 465 (Oct. 1999).
[6] Wendy P. Crook, *supra* note 3, at 6.
[7] *Id*.

collecting program and service data in a web-based database.[8] By 2006, Florida had more than 60 supervised visitation programs, and the database held information on 5,196 cases.[9]

As of 2007, Florida was the only state that tracked the statewide usage of supervised visitation across all types of referrals, including domestic violence, child abuse and neglect, and separation or divorce cases.[10]

In an attempt to create program uniformity in certain areas, the Florida Supreme Court's Family Court Steering Committee began developing a minimum set of standards for supervised visitation programs in 1998. Chief Justice Harding endorsed the standards and issued an administrative order mandating that the chief judge of each circuit enter into an agreement with local programs that agreed to comply with the standards.[11] Seven years later, the Legislature amended ch. 753, F.S., to provide for the development of new standards, procedures for a certification process, and development of an advisory board, known as the Supervised Visitation Standards Committee (committee).[12] The committee prepared a report to the Legislature explaining the four overarching principles – safety, training, dignity and diversity, and community – and the standards through which the principles are implemented.

Keeping Children Safe Act

In 2007, the Legislature created the Keeping Children Safe Act (Act)[13] to keep children in the custody of the Department of Children and Family Services (DCF or department) or its contractors safe during visitation or other contact with an individual who is alleged to have committed sexual abuse or some related criminal conduct. The Act creates a rebuttable presumption that visitation with a parent or caregiver will be detrimental to the child if the parent or caregiver has been reported to the child abuse hotline for sexual abuse of a child or has been convicted of certain crimes involving children.[14] If the presumption is not rebutted, visitation must be prohibited or allowed only through a supervised visitation program.[15]

In *In re: Te Interest of Helen Potts*, the circuit court in Pasco County held that s. 39.0139(3)(a)(1), F.S., the section of law finding a presumption of detriment if a parent or caregiver has been reported to the child abuse hotline, was unconstitutional.[16] The court explained that because the statute impinges a fundamental liberty interest – the right to parent[17] – the statute must serve a compelling state interest and use the least intrusive means possible to

[8] *Id*. at 7. The Clearinghouse on Supervised Visitation was created in 1996 to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers. *Id*. at 3.
[9] *Id*. at 7.
[10] *Id*. at 6.
[11] Nat Stern et al., *supra* note 4, at 117. The Minimum Standards for Supervised Visitation Program Agreements can be found at http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf (last visited Mar. 16, 2011).
[12] Nat Stern and Karen Oehme, *A Comprehensive Blueprint for a Crucial Service: Florida's New Supervised Visitation Strategy*, 12 J.L. & FAM. STUD. 199, 206 (2010).
[13] Chapter 2007-109, s. 1, Laws of Fla.
[14] Section 39.0139(3), F.S.
[15] Section 39.0139(5), F.S.
[16] *In re: The Interest of Helen Potts*, case no. 07-00742DPAWS (Fla. 6th Jud. Cir. 2007).
[17] *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Troxel v. Granville*, 530 U.S. 57, 72-73 (2000).

achieve its compelling interest. Although the court found that s. 39.0139(3)(a)(1), F.S., serves a compelling state interest – to protect children from acts of sexual abuse and exploitation committed by a parent or caregiver – the statute did not do so in the least restrictive means possible. The statute does provide for an evidentiary hearing for those parents or caregivers who fall within the statute; however, those persons are deprived of visitation and contact with their child until the hearing is held. Additionally, the court stated that "there is no other place in the Florida Statutes that permits interference with a fundamental right based solely on an anonymous tip."[18] Accordingly, the court found s. 39.0139(3)(a)(1), F.S., unconstitutional because:

> The statute creates a rebuttable presumption that visitation of a dependent child by a parent or caregiver who has been reported to the child abuse hotline for sexual abuse, is detrimental to the child. The parent is not entitled to notice or entitled to be heard before his or her rights are eliminated. If a hearing is held at some future undetermined time, the onus is on the parent to rebut the presumption by clear and convincing evidence. Any and all evidence is permitted and the rules of evidence simply do not apply. . . . There is no other place in Chapter 39 that shifts the burden to the parent.[19]

The Keeping Children Safe Act also permits a court to immediately suspend visitation or other contact with a person who attempts to influence the testimony of a child.[20] Moreover, the Act requires a court to convene a hearing within seven business days to evaluate a report from the child's therapist that visitation is impeding the child's therapeutic process.[21]

III. Effect of Proposed Changes:

This bill amends s. 39.0139, F.S., the Keeping Children Safe Act, by requiring a court to find probable cause that a parent or caregiver has sexually abused a child before creating a rebuttable presumption of detriment to the child. The bill provides that if a person meets certain criteria as set out in law, that person may not visit or have contact with a child without a hearing and order by the court. If visitation or contact is denied and the person wishes to begin or resume contact with the child victim, there must be an evidentiary hearing to determine whether contact is appropriate. The bill clarifies that *prior* to the hearing, the court shall appoint a guardian ad litem or attorney ad litem for the child.

The bill also provides that at the hearing, the court may receive evidence, to the extent of its probative value, such as recommendations from the child protective team, the child's therapist, or the child's guardian ad litem or attorney ad litem, even if the evidence may not be admissible under the rules of evidence. Regardless of whether the court finds that the person did or did not rebut the presumption of detriment, the court must enter a written order setting forth findings of fact.

The bill provides that once a rebuttable presumption of detriment has arisen or if visitation has already been ordered and a party or participant informs the court that a person is attempting to

[18] *In re*, *supra* note 16, at 7.
[19] *Id*.
[20] Section 39.0139(6)(a), F.S.
[21] Section 39.0139(6)(b), F.S.

influence the testimony of the child, the court must hold a hearing within seven business days to determine whether it is in the best interests of the child to prohibit or restrict visitation with the person who is alleged to have influenced the testimony of the child.

The bill also amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in any proceeding pursuant to ch. 39, F.S.

The bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

D. Other Constitutional Issues:

The Keeping Children Safe Act (Act) creates a rebuttable presumption that visitation with a parent or caregiver will be detrimental to the child if the parent or caregiver has been reported to the child abuse hotline for sexual abuse of a child or has been convicted of certain crimes involving children. If the person meets certain criteria, the person may not visit or have contact with the child until a hearing is held. At the hearing, all evidence is admissible, even if it is not generally admissible under the rules of evidence, and the person must try and overcome the presumption by clear and convincing evidence.

In *In re: The Interest of Helen Potts*,[22] the circuit court in Pasco County held that certain portions of the Act unconstitutionally infringed on the fundamental right to parent because the Act created a presumption of detriment based on an anonymous tip and did not provide notice or a time frame in which a hearing must be held. In addition, the court raised issue with the fact that all evidence is permitted and the rules of evidence do not

[22] *In re: The Interest of Helen Potts*, case no. 07-00742DPAWS (Fla. 6th Jud. Cir. 2007).

apply and that the burden is placed on the parent to rebut the presumption by clear and convincing evidence.

This bill addresses the issue that a presumption of detriment could arise based on an anonymous call. The bill also provides that "to the extent of its probative value" all evidence may be heard, regardless of whether it would be admissible under the rules of evidence. According to representatives from The Florida Bar, evidence in ch. 39, F.S., cases is usually allowed to be heard despite the rules of evidence, but in an attempt to address the possible constitutional concern raised by the court, the bill does limit evidence "to the extent of its probative value."[23] It is unclear how a court will rule in the future.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

After the Keeping Children Safe Act (Act) was created, there was debate on whether it applied only to children with cases under ch. 39, F.S., or whether it applied to all judicial determinations relating to visitation and contact with children.[24] This bill amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in any proceeding pursuant to ch. 39, F.S. This change makes it clear that the provisions of s. 39.0139, F.S., only apply in cases under ch. 39, F.S.

[23] Conversation with Thomas Duggar, Duggar & Duggar, P.A., representative of the Family Law Section of The Florida Bar (Mar. 21, 2011).

[24] *See* Alex Caballero and Ingrid Anderson, *Florida Statute Section 39.0139: Protecting Children from Sexual Abuse from Those Entrusted with Their Care*, 83 FLA. B.J. 59 (Mar. 2008); Judge Sue Robbins, *Florida Statute Section 39.0139: Limiting the Risk of Serious Harm to Children*, 82 FLA. B.J. 45 (May 2008).

VIII. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 22, 2011:
The committee substitute provides that it is the intent of the Legislature to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in *any proceeding pursuant to ch. 39, F.S.*, rather than in any proceeding under the laws of the state.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 1366
INTRODUCER:	Health Regulation Committee; Children, Families, and Elder Affairs Committee; and Senator Storms
SUBJECT:	Child Welfare/Mental Health/Substance Abuse
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Fav/CS**
2.	O'Callaghan	Stovall	HR	**Fav/CS**
3.	Carpenter	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill includes managing entities and the agencies that have contracted with monitoring agents among the entities who must identify and implement changes that improve the efficiency of administrative monitoring of child welfare services and the efficiency of administrative, licensure, and programmatic monitoring of mental health and substance abuse service providers.

To improve efficiency, these entities must limit administrative monitoring to once every three years if the provider of child welfare services is accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA), and must limit administrative, licensure, and programmatic monitoring to once every three years if the provider of mental health or substance abuse services is accredited by these entities.

The bill provides that the limitations on administrative, licensure, and programmatic monitoring apply only to providers of mental health or substance abuse services that are accredited for the services being monitored and, despite the limitations on such monitoring, these entities may continue to monitor the service provider as to specified areas of concern.

These entities must also allow the private sector to develop and implement an Internet-based, secure, and consolidated data warehouse and archive for maintaining certain records of providers of child welfare, mental health, or substance abuse services and the entities must use the data warehouse to request documents.

This bill has no direct fiscal impact on state or local government.

This bill substantially amends the following section of the Florida Statutes: 402.7306.

II. Present Situation:

Contract Monitoring

State agency procurement contracts typically include oversight mechanisms for contract management and program monitoring. Contract monitors ensure that contractually required services are delivered in accordance with the terms of the contract, approve corrective action plans for non-compliant providers, and withhold payment when services are not delivered or do not meet quality standards.

From November 1, 2008, to October 31, 2009, the Children's Home Society of Florida (CHS) surveyed[1] 174 programs,[2] in an effort to "assess the quantity of external contract monitoring of CHS programs" and "identify any potential areas of duplication across monitoring by state and designated lead agencies." According to the responses:

- The 174 CHS programs were monitored 222 times by state and community-based agencies, and 1,348 documents were requested in advance of site monitoring visits.
- Of the document requests, 417 were requested by other state agencies or other divisions within a state agency.
- Professional program staff spent 966 cumulative hours on duplicative requests.

To address these concerns, in 2010, the Legislature enacted HB 5305,[3] which required that health and human services contracting agencies[4] limit administrative monitoring to once every three years, if the contracted provider of child welfare services is accredited by the Joint Commission, the CARF, or the COA.

In addition, the bill authorized private-sector development and implementation of an Internet-based, secure, and consolidated data warehouse for maintaining corporate, fiscal, and administrative records related to child welfare provider contracts, and required state agencies that contract with child welfare providers to access records from this database.

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[1] CHS, *Case Study- Contract Monitoring Survey*, (November 30, 2009), on file with the Senate Health Regulation Committee.
[2] There was a 100% response rate.
[3] Chapter 2010-158, Laws of Florida.
[4] "Contracting or funding agencies" are defined as a state agency or other non-profit organization (including community-based organizations) that contract state funds to a program. The contracting agencies include the Department of Children and Families, Department of Health, Agency for Persons with Disabilities, Agency for Health Care Administration, and community-based care lead agencies. *See* CHS, *Case Study- Contract Monitoring Survey*, (November 30, 2009).

Entities not covered by the newly-enacted law — that is, entities other than child welfare providers — have expressed similar concerns about excessive monitoring and auditing by human services agencies. Meridian Behavioral Healthcare advises[5] that in a 12-month period ending February 2011, they were the subject of 17 audits, 14 of which were by state agencies. Other than contract-specific data, all audited items are reviewed by CARF prior to Meridian's accreditation.[6]

Mental Health and Substance Abuse

Section 394.66(16), F.S., expresses the Legislature's intent that "the state agencies licensing and monitoring contracted [substance abuse and mental health service] providers perform in the most cost-efficient and effective manner with limited duplication and disruption to organizations providing services."

"Mental health services" are those therapeutic interventions and activities that help to eliminate, reduce, or manage symptoms or distress for persons who have severe emotional distress or a mental illness and to effectively manage the disability that often accompanies a mental illness so that the person can recover from the mental illness, become appropriately self-sufficient for his or her age, and live in a stable family or in the community. The term also includes those preventive interventions and activities that reduce the risk for, or delay, the onset of mental disorders, including treatment, rehabilitative, support, and case management services.[7]

"Substance abuse services" are those services designed to prevent or remediate the consequences of substance abuse, improve an individual's quality of life and self-sufficiency, and support long-term recovery. They include prevention, assessment, intervention, rehabilitation, and other ancillary services.[8]

In establishing behavioral health managing entities, the Legislature intended that:

> A management structure that places the responsibility for publicly financed behavioral health treatment and prevention services[9] within a single private, nonprofit entity at the local level will promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. [In addition] streamlining administrative processes will create cost efficiencies and provide flexibility to better match available services to consumers' identified needs.[10]

A managing entity is a nonprofit organization under contract with the Department of Children and Family Services (DCF) to manage the day-to-day operational delivery of behavioral health

[5] Audit Data. Meridian Behavioral Healthcare, on file with the Senate Health Regulation Committee.
[6] *Id.*
[7] Section 394.67(15), F.S.
[8] Section 394.67(24), F.S.
[9] Behavioral health services are mental health services and substance abuse prevention and treatment services provided using state and federal funds. Section 394.9082(2)(a), F.S.
[10] Section 394.9082(1), F.S.

services through an organized system of care.[11] Their goal is to effectively coordinate, integrate, and manage the delivery of effective behavioral health services to persons who are experiencing a mental health or substance abuse crisis, who have a disabling disorder, and require extended services in order to recover, or who need brief treatment or longer-term supportive interventions to avoid a crisis or disability. In addition, the system enhances the continuity of care for all children, adolescents, and adults who enter the publicly funded behavioral health service system.[12]

Licensure Review

Child-placing agencies and residential child-caring agencies are licensed by the DCF.[13] Those entities may be monitored only once per year, and that monitoring may not duplicate the administrative monitoring conducted by their accreditation agency.[14]

Section 394,741, F.S., requires the DCF and the Agency for Health Care Administration (AHCA) to accept accreditation as a substitute for facility onsite licensure review and administrative and programmatic requirements for mental health and behavioral health services.

Section 397.411, F.S., requires DCF to accept, in lieu of its own inspections for licensure, the survey or inspection of an accrediting organization, if the provider is accredited according to the provisions of s. 394.741, F.S., and the DCF receives the report of the accrediting organization.

Substance abuse and mental health facilities are subject to licensure by the AHCA.[15] Section 408.811(2), F.S., provides that

> Inspections conducted in conjunction with certification, comparable licensure requirements, or a recognized or approved accreditation organization may be accepted in lieu of a complete licensure inspection. However, a licensure inspection may also be conducted to review any licensure requirements that are not also requirements for certification. (emphasis supplied)

III. Effect of Proposed Changes:

The bill includes managing entities and the agencies that have contracted with monitoring agents among the entities who must identify and implement changes that improve the efficiency of administrative monitoring of child welfare services and the efficiency of administrative, licensure, and programmatic monitoring of mental health and substance abuse service providers.

The bill defines "mental health and substance abuse service providers" as providers who provide services to Florida's "priority population." Under s. 394.674, F.S., to which the bill refers, a priority population consists of:

- For adult mental health services:

[11] Section 394.9082(2)(d), F.S.
[12] Section 394.9082(5), F.S.
[13] Section 409.175, F.S.
[14] Section 402.7305(4), F.S.
[15] Section 408.801, F.S., *et seq*.

  - Adults who have severe and persistent mental illness, as designated by the DCF using criteria that include severity of diagnosis, duration of the mental illness, ability to independently perform activities of daily living, and receipt of disability income for a psychiatric condition.
  - Persons who are experiencing an acute mental or emotional crisis as defined in s. 394.67(17), F.S.
- For children's mental health services:
  - Children who are at risk of emotional disturbance as defined in s. 394.492(4), F.S.
  - Children who have an emotional disturbance as defined in s. 394.492(5), F.S.
  - Children who have a serious emotional disturbance as defined in s. 394.492(6), F.S.
  - Children diagnosed as having a co-occurring substance abuse and emotional disturbance or serious emotional disturbance.
- For substance abuse treatment services:
  - Adults who have substance abuse disorders and a history of intravenous drug use.
  - Persons diagnosed as having co-occurring substance abuse and mental health disorders.
  - Parents who put children at risk due to a substance abuse disorder.
  - Persons who have a substance abuse disorder and have been ordered by the court to receive treatment.
  - Children at risk for initiating drug use.
  - Children under state supervision.
  - Children who have a substance abuse disorder but who are not under the supervision of a court or in the custody of a state agency.
  - Persons identified as being part of a priority population as a condition for receiving services funded through the Center for Mental Health Services and Substance Abuse Prevention and Treatment Block Grants.

To improve efficiency, these entities must limit administrative monitoring to once every three years if the provider of child welfare services is accredited by the Joint Commission, the CARF, or the COA and must limit administrative, licensure, and programmatic monitoring to once every three years if the provider of mental health or substance abuse services is accredited by these entities.

The bill provides that the limitations on administrative, licensure, and programmatic monitoring apply only to providers of mental health or substance abuse services that are accredited for the services being monitored and if the accrediting body does not require documentation that the state agency requires, that documentation must be requested by the agency and may be posted by the service provider on the data warehouse for the agency's review. Despite the limitations on such monitoring, the agency may continue to monitor the service provider as to the following:

- Ensuring that services for which the entity is paying are being provided.
- Investigating complaints, identifying problems that would affect the safety or viability of the service provider, and monitoring the service provider's compliance with any resulting negotiated terms and conditions, including provisions relating to consent decrees that are unique to a specific service and are not statements of general applicability.
- Ensuring compliance with federal and state laws, federal regulations, or state rules if such monitoring does not duplicate the accrediting organization's review pursuant to accreditation standards.

The bill also provides that Medicaid certification and precertification reviews of providers of child welfare, mental health, or substance abuse services are exempt from the monitoring limitations to ensure Medicaid compliance.

The monitoring entities must also allow the private sector to develop and implement an Internet-based, secure, and consolidated data warehouse and archive for maintaining certain records of providers of child welfare, mental health, or substance abuse services and the entities must use the data warehouse to request documents.

The bill provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector, i.e., child welfare, mental health, and substance abuse will experience fewer monitoring visits, thereby increasing the amount of time available to spend on providing direct services.

C. Government Sector Impact:

A limit on allowed administrative, licensure, and programmatic monitoring could potentially lead to a reduction in expenditures of certain state agencies and covered entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Health Regulation on April 4, 2011:

- Corrects the catch line;
- Clarifies that certain agencies and managing entities must identify and implement changes that improve the efficiency of not only administrative monitoring, but also licensure and programmatic monitoring of mental health and substance abuse service providers;
- Clarifies that the term "mental health and substance abuse service provider" means providers providing services to the state's priority population as defined in law;
- Updates names of accrediting bodies;
- Limits administrative, licensure, and programmatic monitoring to once every 3 years if the mental health or substance abuse service provider is accredited by the Joint Commission, Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation, unless the services being monitored are not those for which the provider is not accredited;
- Requires the mental health or substance abuse service provider to provide certain documentation to the agency if that documentation was not required for accreditation;
- Provides that despite being accredited, an agency may continue to monitor whether services that the agency is paying for are being provided; complaints, problems that would affect the safety or viability of the service provider, the service provider's compliance with any negotiated terms and conditions; and compliance with federal and state laws, federal regulations, or state rules if such monitoring does not duplicate the accrediting organization's review; and
- Exempts Medicaid certification and precertification reviews to ensure Medicaid compliance.

CS by Children, Families and Elder Affairs on March 14, 2011:
The Committee adopted an amendment which clarified that the limitations on monitoring do not apply to services for which the provider is not accredited, and deleted unnecessary directory language.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 720
INTRODUCER:	Higher Education Committee and Senator Gaetz
SUBJECT:	Cancer Research and Control
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Favorable**
2.	Harkey	Matthews	HE	**Fav/CS**
3.	Bradford	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill extends the time that any balance of any appropriation from the Biomedical Research Trust Fund, which is not disbursed but which is obligated pursuant to a contract or committed to be expended, may be carried forward. This bill also:

- Establishes a 4-year staggered term of membership for the Biomedical Research Advisory Council and adds one member to the council;
- Provides the Biomedical Research Advisory Council may make recommendations to the State Surgeon General for the allocation of funds appropriated to the James and Esther King Biomedical Research Program (King Program) and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program) for training grants, research fellowships, clinical trial project grants, recruitment of certain researchers, start-up grants for certain research teams, and equipment expenditures related to certain research**;**
- Authorizes the Biomedical Research Advisory Council to develop a grant application and review mechanism which shall ensure fair and rigorous analysis of the merit of any proposals considered for funding under the King Program or Bankhead-Coley Program;
- Authorizes the Department of Health (DOH) to accept gifts, under certain circumstances, and deposit them into the Biomedical Research Trust Fund to be used for grant or fellowship awards in the King Program or Bankhead-Coley Program;

- Specifies that, in part, the purpose of the Bankhead-Coley Program is to expand cancer research and treatment capacity in Florida;
- Expands the list of types of grants for which preference may be given by the Bankhead-Coley Program by including grant proposals for recruiting researchers and research teams to Florida, equipment for cancer research, and fostering the transfer of knowledge gained from research into community practice;
- Requires the Biomedical Research Advisory Council, instead of the DOH, to submit by February 1 of each year a report to the Governor and Legislature indicating the progress towards the Bankhead-Coley Program's mission and to make recommendations;
- Creates the Florida Comprehensive Cancer Control Act;
- Establishes the Florida Cancer Control and Resource Advisory Council to replace the Cancer Control and Research Advisory Council, which is repealed; and
- Establishes the Florida Cancer Control Collaborative Program to support future cancer control initiatives.

There is no fiscal impact to the Department of Health. The Moffitt Cancer Center may incur costs to provide staff to the Florida Cancer Control and Resource Advisory Council as required by this act.

This bill amends sections 20.435, 215.5602, 381.922, 458.324, and 459.0125, Florida Statutes; and creates section 381.923, Florida Statutes.

This bill repeals section 1004.435, Florida Statutes.

II. Present Situation:

The James and Esther King Biomedical Research Program

The purpose of the King Program[1] is to provide an annual and perpetual source of funding to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.[2] The long-term goals of the program are to:

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

[1] The Florida Legislature created the Florida Biomedical Research Program in 1999 within the DOH (ch. 99-167, L.O.F.). The Florida Biomedical Research Program was renamed the James and Esther King Biomedical Research Program during Special Session B of the 2003 Legislature (ch. 2003-414, L.O.F.).
[2] Section 215.5602, F.S.

- Stimulate economic activity in the state in areas related to biomedical research, such as the research and production of pharmaceuticals, biotechnology, and medical devices.

The King Program offers competitive grants to researchers throughout Florida. Grant applications from any university or established research institute[3] in Florida will be considered for biomedical research funding. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding.[4]

The State Surgeon General, after consultation with the Biomedical Research Advisory Council, is authorized to award grants and fellowships on the basis of scientific merit[5] within the following three categories:

- Investigator-initiated research grants, which are designed to initiate research that can be subsequently funded from a national agency;
- Institutional research grants, which are intended to foster the development of new and promising research investigators to undertake more independent research that would be competitive for national research funding, as well as to attract talented researchers to Florida institutions; and
- Predoctoral and postdoctoral research fellowships.[6]

The King Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature continued the program in 2010 by enacting HB 5311.[7]

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

The 2006 Legislature created the Bankhead-Coley Program within the DOH.[8] The purpose of the program is to advance progress toward cures for cancer through grants awarded for cancer research.

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[3] An "established research institute" is any Florida non-profit or foreign non-profit corporation covered under ch. 617, F.S., with a physical location in Florida, whose stated purpose and power is scientific, biomedical or biotechnological research or development and is legally registered with the Florida Department of State, Division of Corporations. This includes the federal government and non-profit medical and surgical hospitals, including veterans' administration hospitals. *See* James & Esther King Biomedical Research Program, *Call for Grant Applications: Biomedical, Biotechnological, and Social Scientific Research and Development, Fiscal Year 2009-2010*, page 7, available at: http://forms.floridabiomed.com/jek_call/King%20Call%2009-10.pdf (Last visited on April 1, 2011).

[4] Grant award recipients for FY 2010-11 include the following institutions or investigators associated with these institutions: Bay Pines VA Healthcare System, Florida International University (FIU), Florida State University, M.D. Anderson Cancer Center, Mayo Clinic, Miami VA Healthcare System, H. Lee Moffitt Cancer Center & Research Institute (Moffitt Cancer Center), Sanford-Burnham Institute, Scripps Research Institute, Torrey Pines Institute, University of Central Florida, University of Florida, University of Miami, and University of South Florida. *See* James & Esther King Biomedical Research Program, *Florida Biomedical Research Programs Grants Awarded by Institution*, readable at: http://forms.floridabiomed.com/Forms/GrantsAwardedbyInstitution.pdf (Last visited on April 1, 2011).

[5] *See* the "Grant Application Review and Processing" section of Senate Interim Report 2010-219, page 7, for more information about assessing scientific merit. The report is available at: http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-219hr.pdfhttp://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-219hr.pdf%20(Last visited on April 1, 2011).

[6] Section 215.5602(5)(b), F.S.

[7] Chapter 2010-161, L.O.F.

[8] Section 381.922, F.S., (ch. 2006-182, L.O.F.).

Applications for funding cancer research from any university or established research institute in the state will be considered under the Bankhead-Coley Program. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding.[9] The State Surgeon General, after consultation with the Biomedical Research Advisory Council, is authorized to award grants and fellowships on the basis of scientific merit[10] within the following three categories:

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

As with the King Program, the Bankhead-Coley Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature also continued this program in 2010 when it enacted HB 5311.[11]

Program Funding

Initially, the King Program was funded with income from $150 million of principal in the Lawton Chiles Endowment Fund.[12] In 2004, the Legislature appropriated additional funding, through a distribution from alcoholic beverage surcharge taxes. In 2006, the Legislature substituted a $6 million dollar annual appropriation commitment from the General Revenue Fund to fund the Biomedical Research Trust Fund within the DOH for the purposes of the King Program.[13] However, in the January 2009 Special Session A, for fiscal year 2008-2009 and each fiscal year thereafter, the annual appropriation from the General Revenue Fund to the Biomedical Research Trust Fund for purposes of the King Program was reduced to $4.5 million.[14] During the regular session in 2009, the Legislature eliminated the general revenue appropriation and provided that 2.5 percent of the revenue generated from the additional cigarette surcharge enacted in 2009, not to exceed $25 million, was to be transferred into the Biomedical Research Trust Fund for the King Program for the 2009-2010 fiscal year.[15]

In 2010, when the Legislature reenacted the King Program, it continued funding for the King Program with an annual appropriation of $20 million.[16] Of the funds appropriated for the King

[9] Grant award recipients for FY 2010-11 include the following institutions or investigators associated with these institutions: Florida A&M University, Florida State University, M.D. Anderson Cancer Center, Mayo Clinic, Moffitt Cancer Center, Sanford-Burnham Institute, Scripps Research Institute, University of Central Florida, University of Florida, University of Miami, and the University of South Florida. *See* James & Esther King Biomedical Research Program, *Florida Biomedical Research Programs Grants Awarded by Institution*, available at: http://forms.floridabiomed.com/Forms/GrantsAwardedbyInstitution.pdf (Last visited on April 1, 2011).
[10] *Supra* fn. 5.
[11] Chapter 2010-161, L.O.F.
[12] Section 215.5601, F.S. The Lawton Chiles Endowment Fund's principal originated from a portion of the state settlement received from its lawsuit with tobacco companies.
[13] Chapter 2006-182, L.O.F.
[14] Chapter 2009-5, L.O.F.
[15] Chapter 2009-58, L.O.F.
[16] *Supra* fn. 11.

Program, up to $250,000 per year is designated to operate the Florida Center for Universal Research to Eradicate Disease.[17]

The Bankhead-Coley Program was established with a commitment for an appropriation of $9 million per year from the General Revenue Fund.[18] However, in the January 2009 Special Session A, for fiscal year 2008-2009 and each fiscal year thereafter, the annual appropriation from the General Revenue Fund to the Biomedical Research Trust Fund for purposes of the Bankhead-Coley Program was reduced to $6.75 million.[19] During the regular session in 2009, the Legislature eliminated the general revenue appropriation and provided that 2.5 percent of the revenue generated from the additional cigarette surcharge enacted in 2009, not to exceed $25 million, was to be transferred into the Biomedical Research Trust Fund for the Bankhead-Coley Program.[20]

Chapter 2009-58, Laws of Florida, provided that five percent of the revenue deposited into the Health Care Trust Fund pursuant to s. 210.011(9), F.S., related to the cigarette surcharge and s. 210.276(7), F.S., related to the surcharge on tobacco products, are to be reserved for research of tobacco-related or cancer-related illnesses. The sum of the revenue reserved, however, may not exceed $50 million in any fiscal year. The Legislature did not specify an amount to be appropriated annually, after the 2009-2010 fiscal year, for the King Program or the Bankhead-Coley Program from these reserves. However, in 2010, when the Legislature reenacted the Bankhead-Coley Program along with the King Program, it continued funding for the Bankhead-Coley Program with an annual appropriation of $20 million.[21]

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

Biomedical Research Advisory Council[22] and Peer Review Panel[23]

The purpose of the Biomedical Research Advisory Council is to advise the State Surgeon General as to the direction and scope of the King Program. The Biomedical Research Advisory Council is also required to consult with the State Surgeon General concerning grant awards for cancer research through the Bankhead-Coley Program.[24] Currently there are 11 members on the council, authorized to serve two consecutive 3-year terms.

[17] The purpose of the Florida Center for Universal Research to Eradicate Disease is to coordinate, improve, expand, and monitor all biomedical research programs within Florida; facilitate funding opportunities; and foster improved technology transfer or research findings into clinical trials and widespread public use. *See* s. 381.855, F.S.
[18] Section 381.922(5), F.S.
[19] Chapter 2009-5, L.O.F.
[20] Chapter 2009-58, L.O.F.
[21] *Supra* fn. 11.
[22] Section 215.5602(3), F.S.
[23] Section 215.5602(6) and (7), and s. 381.922(3)(b), F.S.
[24] Section 381.922(3)(a), F.S. However, s. 215.5602(11), F.S., contains an inconsistency with respect to the responsibility of the Advisory Council concerning awarding grants for cancer research.

In order to ensure that proposals for research funding within the King Program and the Bankhead-Coley Program are appropriate and evaluated fairly on the basis of scientific merit, a peer review panel of independent, scientifically qualified individuals is appointed to review the scientific content of each proposal to establish a "scientific"[25] priority score.[26] To eliminate conflicts of interest, peer reviewers come from outside the state of Florida. Reviewers are experts in their fields from universities, government agencies, and private industry who are matched according to application topic and area of expertise. The priority scores must be considered by the Biomedical Research Advisory Council in determining which proposals will be recommended for funding to the State Surgeon General.

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

Program Administration and Grant Management

The Office of Public Health Research within the DOH manages both the King Program and the Bankhead-Coley Program with support from the Biomedical Research Advisory Council and Lytmos Group, LLC (Lytmos), pursuant to contract.[27]

The law authorizes, but does not require, the DOH, after consultation with the Biomedical Research Advisory Council, to adopt rules as necessary to implement these programs.[28] The DOH has not adopted rules to implement these programs. Instead, the DOH publishes, on its website, the procedures for implementing these two programs.[29]

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

Cancer Control and Research Act

The Cancer Control and Research Act (the Act) is created in s. 1004.435, F.S. The Florida Cancer Control and Research Advisory Council (C-CRAB) is established within the Act to advise the Board of Governors, the State Surgeon General, and the Legislature with respect to cancer control and research in Florida. The C-CRAB consists of 34 members. Annually the C-CRAB approves the Florida Cancer Plan, which is a program for cancer control and research that must be consistent with the State Health Plan and integrated and coordinated with existing programs in this state. Additional responsibilities of the C-CRAB include:

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

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

[27] James & Esther King Biomedical Research Program, *Annual Report 2010*, available at: http://forms.floridabiomed.com/AnnualReports/Annual10.pdf (Last visited on April 1, 2011).

[28] Section 215.5602(9), F.S.

[29] *See* http://www.doh.state.fl.us/ExecStaff/biomed/ophrsitemap.html, (Last visited on April 1, 2011).

- Recommending to the State Surgeon General a plan for the care and treatment of persons suffering from cancer and standard requirements for cancer units in hospitals and clinics in Florida;
- Recommending grant and contract awards for the planning, establishment, or implementation of programs in cancer control or prevention, cancer education and training, and cancer research;
- Pursuant to Legislative appropriations, providing written summaries that are easily understood by the average adult patient, informing actual and high-risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of the medically viable treatment alternatives available to them and explaining the relative advantages, disadvantages, and risks associated therewith;
- Implementing an educational program for the prevention of cancer and its early detection and treatment;
- Advising the Board of Governors and the State Surgeon General on methods of enforcing and implementing laws concerning cancer control, research, and education; and
- Recommending to the Board of Governors or the State Surgeon General rulemaking needed to enable the C-CRAB to perform its duties.

III. Effect of Proposed Changes:

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

Section 2 amends s. 215.5602, F.S., to provide for the funding of biomedical research under the King Program, including grants and fellowships awarded by the State Surgeon General for institutional training. The Biomedical Research Advisory Council may recommend an allocation of up to one-third of the program funds for the recruitment of cancer, heart, or lung disease researchers and research teams to institutions in Florida; for operational start-up grants for newly recruited cancer, heart, or lung disease research teams; and for equipment expenditures related to the expansion of cancer, heart or lung disease research and treatment capacity in Florida. The council may develop a grant application and review mechanism for the allocation of such funds, but such mechanism must ensure a fair and rigorous analysis of the merit of any proposals. A member of the Biomedical Research Advisory Council or a peer review panel is prohibited from discussing or making a decision on a research proposal if the member is a part of the governing body of, an employee of, or is contracted with the firm, entity, or agency under review.

This section also expands the Biomedical Research Advisory Council from 11 to 12 members, and requires one member to be the chief executive officer of BioFlorida, or a designee. A member of the council, who is currently required be the chief executive officer of the Florida/Puerto Rico Affiliate of the American Heart Association, is replaced by the chief executive officer of the Greater Southeast Affiliate of the American Heart Association.[30] The

[30] The following states and territories are part of the Greater Southeast Affiliate: Alabama, Florida, Georgia, Louisiana, Mississippi, Puerto Rico, Tennessee, and U.S. Virgin Islands. American Heart Association, *Greater Southeast Affiliate Funding Opportunities*, available at: http://www.americanheart.org/presenter.jhtml?identifier=2471 (Last visited on April 1, 2011).

appointment of such members is extended from 3-year terms to 4-year staggered terms. However, the first two appointments by the Governor and the first appointment by the President of the Senate and the Speaker of the House of Representatives on or after July 1, 2011, must be for a term of 2 years each.

This section provides that the DOH may accept gifts made willfully and without conditions and may deposit the gifts into the Biomedical Research Trust Fund to be used for grant or fellowship awards under the King Program. The DOH may also accept gifts to which conditions are attached, if it is lawful for the DOH to accept the gift with conditions and the gift is consistent with the provisions of the King Program.

Section 3 amends s. 381.922, F.S., to specify that the purpose of the Bankhead-Coley Program, in part, is to expand cancer research and treatment capacity in Florida. The program is required to provide grants for cancer clinical trials projects, for recruiting cancer researchers and research teams; for operational start-up grants for newly recruited cancer researchers and research teams; or for equipment expenditures related to the expansion of cancer research and treatment capacity in Florida. An applicant for such grants is given preference if the grant proposal would support the transfer of knowledge gained from research into the practice of community practitioners.

Grants or fellowships may be given for institutional training, predoctoral and postdoctoral research, and clinical trial projects, especially if those clinical trial projects identify prospective clinical trials treatment options for cancer patients in Florida or foster greater rates of participation in clinical trials. At least one clinical trial project per year that has been proposed and that merits an award must be awarded a grant.

The Biomedical Research Advisory Council may recommend an allocation of up to one-third of the program funds for the recruitment of cancer, heart, or lung disease researchers and research teams to institutions in Florida; for operational start-up grants for newly recruited cancer, heart, or lung disease research teams; and for equipment expenditures related to the expansion of cancer, heart or lung disease research and treatment capacity in Florida. The council may develop a grant application and review mechanism for the allocation of such funds, but such mechanism must ensure a fair and rigorous analysis of the merit of any proposals. A member of the Biomedical Research Advisory Council or a peer review panel is prohibited from discussing or making a decision on a research proposal if the member is a part of the governing body of, an employee of, or is contracted with the firm, entity, or agency under review.

This section requires the Biomedical Research Advisory Council to submit, by February 1 of each year, a report to the Governor and the Legislature which indicates progress towards the Bankhead-Coley Program's mission and makes recommendations that furthers the program's purpose.

This section provides that the DOH may accept gifts made willfully and without conditions and may deposit the gifts into the Biomedical Research Trust Fund to be used for grant or fellowship awards under the Bankhead-Coley Program. The DOH may also accept gifts to which conditions

are attached, if it is lawful for the DOH to accept the gift with conditions and the gift is consistent with the provisions of the King Program.

Section 4 creates s. 381.923, F.S., to create the "Florida Comprehensive Cancer Control Act" (Cancer Control Act). This section provides legislative intent for the Cancer Control Act, including the importance of research related to cancer and the importance of community outreach to educate Floridians about, and prevent, cancer. The terms "cancer," "council," "department," "plan," "program," and "qualified nonprofit association" are defined for purposes of the Cancer Control Act.

This section creates the Florida Cancer Control and Resource Advisory Council (council) within the H. Lee Moffitt Cancer Center and Research Institute, Inc. Each member of the council must be a resident of Florida. The composition of the 42-member council includes:

- Three members representing the general public, appointed by the Governor;
- A member of the Senate, appointed by the President of the Senate;
- A member of the House of Representatives, appointed by the Speaker of the House of Representatives;
- A representative appointed by:
  - H. Lee Moffitt Cancer Center and Research Institute, Inc.;
  - University of Florida Shands Cancer Center;
  - University of Miami Sylvester Comprehensive Cancer Center;
  - Mayo Clinic, Florida;
  - M.D. Anderson Cancer Center, Florida;
  - American Cancer Society, Florida Division;
  - American Lung Association of the Southeast;
  - American Association for Retired Persons;
  - Department of Health;
  - Department of Education;
  - Florida Tumor Registrars Association;
  - Florida Cancer Data System;
  - Florida Society of Oncology Social Workers;
  - Florida Oncology Nurses Society;
  - Florida Society of Clinical Oncology;
  - Florida Association of Pediatric Tumor Programs, Inc;
  - Florida Medical Association;
  - Florida Hospital Association;
  - Florida Nursing Association;
  - Florida Dental Association;
  - Florida Osteopathic Association;
  - University of Florida College of Medicine;
  - Florida Academy of Family Physicians;
  - University of Miami College of Medicine;
  - University of South Florida College of Medicine;
  - Florida State University College of Medicine;
  - University of Central Florida College of Medicine;
  - Nova Southeastern College of Osteopathic Medicine;
  - Florida International University College of Medicine;

- Lake Erie School of Osteopathic Medicine;
- Biomedical Research Advisory Council;
- Center for Universal Research to Eradicate Disease; and
- Each of the regional Cancer Control Collaboratives. (Currently there are five regional Cancer Control Collaboratives.)

This section designates membership of an executive committee to coordinate the activities and plan the direction of the full council.

The council must meet at least semiannually and may prescribe, amend, and repeal bylaws governing the council. Members of the council are prohibited from participating in any discussion or decision to recommend an award or contract to any qualified nonprofit association or to any agency of this state or its political subdivision with which the member is also a member of the governing body, an employee, or has entered into a contractual arrangement.

The council is required to:

- Advise the Governor, Legislature, State Surgeon General, or other policymakers with respect to cancer control and resources in Florida;
- Approve a plan for cancer control to be known as the "Florida Cancer Plan" and review it at least every 2 years;
- Recommend to the Governor, Legislature, State Surgeon General, or other policymakers an evidence-based plan for the prevention and early detection of cancer. The State Surgeon General and other state policymakers are required to consider this plan in developing department priorities and funding priorities and standards under ch. 385, F.S., relating to chronic disease;
- Provide expertise and input in the content and development of the Florida Cancer Plan. Recommendations must include coordination and integration of other state plans concerned with cancer control;
- Advise the State Surgeon General on methods of enforcing and implementing laws that are concerned with cancer control; and
- Report any findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by December 1 of each year.

The council is authorized to form committees to address the following areas for action:

- Cancer plan evaluation, including tumor registry, data retrieval systems, and epidemiology of cancer in Florida;
- Cancer prevention;
- Cancer detection;
- Cancer treatments;
- Support services for cancer patients and caregivers;
- Cancer education for laypersons and professionals; and
- Other cancer-control-related topics.

The council must develop or purchase written summaries of the medical treatment alternatives for breast cancer and prostate cancer patients and for men who are considering prostate cancer

screening, if the Legislature specifically appropriates funds for this purpose. Such summaries would have to be printed and provided to allopathic and osteopathic physicians and surgeons in Florida. Also, if such funds are appropriated for this purpose, the council must develop and implement educational programs to inform citizen groups, associations, and voluntary organizations about early detection and treatment of breast cancer and prostate cancer.

The council may recommend to the State Surgeon General rulemaking enabling it to perform its duties and properly administer the Cancer Control Act.

The H. Lee Moffitt Cancer Center and Research Institute must house the council and provide a full-time executive director and additional administrative support for the council.

The DOH is authorized to adopt rules necessary to administer the Cancer Control Act.

The Florida Cancer Plan is established within the DOH. The DOH is required to consult with the council in developing the plan, prioritizing goals, and allocating resources.

The bill establishes the Cancer Control Collaborative Program (collaborative program) within the Comprehensive Cancer Control Program of the DOH. The collaborative program is responsible for overseeing and providing infrastructure for the state cancer collaborative network by implementing the Florida Cancer Plan's initiatives and facilitating the local development of solutions to cancer control needs. The DOH must appoint a collaborative program director to be responsible for supervising the collaborative program and providing support to the regional cancer control collaboratives. This support must include, at a minimum, centralized organization, communications, information technology, shared resources, and cancer control expertise. The collaborative program must submit a report to the council by October 15 of each year. The collaborative program is also required to serve as the infrastructure for expansion or adaption as federal programs or other opportunities arise for future cancer control initiatives. The infrastructure for the local cancer control collaboratives is required, to the extent possible, to be designed to leverage federal funding opportunities.

Each regional cancer control collaborative must bring together local stakeholders, develop bylaws, identify priority cancer control needs of its region, and develop solutions to solve problems. The solutions must be consistent with the Florida Cancer Plan. Each regional cancer control collaborative must meet at least semiannually and send representation to council meetings.

Section 5 amends s. 458.324, F.S., to correct cross-references to conform to changes made by the bill.

Section 6 amends s. 459.0125, F.S., to correct cross-references to conform to changes made by the bill.

Section 7 repeals s. 1004.435, F.S., the Cancer Control and Research Act.

Section 8 provides an effective date of July 1, 2011.

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:

Private institutions would be able to apply for funding for the new research purposes authorized in the bill.

C. Government Sector Impact:

The Moffitt Cancer Center may incur costs because it is required to provide a full-time director and additional administrative support as reasonably necessary to the Florida Cancer Control and Resource Advisory Council.

State universities would be able to apply for funding for the new research purposes authorized in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH reports that in order to obligate and disburse funds in accordance with the conditions of a gift, the DOH will have to seek specific spending authority from the Legislative Budget Commission. [31]

[31] Department of Health, *Bill Analysis, Economic Statement, and Fiscal Note for SB 720*, dated February 17, 2011. A copy of this analysis is on file with the Senate Health Regulation Committee.

VIII. Additional Information:

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

CS by Higher Education on April 4, 2011:
The committee substitute makes a technical correction to locate the Cancer Control Collaborative Program within the Comprehensive Cancer Control Program in the Department of Health and not in the Bankhead-Coley Program.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 1228
INTRODUCER:	Military Affairs, Space & Domestic Security Committee; Health Regulation Committee; and Senator Altman
SUBJECT:	Military Spouses
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/CS**
2.	Fleming	Carter	MS	**Fav/CS**
3.	Bradford	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill authorizes the appropriate board, or the Department of Health (DOH) when there is no board, to issue a temporary professional license, which is valid for 12 months after issuance and is not renewable, to the spouse of an active duty member of the Armed Forces of the United States. To be eligible for licensure, the spouse must submit to the DOH a completed application, application fee, proof of marriage to an active duty service member, proof of a valid license in another state or other jurisdiction, proof that the applicant's spouse is an active duty service member assigned to a duty station in Florida, and proof that the applicant is eligible to take the respective licensure examination in Florida.

The bill also requires an applicant for a temporary license to submit a complete set of fingerprints to the Florida Department of Law Enforcement (FDLE) to undergo a statewide criminal history check and national criminal history check, which is to be conducted by the Federal Bureau of Investigation. The DOH or the appropriate board must review the results of the criminal history check when granting and denying a temporary license.

The bill requires the applicant to pay the cost of fingerprint processing for criminal history checks and requires the applicant to pay an application fee, which may not exceed the DOH's cost of issuing a license.

The bill provides circumstances in which an applicant would be deemed ineligible to obtain a temporary license and also authorizes the DOH or the appropriate board to revoke a temporary license upon discovering a temporary license holder has violated the profession's governing practice act.

The bill also provides for the naming of temporary certificates issued for practice in areas of critical need.

The DOH or boards within the DOH may incur costs associated with implementing the bill, which should be off-set by the application fees received for temporary licensure.

This bill substantially amends the following sections of the Florida Statutes: 456.024, 458.315, and 459.0076, F.S.

II. Present Situation:

Background

The United States currently has 1.4 million people serving in the armed forces, over 23 million veterans living in the U.S., and over 200 military installations in 46 states, the District of Columbia, and Puerto Rico. In addition, there are more than 400,000 National Guard members throughout the 50 states, the District of Columbia, and commonwealths and territories. The military operations of the United States touch every state in some manner.[1]

In Florida, there are 22 military bases, over 58,000 active duty military personnel, and over 37,000 Reserve and National Guard personnel.[2] There are approximately 37,000 military spouses that currently live in Florida.[3]

Military families often face frequent moves and these moves can add unique financial pressures, as spouses may have to leave their employment due to a military transfer and the families may face a reduction in income.

While the majority of programs and benefits for soldiers and veterans are administered by the federal government, states and state legislatures are playing an increasingly larger role in military issues. With many active duty military members and National Guard and Reservists, and their

[1] National Conference of State Legislatures, *Military Personnel, Veterans and Their Families*, available at: http://www.ncsl.org/default.aspx?TabID=123&tabs=858,137,1160#858 (Last visited on March 10, 2011).
[2] Telephone interview with Col. Rocky McPherson, USMC, Director of Military and Defense Programs, Enterprise Florida, by professional staff of the Senate Health Regulation Committee on March 10, 2011.
[3] Agency for Workforce Innovation, *Military Family Employment Advocacy Program*, available at: http://www.floridajobs.org/workforce/mfea.html (Last visited on March 11, 2011).

families, facing multiple deployments, state policymakers are creating benefits and programs designed to assist both the military personnel and their families.[4]

In Florida, in 2009, the Legislature enacted HB 7123, which became ch. 2009-155, Laws of Florida. The Florida Council on Military Base and Mission Support (council) was created with the enactment of this law. The council was created to:

- Support and strengthen all DoD missions and bases located in Florida;
- Know the capabilities of Florida's military installations in order to support future military growth opportunities;
- Support community efforts relating to mission support of a military base by acting as a liaison between the local communities and the Legislature; and
- Enhance Florida's defense economy.[5]

In 2010, the Legislature enacted HB 713, which became ch. 2010-106, Laws of Florida. This law authorizes the Department of Business and Professional Regulation (DBPR) to issue a temporary professional license, which is valid for 6 months after issuance and is not renewable, to the spouse of an active duty member of the Armed Forces of the United States if the spouse applies to the DBPR for the temporary license. The applicant for a temporary license must submit to the DBPR proof of marriage to the military member, proof that he or she holds an active license in another state or jurisdiction, and proof that the military member is assigned to a duty station in Florida. The applicant must also be subject to a criminal history check and is responsible for the cost of the fingerprinting process. The applicant must also pay an application fee.

In Florida, military spouses also enjoy benefits related to education and unemployment compensation.[6] Through federal funding under the Wagner-Peyser Act, the Agency for Workforce Innovation provides services to military spouses and dependents through the Military Family Employment Advocacy Program. The program delivers employment assistance services, including interviewing, assessment, counseling, job search and placement assistance, labor market information, and resume assistance through Military Family Employment Advocates co-located within selected One-Stop Career Centers. Persons eligible for assistance through this program include spouses and dependents of active-duty military personnel, Florida National Guard members, and military reservists.[7]

The Department of Health

Section 20.43, F.S., creates the DOH. The DOH is responsible for the state's public health system, which is designed to promote, protect, and improve the health of all people in the state. The mission of the state's public health system is to foster the conditions in which people can be healthy, by assessing state and community health needs and priorities through data collection, epidemiologic studies, and community participation; by developing comprehensive public health policies and objectives aimed at improving the health status of people in the state; and by ensuring essential health care and an environment which enhances the health of the individual

[4] *Supra* fn. 1.
[5] Section 288.984(1), F.S.
[6] *See* ss. 295.01, 1009.21(10), and 443.101(1)(a)1., F.S.
[7] Agency for Workforce Innovation, *AWI Programs*, available at: http://www.floridajobs.org/workforce/WP_MFEA.html (Last visited on March 10, 2011).

and the community.[8] The State Surgeon General is the State Health Officer and the head of the DOH.

Section 20.43, F.S., creates several divisions under the DOH, including the Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:

- The Board of Acupuncture, created under chapter 457.
- The Board of Medicine, created under chapter 458.
- The Board of Osteopathic Medicine, created under chapter 459.
- The Board of Chiropractic Medicine, created under chapter 460.
- The Board of Podiatric Medicine, created under chapter 461.
- The Board of Optometry, created under chapter 463.
- The Board of Nursing, created under part I of chapter 464.
- The Board of Pharmacy, created under chapter 465.
- The Board of Dentistry, created under chapter 466.
- The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.
- The Board of Nursing Home Administrators, created under part II of chapter 468.
- The Board of Occupational Therapy, created under part III of chapter 468.
- The Board of Athletic Training, created under part XIII of chapter 468.
- The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.
- The Board of Massage Therapy, created under chapter 480.
- The Board of Clinical Laboratory Personnel, created under part III of chapter 483.
- The Board of Opticianry, created under part I of chapter 484.
- The Board of Hearing Aid Specialists, created under part II of chapter 484.
- The Board of Physical Therapy Practice, created under chapter 486.
- The Board of Psychology, created under chapter 490.
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

In addition to the professions regulated by the various aforementioned boards, the DOH also regulates the following professions: naturopathy, as provided under chapter 462; nursing assistants, as provided under part II of chapter 464; midwifery, as provided under chapter 467; respiratory therapy, as provided under part V of chapter 468; dietetics and nutrition practice, as provided under part X of chapter 468; electrolysis, as provided under chapter 478; medical physicists, as provided under part IV of chapter 483; and school psychologists, as provided under chapter 490.

Temporary Licensure by the Department of Health

There are several examples of laws that authorize individuals in Florida to obtain temporary permits or licenses from the DOH, typically only if certain conditions are met.

Advanced Registered Nurse Practitioners

[8] Section 381.001, F.S.

Under s. 464.012(1)(b), F.S., the Board of Nursing is authorized to provide by rule for provisional state certification of graduate nurse anesthetists and nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification exam.

Clinical Laboratory Personnel
Under s. 483.813, F.S., the DOH may grant a temporary license to any candidate it deems property qualified, for a period not to exceed 1 year.

Dentistry
Under s. 466.025, F.S., the DOH has authority to issue temporary certificates to graduates of accredited dental schools, which are approved by the Board of Dentistry, to practice in state and county government facilities, working under the general supervision of licensed dentists in the state or county facility. The certificate is only valid for such a time as the dentist remains employed by a state or county government facility.

Dietetics/Nutritionists
Under s. 468.511, F.S., the Board of Medicine may issue a temporary permit to an applicant seeking to practice dietetics and nutrition if the applicant files an application, pays a temporary permit fee, submits proof of completion of the required education requirement and is supervised by a licensed dietitian or nutritionist. The temporary permit expires 1 year from the date of issuance, but one extension may be granted for good cause shown.

Electrolysis
Under s. 478.46, F.S., the DOH is authorized to issue a temporary permit to practice electrolysis if an applicant qualifies for licensure. The temporary permit is valid until the next Board of Medicine meeting at which license applications are to be considered or if the applicant qualifies for licensure but has not taken an exam, the permit is valid until notification of the results of the examination.

Nursing Home Administrators
Under s. 468.1705, F.S., the DOH may issue a one-time temporary license to an applicant who has filed an application for license by endorsement, has paid a fee to take an exam, has filed an application and paid an application fee, has an active license in another state, and has worked as a fully licensed nursing home administrator for 2 years within the 5-year period immediately preceding the application for the temporary license.

Occupational Therapy
Under s. 468.209, F.S., an applicant who qualifies for licensure by endorsement may be issued a temporary permit. Also, an applicant who has not passed an examination, but meets all of the other licensure requirements may be issued a temporary permit by the Board of Occupational Therapy Practice which is valid until the notification of the results of the examination. A person may not practice under the temporary permit unless he or she practices under the supervision of a licensed occupational therapist.

Physician Assistants
Under s. 458.347, F.S., The DOH may grant temporary licensure to an applicant who meets licensure requirements. The temporary license expires 30 days after receipt and notice of scores

to the licenseholder from the first available examination following licensure by the DOH. The applicant may be granted one extension of the temporary license.

Radiologic Technologists
Under s. 468.307, F.S., the DOH may issue a temporary certificate to an applicant who has completed an educational program and is awaiting examination for a certificate. However, the applicant must meet all other certification requirements specified in law.

Rear Admiral LeRoy Collins, Jr.

Rear Admiral LeRoy Collins, Jr., died July 29, 2010, in Tampa, Florida, at the age of 75. He was a native of Tallahassee and the son of former Florida Governor LeRoy Collins. He graduated from the U.S. Naval Academy in 1956, embarking upon a 34-year military career and retiring as a two-star Rear Admiral in 1990.[9]

Admiral Collins also became a prominent businessman and civic leader in Florida. He was instrumental in the growth of electronic payment systems in the United States, starting with the introduction of credit cards in Florida and the Southeast. As the founder and president of the Armed Forces Financial Network, Admiral Collins pioneered the deployment of ATMs and point-of-sale devices in U.S. military installations worldwide, including major U.S. aircraft carriers. He also held several other positions, including founding president of Financial Transaction Systems, Inc. and a senior executive of Telecredit Service Center, Inc.[10]

Rather than retiring, Admiral Collins mounted an unsuccessful campaign for the U.S. Senate in 2006. He was then appointed by Governor Charlie Crist as the executive director of the Florida Department of Veterans' Affairs, where he directed the state agency responsible for all of Florida's 1.8 million veterans. Continuing his support of the military community, Admiral Collins also founded the Florida Veterans Foundation, Inc.[11]

III. Effect of Proposed Changes:

This bill amends s. 456.024, F.S., to authorize the appropriate board, or the DOH when there is no board, to issue a temporary professional license, which is valid for 12 months after issuance and is not renewable, to the spouse of an active duty member of the Armed Forces of the United States. To be eligible for licensure, the spouse must submit to the DOH:

- A completed application upon a form prepared and furnished by the DOH in accordance with the board's rules;
- An application fee;
- Proof of marriage to an active duty service member;
- Proof of a valid license to practice the profession in another state, the District of Columbia, a possession or territory of the United States, and is not the subject of any disciplinary proceeding in any jurisdiction in which the applicant holds a license to practice a profession regulated under ch. 456, F.S.;

[9] Collins Center for Public Policy, *LeRoy Collins Jr.*, available at http://www.collinscenter.org/?page=Leroy_Collins_Mem (Last visited on March 14, 2011). *See also* http://www.collinscenter.org/?page=LCJr_ObituaryPage.
[10] *Id.*
[11] *Id.*

- Proof that the applicant's spouse is an active duty service member assigned to a duty station in Florida; and
- Proof that the applicant is eligible to take the respective licensure examination as required in Florida.

The bill also requires an applicant for a temporary license to submit a complete set of fingerprints to the FDLE to undergo a statewide criminal history check. The FDLE is required to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check to be conducted. The DOH or the appropriate board must review the results of the criminal history check when granting and denying a temporary license.

The bill requires the applicant to pay the cost of fingerprint processing for criminal history checks and requires the applicant to pay an application fee, which may not exceed the DOH's cost of issuing a license.

The bill provides that an applicant who has met any of the following conditions is ineligible to obtain a temporary license:

- Has been convicted of or pled nolo contendere to any felony or misdemeanor related to the practice of a health care profession;
- Has had a health care provider license revoked or suspended;
- Has been reported to the National Practitioner Data Bank; or
- Has previously failed the Florida examination required to receive a license to practice the profession for which the applicant is seeking a license.

In addition, the DOH or the appropriate board may revoke a temporary license upon discovering a temporary license holder has violated the profession's governing practice act.

The bill requires an applicant who is issued a temporary license to practice as a dentist must practice under the indirect supervision of a dentist license pursuant to ch. 466, F.S.

The bill provides for the naming of temporary certificates for practice in areas of critical need under ss. 458.315 and 459.0076, F.S., to name such certificates, "Rear Admiral LeRoy Collins, Jr., Temporary Certificate for Practice in Areas of Critical Need."

The bill provides that it shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The applicant for a temporary professional license is required to pay an application fee and for the processing of fingerprints for criminal history checks. Statewide and nationwide criminal history checks cost a total of $54.25.[12]

B. Private Sector Impact:

Although military spouses may incur costs associated with applying for a temporary license, they may be able to find employment more quickly after transferring to Florida should they be issued a temporary license.

C. Government Sector Impact:

The DOH or boards within the DOH may incur costs associated with implementing the bill, which should be off-set by the application fees received for temporary licensure.

VI. Technical Deficiencies:

The term "Armed Forces" is not defined in the bill or in ch. 456, F.S. The term "Armed Forces" is defined under s. 250.01(4), F.S., to mean the United States Army, Navy, Air Force, Marine Corps, and Coast Guard, but does not include Reservists or National Guardsmen. It may be appropriate to either define the term "Armed Forces" or cross-reference s. 250.01(4), F.S.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Military Affairs, Space & Domestic Security on March 23, 2011:
The CS makes the following changes:

- Requires an applicant to provide proof that he or she is eligible to take the licensure exam in Florida;

[12] Florida Department of Law Enforcement, *Criminal History Record Checks/Background Checks Fact Sheet*, January 4, 2011, available at: http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx (Last visited on March 11, 2011).

- Provides circumstances in which an applicant would be deemed ineligible to receive a temporary professional license;
- Allows a board or the DOH to revoke a temporary license if an individual violates the profession's governing practice act;
- Extends the temporary licensure from 6 months to 12 months;
- Requires an applicant, who is issued a temporary license as a dentist, to practice under the indirect supervision of a fully licensed dentist; and
- Specifies that a person issued a temporary license is subject to the requirements under s. 456.013(3)(a) and (c), F.S., relating to a review by the board or the DOH of the applicant's eligibility for licensure.

CS by the Health Regulation Committee on March 14, 2011:
The CS differs from the bill in that it:

- Authorizes a board within the DOH to issue a temporary professional license to the spouse of an active duty member of the Armed Forces of the United States if certain requirements are met by the applicant;
- Requires the applicant for a temporary license to complete an application upon a form prepared and furnished by the DOH in accordance with a board's rules;
- Removes the authorization of temporary licensure for an applicant having a valid license in a foreign jurisdiction;
- Requires an applicant to prove that he or she is not subject to any disciplinary proceeding in any jurisdiction in which the applicant holds a license to practice a profession regulated under ch. 456, F.S.;
- Removes the requirement that an applicant prove that he or she is assigned to a duty station in Florida pursuant to his or her spouse's official active duty military orders;
- Specifies that a person issued a temporary license is subject to the requirements under s. 456.013(3), F.S., relating to a review by the board or the DOH of the applicant's eligibility for licensure; and
- Provides for the naming of temporary certificates for practice in areas of critical need, to name such certificates, "Rear Admiral LeRoy Collins, Jr., Temporary Certificate for Practice in Areas of Critical Need."

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 1410
INTRODUCER:	Health Regulation Committee and Senator Negron
SUBJECT:	Health Care Price Transparency
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HR	**Fav/CS**
2.	Bradford	Hansen	BHA	**Favorable**
3.	Bradford	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill amends the Patient's Bill of Rights to authorize a primary care provider to publish a schedule of charges for the medical services that the provider offers to patients. As an incentive to posting the schedule, the primary care practitioner is exempt from the general continuing education requirements for a single 2-year period. If posted, the schedule is to include the prices charged to an uninsured person paying by cash, check, credit card, or debit card for at least the 50 services most frequently provided by that primary care provider.

If a person requests an estimate of charges for medical services before the services are provided, the estimate by a primary care provider must be consistent with the posted schedule.

This bill has no fiscal impact on state or local government. Primary care physicians may incur an indeterminate cost to post and maintain the schedule of charges in the reception area. However, this cost might be offset by the savings due to the exemption from continuing education requirement.

This bill substantially amends s 381.026, Florida Statutes.

II. Present Situation:

The Florida Patient's Bill of Rights and Responsibilities

The Florida Patient's Bill of Rights and Responsibilities[1] is intended to promote better communication and eliminate misunderstandings between the patient and health care provider or health care facility.[2] The rights of patients include: standards related to individual dignity; information about the provider, facility, diagnosis, treatments, risks, etc.; financial information and disclosure; access to health care; experimental research; and patient's knowledge of rights and responsibilities. Patient responsibilities include giving the provider accurate and complete information regarding the patient's health, comprehending the course of treatment and following the treatment plan, keeping appointments, fulfilling financial obligations, and following the facility's rules and regulations affecting patient care and conduct.

Currently under the financial information and disclosure provisions:

- A health care provider or health care facility must disclose to a Medicare-eligible patient when requested whether the provider or facility accepts Medicare payment as full payment for medical services and treatment rendered in the provider's office or health care facility;
- A health care provider or health care facility is required to furnish to a person, upon request, an estimate of charges for medical services before providing the services. In addition, a health care provider or health care facility must provide an uninsured person, before planned nonemergency medical services, a reasonable estimate of the charges for the medical services and information regarding the provider's or facility's discount or charity policies for which the uninsured person may be eligible. These estimates are required to be written in a language that is comprehensible to an ordinary layperson. However, the provider or facility may exceed the estimates or make additional charges based on changes in the patient's condition or treatment needs;
- A licensed facility must place a notice in its reception area that financial information related to that facility is available on the Agency for Health Care Administration's (Agency) website;[3]
- The facility may indicate that the pricing information is based on a compilation of charges for the average patient and that an individual patient's charges may vary; and
- A patient has the right to receive an itemized bill and explanation of the charges upon request.

Health care providers and health care facilities are required to make available to patients a summary of their rights. The applicable regulatory board or the Agency may impose an

[1] Section 381.026, Florida Statutes.
[2] A health care facility is a facility licensed under ch. 395, F.S., and a health care provider means a physician, osteopathic physician, or a podiatric physician licensed under chapters 458, 459, or 461, respectively.
[3] The Florida Center for Health Information and Policy Analysis (Florida Center) within the Agency is responsible for collecting, compiling, analyzing, and disseminating health-related data and statistics. The information is published on the FloridaHealthFinder website at http://www.floridahealthfinder.gov. This website currently discloses and allows price comparisons for certain inpatient and outpatient procedures in licensed health care facilities and certain prescription drugs. Long-range plans include the availability of similar price comparisons for physician services. *See* s. 408.05(3)(k), F.S.

administrative fine when a provider or facility fails to make available to patients a summary of their rights.[4]

III. Effect of Proposed Changes:

Section 1 amends s. 381.026, F.S., relating to the Florida Patient's Bill of Rights and Responsibilities, to authorize a primary care provider, as defined in the bill, to publish a schedule of charges for the medical services that the provider offers. If a primary care provider publishes and maintains the schedule, then he or she is exempt from the general continuing education requirements that are applicable to all health care practitioners and rules implementing those requirements for a single 2-year period.

If posted, the schedule of charges must include the prices that the provider charges to an uninsured person paying by cash, check, credit card, or debit card. The schedule of charges must be posted in a conspicuous place in the reception area of the provider's office and at least 15 square feet in size. Additionally, the schedule must include at least 50 services that are most frequently provided by that primary care provider. Rather than listing a price for each individual service, the schedule may group the services by three prices levels, listing the services in each price level.

The bill defines a primary care provider as a medical physician licensed under ch. 458, F.S., an osteopathic physician licensed under ch. 459, F.S., or a podiatric physician licensed under ch. 461, F.S., who provides medical services to patients which are commonly provided without referral from another health care provider. The types of providers include those who practice family medicine, general medicine, general pediatrics, or general internal medicine.

The bill requires that the estimate of charges furnished by a primary care provider pursuant to a request from an uninsured person before the medical services are provided must be consistent with the schedule posted in the reception area.

Section 2 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

[4] Section 381.0261, F.S.

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The primary care physicians may incur an indeterminate cost to post and maintain the schedule of charges in the reception area. However, this cost might be offset by the savings due to the exemption from continuing education requirement. Uninsured patients of primary care physicians will have ready access to the charges for certain health care services provided by that physician's office.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Health Regulation on April 4, 2011:
Removes obstetricians and gynecologists from the definition of primary care provider; provides for the size of the posting and contents; makes the posting optional rather than mandatory; provides an exemption from general continuing education requirements for a single 2-year period for posting the schedule; and removes the disciplinary authority for not posting (with Title amendment).

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 632
INTRODUCER:	Community Affairs Committee, Higher Education Committee, and Senator Oelrich
SUBJECT:	Postsecondary Education
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	HE	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Fav/CS**
3.	Hamon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill would revise requirements for the disposal of personal property lost or abandoned on university or Florida College System institution campuses. Institutions would not have to sell the property at public auction after public notice and would not have to use the proceeds for student scholarships and loans. Instead, the property would be disposed of in accordance with the policies of the institution.

The bill would authorize the Board of Governors (BOG) to adopt a regulation instead of a rule to govern the naming of state university buildings; university-acquired patents, copyrights or trademarks; delinquent accounts; purchasing; research centers for child development; personnel records; and university lease agreements for facilities.

The bill repeals a prohibition on a university from requiring a student who earns 9 or more credit hours through an acceleration mechanism to enroll in a summer term, thus permitting a state university to require summer term attendance by students.

The bill repeals the University Concurrency Trust Fund.

The bill amends ss. 267.062, 705.18, 1004.23, 1007.27, 1010.03, 1010.04, 1010.07, 1011.48, 1012.91, 1013.171, and 1013.33, Florida Statutes. The bill repeals s. 1013.63, Florida Statutes

II. Present Situation:

The University Concurrency Trust Fund

Section 1013.63, F.S., creates the University Concurrency Trust Fund which may be funded as provided in the General Appropriations Act. The statute requires funds in the trust fund to be used for university offsite improvements and to meet the requirements of concurrency standards required under pt. II of ch. 163, F.S. Funds last were appropriated to the trust fund in 2007, and at present there are no funds in the trust fund.

Rules and Regulations

Section 1001.706(2)(b), F.S., establishes the rulemaking and regulatory authority of the BOG. When the BOG is acting pursuant to authority derived from the Legislature, it must adopt rules pursuant to ch. 120, F.S., except that the BOG may adopt regulations for such matters if it is expressly authorized to do so by law. For matters relating to the BOG's constitutional authority, the BOG may adopt regulations. Statutes granting rulemaking or regulatory authority to the BOG specify whether rules or regulations are to be adopted. The BOG has indentified eight statutes requiring rules for which the BOG would prefer the Legislature to authorize regulations in lieu of rules. The statutes concern the naming of university buildings; the acquiring of university patents, copyrights, or trademarks; delinquent accounts; purchasing; contractor's bonds; establishing educational research centers for child development; personnel records; and university lease agreements for facilities. The BOG has adopted regulations to govern these areas.

Summer Term at Universities

Section 1007.27(10), F.S., prohibits a public college or university from requiring a student who earns 9 or more credit hours through an acceleration mechanism, such as dual enrollment and advanced placement, to enroll in a summer term.

III. Effect of Proposed Changes:

The bill would revise requirements for the disposal of personal property lost or abandoned on university or Florida College System institution campuses. Institutions would not have to sell the property at public auction after public notice and would not have to use the proceeds for student scholarships and loans. Instead the institution would dispose of the property in accordance with its policies.

The bill would authorize the Board of Governors (BOG) to adopt a regulation instead of a rule to govern:

- The naming of state university buildings;
- University-acquired patents, copyrights or trademarks;
- Delinquent accounts;
- Purchasing;

- Establishment of educational research centers for child development;
- Personnel records;
- Contractors' bonds; and
- University lease agreements for facilities.

The bill would repeal s. 1007.27(10), F.S., which prohibits a public college or university from requiring a student who earns 9 or more credit hours through an acceleration mechanism to enroll in a summer term, thus permitting a state university to require summer term attendance by students. According to the Department of Education, 21,200 students, who earned a standard high school diploma in 2010, earned 9 or more credit hours through an accelerated mechanism, such as Advanced Placement, dual enrollment, International Baccalaureate, or Advanced International Certificate of Education. Requiring students to attend during the summer term could enable a postsecondary institution to use its facilities year-round. However, the provision could create new costs for students who receive state financial aid, including the Bright Futures Scholarships, because state scholarship programs are only funded for the fall and spring academic terms. The Bright Futures Scholarships may be used in the summer term if funds are available,[1] but the Legislature has not funded the scholarship for the summer term.

The bill repeals the University Concurrency Trust Fund.

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:

Florida College System students and state university students who were required to enroll during the summer term could incur costs not covered by financial aid if their financial aid only covered fall and spring academic terms. A student who enrolled in the fall,

[1] Section 1009.53(9), F.S.

spring, and summer terms would be more likely to finish his degree program sooner than a student who only enrolled in the fall and spring terms.

C. Government Sector Impact:

Florida College System Institutions and state universities would be able to dispose of lost property in accordance with the institution's procedures and would not incur the cost of holding a public auction.

State universities could make better year-round use of their facilities if they required students to enroll in the summer term. Universities would receive additional revenue from students for additional enrollment during the summer term.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Community Affairs on April 11, 2011:
Removed provisions relating to campus development agreements.

CS by Higher Education on March 22, 2011:
The committee substitute:

- Changes requirements for disposal of personal property that is lost or abandoned on a state university or Florida College System campus to permit the president to dispose of the property or make use of it in accordance with the institutions' procedures;
- Repeals the University Concurrency Trust Fund;
- Does not redirect fuel tax revenues;
- Removes the requirement for campus development plans with local governments effective July 1, 2011, and specifies that when the current plans expire they may not be renewed;
- Removes the requirement for impact fees to be paid before the university begins construction; and
- Authorizes regulations instead of rules for these additional areas: delinquent accounts; contractors' bonds; university centers for child development; and personnel records.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Lynn) recommended the following:

Senate Amendment to Amendment (585488) (with title amendment)

Delete lines 3 - 218.

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

And the title is amended as follows:

Delete lines 221 - 254.

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 Budget Committee

BILL:	SB 404
INTRODUCER:	Senators Wise and Lynn
SUBJECT:	Transition-to-Adulthood Services
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Favorable**
2.	Dugger	Cannon	CJ	**Fav/1 amendment**
3.	Sadberry	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill makes changes to ch. 985, F.S., relating to juvenile justice, to provide transition-to-adulthood services to older youth who are in the custody of, or under the supervision of, the Department of Juvenile Justice (DJJ).

The bill requires that transition-to-adulthood services for a youth be part of an overall plan leading to the total independence of the child from DJJ's supervision, and the bill specifies the requirements of the overall plan.

The bill also provides that youth who are adjudicated delinquent and are in the legal custody of the Department of Children and Family Services (DCF) may, if eligible, receive DCF's independent living transition services pursuant to s. 409.1451, F.S. Adjudication of delinquency may not be considered, by itself, as disqualifying criteria for eligibility in DCF's Independent Living Program. This is consistent with current DCF policy.[1]

[1] Dep't of Children and Families, *Staff Analysis and Economic Impact SB 404* (Jan. 25, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

The bill also permits a court to retain jurisdiction for a year beyond the child's 19th birthday if he or she is participating in the transition-to-adulthood program.

This bill substantially amends sections 985.03 and 985.0301, Florida Statutes. This bill creates section 985.461, Florida Statutes.

II. Present Situation:

Florida Juvenile Justice System[2]

Historically, Florida provided services to children who are delinquent under a "rehabilitative" model of justice. When all "proceedings relating to children" were under the auspices of the Department of Health and Rehabilitative Services (HRS),[3] HRS's approach to children involved in dependency proceedings or delinquency proceedings was the same, which was to provide social services to the child and his or her family. Provisions relating to both dependent and delinquent children were contained in ch. 39, F.S.

The first of a number of efforts to shift the state's juvenile justice system away from a social services model occurred in 1994. The Legislature created the Department of Juvenile Justice and provided for the transfer of powers, duties, property, records, personnel, and unexpended balances of related appropriations and other funds from HRS's Juvenile Justice Program Office to the new department.[4] The Department of Juvenile Justice (DJJ or department) was assigned responsibility for children who were delinquent and children and families who were in need of services (CINS/FINS).[5] Statutory provisions relating to children being served in the juvenile justice system remained in ch. 39, F.S., and most of the new department's employees were former HRS employees.

In 1997, while few changes were made to substantive law, provisions relating to children who were delinquent and CINS/FINS were removed from ch. 39, F.S. Provisions relating to CINS/FINS were placed in newly created ch. 984, F.S., and provisions relating to children who are delinquent were placed in newly created ch. 985, F.S.[6]

In 2000, comprehensive legislation, known as the "Tough Love Law," provided statutory authority for DJJ to change its organizational structure. This legislation signified the most

[2] Information contained in this section of the Present Situation of this bill analysis is from the Department of Juvenile Justice's website. Florida Dep't of Juvenile Justice, *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/AboutDJJ/history.html (last visited Mar. 21, 2011).
[3] The Department of Health and Rehabilitative Services (HRS) was renamed the Department of Children and Family Services (DCF) in 1996. Chapter 96-403, s. 2, Laws of Fla.
[4] Chapter 94-209, s. 1, Laws of Fla.
[5] The term "child in need of services" means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Children and Family Services for an adjudication of dependency or delinquency. The child must also be found by the court to be habitually truant from school, to have persistently run away from home, or to have persistently disobeyed the reasonable demands of his or her parents and to be beyond their control. Section 984.03(9), F.S.
[6] Chapter 97-238, Laws of Fla.

dramatic policy shift away from the social services model and toward a criminal justice approach.[7] However, even under the "Tough Love" plan, DJJ maintains that:

> [T]he juvenile justice system continued to be operationally and philosophically distinct from the adult criminal justice system. Florida continues to segregate juveniles from their adult counterparts, although there has been an expansion of the circumstances under which a juvenile can be prosecuted as an adult. Youth continue to be managed under a strategy of redirection and rehabilitation, rather than punishment. Although the State strengthened its hold on juvenile delinquents under the "Tough Love" plan, the system maintained focus on "treatment" designed to effect positive behavioral change.[8]

The department is currently required to provide independent living services as a program component of both the early delinquency intervention and the serious or habitual juvenile offender programs.[9]

The department is also tasked with providing conditional-release services to youth exiting juvenile justice residential programs. Conditional release is the care, treatment, help, and supervision provided to juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism.[10] The program is intended to help prepare youth for a successful transition from DJJ commitment back to the community. Each youth committed to a DJJ residential program is to be assessed to determine the need for conditional-release services upon release from the program.[11] The department may also supervise the juvenile when released into the community from a residential program and provide such counseling and other services as may be necessary for families and assisting families' preparations for the return of the child.[12]

Independent Living Transition Services for Dependent Children[13]

Each year thousands of dependent children leave state foster care systems because they reach the age of 18 and are no longer eligible for out-of-home care. Since the early 1980's, research and anecdotal evidence have indicated that many of these young adults experience numerous difficulties in their attempts to achieve self-sufficiency. When compared to young adults with no exposure to the child welfare system, former foster youth are less likely to earn a high school diploma or GED and, subsequently, have lower rates of college attendance.[14] They suffer more

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[7] Five bills passed in the 2000 session comprise the Tough Love Law: ch. 2000-137, ch. 2000-136, ch. 2000-135, ch. 2000-134, and ch. 2000-119, Laws of Fla. *See* Senate Bills 69, 1192/80, 1196, 1548, 2464 (2000).
[8] Florida Dep't of Juvenile Justice, *supra* note 2.
[9] *See* ss. 985.47 and 985.61, F.S.
[10] Section 985.46(1)(a), F.S.
[11] Section 985.46(2)(c), F.S.
[12] Section 985.46(3), F.S.
[13] Information contained in this section of the Present Situation of this bill analysis is from an interim report by the Committee on Children, Families, and Elder Affairs. See Comm. Children, Families, and Elder Affairs, The Florida Senate, *Review of the Provisions of Independent Living Services to Minors* (Interim Report 2010-105) (Nov. 2009), *available at* http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-105cf.pdf (last visited Mar. 21, 2011).
[14] Wilhelmina A. Leigh et al., *Aging out of the Foster Care System to Adulthood: Findings, Challenges, and Recommendations*, JOINT CTR. FOR POLITICAL AND ECONOMIC STUDIES, HEALTH POLICY INSTITUTE, 3-4 (Dec. 2007) (on file with the Senate Committee on Children, Families, and Elder Affairs) (citing Mark Courtney, *Youth Aging Out of Foster Care*, NETWORK ON TRANSITIONS TO ADULTHOOD, Policy Brief Issue 19 (April 2005), *available at*

from mental health problems; have a higher rate of involvement with the criminal justice system; are more likely to have a difficult time achieving financial independence, thus increasing their reliance on public assistance; and experience high rates of housing instability and homelessness.[15]

The federal government responded to the needs of foster care youth who age out by enacting the Foster Care Independence Act of 1999 (known as the CFCIP or the Chafee Act).[16] The Chafee Act provides states with flexible funding that enables programs to be designed and conducted to:

- Identify and assist youths who are likely to remain in foster care until 18 years of age;
- Provide education, training, and services necessary to obtain employment for those youths;
- Prepare those youths to enter postsecondary training and education institutions; and
- Provide support through mentors and the promotion of interactions with dedicated adults.[17]

Age restrictions were also eliminated, allowing states to offer independent living services to youth earlier than age 16.[18] The Chafee Act grants wide discretion to the states, allowing them to set their own criteria regarding which foster care youths receive services.[19] However, states must use objective criteria for determining eligibility for benefits and services under the programs and for ensuring fair and equitable treatment of benefit recipients.[20]

With the enactment of federal legislation and increased available funding, the 2002 Florida Legislature established a new framework for the state's independent living transition services to be provided to older youth in foster care.[21] Specifically provided for was a continuum of independent living transition services to enable youth who are 13 to 17 years of age and in foster care to develop the skills necessary for successful transition to adulthood and self-sufficiency. Service categories established for minors in foster care include the following:[22]

CATEGORIES OF SERVICES	SERVICES INCLUDED	ELIGIBILITY
Pre-independent living services	Life skills training, educational field trips and conferences.	13 and 14 year olds in foster care.
Life skills services	Training to develop banking and budgeting skills, parenting skills, and time management and organizational skills, educational support, employment training, and counseling.	15,16, and 17 year olds in foster care.
Subsidized	Living arrangements that allow the child to live independently	16 and 17 year olds

http://www.transad.pop.upenn.edu/downloads/courtney--foster%20care.pdf (last visited Mar. 21, 2011)).
[15] *Id.*
[16] Public Law No. 106-169, 113 Stat. 1822 (1999). Federal funds for independent living initiatives were first made available under the Consolidated Omnibus Budget Reconciliation Act of 1985.
[17] 42 U.S.C. s. 677 (2002).
[18] 42 U.S.C. s. 677(b)(2)(C) (2002).
[19] 42 U.S.C. s. 677(b)(2).
[20] 42 U.S.C. s. 677(b)(2)(E).
[21] The department provided independent living services to older youth in foster care prior to the creation of s. 409.1451, F.S., with provisions for those services appearing in a number of sections of Florida Statutes, including s. 409.145, F.S., relating to care of children (2001), and s. 409.165, F.S., relating to alternative care of children (2001).
[22] Section 409.1451(4), F.S. The legislation also contained provisions for young adults who are 18 to 23 years of age who were formerly in foster care, including aftercare services, the Road-to-Independence Program, and transitional support services. *See* s. 409.1451(5), F.S.

independent living services	of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175, F.S.	who demonstrate IL skills.

For fiscal year 2009-2010, $35.6 million was budgeted for the Independent Living Transition Services Program from a number of sources.[23] This represents a $3.9 million increase in the budget from fiscal year 2008-2009, but is $2.9 million less than was actually spent in fiscal year 2008-2009.[24] The actual expenditure of the program in 2010 was almost $52 million.[25] The projected spending for 2011 is $58.5 million.[26]

If a dependent child is also adjudicated delinquent, DCF shares responsibility for that child with DJJ and while not specifically required by statute, DCF allows youth who are eligible for independent living transition services under s. 409.1451, F.S., and who have been adjudicated delinquent to receive those services.[27]

Court Jurisdiction

Except under certain specified circumstances, the court shall retain jurisdiction of a child who has committed a delinquent act, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child that the court had prior to the child becoming an adult.[28] Current law provides that the court may retain jurisdiction beyond 19 years of age under certain other circumstances, including, but not limited to:

- Jurisdiction may be retained until 22 years of age for a youth placed in a juvenile prison or in a high-risk or maximum-risk residential commitment program to allow the child to participate in a juvenile conditional release program.
- Jurisdiction may be retained until 21 years of age for a youth committed to the DJJ for placement in an intensive residential treatment program for 10-year-old to 13-year-old offenders, in the residential commitment program in a juvenile prison, in a residential sex offender program, or in a program for serious or habitual juvenile offenders, solely for the purpose of the child completing the program.

III. Effect of Proposed Changes:

The bill creates s. 985.461, F.S., titled "Transition to adulthood," which the bill defines to mean "services that are provided for youth in the custody of the department [Department of Juvenile Justice] or under the supervision of the department and that have the objective of instilling the knowledge, skills, and aptitudes essential to a socially integrated, self-supporting adult life." The bill specifies that these services may include, but are not limited to:

- Assessment of the youth's ability and readiness for adult life;

[23] Chafee ILP - $7,046,049; Chafee ETV - $2,396,966; Chafee ILP Match - $1,761,513; Chafee ETV Match - $599,241; General Revenue - $21,303,202; and Title IV-E - $2,495,646. Comm. on Children, Families, and Elder Affairs, *supra* note 13.
[24] *Id*.
[25] Information from the Dep't of Children and Families provided to Professional Staff of the Senate Committee on Children, Families, and Elder Affairs on Mar. 2, 2011 (on file with the Senate Committee on Children, Families, and Elder Affairs).
[26] *Id*.
[27] Dep't of Children and Families, *supra* note 1.
[28] Section 985.0301(5)(a), F.S.

- A plan for the youth to acquire the knowledge, information, and counseling necessary to make a successful transition to adulthood; and
- Services that have been proven effective toward achieving the transition to adulthood.

The bill provides legislative intent that the Department of Juvenile Justice (DJJ or department) may provide older youth in its custody or under its supervision opportunities to participate in transition-to-adulthood services while in DJJ's commitment programs or in probation or conditional release programs in the community.[29] The bill specifies that these services should be reasonable and appropriate for the youths' respective ages or for any special needs the youth may have.

The bill also provides that youth who enter a DJJ placement from a foster care placement and who are in the legal custody of the Department of Children and Family Services (DCF) may, if eligible, receive DCF's independent living transition services pursuant to s. 409.1451, F.S. The bill also provides that court-ordered commitment or probation is not a barrier to eligibility for youth to receive the array of services available if they were in foster care. This is consistent with current DCF policy.[30]

The bill provides that adjudication of delinquency may not, by itself, disqualify a dependent youth for eligibility to receive independent living transition services from DCF.

The bill allows DJJ to:

- Assess a child's skills and abilities to live independently and become self sufficient;
- Develop a list of age-appropriate activities and responsibilities to be incorporated into the child's written case plan for any youth 17 years of age or older. The activities may include, but are not limited to, life skills such as banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health management, and time management or organizational skills; educational support; employment training; and counseling;
- Provide information related to social security insurance benefits and public assistance;
- Request parental or guardian permission for the youth to participate in the transition-to-adulthood services. Upon such consent, the age-appropriate activities must be incorporated into the youth's written case plan. The case plan may include specific goals and objectives and must be reviewed and updated quarterly. The plan may not interfere with the parent's or guardian's rights to train the child; and
- Contract for transition-to-adulthood services, which include residential services and assistance, that allow for the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175, F.S. The bill provides for program eligibility to include youth at least 17 but not yet 19 years of age and who are not a danger to the public and have a demonstrated sufficient skills and aptitude for living under decreased adult supervision.

[29] This appears to be a similar authority to that which currently exists in the conditional release program operated by DJJ for youth transitioning back to the community. See s. 985.46, F.S.
[30] Dep't of Children and Families, *supra* note 1.

The bill requires that transition-to-adulthood services be part of an overall plan leading to the total independence of the child from DJJ's supervision. The plan must include:

- A description of the child's skills and a plan for learning additional identified skills;
- The behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities;
- The provision for future educational, vocational, and training skills;
- Present financial and budgeting capabilities and a plan for improving resources and abilities;
- A description of the proposed residence;
- Documentation that the child understands the specific consequences of his or her conduct in such a program;
- Documentation of proposed services to be provided by DJJ and other agencies, including the type of services and the nature and frequency of contact; and
- A plan for maintaining or developing relationships with family, other adults, friends, and the community.

These changes will permit DJJ to provide services to youth in their custody or supervision which may increase a youth's ability to live independently and become a self-sufficient adult.

The bill also amends s. 985.0301(5)(a), F.S., to allow a court to retain jurisdiction for an additional 365 days following a child's 19th birthday if the child is participating in a DJJ transition-to-adulthood program. The bill also provides that the transition services created in s. 985.461, F.S., require voluntary participation by affected youth and are not intended to create an extension of involuntary court-sanctioned residential commitment.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Neither the Department of Children and Family Services nor the Department of Juvenile Justice expects there to be a fiscal impact.[31]

VI. Technical Deficiencies:

There are several places in the bill where the language appears duplicative. For example, lines 81-83 provide that the Department of Juvenile Justice may "develop a list of age-appropriate activities and responsibilities to be incorporated in the child's written case plan . . ." and lines 93-95 provide that "age-appropriate activities shall be incorporated into the youth's written case plan."

Additionally, the terms "child" and "youth" are used interchangeably throughout the bill. The Legislature may wish to amend the bill to use one term in order to provide consistency.

VII. Related Issues:

The Department of Children and Family Services (DCF) is attempting to amend portions of chs. 39 and 409, F.S., to support the federal H.R. 6893, "Fostering Connections to Success and Increasing Adoptions Act," passed by the 110th Congress in 2008. If these amendments are made, DCF's current Independent Living services will be modified. According to DCF, if the changes to chs. 39 and 409, F.S., are made to include the Fostering Connections to Success and Increasing Adoptions Act, there may be a fiscal impact to implement this bill.[32]

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:

Barcode 585488 by Criminal Justice April 12, 2011:
Creates the College-Preparatory Boarding Academy Pilot Program for at-risk students as follows:

- Defines the key elements of the program and establishes "at-risk" student eligibility criteria consistent with eligibility standards for a range of non-educational federal and state programs that support needy families, children, and youth;

[31] Dep't of Children and Families, *supra* note 1; Department of Juvenile Justice, Senate Bill 404 (Mar. 1, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[32] Dep't of Children and Families, *supra* note 1.

- Outlines a process for the State Board of Education to select an experienced, qualified operator (through an RFP process) and prescribes the obligations for the operator;
- Authorizes the program to receive non-education program appropriations to support the Academy's student life/boarding program and requires state agencies to streamline and simplify conflicting and redundant regulations to which the academy is subjected; and

Directs the Academy to enroll up to 80 students beginning in August 2012 and to grow to a student capacity of 400 students.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/12/2011	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

Between lines 159 and 160
insert:

Section 4. College-Preparatory Boarding Academy Pilot Program for at-risk students.—

(1) PROGRAM CREATION.—The College-Preparatory Boarding Academy Pilot Program is created for the purpose of providing unique educational opportunities to dependent or at-risk children who are academic underperformers but who have the potential to progress from at-risk to college-bound. The State Board of Education shall implement this program.

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

(a) "Board" means the board of trustees of a college-preparatory boarding academy for at-risk students.

(b) "Eligible student" means a student who is a resident of the state and entitled to attend school in a participating school district, is at risk of academic failure, is currently enrolled in grade 5 or 6, is from a family whose income is below 200 percent of the federal poverty guidelines, and who meets at least two of the following additional risk factors:

1. The student has a record of suspensions, office referrals, or chronic truancy.

2. The student has been referred for academic intervention or has not attained at least a proficient score on the state achievement assessment in English and language arts, reading, or mathematics.

3. The student's parent is a single parent.

4. The student does not live with the student's custodial parent.

5. The student resides in a household that receives a housing voucher or has been determined as eligible for public housing assistance.

6. A member of the student's immediate family has been incarcerated.

7. The student has been declared an adjudicated dependent by a court of competent jurisdiction.

8. The student has received a referral from a school, teacher, counselor, dependency circuit court judge, or community-based care organization.

9. The student meets any additional criteria prescribed by

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an agreement between the State Board of Education and the operator of a college-preparatory boarding academy.

(c) "Operator" means a private, nonprofit corporation that is selected by the state under subsection (3) to operate the program.

(d) "Program" means a college-preparatory boarding academy for at-risk students which includes:

1. A remedial curriculum for middle school grades;

2. The college-preparatory curriculum for high school grades;

3. Extracurricular activities, including athletics and cultural events;

4. College admissions counseling;

5. Health and mental health services;

6. Tutoring;

7. Community service and service learning opportunities;

8. A residential student life program;

9. Extended school days and supplemental programs; and

10. Professional services focused on the language arts and reading standards, mathematics standards, science standards, technology standards, and developmental or life skill standards using innovative and best practices for all students.

(e) "Sponsor" means a public school district that acts as sponsor pursuant to s. 1002.33, Florida Statutes.

(3) PROPOSALS.—

(a) The State Board of Education shall select a private, nonprofit corporation to operate the program which must meet all of the following qualifications:

1. The nonprofit corporation has, or will receive as a

condition of the contract, a public charter school authorized under s. 1002.33, Florida Statutes, to offer grades 6 through 12, or has a partnership with a sponsor to operate a school.

2. The nonprofit corporation has experience operating a school or program similar to the program authorized under this section.

3. The nonprofit corporation has demonstrated success with a school or program similar to the program authorized under this section.

4. The nonprofit corporation has the capacity to finance and secure private funds for the development of a campus for the program.

(b) Within 60 days after July 1, 2011, the State Board of Education shall issue a request for proposals from private, nonprofit corporations interested in operating the program. The state board shall select operators from among the qualified responders within 120 days after the issuance of the requests for proposal.

(c) Each proposal must contain the following information:

1. The proposed location of the college-preparatory boarding academy;

2. A plan for offering grade 6 in the program's initial year of operation and a plan for expanding the grade levels offered by the school in subsequent years; and

3. Any other information about the proposed educational program, facilities, or operations of the school as determined necessary by the state board.

(4) CONTRACT.—The State Board of Education shall contract with the operator of a college-preparatory boarding academy. The

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contract must stipulate that:

(a) The academy may operate only if, and to the extent that, it holds a valid charter authorized under s. 1002.33, Florida Statutes, or is authorized by a local school district defined as a sponsor pursuant to s. 1002.33, Florida Statutes.

(b) The operator shall finance and oversee the acquisition of a facility for the academy.

(c) The operator shall operate the academy in accordance with the terms of the proposal accepted by the state board.

(d) The operator shall comply with this section.

(e) The operator shall comply with any other provisions of law specified in the contract, the charter granted by the local school district or the operating agreement with the sponsor, and the rules adopted by the state board for schools operating in this state.

(f) The operator shall comply with the bylaws that it adopts.

(g) The operator shall comply with standards for admission of students to the academy and standards for dismissal of students from the academy which are included in the contract and may be reevaluated and revised by mutual agreement between the operator and the state board.

(h) The operator shall meet the academic goals and other performance standards established by the contract.

(i) The state board or the operator may terminate the contract in accordance with the procedures specified in the contract, which must at least require that the party seeking termination give prior written notice of the intent to terminate the contract and that the party receiving the termination notice

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be granted an opportunity to redress any grievances cited therein.

(j) If the school closes for any reason, the academy's board of trustees shall execute the closing in a manner specified in the contract.

(5) OPERATOR BYLAWS.—The operator of the program shall adopt bylaws for the oversight and operation of the academy which are in accordance with this section, state law, and the contract between the operator and the State Board of Education. The bylaws must include procedures for the appointment of board members to the academy's board of trustees, which may not exceed 25 members, 5 members of whom shall be appointed by the Governor with the advice and consent of the Senate. The bylaws are subject to approval of the state board.

(6) OUTREACH.—The program operator shall adopt an outreach program with the local education agency or school district and community. The outreach program must give special attention to the recruitment of children in the state's foster care program as a dependent child or as a child in a program to prevent dependency who are academic underperformers who, if given the unique educational opportunity found in the program, have the potential to progress from at-risk children to college-bound children.

(7) FUNDING.—The college-preparatory boarding academy must be a public school and part of the state's program of education. If the program receives state funding from noneducation sources, the State Board of Education shall coordinate, streamline, and simplify any requirements to eliminate duplicate, redundant, or conflicting requirements and oversight by various governmental

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programs or agencies. The applicable regulating entities shall, to the maximum extent possible, use independent reports and financial audits provided by the program and coordinated by the state board to eliminate or reduce contract and administrative reviews. Additional items may be suggested, if reasonable, to the state board to be included in independent reports and financial audits for the purpose of implementing this section. Reporting paperwork that is prepared for the state and local education agency shall also be shared with and accepted by other state and local regulatory entities, to the maximum extent possible.

(8) PROGRAM CAPACITY.—Beginning August 2012, the program shall admit 80 students. In each subsequent fiscal year, the program shall grow by an additional number of students, as specified in the contract, until the program reaches a capacity of 400 students.

(9) STUDENT SERVICES.—Students enrolled in the program who have been adjudicated dependent must remain under the case management services and supervision of the lead agency and its respective providers. The operator may contract with its own providers as necessary to provide services to children in the program and to ensure continuity of the full range of services required by children in foster care who attend the academy.

(10) MEDICAID BILLING.—This section does not prohibit an operator from appropriately billing Medicaid for services rendered to eligible students through the program or from earning federal or local funding for services provided.

(11) ADMISSION.—An eligible student may apply for admission to the program. If more eligible students apply for admission

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than the number of students permitted by the capacity established by the board of trustees, admission shall be determined by lottery.

(12) STUDENT HOUSING.—Notwithstanding ss. 409.1677(3)(d) and 409.176, Florida Statutes, or any other provision of law, an operator may house and educate dependent, at-risk youth in its residential school for the purpose of facilitating the mission of the program and encouraging innovative practices.

(13) ANNUAL REPORT.—

(a) The State Board of Education shall issue an annual report for each college-preparatory boarding academy which includes all information applicable to schools.

(b) Each college-preparatory boarding academy shall report to the Department of Education, in the form and manner prescribed in the contract, the following information:

1. The total number of students enrolled in the academy;

2. The number of students enrolled in the academy who are receiving special education services pursuant to an individual education plan; and

3. Any additional information specified in the contract.

(c) The operator shall comply with s. 1002.33, Florida Statutes, and shall annually assess reading and mathematics skills. The operator shall provide the student’s legal guardians with sufficient information on whether the student is reading at grade level and whether the student gains at least a year’s worth of learning for every year spent in the program.

(14) RULES.—The State Board of Education shall adopt rules to administer this section. These rules must identify any existing rules that are applicable to the program and preempt

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any other rules that are not specified for the purpose of clarifying the rules that may be conflicting, redundant, or that result in an unnecessary burden on the program or the operator.

========== 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:

creating the College-Preparatory Boarding Academy Pilot Program for dependent or at-risk students; providing a purpose for the program; requiring that the State Board of Education implement the program; providing definitions; requiring the state board to select a private nonprofit corporation to operate the program if certain qualifications are met; requiring that the state board request proposals from private nonprofit corporations; providing requirements for such proposals; requiring that the state board enter into a contract with the operator of the academy; requiring that the contract contain specified requirements; requiring that the operator adopt bylaws, subject to approval by the state board; requiring that the operator adopt an outreach program with the local education agency or school district and community; providing that the academy is a public school and part of the state's education program; providing program funding guidelines; limiting the capacity of eligible students attending the academy; requiring that enrolled students remain under case


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management services and the supervision of the lead agency; authorizing the operator to appropriately bill Medicaid for services rendered to eligible students or earn federal or local funding for services provided; providing for eligible students to be admitted by lottery if the number of applicants exceeds the allowed capacity; authorizing the operator to board dependent, at-risk students; requiring that the state board issue an annual report and adopt rules; providing an effective date.

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 Budget Committee

BILL:	CS/CS/SB 1206
INTRODUCER:	Judiciary Committee; Criminal Justice Committee; and Senators Negron and Joyner
SUBJECT:	Eyewitness Identification
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.	Maclure/Boland	Maclure	JU	**Fav/CS**
3.	Sadberry	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates procedures that law enforcement officers must follow when they are conducting photo and live lineups with eyewitnesses to crimes. In particular, it specifies that a lineup must be conducted an independent administrator, meaning someone who is not participating in the criminal investigation and is unaware of which person in the lineup is the suspect. In the case of photo lineups, however, the bill provides that an alternative method may be used in lieu of an independent administrator. The Criminal Justice Standards and Training Commission must specify and approve the alternative method, and the method must achieve neutral administration and prevent the administrator from knowing which photograph is being presented to the eyewitness.

Further, the bill provides remedies for a defendant when the specified eyewitness identification procedures are not followed. The court may allow a jury in a criminal trial to hear evidence of officer noncompliance, and the court may consider the noncompliance in a motion to suppress the identification of the defendant. The bill requires instructions to the jury regarding the reliability of eyewitness identifications under certain circumstances.

Lastly, the bill requires education and training of law enforcement officers on the new eyewitness identification procedures.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Eyewitness Identification

Eyewitness misidentification has been a factor in 75 percent of the 267 cases nationwide in which DNA evidence has helped prove wrongful convictions. According to Gary Wells, an Iowa State University psychologist who has studied the problems with eyewitness identification for more than 20 years, it is the number one reason innocent people are wrongfully convicted.[1] The Innocence Project of Florida reports that the same percentage applies in the 12 Florida cases, nine of which involved issues of eyewitness misidentification.[2]

Florida statutes do not currently set forth requirements for law enforcement officers to follow when conducting eyewitness identification procedures during criminal investigations. At least three other states, including North Carolina, Maryland, and Ohio, have enacted statutes regarding eyewitness identification procedures.

There are many variables in eyewitness identification procedures. First, there are different ways to conduct them. For example, in the presentation of photo lineups, there are two main methods: sequential (one photo is shown at the time) and simultaneous (photo array shows all photos at once). Then there are the variables such as what an officer should or should not say to an eyewitness about the procedure, whether the procedure should be videotaped or otherwise recorded, and whether officers have been trained to control body language or other suggestive actions during the procedure.

Some law enforcement agencies, although not statutorily required to follow a particular procedure, have included eyewitness identification procedures in their agency's standard operating procedures. There is no statewide standard, however, and a survey of 230 Florida agencies, conducted by the Innocence Project of Florida, indicated that 37 of those agencies had written policies, while 193 did not.[3]

As Dr. Roy Malpass, a professor in legal psychology at the University of Texas at El Paso and an expert in the field of eyewitness identification, explained during his presentation to the Innocence Commission at its January 2011 meeting, it is important to have protocol compliance. Dr. Malpass also recommended videotaping the identification procedure.

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[1] Presentation to Innocence Commission, Nov. 22, 2010. Gary L. Wells and Deah S. Quinlivan, *Suggestive Eyewitness Identification Procedures and the Supreme Court's Reliability Test in Light of Eyewitness Science: 30 Years Later*, 33 Law & Hum. Behav. 1 (2009). See also Rene Stutzman, "Florida Innocence Commission to cops: Fix photo-lineup problems," Orlando Sentinel (Mar. 21, 2011), *available at* http://articles.orlandosentinel.com/2011-03-21/news/os-innocence-commission-vote-20110321-19_1_lineups-florida-s-innocence-commission-florida-innocence-commisssion.

[2] E-mail correspondence with Seth Miller, Executive Director, Innocence Project of Florida, Mar. 23, 2011.

[3] Survey on file with the Criminal Justice Committee.

Dr. Malpass made further recommendations and offered certain opinions during his presentation to the Innocence Commission in January. These included:

- There is no definitive study showing that sequential or simultaneous presentation is the superior method of presentation, although he believes that sequential administration suppresses all identifications.
- A "confidence statement" from the witness is not a good predictor of accuracy.
- With regard to training on eyewitness identification, much depends upon the "buy-in" of the people being trained.
- Appropriate instructions regarding the procedure should be developed and given to witnesses. For example: the suspect may or may not be in the line-up; there is no requirement to identify a particular person; and if an identification is not made, the investigation will continue.
- There should be no extraneous comments made by law enforcement officers because informal interaction has the potential to create bias.
- The quality of the photo spread is very important.
- "Blind" administration, in which the officer conducting the procedure is unaware of the identity of the suspect, is a good method for use in both sequential and simultaneous administration.[4]

If an agency has a particular protocol in place and the protocol is not followed, the issue becomes ripe for a challenge on the issue of reliability and therefore, admissibility, of the identification evidence at trial. This possibility provides an incentive for protocol compliance. Conversely, if the protocol is followed, motions to suppress should rarely be filed as there is likely no good-faith basis for filing them.

The Florida Supreme Court has ruled on the admissibility of eyewitness identifications at trial as follows:

> The test for suppression of an out-of-court identification is two-fold: (1) whether the police used an unnecessarily suggestive procedure to obtain the out-of-court identification; and (2) if so, considering all the circumstances, whether the suggestive procedure gave rise to a substantial likelihood of irreparable misidentification. *See Thomas v. State*, 748 So.2d 970, 981 (Fla.1999); *Green v. State*, 641 So.2d 391, 394 (Fla.1994); *Grant v. State*, 390 So.2d 341, 343 (Fla.1980). The factors to be considered in evaluating the likelihood of misidentification include:
>
> [T]he opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation. *Grant*, 390 So.2d at 343 (quoting *Neil v. Biggers*, 409 U.S. 188, 199-200, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972)). If the procedures used by the police in obtaining the out-of-court identification were not unnecessarily suggestive, however, the court need not

[4] Innocence Commission meeting minutes, January 2011 meeting.

consider the second part of the test. *See Thomas*, 748 So.2d at 981; *Green*, 641 So.2d at 394; *Grant*, 390 So.2d at 344.[5]

Very recently, a central Florida trial court judge has found himself focused on the issue of eyewitness identification after a woman was wrongfully convicted of a crime based on the testimony of three eyewitnesses in his courtroom.[6] The state filed a motion to set aside the conviction, and she has since been released from jail. Then in a robbery case that was set for trial before the same central Florida judge, a defense attorney successfully argued last month for a special jury instruction on eyewitness identification.[7] The state is appealing the court's ruling on the special instruction.

Florida Innocence Commission

During the 2010 Regular Session, the Legislature provided funding for the creation of commission to study the causes of wrongful conviction and subsequent incarceration. In response, the Florida Supreme Court established the Florida Innocence Commission "to conduct a comprehensive study of the causes of wrongful conviction and of measures to prevent such convictions."[8] The commission shall submit an interim report to the Court no later than June 30, 2011, and a final report and recommendations no later than June 30, 2012.[9] At its March 21, 2011, meeting, the commission vote to support legislation that would prescribe procedures law enforcement officers must follow when they are conducting photo and live lineups with eyewitnesses to crimes.[10]

III. Effect of Proposed Changes:

The bill creates a new section of Florida Statutes relating to eyewitness identifications in criminal cases. It is a comprehensive bill that sets forth specific procedures that law enforcement agencies must implement when conducting lineups.

The bill provides definitions of common terms relating to eyewitness identification procedures used in the law enforcement community.

Under the provisions of the bill, law enforcement must fulfill certain criteria in conducting a lineup. The bill also provides remedies should the requirements of the lineup procedure not be followed in conducting the lineup.

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[5] *Rimmer v. State*, 825 So. 2d 304 (Fla. 2002).
[6] Anthony Colarossi, "Anatomy of a botched conviction: How was innocent Haitian woman convicted?," Orlando Sentinel (Oct. 2, 2010), *available at* http://articles.orlandosentinel.com/2010-10-02/news/os-anatomy-botched-conviction-20101002_1_kittsie-simmons-malenne-joseph-officer-jose-m-varela/4.
[7] Anthony Colarossi, "Jurors in robbery trial asked to consider whether to believe eyewitness testimony," Orlando Sentinel (Feb. 17, 2011), *available at* http://articles.orlandosentinel.com/2011-02-17/news/os-witness-identification-motion-20110217.
[8] Fla. Supreme Court, Admin. Order No. AOSC10-39, *In Re: Florida Innocence Commission* (July 2, 2010).
[9] *Id*. at 2.
[10] Stutzman, *supra* note 1.

Lineup Procedures

Prior to the lineup, officers are required to give the eyewitness five instructions. These are:

1) The perpetrator might or might not be in the lineup;
2) The lineup administrator does not know the suspect's identity;
3) The eyewitness should not feel compelled to make an identification;
4) It is as important to exclude innocent persons as it is to identify the perpetrator; and
5) The investigation will continue with or without an identification.

The eyewitness must be given a copy of these instructions. If he or she refuses to sign a document acknowledging receipt of the instructions, the lineup administrator is directed to sign it and make a notation of the eyewitness refusal.

An independent administrator must conduct the lineup. This approach is sometimes referred to as a "blind" administration. The independent administrator is not participating in the investigation and does not know the identity of the suspect. This is one element of the scientific studies on eyewitness identification which is most agreed upon by the scholars in the area of study as being critical to untainted suspect identification.

In the case of photo lineups, the bill provides that an alternative method may be used in lieu of an independent administrator if the method is specified and approved by the Criminal Justice Standards and Training Commission. Two required features of any alternative method are: achieving neutral administration and preventing the administrator from knowing which photograph is being presented to the eyewitness. The alternative methods may include:

- Using automated computer programs that administer the photo lineup directly to the eyewitness in a manner such that the administrator cannot see which photograph is being viewed;
- Placing photographs in folders, randomly numbered, and shuffling them, and then presenting them in a manner such that the administrator cannot see which photograph is being viewed; or
- Employing any other procedure that achieves neutral administration and prevents the administrator from knowing which photograph is being presented.

Remedies for Noncompliance

The court may consider noncompliance with the statutory suspect identification procedures when deciding a motion to suppress the identification from being presented as evidence at trial. The court may allow the jury to hear evidence of noncompliance in support of claims of eyewitness misidentification raised by the defendant.

The bill also provides that the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications. Jury instructions must be adopted by the Florida Supreme Court; therefore, this particular part of the bill will require action by the Court after it is presented with a proposed instruction for consideration. Standard Jury Instructions for criminal cases are quite often proposed and adopted

based upon the Legislature's revision of the criminal statutes, soon after the end of each legislative session. However, in the meantime, an attorney could present his or her own proposed instruction to the trial court, and it could be given to the jury. The trial court has the prerogative to give instructions outside the Standard Jury Instructions; however, the court runs the risk of that issue being raised on appeal.

Education and Training

The bill requires the Criminal Justice Standards and Training Commission, in consultation with the Florida Department of Law Enforcement, to develop educational materials and conduct training programs for law enforcement on the eyewitness identification procedures set forth in the bill.

Effective Date

The bill has a July 1, 2011, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The use of lineups with eyewitnesses to crimes occurs on a limited basis in most law enforcement organizations. Nonetheless, smaller law enforcement agencies, in particular, may experience some fiscal impact from the implementation of the requirements of this bill.

Agencies that have few officers on a shift at any given time may have to call in additional officers anytime a lineup that requires an independent administrator is conducted due to the fact that all or most officers on the shift are a part of the investigation. An officer who has knowledge of the identification of a suspect would not be eligible to conduct the lineup under the provisions of the bill.

The bill directs the Criminal Justice Standards and Training Commission to create educational materials and conduct training programs on compliance with the lineup procedures. In addition, the bill authorizes the use of an alternative method, in lieu of an independent administrator, in the case of photo lineups. The alternative method must be specified and approved by the commission. The commission may experience costs or workload impacts related to these requirements.

Regarding specialized training, currently law enforcement training on eyewitness identification procedures in Florida, provided by the Criminal Justice Standards and Training Commission, occurs at the Basic Recruit Training Level. Some agencies have indicated that statewide training requirements are more costly than in-house training; therefore those agencies would experience a fiscal impact if statewide training on eyewitness identification procedures is required.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Judiciary on April 4, 2011:
The committee substitute adds provisions authorizing, in lieu of an independent administrator, the use of an alternative method for photo lineups, provided the method achieves neutral administration and prevents the administrator from knowing which photograph is being presented to the witness. The alternative methods must be specified and approved by the Criminal Justice Standards and Training Commission and may include:

- Using automated computer programs that administer the photo lineup directly to the eyewitness in a manner such that the administrator cannot see which photograph is being viewed;
- Placing photographs in folders, randomly numbered, and shuffling them, and then presenting them in a manner such that the administrator cannot see which photograph is being viewed; or

- Employing any other procedure that achieves neutral administration and prevents the administrator from knowing which photograph is being presented.

CS by Criminal Justice on March 28, 2011:
The committee substitute deleted details related to the lineup procedures provided for in the original bill, including:

- Restrictions on the type of photograph of the suspect and fillers that must be utilized in a particular case;
- The number of fillers that must be used;
- The placement of the suspect in the live or photographic lineup for each witness;
- Restrictions on eyewitness contact with live lineup participants;
- Requirements for live lineup participants performing gestures, speech, or other movements;
- Prohibition on communication with the eyewitness regarding the suspect's position in the lineup or other influential communication;
- Procurement of an eyewitness's "confidence statement" by the lineup administrator;
- Separation of witnesses from one another; and
- Videotaping or audiotaping the lineup procedure, or if neither is practical, a full written record by the lineup administrator including the nine requirements set forth in the bill.

The committee substitute also removed the alternative method for identification provided for in the bill.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/CS/SB 846
INTRODUCER:	Judiciary Committee; Criminal Justice Committee; and Senators Benacquisto and Gaetz
SUBJECT:	Prevention of Child Exploitation
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	Boland	Maclure	JU	**Fav/CS**
3.	Sadberry	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill amends the statute prohibiting possession of child pornography to extend its prohibitions to controlling or intentionally viewing child pornography. However, the bill adds a provision that specifies that the prohibition on intentional viewing of child pornography does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation. The bill specifically adds an "image," "data," and "computer depiction" to the enumeration of the items that cannot be possessed, controlled, or viewed. The bill defines "intentionally view" to mean to deliberately, purposefully, and voluntarily view. It specifies that proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

The bill amends a section of the Florida Statutes that lists the level-five offenses for purposes of the offense severity ranking chart to add the offenses of controlling or intentionally viewing child pornography to that list.

This bill substantially amends sections 827.071, and 921.0022, Florida Statutes.

II. Present Situation:

Section 827.071(5), F.S., prohibits a person from possessing a photograph, motion picture, exhibition, show, representation, or other presentation that he or she knows to include any sexual conduct by a child in whole or in part. Violation of the statute is a third-degree felony ranked at Level 5 of the Criminal Punishment Code, punishable by up to five years in prison. A computer image falls within the definition of the proscribed materials.[1]

While it is clear that it is illegal to knowingly possess child pornography, in the computer age it is much more difficult to determine whether a person knowingly possesses an image of child pornography. It is clear that intentionally saving an image to a computer hard drive constitutes knowing possession. However, courts in a number of states have held that an image is not knowingly possessed if it is on a computer hard drive because it has been automatically saved as a temporary Internet file. In Florida and many other states, viewing child pornography without possessing or distributing it is not a crime. In *Strouse v. State*, the Fourth District Court of Appeal noted that "passive viewing on the Internet of child pornography does not violate the law because viewing does not constitute possession."[2] However, the court upheld the defendant's conviction because it concluded that testimony given by his girlfriend was sufficient to establish that the child pornography on his computer was not merely an automatically stored temporary Internet file. Without the girlfriend's testimony, it is likely that the defendant would have been acquitted.[3]

In reaching its conclusion in *Strouse*, the appellate court considered federal court decisions that addressed the possession issue:

> Federal courts have analyzed the issue of temporary Internet files in the context of the federal child pornography statute. In *United States v. Perez,* the court held the mere viewing of a child pornographic image does not constitute knowing possession of the image under 18 U.S.C. § 2252A(a)(5)(B). 247 F.Supp.2d 459, 484 n. 12 (S.D.N.Y.2003) (citing *United States v. Zimmerman*, 277 F.3d 426, 435 (3d Cir.2002)). However, the court acknowledged that "knowing possession" should be based upon the manner in which the defendant manages the files. *Id.*, (citing *United States v. Tucker*, 305 F.3d 1193, 1205 (10th Cir.2002) (upholding a conviction based on automatically stored files because the defendant habitually deleted the temporary files manually, demonstrating that he exercised control over them), *cert. denied,* 537 U.S. 1223, 123 S.Ct. 1335, 154 L.Ed.2d 1082 (2003)).[4]

In 2008, Congress resolved this issue for federal courts by amending 18 U.S.C. § 2252A(a)(5)(B) to criminalize the conduct of a person who "knowingly accesses with intent to view" child pornography.

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[1] *State v. Cohen*, 696 So. 2d 435, 436 (Fla. 4th DCA 1997).
[2] *Strouse v. State*, 932 So. 2d 326 (Fla. 4th DCA 2006).
[3] *Id*. at 329.
[4] *Id*.

III. Effect of Proposed Changes:

The bill amends in several ways the statute governing sexual performance by a child, s. 827.071, F.S. It adds a prohibition against "controlling" or "intentionally viewing" child pornography. As previously noted, the existence of a temporary Internet image file of child pornography on a computer hard drive is not "possession" in violation of the statute unless there is proof that the image was intentionally saved. The bill criminalizes the intentional viewing of child pornography. Therefore, temporary Internet files of child pornography images found on a computer could be used as evidence that a person was intentionally viewing prohibited material. For example, a prosecutor could argue that the existence of numerous temporary Internet files on a hard drive indicates that someone intentionally viewed the images. If the prosecutor is able to offer sufficient proof that the defendant was the person who intentionally viewed the images, a judge or jury may conclude that the defendant is guilty of intentionally viewing child pornography.

The changes made by the bill could create a situation in which a person could potentially be convicted based upon testimony that he or she was observed viewing child pornography (either on a computer or in another form) even if there is no physical evidence to corroborate the testimony. As in all cases, the judge or jury would be required to determine whether such testimony proved the defendant's guilt beyond a reasonable doubt.

The bill defines "intentionally view" to mean deliberately, purposefully, and voluntarily viewing. It specifies that proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time. This clearly does not include inadvertent or unintentional viewing that might happen, for example, if a person is using the Internet and an image of child pornography pops up on a computer screen, or the person accidently accesses a site with child pornography. However, the decision of whether to charge a person with "intentional viewing" is up to the discretion of the prosecutor, and ultimate conviction depends upon the judge or jury concluding that the charge has been proven beyond a reasonable doubt. Furthermore, the statement that proof of intentional viewing requires establishing more than a single image over a period of time does provide additional protection against any possible prosecutions for accidental or inadvertent viewing that might occur.

The addition of a prohibition against "controlling" an image of child pornography addresses emerging technologies. A person can maintain images of child pornography on a remote server ("in the cloud") and control what happens to the image, even though arguably the person does not possess the image. It is possible that the prohibition against "controlling" images could be used to prosecute such cases in the unusual situation when there is insufficient evidence of distributing, transmitting, or intentionally viewing an image.

The bill also adds "image," "data," and "computer depiction" as specific materials to which the prohibition against possession, controlling, or intentionally viewing materials that include sexual conduct by a child are applied. It appears that possession of any of these materials is prohibited under the current statute as either a "photograph" or under the more general categories of

"presentation" or "other representation."[5] However, specifically adding the terms removes any question as to whether they are among the materials that are prohibited.

Additionally, the bill adds a provision specifying that the prohibition on intentional viewing of child pornography does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

The bill amends s. 921.0022(3)(e), F.S., which is Level 5 of the Offense Severity Ranking Chart in the Criminal Punishment Code, to incorporate the amendments to s. 827.071, F.S.

The bill provides an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference found that the bill would have an indeterminate fiscal impact.[6]

VI. Technical Deficiencies:

None.

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[5] *See, e.g.*, note 1, citing the opinion in *State v. Cohen*, holding that a computer image falls within the definition of the proscribed materials.

[6] Office of Economic and Demographic Research, Criminal Justice Impact Conference, *Conference Results*, *available at* http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Judiciary on April 12, 2011:
The committee substitute amends the original bill in the following ways:

- Adds a provision after the definition of "intentionally view" that specifies that proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time; and
- Adds a provision that states that the prohibition on knowingly possessing, controlling, or intentionally viewing child pornography does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

CS by Criminal Justice on April 4, 2011:
"Image," "data," and "computer depiction" are specifically added to the enumeration of the items that cannot be possessed, controlled or viewed. This removes any question as to whether they are included among more general categories that are already in the statute.

B. Amendments:

None.

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 Budget Committee

BILL:	CS/SB 438
INTRODUCER:	Criminal Justice Committee and Senator Hill
SUBJECT:	Injunctions for Protection
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.	Boland	Maclure	JU	**Favorable**
3.	Hendon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill requires the Florida Association of Court Clerks and Comptrollers, subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Such notification must be made within 12 hours after the sheriff or other law enforcement officer serves the protective injunction.

This bill amends sections 741.30 and 784.046, Florida Statutes.

II. Present Situation:

Protective Injunctions

In 2005, it was estimated that more than 1.5 million adults in the United States are victims of domestic violence each year, and more than 85 percent of the victims are women.[1] In Florida,

[1] Margaret Graham Tebo, *When Home Comes to Work*, ABA JOURNAL (Sept. 2005), *available at* http://www.abajournal.com/magazine/when_home_comes_to_work/ (last visited Mar. 10, 2011) (citing statistics from Legal Momentum, an advocacy and research organization based in New York City); *see also* Nat'l Coalition Against Domestic

113,123 incidents of domestic violence were reported in 2008, which is 1.8 percent less than what was reported for the same period in 2007.[2] Additionally, statistics show that one in five high school girls has reported being physically or sexually abused by a dating partner, and females ages 16 through 24 are three times more vulnerable for partner violence than any other age group.[3]

An injunction for protection is a civil order that provides protection from abuse by certain people. An injunction can order the abuser to do certain things (such as moving out of the house), to not do certain things (such as contacting the victim), or it can give the victim certain rights (such as temporary custody of any children).[4] In 1979, the Florida Legislature created a cause of action for an injunction for protection against domestic violence, and in 1988 a cause of action for an injunction for protection against repeat violence, sexual violence, or dating violence was also created.[5]

A victim of domestic violence[6] or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence may seek protective injunctive relief.[7] Additionally, a victim of repeat violence,[8] sexual violence,[9] or dating violence[10] may seek protective injunctive relief.[11]

Florida law requires that within 24 hours after the court issues or modifies an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence, the

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Violence, *Domestic Violence Facts*, http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf (last visited Mar. 10, 2011).

[2] Florida Dep't of Law Enforcement, *Crime in Florida* (Jan.-Dec. 2008), http://www.fdle.state.fl.us/Content/getdoc/4f6a6cd0-6479-4f4f-a5a4-cd260e4119d8/CIF_Annual08.aspx (last visited Mar. 10, 2011).

[3] American Bar Association, *Teen Dating Violence Facts* (2006), http://www.abanet.org/unmet/teendating/facts.pdf (last visited Mar. 3, 2010).

[4] *Injunctions for Protection Against Domestic Violence* (Feb. 3, 2010), http://www.womenslaw.org/laws_state_type.php?id=496&state_code=FL (last visited March 10, 2011).

[5] See chs. 79-402, s. 1, and 88-344, s. 1, Laws of Fla.

[6] Domestic violence is defined as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Section 741.28(2), F.S.

[7] Section 741.30(1), F.S.

[8] Section 784.046(1)(b), F.S., defines repeat violence as "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member."

[9] Sexual violence is defined as any one incident of "1. Sexual battery, as defined in chapter 794; 2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in chapter 787; 4. Sexual performance by a child, as described in chapter 827; or 5. Any other forcible felony wherein a sexual act is committed or attempted." For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

[10] Dating violence is defined as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature." The following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six months; (2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. Section 784.046(1)(d), F.S.

[11] Section 784.046(2), F.S.

clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The following requirements must be followed when serving the injunction:

- The law enforcement officer must forward the written proof of service of process to the sheriff within 24 hours after service of process of a domestic violence protective injunction upon a respondent;
- The sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement (FDLE) within 24 hours after the sheriff receives a certified copy of the protective injunction; and
- The sheriff must make such information relating to the service available to other law enforcement agencies by electronically transmitting such information to the FDLE within 24 hours after the sheriff or other law enforcement officer makes service upon the respondent and the sheriff has been so notified.[12]

Victim Notification

Section 960.001, F.S., provides guidelines for the fair treatment of victims and witnesses involved in the criminal and juvenile justice systems. Specifically, the purpose of the guidelines is to achieve specified objectives in the following categories:

- Information concerning services available to victims of adult and juvenile crime;
- Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim;
- Information concerning protection available to victim or witness;
- Notification of scheduling changes;
- Advance notification to victim or relative of victim concerning judicial proceedings; right to be present;
- Information concerning release from incarceration from a county jail, municipal jail, juvenile detention facility, or residential commitment facility;
- Consultation with victim or guardian or family of victim;
- Return of property to victim;
- Notification to employer and explanation to creditors of victim or witness;
- Notification of right to request restitution;
- Notification of right to submit impact statement;
- Local witness coordination services;
- Victim assistance education and training;
- General victim assistance;
- Victim's rights information card or brochure;
- Information concerning escape from a state correctional institution, county jail, juvenile detention facility, or residential commitment facility;
- Presence of victim advocate during discovery deposition; testimony of victim of a sexual offense;

[12] See ss. 741.30(8)(c)2.-4., and 784.046(8)(c)2.-4., F.S.

- Implementing crime prevention in order to protect the safety of persons and property, as prescribed in the State Comprehensive Plan;
- Attendance of victim at same school as defendant;
- Use of a polygraph examination or other truth-telling device with victim; and
- Presence of victim advocates during forensic medical examination.

Essentially, victims have the right to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused.

Upon the request of the victim (or the appropriate next of kin or designated contact), the chief administrator of a county jail, municipal jail, juvenile detention facility, or residential commitment facility must make a reasonable attempt to notify the requestor prior to the defendant's or offender's release from incarceration. However, victims (or the appropriate next of kin or designated contact) of specified offenses[13] must be notified within four hours by the chief administrator about the release of an offender or defendant from incarceration in any of the above facilities or the release of an offender or defendant following sentencing, disposition, or furlough.[14]

If an offender escapes from a state correctional institution or any of the above facilities, then the institution of confinement must immediately notify the state attorney of the jurisdiction where the criminal charge arose and the judge who imposed the sentence. The state attorney must then make every effort to notify the victim, material witness, parents or legal guardian of a minor who is a victim or witness, or immediate relatives of a homicide victim of the escapee.[15]

The Department of Corrections (DOC or department) is required by law to notify, if requested, the state attorney, victim, or personal representative of the victim when an inmate has been approved for community work release within 30 days after the date of approval.[16] The department is also required to notify the victim six months before the release of an inmate from the custody of the department.[17] In addition, if an inmate is a sexual offender,[18] DOC is required, if requested, to notify the victim of the offense, the victim's parent or legal guardian if the victim is a minor, the lawful representative of the victim, or the next of kin if the victim is a homicide victim, within six months prior to the anticipated release of a sexual offender, or as soon as possible if the sexual offender is released earlier than anticipated.[19]

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[13] These offenses include homicide, sexual offense, an attempted murder or sexual offense, stalking, or domestic violence. See s. 960.001(1)(b), F.S.
[14] Section 960.001(1)(f), F.S.
[15] Section 960.001(1)(p), F.S.
[16] Section 944.605(6), F.S.
[17] Section 944.605(1), F.S.
[18] Section 944.606, F.S., defines "sexual offender" as "a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection."
[19] Section 944.606(3)(b), F.S.

III. Effect of Proposed Changes:

This bill requires (in addition to the notice requirements on law enforcement for serving an injunction for protection) that the Florida Association of Court Clerks and Comptrollers, subject to available funding, develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence, as well as other court actions related to the injunction. The association must apply for any available grants to help fund the notification system. Notification must be made within 12 hours after the sheriff or other law enforcement officer has served the protective injunction. The notification must include, at a minimum, the location, date, and time that the protective injunction was served.

This bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the Florida Association of Court Clerks and Comptrollers to develop an automated process so that a petitioner may request notification of service of an injunction for protection. However, the bill specifies that the association is only required to develop the automated process if it has available funding. It is unclear how the determination will be made that sufficient funding is available for the association to comply with the bill's requirements. The association has stated that a determined funding amount and the source

of the funding need to be established in order for the association to comply with the bill.[20] In its agency analysis of the bill, the Florida Association of Court Clerks and Comptrollers found that the bill would have an indeterminate policy and fiscal impact on the office of the clerk.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 14, 2011:
The committee substitute:

- Updates the name of the Florida Association of Court Clerks to the Florida Association of Court Clerks and Comptrollers.
- Requires the association to apply for available grants to fund the notification system.

B. Amendments:

None.

[20] Correspondence from Fred Baggett, General Counsel, Fla. Ass'n of Court Clerks and Comptrollers, to Senator Anthony Hill (Mar. 25, 2010) (on file with the Senate Committee on Judiciary).
[21] Florida Association of Court Clerks and Comptrollers, Agency Analysis of SB 438, March 9, 2011 (on file with the Senate Committee on Judiciary).

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 Budget Committee

BILL:	SB 1494
INTRODUCER:	Senator Evers
SUBJECT:	Interstate Compact for Juveniles
DATE:	April 9, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Favorable**
2.	Sadberry	Sadberry	BJA	**Favorable**
3.	Sadberry	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill reenacts the statutes relating to the Interstate Compact for Juveniles (compact) and the State Council for Interstate Juvenile Offender Supervision (council) that expired by operation of law on August 26, 2010. The compact governs interstate movement of juveniles on probation and parole as well as extradition across state lines of runaways, escapees, absconders and juveniles charged as delinquent. The compact became effective in August 2008. However, there was also a two year sunset provision that began running when the compact became effective and it caused the compact to expire in August 2010. In order to reinstate the compact, Florida must reenact the laws governing the compact. As such, the bill reenacts the compact to do the following:

- Create the Interstate Commission for Juveniles (Interstate Commission), which is an independent compact administrative agency with the authority to administer ongoing compact activity;
- Provide rule making authority for the Interstate Commission;
- Establish a mechanism for all states to collect standardized information and information systems;
- Provide for sanctions against states that do not follow compact rules and regulations;
- Provide for gubernatorial appointments of representatives from member states to the Interstate Commission;
- Provide a mandatory funding mechanism sufficient to support essential compact operations;
- Provide for coordination and cooperation with other interstate compacts; and
- Require the creation of a state council.

This bill reenacts sections 985.802 and 985.5025 of the Florida Statutes.

II. Present Situation:

In 2005, the Legislature passed legislation[1] that revised and updated provisions of the Interstate Compact on Juveniles (compact), which provided for cooperation among states in supervising and returning juveniles who have run away or escaped from detention across state boundaries.[2] The revised compact did the following:

- Created the Interstate Commission, which is an independent compact administrative agency with the authority to administer ongoing compact activity;
- Required the Interstate Commission to establish an executive committee to oversee the day-to-day activities of the administration of the compact and to act on behalf of the Interstate Commission when it is not in session;
- Mandated that the Interstate Commission meet at least annually to attend to general business, rule-making, and enforcement procedures and that each member-state must appoint one voting commissioner to represent that state's interests on the Interstate Commission;
- Delegated rule-making authority to the Interstate Commission and made provisions for sanctions to administer and enforce the operation of the compact;
- Provided a mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, and training/education);
- Provided for collection of standardized information and information sharing systems;
- Provided for the coordination and cooperation with other interstate compacts which have "overlapping" jurisdiction (for example, the Interstate Compact on the Placement of Children and the Interstate Compact for Adult Offender Supervision); and
- Mandated states create a State Council for Interstate Juvenile Offender Supervision (council) comprised of a compact administrator, a representative from each of the three branches of government, a victim's advocate, and a parent of a youth not in the juvenile justice system, to oversee state participation in the activities of the Interstate Commission.

Additionally, this legislation created the State Council for Interstate Juvenile Offender Supervision (council)[3] to comply with the requirements of Article IX of the compact as follows:

- Required that the council consist of seven members comprised of the Secretary of the Department of Juvenile Justice (DJJ), the compact administrator or his or her designee, the Executive Director of the Department of Law Enforcement (FDLE) or his or her designee, and four remaining members to be appointed by the Governor, who may delegate this appointment power to the Secretary of DJJ in writing on an individual basis;
- Provided that appointees may include one victim's advocate, employees of the Department of Children and Family Services (DCF), employees of the FDLE who work with missing or exploited children, and a parent;

[1] HB 577, ch. 2005-80, L.O.F., s. 985.502, F.S.
[2] In FY 2009-10, Florida provided cooperative supervision for 2,828 juveniles. It also returned 427 absconders, escapees, failed placements, and delinquent juveniles to other states, according to the DJJ's 2011 Agency Proposal re Interstate Compact for Juveniles (on file with the Senate Criminal Justice Committee in Tallahassee, Florida).
[3] Section 985.5025, F.S., HB 577, ch. 2005-80, L.O.F.

- Applied provisions of public records/open meetings requirements to the council's proceedings and records;
- Supplied terms of office, record storage, property transfer, and reimbursement for travel and per diem expenses; and
- Created additional duties and responsibilities for the compact administrator.

The legislation provided that the compact was to become effective on July 1, 2005, or upon ratification of the thirty-fifth state, whichever occurred later. The compact became effective in August 2008 after the thirty-fifth state joined.[4] However, there was also a two year sunset provision that began to run when the compact became effective and it caused the compact to expire in August 2010. In order to reinstate the compact, Florida must reenact the laws governing the compact.[5]

III. Effect of Proposed Changes:

The bill reenacts the statutes relating to the Interstate Compact for Juveniles (compact) and the State Council for Interstate Juvenile Offender Supervision (council) that expired by operation of law on August 26, 2010.[6] The compact governs interstate movement of juveniles on probation and parole as well as extradition across state lines of runaways, escapees, absconders and juveniles charged as delinquent. The bill reenacts the compact to do the following:

- Create the Interstate Commission, which is an independent compact administrative agency with the authority to administer ongoing compact activity;
- Provide rule making authority for the Interstate Commission;
- Establish a mechanism for all states to collect standardized information and information systems;
- Provide for sanctions against states that do not follow compact rules and regulations;
- Provide for gubernatorial appointments of representatives from member states to the Interstate Commission;
- Provide a mandatory funding mechanism sufficient to support essential compact operations;
- Provide for coordination and cooperation with other interstate compacts; and
- Require the creation of state councils.

The bill also reenacts the Interstate Juvenile Offender Supervision Council (council) to do the following:

- Require that the council consist of seven members comprised of the Secretary of the DJJ, the compact administrator or his or her designee, the Executive Director of the FDLE or his or her designee, and four remaining members to be appointed by the Governor, who may delegate this appointment power to the Secretary of DJJ in writing on an individual basis;
- Provide that appointees may include one victim's advocate, employees of the DCF, employees of the FDLE who work with missing or exploited children, and a parent;

[4] The DJJ 2011 Agency Proposal re Interstate Compact for Juveniles (on file with the Senate Criminal Justice Committee in Tallahassee, Florida).
[5] *Id.*
[6] *Id.*

- Apply provisions of public records/open meetings requirements to the council's proceedings and records;
- Supply terms of office, record storage, property transfer, and reimbursement for travel and per diem expenses; and
- Create additional duties and responsibilities for the compact administrator.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Florida's annual dues for participation in the State Council for Interstate Juvenile Offender Supervision is $37,000. The aggregated annual assessment is allocated based on a formula determined by the commission. Florida, along with California and Texas, is one of the top three states by size.[7]

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the DJJ, this bill is necessary because it reenacts a crucial tool ensuring public safety and preserving child welfare within the State. With the compact currently repealed, the

[7] *Id.*

mechanism by which Florida manages the interstate movement of juvenile offenders and status offenders no longer exists.[8]

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.

[8] The DJJ 2011 Agency Proposal re Interstate Compact for Juveniles (on file with the Senate Criminal Justice Committee in Tallahassee, Florida).

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 Budget Committee

BILL:	CS/SB 580
INTRODUCER:	Community Affairs Committee and Senator Oelrich
SUBJECT:	Residential Building Permits
DATE:	April 12, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Fav/CS**
2.	Oxamendi	Imhof	RI	**Favorable**
3.	Martin	Meyer, C.	BC	**Premeeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This committee substitute (CS) prohibits a local enforcement agency, and any local building code administrator, inspector, or other official or entity from requiring the inspection of any portion of a building, structure, or real property that is not directly related to the activity for which a permit is sought as a condition for issuance of a one- or two-family residential building permit.

The CS provides that this act does not apply to a building permit that is sought for substantial improvements, a change in occupancy, conversions from residential to nonresidential or mixed use, and historic buildings. The CS further states that this act does not prohibit a local enforcement agency, or any local building code administrator, inspector, or other official or entity from engaging in certain specified acts.

The provisions of this act shall expire upon being adopted into the Florida Building Code.

This CS substantially amends section 553.79 of the Florida Statutes.

II. Present Situation:

The Florida Building Code

The purpose and intent of the Florida Building Codes Act, located in part IV of ch. 553, F.S., is "to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single unified state building code," known as the Florida Building Code.[1] Section 553.72, F.S., defines the Florida Building Code (code) as a "single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state" which establishes minimum standards that shall be enforced by authorized state and local government enforcement agencies. The code consists of seven volumes, which include: Building, Residential, Mechanical, Plumbing, Fuel Gas, Existing Building, and Test Protocols for High-Velocity Hurricane Zones.

Florida Building Commission

The Florida Building Commission (commission) is established in ch. 553, F.S., within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.[2] The commission is responsible for adopting and enforcing the code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.[3] The commission is required to update the code triennially based upon the "code development cycle of the national model building codes, ..."[4] Pursuant to s. 553.73, F.S., the commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the code.[5]

Section 553.79(9), F.S., allows state agencies whose enabling legislation authorizes the enforcement of the code to enter into agreements with other governmental units in order to delegate their code enforcement powers and to utilize public funds for permit and inspection fees so long as the fees are not greater than the fees charged to others.

Building Permits

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity from constructing, erecting, altering, modifying, repairing, or demolishing any building within this state without first obtaining a permit from the appropriate enforcing agency.[6] An enforcing agency may not issue a permit for these activities until the local building code administrator or inspector has reviewed the plans and specifications required by the code to ensure compliance with the code and until a certified firesafety inspector ensures compliance with the Florida Fire Prevention Code.

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[1] Section 553.72(1), F.S.
[2] *See* s. 553.74(1)(a)-(w), F.S.
[3] Sections 553.73 and 553.74, F.S.
[4] Florida Building Commission, *Report to the 2009 Legislature,* at 2 (January 2009) (on file with the Florida Senate Committee on Regulated Industries).
[5] *See also* ss. 553.76, 553.775, and 553.73(7), F.S., respectively.
[6] Section 553.79(1), F.S.

Existing Building Permits.—The Existing Buildings Volume of the code provides construction requirements for the repair, alteration, change of occupancy, addition, and relocation of existing buildings.[7] According to the DCA, the following situations are examples of construction activities that may require the inspection of an existing building or structure prior to issuing a permit for the proposed improvement:

- Change of occupancy - A permit may be necessary to substantiate the proposed improvements and insure that the existing building systems are sufficient to accommodate the new occupancy classification;
- Repair to damaged buildings - A full inspection of a damaged building may be necessary before issuing a permit for improvement to ensure that the proposed improvements will eliminate any existing dangerous conditions; and
- Addition or modification - A permit may be necessary to determine whether the proposed addition/modification would impact the existing building or structure, and whether the addition creates or extends any nonconformity in the existing building to which the addition is being made in regards to accessibility, structural strength, fire safety, means of egress, or the capacity of mechanical, plumbing, or electrical systems.

Local Code Enforcement.—According to the DCA, it is commonplace for local governments to adopt the International Property Maintenance Code through a local ordinance in order to establish minimum maintenance requirements for existing buildings, and to provide authority to inspect such existing buildings or structures for property maintenance, code violation, and unsafe structures.[8]

Florida Fire Prevention Code.—The Florida Fire Prevention Code has been adopted by the State Fire Marshal and is enforced locally by the local fire officials. The Florida Fire Prevention Code is updated every three years and contains all firesafety regulations relating to the construction and modification of building structures.[9] The State Fire Marshal is required to notify local fire departments no later than 180 days prior to the triennial adoption of the Florida Fire Prevention Code in order to consider whether local amendments should be implemented. The Florida Fire Prevention Code also applies to existing buildings, to the extent that the local fire official determines that a threat to firesafety or property exists.

Classification of Residential Buildings

Chapter 3 of the code classifies the term "residential building" to include single-family dwellings, two-family dwellings, multi-family dwellings, transient residential buildings, adult care facilities, and childcare facilities.[10]

Pursuant to s. 310 of the Florida Building Code, Residential Group R includes the use of a building or structure, or a portion thereof, for sleeping purposes. Residential Group R is broken

[7] Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 3 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).
[8] *Id.* at 4.
[9] Section 633.0215(1), F.S.
[10] Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 2 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).

down into four groups labeled R-1 through R-4, which are based on the residential occupancy of the structure.[11] The residential group occupancy classifications are as follows:

- Group R-1 are residential occupancies containing sleeping units where the occupants are primarily transient in nature. R-1 occupancies include transient boarding houses, hotels and motels;
- Group R-2 are residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature. R-2 occupancies include apartment houses, non-transient boarding houses, convents, dormitories, fraternities/sororities, non-transient hotels and motels, monasteries, and vacation timeshare properties;
- Group R-3 are residential occupancies where the occupants are primarily permanent in nature and are not classified as Group R-1, R-2, R-4 or Institutional Group I. R-3 occupancies include buildings that do not contain more than two dwelling units, adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours, and congregate living facilities with 16 or fewer persons; and
- Group R-4 are residential occupancies that include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.[12]

Substantial improvements to a building is defined in s. 161.54(12), F.S. Among other things, the definition provides that substantial improvements mean:

> any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either:
> (a) Before the improvement or repair is started; or
> (b) If the structure has been damaged and is being restored, before the damage occurred.[13]

Section 553.507(2)(a), F.S., provides an exemption from the provisions of the "Florida Americans With Disabilities Accessibility Implementation Act"[14] for when "the building, structure, or facility is being converted from residential to nonresidential or mixed use, as defined by local law."

III. Effect of Proposed Changes:

This CS creates subsection (17) of s. 552.79, F.S., to prohibit a local enforcement agency, local building code administrator, inspector, and other officials and entities from requiring the inspection of any portion of a building, structure, or real property that is not directly related to the construction, erection, alteration, modification, repair, or demolition for which a permit is sought, as a condition for issuance of a one- or two-family residential building permit.

[11] *Id.*
[12] *Id.* at 2-3.
[13] This definition is also cross-referenced in s. 399.15(1)(b), F.S.
[14] *See* ss. 553.501-553.513, F.S.

The CS does not apply to a building permit that is sought for:

- A substantial improvement, as defined in s. 161.54 F.S., or the code;
- A change of occupancy, as defined in the code;
- A conversion from residential to nonresidential or mixed use pursuant to s. 553.507(2)(a), F.S., or the code; and
- An historic building, as defined in the code.

This CS does not prohibit a local enforcement agency, or any local building code administrator, inspector, or other official or entity from:

- Citing a violation that was inadvertently observed in plain view during the course of an inspection conducted in accordance to this act;
- Inspecting a physically nonadjacent portion of the building, structure, or real property that is directly impacted by the activity for which the permit is sought;
- Inspecting any portion of the building, structure, or real property in which the owner or person having control has voluntarily consented to such inspection; and
- Inspecting any portion of the building, structure, or real property pursuant to an inspection warrant issued in accordance to ss. 933.20-933.30, F.S.

The CS provides that s. 553.79(17), F.S., shall expire upon the Secretary of State's receipt of written certification by the chair of the commission that the commission has adopted an amendment to the code that has substantially incorporated the provisions of this subsection and that such amendment has taken effect.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the proponents of the bill, it would help streamline the permitting process by limiting the inspections to only the portion of the real property that is directly being affected.

C. Government Sector Impact:

Local enforcement agencies and other officials and entities will not be allowed to require, as a condition of issuance of a one- or two-family residential building permit, to inspect any portion of a building, structure, or real property that is not directly related to the activity for which a permit is sought.

The Department of Community Affairs has articulated that this CS may impede local code enforcement authorities' ability to inspect and determine whether an existing structure is unsafe.[15]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The CS provides that s. 553.79(17), F.S., shall expire upon the Secretary of State's receipt of written certification by the chair of the commission that the commission has adopted an amendment to the code that has substantially incorporated the provisions of this subsection and that such amendment has taken effect. However, after the provisions of this bill have expired, the CS would not prevent the commission from amending the code to repeal those provisions from the code.

According to the Division of Statutory Revision, a reviser's bill would be needed to delete the provisions of this bill after the DCA's certification that it has adopted an amendment that substantially incorporates the provisions of s. 522.79(17), F.S.

[15] Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 5 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).

VIII. Additional Information:

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

CS by Community Affairs on April 4, 2011:
This CS makes clarifying amendments and specifies situations in which the provisions of the act do not apply. The CS also provides that the provisions of this act shall expire upon being adopted into the Florida Building Code.

B. Amendments:

None.

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 Transportation Committee

BILL:	CS/CS/SB 1824
INTRODUCER:	Transportation Committee, Regulated Industries Committee and Senator Hays
SUBJECT:	Regulated Professions and Occupations
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	**Fav/CS**
2.	Eichin	Spalla	TR	**Fav/CS**
3.	Carey	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill authorizes the Department of Highway Safety and Motor Vehicles to release photographs to the Department of Business and Professional Regulation (department) to identify suspects involved in unlicensed activity investigations. This bill also amends provisions related to the regulation of professions under the Department of Business and Professional Regulation (department) as follows:

- Provides the department can waive renewal fees on a case-by-case basis for financial hardship or an error caused by the department;
- Provides licensees who are required to obtain continuing education prior to license renewal need only complete one licensure cycle of continuing education to reactivate an inactive license;
- Decriminalizes violations of board rules for cosmetology related professions and real estate professions;
- Amends appraisal regulations and deletes references to Uniform Standards of Professional Appraisal Practice and provides that the professional standards be adopted by board rule;

- Provides matters related to the nutritional content and marketing of foods offered in public food service establishments are preempted to the state, and provides mandatory completion of a remedial educational program administered by a food safety training program provider may be imposed by the Division of Hotels and Restaurants for certain violations;
- Establishes a peer review process for licensed accounting firms, requiring compliance with the process in order to obtain or maintain a license;
- Grants the Board of Architecture and Interior Design the authority to contract with nonprofit organizations for the regulation of professionals; and
- Delays the implementation of the regulation of appraisal management companies, from July 1, 2011 to July 1, 2014.

This bill substantially amends the following sections of the Florida Statutes: 322.142, 373.461, 455.213, 455.271, 475.42, 477.0212, 477.0265, 481.217, 481.315, 489.116, 489.519, 475.611, 475.626, 475.624, 475.628, 509.032, 509.261, 473.311, 473.323, 481.205, 475.25, 475.615, 475.617, 475.6175, 475.6235, and 475.6245 and Chapter 2010-84, Laws of Florida.

This bill creates the following section of the Florida Statutes: 473.3066 and 473.3125.

This bill repeals s. 686.201, F.S.

II. Present Situation:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.[1] The department is created in s. 20.165, F.S., and s. 20.165(2), F.S., establishes the following eleven divisions:

- Division of Administration;
- Division of Alcoholic Beverages and Tobacco;
- Division of Certified Public Accounting;
- Division of Florida Condominiums, Timeshares, and Mobile Homes;
- Division of Hotels and Restaurants;
- Division of Pari-mutuel Wagering;
- Division of Professions;
- Division of Real Estate;
- Division of Regulation;
- Division of Technology and
- Division of Service Operations.

Professional Boards

[1] Chapter 93-220, L.O.F.

Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.;
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.;
- Barbers' Board, created under ch. 476, F.S.;
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.;
- Construction Industry Licensing Board, created under part I of ch. 489, F.S. ;
- Board of Cosmetology, created under ch. 477, F.S. ;
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.;
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.;
- Board of Landscape Architecture, created under part II of ch. 481, F.S.;
- Board of Pilot Commissioners, created under ch. 310, F.S.;
- Board of Professional Engineers, created under ch. 471, F.S.;
- Board of Professional Geologists, created under ch. 492, F.S.;
- Board of Veterinary Medicine, created under ch. 474, F.S.;
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.; and
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.;

Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.; and
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission,[2] the Pilot Rate Review Board,[3] and the Regulatory Council of Community Managers are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.;
- Farm labor contractors under part III of ch. 450, F.S.; and
- Talent agencies under part VII of ch. 468., F.S.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

[2]Section 548.003, F.S.
[3] *Id.*

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Fees

Section 455.213, F.S., establishes general licensing provisions for the department, including the authority to charge licensing fees.

Continuing Education

Section 455.271(4), F.S., provides an inactive licensee may change his or her status to active provided the licensee meets all requirements for active status, pays the appropriate fees, and meets all continuing education requirements.

Cosmetology

Section 477.019(7)(a), F.S., requires the Board of Cosmetology to prescribe by rule continuing education requirements, not to exceed 16 hours biennially,[4] as a condition for renewal of a license or registration as a specialist. Section 477.0212, F.S., provides a cosmetologist's license that has become inactive may be reactivated upon application to the department, which would require the inactive licensee to complete 16 hours of continuing education coursework for each cycle he or she was inactive.

Architecture and Interior Design

Section 481.215, F.S., provides the continuing education requirements for renewal of architect and interior designer licenses shall be no less than 20 hours per license cycle. Section 481.217(1), F.S., provides the continuing education requirement for reactivating an architect's license may not exceed 12 hours for each year the license was inactive. The statute provides the minimum continuing education requirement for reactivating an interior designer's license shall be the number of hours required for the most recent license cycle plus half of the requirements for each year or part in which the license was inactive.

Landscape Architecture

Section 481.315(1), F.S., provides continuing education requirements for renewing an inactive landscape architect's license may not exceed 12 hours for each year the license was inactive.

Construction

Section 489.115, F.S., provides that the continuing education requirement for renewal of a construction contractor's license shall be at least 14 hours per license cycle. Section 489.116(6), F.S., provides an inactive licensee shall comply with the same continuing education requirements that are imposed on an active licensee.

[4] Licenses are renewed on a two-year cycle.

Electrical or Alarm Contracting

Section 489.517(3), F.S., provides that the continuing education requirement for renewal of an electrical or alarm contractor's license shall be at least 14 hours per license cycle. Section 489.519(1), F.S., provides the continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the certificate or registration was inactive.

Criminalization of Rule Violations

Section 477.0265(1)(c), F.S., provides it is unlawful for any person licensed or registered under ch. 477, F.S., to engage in willful or repeated violations of ch. 477, F.S., or any rule adopted by the Board of Cosmetology. Section 477.0265(2), F.S., provides any person who violates any provision of s. 477.0265, F.S., commits a misdemeanor of the second degree.[5]

Section 475.42(1)(e), F.S., makes any violation of a lawful rule of the Florida Real Estate Commission a disciplinary action. Section 475.42(2), F.S., subjects the licensee to criminal sanctions for a rule violation.[6] In addition, s. 475.626(2), F.S., makes it a crime to violate any rule of the Florida Real Estate Appraisal Board. Criminal sanctions may be imposed no matter how minor the rule violation.[7]

Appraisal Management Companies

Chapter 2010-84, L.O.F., created the regulation of a new license type for Appraisal Management Companies. The new regulations are to take effect on July 1, 2011. Since passage of the state legislation, the United State Congress passed H.R. 4173, also known as the Frank-Dodd Wall Street Reform and Consumer Protection Act, which was enacted into law on July 21, 2010.[8] The new federal law requires states to regulate Appraisal Management Companies; however, according to the division, because final regulatory requirements have not been set by rule at this time, there remains uncertainty about how to proceed to ensure consistencies with the requirements of the federal law.

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (division) within the department is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to

[5] A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days or a fine not to exceed $500.
[6] A misdemeanor of the second degree.
[7] *Id*.
[8] Public Law 111-203.

the department, there are over 37,273 licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.[9]

The division is responsible for inspecting public food service establishments to ensure that they meet the requirements of ch. 509, F.S., and division rules.[10] Each public food service establishment must obtain a license and meet the standards set by the division to maintain the license.[11]

Any public food service establishment or pubic lodging establishment that has operated or is operating in violation of ch. 509, F.S., or the rules of the division, operating without a license, or operating with a suspended or revoked license may be subject by the division to:

- Fines not to exceed $1,000 per offense;
- Mandatory attendance, at personal expense, at an educational program sponsored by the Hospitality Education Program;[12] and
- The suspension, revocation, or refusal of a license issued pursuant to ch. 509, F.S.

Board of Accountancy

The Board of Accountancy within the department is the agency charged with regulating the practice of public accountancy.[13] The Division of Certified Public Accounting performs for the board all services concerning the enforcement of ch. 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in ch. 455, F.S., necessary to perform the board's duties under the chapter.

Section 473.302(4), F.S., defines a "certified public accountant" to mean a person who holds a license to practice public accounting in this state under the authority of ch. 473, F.S.

Section 473.302(8), F.S., defines the "practice of," "practicing public accountancy," or "public accounting" to mean:

> (a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;

[9] *See Annual Report, Fiscal Year 2009-2010*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2009_10.pdf (Last visited March 1, 2011).
[10] Section 509.032, F.S.
[11] Section 509.241, F.S.
[12] Section 509.302, F.S. This program was not funded in FY 2010-2011.
[13] Section 473.303, F.S.,

> (b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, including the performance of such services by a certified public accountant in the employ of a person or firm; or
>
> (c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, a firm of certified public accountants, or a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting licensees employed by unlicensed firms from preparing financial statements as authorized by this paragraph.
>
> However, these terms [of practice] shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

Section 473.302(5), F.S., defines the term "firm" to mean "any entity that is engaged in the practice of public accounting."

Section 473.3101(1)(a), F.S., requires that firms must hold a license if the firm:

- Uses the title "CPA," "CPA firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting; or
- Does not have an office in this state but performs the services described in s. 473.3141(4), F.S.,[14] for a client having its home office in this state, as defined by rule of the board.

Section 473.311(1), F.S., requires CPA licensee's, as a condition of license renewal every two years, complete continuing education requirements, and pass an examination on chs. 455 and 473, F.S. The biennial renewal fee for individual active and inactive status licenses is $105.00.[15]

The continuing education requirement provides every two years before each license renewal CPA's must successfully complete not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board.[16]

[14] Section 473.3141, F.S., provides the practice requirements for CPA's from out-of-state.
[15] *See* Rule 61H1-31.001, F.A.C., for the board's fee schedule. Section 473.305, F.S., authorizes a maximum biennial renewal fee of $250.
[16] Section 473.312, F.S.

The board may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period. Not less than 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services. Not less than 5 percent of the total hours required by the board shall be in the practice of public accounting.[17]

Florida does not require firms to participate in a peer review program. It also does not have a peer review oversight committee or other oversight process for peer review. According to the Florida Institute of Certified Public Accountants (FICPA), 48 states have peer review requirements. According to FICPA, Florida and Delaware are the only states without a peer review requirement.

Also according to the FICPA, the goal of a peer review is to help CPA firms improve their work, if needed, or to show the CPA's work meets professional auditing standards.
The Florida Institute of Certified Public Accountants has represented that Florida CPA firms that perform one or more audits, reviews, compilations, or any other agreed-upon attestation engagement, and are members of the American Institute of Certified Public Accountants are currently required to perform work under the Yellow Book standards[18] and public company audits which requires that they enroll in a peer review program and undergo a peer review at least once every three years.

The American Institute of Certified Public Accountants Peer Review Board has approved 41 state CPA societies or groups of societies as "administering entities" to administer the peer review program for 55 licensing jurisdictions.[19]

The board has unanimously approved the concept of peer review as a requirement for firm license renewal.[20]

Driver's Licenses

Section 322.142, F.S., provides reproduction of a driver's license digital image and signature from the file or record of the Department of Highway Safety and Motor Vehicles are exempt from the open records provisions in s. 119.07(1), F.S., except for specified departmental purposes. The Department of Highway Safety and Motor Vehicles may provide copies of licenses to the department pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the department.

[17] *Id.*
[18] The "Yellow Book" provides the government auditing standards.
[19] *Peer Review Resources,* American Institute of Certified Public Accountants, http://www.aicpa.org/InterestAreas/PeerReview/Resources/Pages/default.aspx (last visited March 27, 2011).
[20] See correspondence from David C. Tipton, CPA, Chairman, Florida Board of Accountancy, to the Florida Institute of Certified Public Accountants, dated December 7, 2010, which is on file with the professional staff of the Senate Committee on Regulated Industries.

The department is currently not authorized to access the digital images for the purpose of identifying subjects who are under investigation for unlicensed activity.

III. Effect of Proposed Changes:

Section 1. Amends s. 322.142(4), F.S., to provide the Department of Highway Safety and Motor Vehicles may reproduce color photographic or digital imaged licenses and signatures of licensees to the Department of Business and Professional Regulation for the purpose of identifying subjects who are under investigation for unlicensed activity.

Section 2. Creates subsection (12) of s. 455.213, F.S., to provide the department may grant a fee waiver for a license renewal on a case-by-case basis due to financial hardship or an error caused by the department.

Section 3. Amends s. 455.271(10), F.S., to provide a licensee, except a person licensed under chs. 473 or 475, F.S.,[21] shall only be required to complete one renewal cycle of continuing education to reactivate a license.

Sections 4. Amends s. 475.42, F.S., to eliminate rule violations of the Florida Real Estate Commission from the list of violations which may result in criminal penalties.

Section 5. Amends s. 477.0212(2), F.S., to provide the Board of Cosmetology shall require a licensee to complete one renewal cycle of continuing education requirements prior to renewing an inactive license.

Section 6. Amends s. 477.0265, F.S., to eliminate rule violations of the Board of Cosmetology from the list of violations which may result in a criminal penalty.

Sections 7-10. Amends various sections of statutes to provide architects, interior designers, landscape architects, construction contractors, electrical contractors, and alarm contractor licensees shall only be required to complete one renewal cycle of continuing education to reactivate a license.

Section 11. Repeals paragraph (v) of subsection (1) of s. 475.611, F.S., as amended by ch. 2010-84, L.O.F., effective July 1, 2014.[22] This paragraph provided the definition of "Uniform Standards of Professional Appraisal Practice."

Section 12. Repeals paragraphs (b) and (c) of subsection (1) of s. 475.626, F.S., as amended by ch. 2010-84, L.O.F.,.[23] These paragraphs criminalized rule violations of the Florida Real Estate Appraisal Board.

[21] Chapter 473, F.S., pertains to public accountancy. Chapter 475, F.S., pertains to real estate brokers, sales associates, appraisers, and schools.
[22] The referenced provision is not effective until July 1, 2011.
[23] *Id*.

Section 13. Amends subsection (14) of s. 475.624, F.S., as amended by ch. 2010-84, L.O.F., to remove references to the Uniform Standards of Professional Appraisal Practice, to provide the standards of professional practice will be established by board rule.

Section 14. Amends s. 475.628, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice, to provide the standards of professional practice will be established by board rule.

Section 15. Amends s. 509.032, F.S., to provide matters related to the nutritional content and marketing of foods offered in public food service establishments are preempted to the state.

Section 16. Amends s. 509.261, F.S., to provide a public lodging establishment or public food service establishment that has violated ch. 509, F.S., or a rule of the Division of Hotels and Restaurants, may be subject to mandatory completion of a remedial education program administered by a food safety training program provider whose program has been approved by the division.

Section 17. Amends ch. 2010-84, L.O.F., to change the effective date for the regulation of appraisal management companies to July 1, 2014.

Section 18. Creates s. 473.3066, F.S., to authorize the board to establish a five-member peer review oversight committee. The board is not required to establish this committee. If the board does establish the committee, it may adopt rules for the qualifications, appointment, and terms of members. Each member of the committee must be a Florida-licensed CPA, and their firm must have undergone a peer review and received a review rating of "pass" on the most recent peer review.

Members of any state board, members of another state accountancy board committee, and persons who perform enforcement-related duties for a state accountancy board may not serve on the committee. Committee members would serve without compensation, including no reimbursement for per diem or travel expenses. The bill provides for staggered term terms that are not to exceed three years.

The board's rules may also establish the duties of the committee, may include, but are not limited to, providing or performing:

- Oversight for peer review programs and peer review administering organizations;
- Periodically reporting to the board on the effectiveness of peer review programs and providing a list of licensees that participate in the programs; and
- Other duties relating to oversight of peer review programs.

Section 19. Amends s. 473.311, F.S., to clarify the department shall renew a license issued under section 473.308 F.S.

This bill creates subsection (2) of s. 473.311, F.S., to require, effective January 1, 2015, a firm must satisfactorily comply with the peer review requirements in order to renew a firm license. The firm's license may be renewed if the board has extended the time to comply with the peer

review requirement. Also, s. 473.311(3), F.S., is amended to clarify the board's authority to adopt rules for license renewals relates to the CPA license and the firm license under ss. 473.308 and 473.3101, F.S., respectively.

Section 20. Creates s. 473.3125, F.S., to define terms as used in this section and to provide standards for peer review.

- Section 473.3125(1)(a), defines the term "licensee" to mean firms that are required to be licensed under s. 473.3101, F.S., and that practice public accounting as defined in s. 473.302(8)(a), F.S.

- Section 473.3125(1)(b), F.S., defines the term "peer review" to mean "the study, appraisal, or review by one or more independent certified public accountants of one or more aspects of the professional work of a licensee."

- Section 473.3125(2)(a), F.S., requires that the CPA firm:

  - Enroll in a peer review program of a peer review administering organization approved by the board; and
  - Undergo a peer review at least once every 3 years which is performed according to this section and the rules of the board and submitted to and accepted by a peer review administering organization.

- Section 473.3125(2)(b), F.S., provides that licensees are not required to enroll is a peer review program or undergo a peer review if they do not perform the accounting services defined in s. 473.302(8)(a), F.S.

- Section 473.3125(2)(c), F.S., provides an exception from the requirements to enroll in a peer review program and for a peer review requirement for licensees that have been licensed less than 18 months.

- Section 473.3125(2)(d), F.S., provides that a licensee that receives a review rating of "fail" on two consecutive peer reviews must submit any documentation requested by the board.

- Section 473.3125(3), F.S., requires the board to adopt rules establishing minimum standards for peer review programs including establishing minimum criteria for the board's approval of one or more peer review administering organizations to facilitate and administer the peer review program. The rules must require the peer review administering organization to submit to the board a written summary of the organization's peer review program that includes a description of its entire peer review process.

- Section 473.3125(3)(c), F.S., sets forth the minimum standards for the board to approve peer review organizations. The organization must demonstrate the ability to administer its peer review program in the manner described in its written summary and to comply with the board's minimum standards.

- Section 473.3125(3)(d), F.S., authorizes the board to withdraw its approval of any organization that fails to comply with s. 473.3125, F.S., or the board's rules.

- Section 473.3125(4), F.S., provides immunity from civil liability for CPA's and other persons appointed or authorized to perform administrative services for the peer review administering organization for furnishing information or performing within the scope or function of the duties of the peer review administering organization.

- Section 473.3125(5), F.S., provides the proceedings, records, and work papers of a peer review administering organization are privileged, confidential, and not subject to discovery in a civil or arbitration proceeding. The bill also prohibits a person from testifying in a civil or arbitration proceeding in connection with a peer review. The privilege does not apply to public records and materials prepared for a particular engagement. The privilege does not apply to any dispute between a peer review administering organization and licensee relating to a subject arising from the performance of the peer review.

Section 21. Amends s. 473.323 F.S., to authorize the board to discipline any licensed audit firm or public accounting firm that is subject to the peer review requirement if the firm fails to enroll in a peer review program or undergo a peer review as required by s. 473.3125, F.S.

The firm may also be disciplined by the board if it engages in material noncooperation with a peer review administering organization approved by the board.

Section 22. Amends s. 481.205, F.S., to grant the Board of Architecture and Interior Design. authority to contract with nonprofit organizations under s. 455.32, F.S., for the regulation of professionals.

Section 23. Repeals s. 686.201, F.S., relating to sales representatives involving commissions.

Section 24. Amends s. 373.461(5)(c), F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule.

Section 25. Amends s. 475.25(t), F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule.

Section 26. Amends s. 475.615(5), F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule.

Section 27. Amends s. 475.617, F.S., to conform with other changes in the bill relating to the equivalency of board-adopted rules to the Uniform Standards of Professional Appraisal Practice.

Section 28. Amends s. 475.6175(1), F.S., to conform with other changes in the bill relating to the equivalency of board-adopted rules to the Uniform Standards of Professional Appraisal Practice.

Section 29. Amends s. 475.6235(4), F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule. In addition, this section clarifies an application for registration of an appraisal management company shall expire one year after the date received "by the department".

Section 30. Amends s. 475.6245(1), F.S., to provide the standards of professional practice will be established by board rule.

Section 31. Provides that except as expressly provided in this act, the act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The confidentiality of records provided in s. 473.3125(5), F.S., would not apply to any documentation provided to the board, as provided in s. 473.3125(2)(d), F.S., and which are subject to the public records requirements in s. 119.07, F.S..

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes the department to waive renewal fees on a case-by-case basis.

B. Private Sector Impact:

The bill provides a reduction in the continuing education requirements for activating an inactive license. The reduction in requirements and potential for fee waivers would decrease costs to licensees.

Public accountancy firms that are licensed under s. 473.3101, F.S., and that practice public accounting as defined in s. 473.302(8)(a), F.S., would be required to enroll with a peer review organization and submit to peer review at least every three years as a condition for renewal of their license every two years. According to the Florida Institute of Certified Public Accountants, the cost of a peer review varies depending on the type of accountancy practiced and the complexity of the subject, but advised that a peer review may cost at least $900.

C. Government Sector Impact:

The bill authorizes the department to waive fees due to financial hardship or fault of the department on a case-by-case basis. Because of this provision, there may be a reduction in department revenues, although the department anticipates that any reduction would be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Regulated Industries on March 29, 2011:
The CS removes references to criminal investigations and instead provides that the Department of Highway Safety and Motor Vehicles may provide copies of drivers' licenses for the purpose of identifying subjects who are under investigation by the department for unlicensed activities. The CS adds that the board, or the department when there is no board, shall only require one cycle of continuing education courses, except for licensees under chs. 473 and 475, F.S. The CS amends the appraisal regulations and deletes the references to Uniform Standards of Professional Appraisal Practice. Instead, the CS provides that the professional standards will be adopted by board rule. The CS provides that matters related to the nutritional content and marketing of foods offered in public food service establishments are preempted to the state. In addition, the CS provides that mandatory completion of a remedial educational program administered by a food safety training program provider may be imposed by the Division of Hotels and Restaurants on any public lodging establishment or public food service establishment that has operated in violation of ch. 509, F.S., or a rule of the division.

CS by Transportation on April 5, 2011:
The CS:

- provides for the Board of Appraisers to adopt rules establishing standards of professional practice;
- requires the Board of Accountancy to establish a peer review program and provides for implementation of the program, including requirements for firms to enroll and be subject to peer review; and
- conforms several sections with other changes in the bill relating to the equivalency of board-adopted rules to the Uniform Standards of Professional Appraisal Practice.

B. Amendments:

None.

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 Budget Committee	
BILL:	CS/CS/SB 1318
INTRODUCER:	Senate Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations; Committee on Commerce and Tourism; and Senator Benacquisto
SUBJECT:	Tax Refund for Qualified Target Industry Businesses
DATE:	April 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Fav/CS**
2.	Martin	Meyer, R.	BTA	**Fav/CS**
3.	Martin	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

One of the Florida's most popular economic development incentives is the Qualified Target Industry (QTI) Tax Refund Program. By law, QTI provides several criteria for the Governor's Office of Tourism, Trade, and Economic Development (OTTED) and Enterprise Florida, Inc., (EFI) to review when establishing the list of target industries for the incentive.

CS/SB 1318 modifies the criteria by renaming one of the criteria and giving special preference to businesses that enhance trade opportunities and global logistics, one of the new additions to the 2011 Target Industry Sector List.

The bill also adds input from the local governing body recommending the target industry project about which private-sector wage calculation OTTED and the QTI business should use as the baseline for calculating the required 115-percent annual average wage for the business' new employees. Currently only county governing boards are required to notify OTTED and EFI of which calculation must be used.

CS/SB 1318 amends s. 288.106, F.S.

II. Present Situation:

The Qualified Target Industry (QTI) Tax Refund Program[1]

Overview

The QTI program was created by the Florida Legislature in 1994 to attract businesses in "targeted" industry sectors that offer high-wage jobs, high-skilled jobs to relocate in Florida. This incentive provides annual refunds of seven state taxes and local-government ad valorem taxes to businesses that meet job-creation and wage requirements for the new employees, per an agreement with OTTED.

Businesses that locate or expand in Florida are eligible for tax refunds of $3,000 per new job created. The tax refund increases to $6,000 per job for businesses that locate in an enterprise zone or rural county. In addition, a business is eligible for per-job bonuses if certain criteria are met.

A business' application must be reviewed and certified pursuant to the standard 52-day timeline outlined in s. 288.061, F.S., which includes initial review by Enterprise Florida, Inc., and recommendations to OTTED. The executive director of OTTED makes the final decision to award the QTI incentive to a business.

The QTI program is considered by EFI to be the most popular of the state's incentives. According to EFI's 2010 incentives report, of the 110 businesses that applied for the incentive last fiscal year, 78 were approved by OTTED and 63 have entered into agreements with OTTED.[2]

There are 69 active QTI projects. According to the incentives report, the owners of these projects have invested $778 million in Florida, and created 7,427 jobs paying an annual average wage of $46,345.[3] The average statewide private-sector annual wage in 2010 was $39,621, according to data compiled by the Florida Agency for Workforce Innovation.[4]

Key definition

A "target industry business" is defined as either a corporate headquarters or any business that is engaged in one of the target industries identified by OTTED and EFI as meeting all of the statutory criteria in s. 288.106(2)(t), F.S. Those criteria are:

- Future Growth.— Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to businesses that export goods to, or provide services in, international markets and businesses that replace domestic and international imports of goods or services;

[1] Much of the background information on QTI in this section was taken from "Interim Report 2010-211: Sunset Review of the Qualified Target Industry Tax Refund Incentive Program, Section 288.106, F.S." The report is available at: http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-211cm.pdf

[2] Available at http://eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf Page 13. Site last visited March 24, 2011.

[3] Ibid.

[4] On file with the Senate Commerce and Tourism Committee.

- Stability.—The industry should be stable, not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather, and relatively resistant to recession, so that the demand for its products or services is not necessarily subject to decline during an economic downturn;
- High Wage.—The industry should pay relatively high wages compared to statewide or area salary averages;
- Market and Resource Independent.—The industry should be both market and resource independent. In other words, the business should not be reliant on Florida consumers to purchase its products or services in order to be profitable, nor should it rely on Florida resources;
- Industrial Base Diversification and Strengthening.—The industry should contribute toward diversifying, strengthening, or expanding the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products, building regional industrial clusters, or developing strong industrial clusters that include defense and homeland security businesses; and
- Economic Benefits.— The industry should have strong positive impacts on or benefits to the state and regional economies.

The "target industry list" actually is a list of six industry sectors, with several business types listed under each. It is published in EFI's annual Incentives Report and is attached to OTTED's annual legislative budget request.[5] Originally, the list of target industries was approved by the Legislature, but since 1996 the list has been developed by OTTED, in consultation with EFI and other stakeholders. The Legislature in 2010 required that the list be reviewed, and if appropriate, revised every third year.

Based on that legislatively required review, the list was modified. The 2011 targeted industry list was approved by OTTED in January and includes the seven newly renamed categories of:

- Clean Tech;
- Life Sciences;
- Information Technology;
- Aviation/Aerospace;
- Homeland Security/Defense;
- Financial/Professional Services; and
- Emerging Technologies.

Corporate headquarters, manufacturing, and research and development activities are underneath each category.[6] Included in the "Emerging Technologies" column are: global logistics, marine sciences, materials science, and nanotechnology.

Specifically excluded by statute as "target" industries are: any business engaged in retail activities; any electrical utility company; any phosphate or other solid-minerals severance,

[5] 2010 Incentives Report, prepared by EFI. Information on page 57. Available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf. Site last visited March 18, 2011.
[6] On file with the Senate Commerce and Tourism Committee.

mining, or processing operation; any oil or gas exploration or production operation; or any business subject to regulation by the state Division of Hotels and Restaurants. Implicitly excluded is agriculture.

Also, call centers and other customer-support businesses[7] may be considered a target industry business only after EFI and the local governing board in the community where the business plans to locate determines that the community is suffering from high unemployment, low per-capita income, or other detrimental job-related problems.

Other Eligibility Criteria
Meeting the definition of "target industry business" is just the first step for a business interested in applying for a QTI incentive. The business also must:

- Agree to create at least 10 new jobs or, if a Florida business planning to expand its operations, agree to create a net increase in employment of at least 10 percent. OTTED may grant a waiver to the minimum 10-percent increase in new jobs by an existing business within an enterprise zone or a rural county;
- Agree to pay each new employee an annual salary that is at least 115 percent of either the average annual private-sector wage in the area where the business plans to locate or expand, or the statewide average annual private-sector wage. Currently, the governing board of the county where the business plans to locate or expand informs OTTED which of the private-sector annual average wage thresholds will serve as the basis on which the 115 percent calculation is based[8]; and
- Receive a commitment of a 20-percent match (cash or in-kind) from the local government where the business proposes to locate or expand. The form of the commitment must be a resolution passed by the county commission. The local match can include the amount of ad valorem tax abatement or the appraised market value of publicly owned land or structures deeded to or leased by the QTI business. If a local government provides less than its 20-percent match, OTTED reduces the state award by the same amount.

Refunds
As mentioned previously, the basic refund is $3,000 per new job created, to be paid out over the term of the business' agreement with OTTED. Eligible businesses can receive double the amount of refunds for new jobs created if they are located in rural counties or in enterprise zones.

Also, bonuses of $1,000 to $2,000 per new job created are available, based on the following criteria:

[7] Identified by NAICS codes 5611 and 5614. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The U.S. Office of Management and Budget devised the system.
[8] OTTED also is allowed in statute to waive the wage requirement for businesses that locate in a rural county or city, in an enterprise zone, or in a brownfield area, if requested and justified in writing by the local governmental entity and EFI. A manufacturing project at any location in the state may qualify for the waiver if the jobs proposed to be created pay an estimated annual average wage equaling at least 100 percent of the average private sector wage in the area where the business is to be located.

- A $1,000 per-job bonus if the annual average wage is 150 percent of the statewide or area average annual private-sector wage;
- A $1,000 per-job bonus if the local match is equal to the state's incentive award;
- A $2,000 per-job bonus if the annual average wage is 200 percent of the statewide or area average annual private-sector wage;
- A $2,000 per new job bonus for businesses that increase by 10 percent the tonnage or value of their exports through a Florida airport or publicly owned seaport; and
- A $2,000 per new job bonus if the business is in one of the "high-impact industry sectors" of clean energy, corporate headquarters, financial services, biomedical technology, information technology, and transportation equipment manufacturing.

No business may receive more than $1.5 million in QTI refunds in a single fiscal year, or more than $5 million total over the term of its agreement with OTTED. The exception is for QTI businesses located in an enterprise zone, where the annual cap is $2 million and the overall cap is $7.5 million. Also, no business may receive more than 25 percent of the total award in a single fiscal year; consequently, QTI contracts between OTTED and a business typically are for a term of 4 years.

No business may receive more in tax refunds than taxes paid.

Taxes eligible for refund under the QTI program are the:

- Corporate income taxes under ch. 220, F.S.;
- Insurance premium tax under s. 624.509, F.S.;
- Taxes on the sales, use, and other transactions under ch. 212, F.S.;
- Intangible personal property taxes under ch. 199, F.S.;
- Emergency excise taxes under ch. 221, F.S.;
- Excise taxes on documents under ch. 201, F.S.;
- Ad valorem taxes paid, as defined in s. 220.03(1), F.S.; and
- Certain state communications services taxes administered under ch. 202, F.S.

In s. 288.095(3)(a), F.S., the amount of annual state funding for the QTI and Qualified Defense Contract and Space Business (commonly referred to as QDSC) tax refunds is capped at $35 million. Historically, the majority of the funds are paid out as QTI tax refunds because QTI is the more popular of the two incentive programs. In FY 2010-2011, the Legislature appropriated a lump sum of $16.57 million for the QTI and QDSC tax refund incentive programs.

Global Logistics

Businesses that specialize in global logistics manage the flow of goods and services in the international market. Global logistics begins from the point a product leaves its manufacturer business to its transport within or out of the country, which means the domestic logistics infrastructure also must be efficient. A managed supply chain includes the following: inventory management, coordination of resources, and the transportation, warehousing, and packaging of manufactured goods.

In December 2010, the Florida Chamber Foundation published the Florida Trade and Logistics Report.[9] Among the report's findings:

- In Florida, trucking is the primary method of moving goods, providing transport for more than 73 percent of all tonnage. Movement over water accounts for approximately 15 percent of all freight flows, followed by rail at 12 percent. Air accounts for less than 1 percent by volume, but holds a significant share of high-value goods;
- Domestic and international trade flows to, from, and within Florida were estimated at 623 million tons, or 33 tons per Floridian;
- Of that total, more than half originated and terminated in Florida. About 188 million tons were imports from other nations or states, and the remaining 107 million tons were exports produced in Florida and transported to other nations or states: and
- Trade, logistics, and distribution industries employed 570,000 Floridians in 2008, with an average wage nearly 30 percent higher than the average for all industries in the state. Including spinoff jobs in related industries, trade and logistics industries support about 1.7 million jobs in Florida, nearly 22 percent of employment in the state.

The report made a number of recommendations on how Florida should take advantage of the continuing globalization of the economy, with particular emphasis on attracting a share of the increased waterborne trade when the widened Panama Canal opens in 2014:

- Capture a larger share of the containerized imports originating in Asia and serving Florida businesses and consumers, about half of which enter the nation through seaports in other states today;
- Expand export markets for Florida businesses by filling these import containers with Florida goods and using more efficient logistics patterns to attract advanced manufacturing and other export related industries to Florida;
- Emerge as a global hub for trade and investment, leveraging its location on north-south and east-west trade lanes to become a critical point for processing, assembly, and shipping of goods to markets throughout the eastern United States, Canada, the Caribbean, and Latin America;
- Provide sufficient and reliable funding for transportation infrastructure projects; and
- Designate global trade and logistics as a statewide targeted industry.

Also, one of EFI's strategic priorities from its 2010-2015 Road Map[10] to Florida's Future/Strategic Plan for Economic Development is for the state to improve its transportation systems for global and domestic commerce. The report makes two recommendations related to this effort:

- Maintain and expand Florida's leadership in international trade; and
- Enhance the competitiveness of Florida's infrastructure for international commerce.

[9] Florida Trade and Logistics Study, page 17. Available at: https://www.communicationsmgr.com/projects/1378/docs/FloridaTradeandLogisticsStudy_December2010.pdf. Last visited March 6, 2011.

[10] Available at http://eflorida.com/IntelligenceCenter/Reports/flip/roadmap/index.html.

III. Effect of Proposed Changes:

Section 1: Amends s. 288.106, F.S., to rename the sixth criterion, "Economic Benefits," the more descriptive "Positive Economic Impact," and to revise the explanation of that criterion to include special consideration for industries that facilitate:

> "…the development of Florida as a hub for domestic and global trade and logistics, because such activities generate economic opportunities for multiple target industry sectors."

Also, the local governing body recommending the qualified target industry project is given the opportunity to tell OTTED whether the area or statewide private-sector average wage must be used as the basis for calculating the 115-percent wage figure to be paid by QTI businesses to its new employees.

Section 2: Provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Certain businesses may be given preference over others for economic incentive awards based on the new statutory provision.

C. Government Sector Impact:

Indeterminate, but not likely to have any impact on state or local expenditures for economic development incentives.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations on April 13, 2011:
The committee adopted one amendment which clarified that the "local governing body recommending the qualified target industry", rather than the "governing board of the county or municipality", is given the opportunity to tell OTTED whether the area or statewide private-sector average wage must be used as the basis for calculating the 115-percent wage figure to be paid by QTI businesses to its new employees.

CS by Commerce and Tourism on March 29, 2011:
The committee adopted two amendments to the bill, which:

- Renamed the "Economic Benefits" criterion "Positive Economic Impacts" and added language giving special consideration to industries that promote enhanced trade and logistics; and
- Added the input from municipal governing boards about which private-sector wage calculation OTTED and the QTI business should use as the baseline for calculating the required 115-percent annual average wage for the business' new employees.

B. Amendments:

None.